

National Tax Service Instructions No. 1661

## Guidance On Tax Audit Procedure

2008. 06



National Tax Service

Guidance On Tax Audit Procedure (Refer to International Tax Audit)

2007.7.27 National Tax Service Instructions No. 1661

## Chapter 1. General Provisions

### 1. Purposes

A primary purpose of accomplishing this provision is to protect taxpayers' interests and rights as well as establish tax authorities, by regulating basic common standards and procedures of tax audits or investigation of tax law violation, through the conduct of fair and lawfulness investigation.

### 2. Basic Code of Tax Audit

Tax audit should be faithfully executed according to the following:

1. Protect taxpayers' rights and interests
2. Due diligence
3. Substance Over Form doctrine
4. Documentary of taxation
5. Proportion of Investigation
6. Prohibition of abuse of investigation authority
7. Prohibition of disturbance of property right
8. Prohibition of retroactive taxation
9. Strict adherence to discretionary limitation of Auditor

### 3. Duty of Confidentiality

Investigation officer (including directors) should not furnish or reveal entrusted taxpayer's information to any other person, or use it for any other reason than those authorized or legally mandated.

### 4. Disclosing Audit Standards and Reasons

Identifying taxpayers who are subjected to tax audit should be made fairly based on the objective audit standards, and its performance should be limited by taxpayers' scale, type of business, etc. to avoid excessive selection from bona fide taxpayers.

### 5. Candidate Selection for Tax audit

Identifying taxpayers subjected to tax audit are divided into periodical selection and occasional selection.

### 6. Audit Periods

According to the "Basic Law for National Taxes," determination of audit periods should be at a minimum depends on tax audit lists, types and scales of subjected business and relative difficulties of audit.

### 7. Computation of Audit Periods

The computation of audit periods begins from the first day of audit implementation and ends at the last day there of, but holidays and Saturdays are not included in this computation.

### 8. Audit Method

Depends on the subjected taxpayer's tax payments history, types and scales of business, analysis of imposed tax, and history of tax omission and evasion, an audit can be differently executed as general, partial or simplified audit.

## 9. Advance notification of tax audit

In case of tax audit, advance notice shall be delivered to the subjected taxpayer, at least fifteen days (15 days) prior to the proposed audit implementation date, by direct delivery, registered mail or electronic delivery as regulated under the "Basic Law for National Taxes."

## 10. Deferring Tax audit

Taxpayers who subjected to tax audit may defer the implementation of their audit, with acceptable reasons of their or tax agent's health problems or long-term business trip, which are deemed to create difficulties in achieving a continuous tax audit.

## 11. Grants Taxpayer's Right Charter

At the time of tax audit implementation, "Charter of Taxpayer's right," enacted and announced by the commissioner, should be granted and sufficiently explained to the taxpayer according to the "Basic Law for National Taxes," and its receipt notes from the taxpayer should be filed with the advance notice of tax audit and other audit documents.

## 12. Protection of taxpayer's rights and interests

During an audit process, an auditor should follow rules of protection of taxpayer's rights and interests as well as "Auditor's Code of Conduct."

## 13. Guarantees rights of receiving assistance during tax audit

Under the "Basic Law for National Tax ", a subjected taxpayer should be able to ask a lawyer, certified public accountant, or certified tax attorney to be present at the examination or make a statement for her/him during the tax audit.

#### 14. Limitation on the audit time

An audit should be performed during the taxpayer's regular working hours.

#### 15. Limitations on the extension of audit periods

During the audit procedure, the periods of audit may be extended under certain specific circumstances when there are taxpayer's obvious avoidance of audit by concealment, delay or denial of documents submission, noncompliance with audit questionnaires, or intentional long-term leave of absence.

#### 16. Termination of Tax audit

Under the circumstance of difficulties in audit continuity, caused by natural disaster, fire or severe business disruption in the face of disaster, the tax audit would be terminated for the applicable minimum amount of time.

#### 17. Observance of taxable periods of the audit subjects

During audit procedure, an auditor should apply prescribed scope and limitation on the audit subjects, taxable periods and taxable items, audit periods, and methods of audit.

#### 18. Auditing

During the auditing, an Investigation officer should give a taxpayer sufficient opportunities to defend himself/herself, unless existence of a special exception.

## 19. Furnishing audit information

Auditor should furnish information in an audit as required by taxpayer's specific needs of exercising his/her rights.

## 20. Completion of Tax audit

Auditor should give detailed explanation, after the completion but before the evacuation of the audit, about the audit results as well as remedy for filing a protest, if a taxpayer does not agree with the audit results

## 21. Notifying the results of tax audit

After the completion of the audit, the commissioner of the jurisdiction should mail a notice of audit results to the taxpayer by letter in accordance with the "Basic Law for National Taxes."

## Chapter 2. General Tax Audit

### 1. The Council of transfer pricing

- ① The Council of transfer pricing was formed within the local division of National Tax Service to promote fairness and reasonableness of its operations in compliance with international standards.
- ② The Council performs advance deliberations and adjustments on each of the following lists as well as the results of the transfer pricing investigations:
  1. Matters of proposed termination of the transfer pricing investigation on the adjusted taxable income of more than 100 Million.

2. Matters of proposed termination of objected transfer pricing investigation by the taxpayer.
3. Any other issues deemed to be required of council reviews.

## 2. Requests for information submission

① During a tax audit on an international trade, the regional tax office director or the district tax office head is able to request a taxpayer or his/her foreign related party to submit information related to the below items, under the jurisdiction of the "Law for Coordination of International Tax Affairs" ("CITA"):

1. All related contracts for asset transfer or purchase
2. Price lists of products
3. Schedule of cost of goods manufactured
4. Differentiated specifications for transactions with related parties from with unrelated parties.
5. Above 1 to 4 documents for rendering of services contracts or any other transactions.
6. Corporation's organizational structure table and division of duties chart.
7. Price computation documents for the international transaction.
8. Internal guidelines for decision making on price determination between related parties.
9. Standard of accounting instructions and methods for the transactions.
10. Details of related party's business activities to the transaction

11. The present condition of mutual investments with related party
12. Any errors or omissions in the Income Tax Return or Corporation Tax Return.
13. Any other documents needed for reasonable price fixing.
14. Base documents to understand details of service transactions with diversified company groups.
15. Agreements of Costs assignment related to tax adjustments made by normal cost assignment.

② When the regional tax office director or the district tax office head demands submission of documents, the demands should be made within reasonable level and range of periods considering overall degree of necessities of documents , preparation time of documents ,and the taxpayer's financial burden.

### 3. Methods of demanding submission of documents

Demanding documents related to international transaction (i.e. transfer pricing) by the regional tax office director or the district tax office head, should be made on the "Requests of supporting documents submission form, like transfer pricing"

### 4. Penalties for the failure to meet the obligation of supply information

A taxpayer who fails to submit requested documents within a defined period of time without reasonable reasons, or submit false documents, will be charged penalties of less than thirty thousand dollars.