

Court practice on tax and customs disputes

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1. Company against Tax Department of Aktobe Region

Tax audit period: 2008 - 2012

Date of audit: 2013

Type of audit: complex tax audit

Amount of assessments: appr. KZT 940 millions

Court instance: the Supreme Court

Date: December 2015

Major issues: exclusion of expenses on geological studies and exploration as well as expenses on education of Kazakhstan personnel from CIT deductions.

Issues:

Expenditures on geological studies

A company declared expenses on geological study and preparatory work for extraction of natural resources in the bottom line of the attachment to CIT report. Since the company did not reflect a detailed breakdown of the total amount of exploration costs in corresponding rows of the attachment, the tax authorities challenged deductibility of such expenses due to incompliance with rules on completion of CIT return. According to the tax authorities' position, manual completion of the bottom lines in tax returns is not envisaged by the rules for completion of tax returns (i.e. total amount should be a result of a formula summarizing numerical data indicated in corresponding rows of the attachment).

Expenditures on education of Kazakhstan personnel

The company claimed CIT deduction for expenditures on education of Kazakhstan personnel in the amount exceeding maximum limit established by the subsurface use contract. According to the company's position, the limit was exceeded due to the unfulfilled obligations of prior periods.

The Courts' position:

Supervisory judicial board took a decision in favor of the tax authorities.

Our recommendations:

In order to mitigate tax risks, it is necessary to comply with rules for completion of tax returns.

With regard to expenditures on education of Kazakhstan personnel, provisions of the contracts on subsurface use / requirements of tax legislation (depending on the tax regime) should be followed.

2. Company against Tax Department of Kostanay Region

Tax audit period: 2009 - 2010

Date of audit: 2014

Type of audit: thematic tax audit of CIT and VAT obligations

Amount of assessments: appr. KZT 28 millions

Court instance: the Supreme Court

Date: December 2015

Major issues: documentary support of expenditures on transportation services and doubtful claims in taxpayer's accounting books.

Issues:

Transport expenditures

A company deducted expenses on transportation of goods, supplied by cargo companies directly to the company's buyers. Since the shipping documents were only available at the level of the carriers and buyers, the company was not able to provide these documents to the tax authorities during the tax audit.

Moreover, the contracts did not reflect the essential conditions of the transaction (e.g., delivery location and delivery time, type of transport, etc.).

Expenditures on doubtful claims

During the tax audit the company did not provide supporting documents on doubtful claims. Moreover, the respective expenditures were not recorded in the accounting system of the company (i.e. only an accounting note was prepared).

The Courts' position:

The Supreme Court made a decision in favor of the tax authorities without satisfaction of the company's claims.

Our recommendations:

We recommend paying a special attention to drafting contracts. In particular, to mitigate tax risks, it is crucial to stipulate essential terms of the transactions under the contracts.

Contracts for transportation of goods should also reflect an obligation of the transporter to provide shipping documents to all parties of the transaction – the shipper and the consignee.

Tax accounting is based on accounting data. Therefore, in addition to preparation of accounting notes, we recommend reflecting respective records in the accounting system.

3. Company against Tax Department of the South Kazakhstan Region

Tax audit period: 2008

Date of tax audit: 2013

Type of audit: thematic tax audit

Amount of assessments: appr. KZT 121 millions

Court instance: the Supreme Court

Date: September 2015

The main topics: determination of mineral extraction tax base

Issues:

The tax authorities insisted on increasing mineral extraction tax base, claiming that extracted underground mineral water is bottled by the company in the special package and sold without changing its composition and without adding certain other elements, i.e. as a first commercial product.

According to the position of the taxpayer, activities of the company envisage sale of sparkling bottled drinks (i.e. not underground mineral water). Thus, production of sparkling beverages requires the execution of production and technological processes (filtration of groundwater, addition of carbon dioxide, etc.). Therefore, expenses associated with bottling of the finished product (cost of containers, caps, etc.) do not relate to the

process of extraction and primary processing.

The Courts' position:

The Supreme Court classified the position of the tax authority as unlawful and decided in favor of the taxpayer.

Our recommendations:

We recommend ensuring that correct tax base is determined for mineral extraction tax for groundwater by accurately determining the type of the commercial products sold by the taxpayer.

4. Company against State Revenue authorities of Medeu Region of Almaty State Revenue Department

Tax audit period: 2010 – 2013

Date of audit: 2014

Type of audit: documental tax audit

Amount of assessments: appr. KZT 308 millions

Court instance: specialized interregional economic court of Almaty

Date: November 2015

Major issues: documentation support of VATable turnovers

Issues:

Additional CIT and VAT liabilities were imposed by the tax authorities. The basis for the assessments was lack of primary documentation and failure of the company to reflect amount of VATable turnovers in its tax reports. Therefore, tax audit was conducted using an indirect method (i.e. based on cash movements on the company's bank accounts).

The Courts' position:

The trial court ruled in favor of the tax authority without satisfaction of the company's claims.

Our recommendations:

In order to mitigate tax risks, we recommend making regular reconciliation with counterparties (buyers and suppliers), as well as exercising proper control over the availability of primary documentation.

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