Tax Certificate

According to article 82 par. 5 of law 2238/1994 Certified Auditors are obliged to issue a Tax Certificate to the companies they audit by performing a special audit in their tax affairs taking place in parallel with the statutory audit. Although the above provision is applicable as of April 2010, the procedure, the way and the formalities of issuing the Tax Certificate have been determined with the Ministerial decision 1159/22.7.2011.

Which companies should be subject to an audit for the Tax Certificate

- Societes Anonymes and Limited Liability Companies, whose annual financial statements are obligatorily subject to a statutory audit by individual Certified Auditors / Audit Firms for all fiscal years ending on or after 30/06/2011

In case the Certified Auditor’s Tax Compliance Report is unqualified, the company will not be subject to an audit by the tax authorities, unless it is included in the sample of cases that will be re-audited from the Ministry of Finance.

According to provisions of Law 2190/1920 and Law 3190/1955, Societes Anonymes and Limited Liability Companies are obligatorily audited by Certified Auditors, in case where two (2) out of three (3) following criteria are exceeded for two (2) consecutive years:

- Total Assets > €2.5 millions,
- Net Turnover > € 5 millions,
- Average Staff > 50 employees

In addition, companies that prepare, either mandatorily or optionally, their annual financial statements and annual consolidated financial statements under IFRS are obligatorily audited by Certified Auditors. Moreover, under certain conditions, Certified Auditors also audit branches of foreign banks and insurance companies.

Since the Ministerial Decision does not explicitly state which companies should be obligatorily audited by Certified Auditors / Audit Firms for the purpose of issuance of the Tax Certificate, respective clarifications are expected.

Who issues the Tax certificate

It is not clear from article 82 par. 5 of law 2238/1994 whether the Tax Certificate may be issued by a Certified Auditor / Audit Firm other than the one undertaking the statutory audit. However, there are references in Ministerial Decision POL 1159/2011, from which it may be deduced that the Ministry’s intention is to provide that the Tax Certificate will be issued by the Certified Auditor / Audit Firm that undertakes the statutory audit.
Taxation areas covered by the tax audit program

The tax audit is conducted on specific tax areas as defined by a “Special Audit Program”:

- Corporate Income Tax
- Value Added Tax
- Greek Code of Books and Records
- Real Estate Taxes
- Stamp Duty
- Withholding Tax obligations
- Business Transformations
- Transfer Pricing
- E-Commerce

The “Special Audit Program” is issued by the Ministry of Finance in cooperation with the Committee of Accounting Standardization and Auditing (“ELTE”), it is updated annually and it is in accordance with the provisions of International Standard on Assurance Engagement – ISAE 3000

Audit issues not covered by the “Special Audit Program” will be treated in terms of ISAE 3000

If company performed intercompany transactions in the current fiscal year, it is necessary to document the pricing applied on these transactions, as required in Tax Audit Program.

The tax audit is performed on a sample basis. Especially with respect to the audit of tax deductibility of expenses for income tax purposes, the sample covers at least 10% of each expense’s category.

The sample consists of expenses exceeding certain thresholds depending on the companies’ gross income, as depicted in the following table:

<table>
<thead>
<tr>
<th>Gross Revenues</th>
<th>Expense amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; € 50 millions</td>
<td>&gt; € 15 thousands</td>
</tr>
<tr>
<td>€ 50 millions - € 100 millions</td>
<td>&gt; € 25 thousands</td>
</tr>
<tr>
<td>€ 100 millions - € 200 millions</td>
<td>&gt; € 35 thousands</td>
</tr>
<tr>
<td>€ 200 millions - € 500 millions</td>
<td>&gt; € 50 thousands</td>
</tr>
<tr>
<td>€ 500 millions - € 1.000 millions</td>
<td>&gt; € 70 thousands</td>
</tr>
</tbody>
</table>

If the 10% sample is not covered by the above expenses, then the audit sample is extended.

Especially in case of private car expenses, taxes/duties, provisions and conference/reception expenses, the respective tax records are audited irrespective of their amount.

In case violations are identified, Certified Auditors/Audit Firms are obliged to extend their audit procedures. In such case, the above expense thresholds and audit samples do not apply.
Responsibility for the preparation and the correctness of the “tax records”

• The management of the audited company is responsible for the preparation of the “tax records”
• All the “tax records” are signed by a tax accountant
• The determination of the tax adjustments should derive in detail from the books kept
• The determination and the finalization of the tax adjustments should be performed:
  – either directly by the staff performing the entries
  – or the latest until the finalization of the monthly accounting entries

It clearly derives from the relevant provisions that a change in the organizational and operational structure of companies’ accounting departments may occur, so that the tax adjustments are specified in a way that enables the audit for the issuance of the Tax Certificate.

Content of the Tax Certificate

• The Annual Tax Certificate consists of the following two sections:
  a) the “Tax Compliance Report” and
  b) the “Appendix of detailed data”

a) Tax Compliance Report

• The Tax Compliance Report is drafted according to the Sample of Appendix I of Ministerial Decision 1159/2011 and it is distinguished, depending on the type of the conclusion, as depicted in the following table:
<table>
<thead>
<tr>
<th>b) Appendix of detailed data</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is drafted according to the sample of Appendix II of Ministerial Decision 1159/2011 and includes:</td>
</tr>
<tr>
<td>- Details of the audited company</td>
</tr>
<tr>
<td>- Analysis of the findings deriving from the audit</td>
</tr>
<tr>
<td>- Certification that the outcome of the tax audit has been set at the disposal of the company in written and the latter has made its observations in written</td>
</tr>
<tr>
<td>- Provided that violations have been identified by the audit of the Certified Auditors/Audit Firms, the views of both the company’s management and the tax accountant, who is liable to sign the tax statements, should be included therein justifying the reasons for not identifying the violation, by subsequent application of the relevant provisions of the Tax Penalty Code</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>In which case it is issued</th>
<th>Unqualified Tax Compliance Report</th>
<th>Unqualified Tax Compliance Report with emphasis of matter</th>
<th>Qualified Tax Compliance Report</th>
<th>Tax Compliance Report with adverse or disclaimer conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When no tax violations or “insignificant” violations arise</td>
<td>When issues arise, whose tax treatment is disputed</td>
<td>When reservations issues arise (non compliance with tax legislation)</td>
<td>When failure to reach a conclusion exists (e.g. when data are not provided) or when the conclusion is negative (e.g. when the audit verifications cannot be performed)</td>
</tr>
<tr>
<td>What are the consequences</td>
<td>Within fifteen (15) days after submission of the Report to the Ministry of Finance, a letter is sent to the audited company, stating that a) according to the audit performed by the auditors, no tax violations arise, b) the above is in principle accepted by the Ministry of Finance and c) The tax entries will be finalized after completion of sample audit.</td>
<td>An audit order is issued by the competent Tax Audit Office for the issues of emphasis. The audits are conducted by the competent audit authorities and are completed within a period not exceeding eighteen (18) months as of the deadline set to Certified Auditors/Audit Firms to file the Tax Compliance Report to the Ministry of Finance (e.g. the company with year-end on 31/12/2011 said deadline is on 10/01/2014). After the assessment of taxes (if any), the fiscal year is considered “closed”.</td>
<td>An audit order is issued by the competent Tax Audit Office. In case of taxes that could be assessed by tax authorities only upon an audit of specific tax areas, an audit order is issued for these areas. The competent Tax Audit Office of the Ministry of Finance may request from the Certified Auditor all the appropriate documents for the preparation of the audit report.</td>
<td>An audit order is issued by the competent Tax Audit Office.</td>
</tr>
</tbody>
</table>

An audit order is issued by the competent Tax Audit Office.
Documentation of the tax audit

Within the framework of a Tax Compliance Report the following documents are required to be kept:

- A detailed documentation file
- A detailed documentation report, in which the audit process is described in detail and the findings of the audit are documented per tax item, both in case said findings refer to overall compliance of the company with tax legislation as well as in case there are violations in specific areas only
- A completed audit program, in which there is a reference to the audit file per audit step
- The Appendix of the detailed data constitutes part of the tax documentation
- The documentation should be realized on the basis of ISAE 3000 giving the possibility to a third party experienced auditor to confirm the executed work and the conclusion arising therefrom
- Certified auditors / Audit Firms are required to retain detailed documentation file of the tax audits for at least seven (7) years from the Tax Compliance Report’s issuance date
- Certified auditors / Audit Firms are obliged to submit the relevant documentation file to the audit authorities of the Ministry of Finance, upon request

Timeline for the issuance of the Tax Certificate

- The Tax Compliance Report should be completed and filed to the audited company after the latter submits its corporate income tax return and no later than ten (10) days after the corporate income tax return’s submission date.
- Certified Auditors / Audit Firms are also required to submit the Tax Compliance Report electronically to the Ministry of Finance. The submission takes place online in the database maintained by the General Secretariat of Information System (GSIS) no later than ten (10) days after the approval date of the company’s financial statements by the Shareholders’ General Assembly.

Given the financial statements of Limited Liability Companies are approved by the Assembly of Partners within three (3) months from the fiscal year’s end, i.e. before the submission of the annual income tax and VAT return, it should be clarified whether it is possible to submit the Tax Compliance Report for Limited Liability Companies within the deadline applicable for SAs
The documentation of the abovementioned tax audit is completed within sixty (60) days after the submission of the Tax Compliance Report to the Ministry of Finance, irrespective of any violation being identified upon the audit.

In accordance with the above, we present here below an indicative timeline for a SA, whose fiscal year ended on 30/06/2011 or will end on 31/12/2011.

<table>
<thead>
<tr>
<th>Fiscal Year End</th>
<th>Submission of Corporate Income Tax Return</th>
<th>Submission of the Report to the audited Company</th>
<th>Deadline for the approval of financial statements by GA</th>
<th>Electronic Submission of Report to GSIS</th>
<th>Completion of the tax audit’s documentation</th>
</tr>
</thead>
</table>

In which cases may the tax authorities perform a tax audit

Sample based audits by the tax authorities

- At least 9% of the total number of companies audited by Certified Auditors/ Audit Firms for tax compliance will be selected for an audit by the tax authorities.

- The companies shall be selected in accordance to the following criteria:
  - Qualitative criteria (e.g. activity sector, violations or other cross checks etc.)
  - Financial criteria (e.g. gross income, profits or losses, gross or net profit rate etc.)
  - Place and time criteria (e.g. place of production and transportation, seasonal activities, local particularities)

- The audits are carried out by the competent tax audit authorities and they are completed no later than eighteen (18) months following the deadline set for the Certified Auditors/ Audit Firms to submit the Tax Compliance Report to the Ministry of Finance (e.g. for a company with fiscal year end on 31/12/2011, the deadline expires on 10/01/2014).

- The audits cover all the tax areas defined in the Audit Program

- Once the audit is completed the audit reports are drafted
Regular tax audit based on certain criteria

Apart from companies audited on a sample basis, the Ministry of Finance may choose to audit additional companies following recommendation by the Head of the relevant supervisory audit authority and related approval by a Committee (comprising of the General Director of Tax Audits, the General Director of Taxation and the Director of the Audit Department of the Ministry of Finance)

The audit is based on the following criteria:
- Receipt or issuance of false / fictitious tax records
- Transactions with non-existent companies
- Violations of transfer pricing
- Evidence or indications for violation of tax legislation
- Failure of the Certified Auditors/ Audit Firms to issue a Tax Compliance Report by specified deadlines
- Reporting by the Certified Auditors that they were not provided with the necessary information for the conduction of the tax audit
- Cases where the audit of companies by the Certified Auditors / Audit Firms has revealed violations of law 3693/2008
- Criminal prosecution of Board of Directors' members in accordance with anti-money laundering legislation
- When the same audit firm audits more than 70% of the companies of a certain industry sector following a Committee's decision
- Quality control findings conducted by ELTE

Other cases of regular tax audit

Regular audit is also conducted in the following cases:
- Cases for which the ranging of the Certified Auditors'/ Audit firms' fees are considered as “abnormal” by the Special Committee of art. 10 par. 2 of Ministerial decision POL 1159/2011
- Cases of a Societe Anonyme or Limited Liability Company, which - although meeting the criteria set by the law - has not appointed a Certified Auditor or an Audit Firm for the conduction of a statutory audit and subsequently for the tax compliance audit
- If the tax adjustments identified by the Certified Auditors, exclusively relating to the productivity of expenses, are less than 0,5% of the company's gross revenue, the productivity of expenses is subject to an audit by the tax authorities, upon the recommendation of the Head of the Audit Department and a decision of the Committee

In case company adjusts in its Income Tax Return non productive expenses exceeding the limit of 0,5% of the company's gross revenue and the Certified Auditor has not identified additional non-deductible expenses in lack of their productive nature, then the case will not be referred for an audit for this reason. The determination of non-productive expenses and of gross revenue (e.g. if excise duties are included) should be clarified.
Deadline for completion of audits performed by the tax authorities

- The tax audits should be completed no later than eighteen (18) months following the deadline for the submission by Certified Auditors / Audit Firms of the Tax Compliance Report to the Ministry of Finance.
- Exceptionally, regular audits may be conducted until the expiry of the statute of limitation for the fiscal year in the following cases:
  - Criminal prosecution of Board of Directors' members in accordance with the provisions of anti-money laundering
  - Receipt or issuance of false / fictitious tax records
  - Transactions with non-existent companies
  - Cases of transfer pricing violation

Quality review of Certified Auditors’/Audit Firms’ work

- The quality review is independent from the audit conducted by the tax authorities.
- The quality review is carried out by ELTE members according to law 3693/2008 in cooperation with the auditors from the Ministry of Finance
- The files’ sample is chosen by ELTE
- One file per Certified Auditor and Audit Firm should be reviewed at least once every three years. For one or more files, an Audit Firm should be reviewed every year

Organizational framework – Procedures

- The General Secretariat of Information Systems develops a special IT application for the purpose of monitoring the audits, which will start its operation by 30/11/2011. In the context of such application, the Tax Compliance Report is available to any future audits performed by other Certified Auditor / Audit Firm
- The procedure regarding the information of the IT application is as follows:
  - The Audit Firm, upon undertaking a statutory audit including the provision of Tax Certificate, discloses electronically the IT application that an audit will take place, the Certified Auditor / Audit Firm engaged with the audit and the anticipated timeline of completing the audit
  - Within five (5) days the Audit Firm submits the Tax Compliance Report in XML format

Clarifications are expected with respect to the submission deadline of the Report to the General Secretariat of Information Systems, given that in other points of the Ministerial Decision the deadline defined is ten (10) days.
Fees of the Certified Auditors/ Audit firms

- The fees are determined based on the market conditions, they are freely negotiated, they should be clearly stated on the services invoice issued to the audited company and are considered tax deductible.
- A special committee decides on the differentiation of the fees not complying with the “moral ethics.”

Filing of queries

- Certified Auditors/ Audit Firms may submit electronically written queries related to certain technical issues arising during their audit with the Tax Audit General Directorate via a respective IT application.
- The opinions are notified to the person who submitted the query and are registered in the IT application.
- Any potential delay in replying the query does not constitute a reason for delays of the audits performed by the Certified Auditors/ Audit Firms.

Identification of tax violations upon audit performed by the tax authorities

- In case tax violations are identified for the first time by the audit performed by the tax authorities, the audit report includes both the views of the Certified Auditors / Audit Firms that audited the specific company, who should justify the reasons why they had not identified the violations as well as the views of the company’s tax accountant.
- The provisions of the Tax Penalty Code, of law 3693/2008 and law 3943/2011 are applied by way of analogy.

Sanctions to Certified Auditors/ Audit Firms for not complying with their responsibilities

- If upon a subsequent audit by the tax authorities, additional taxes in areas included in the Audit Program are identified, then the following fines/sanctions are imposed to the Certified Auditors/Audit Firms:
  - Administrative sanctions of the Tax Penalty Code:
    - Fine ranging from €10,000 - €100,000 imposed to the Certified Auditor as well as to the Audit Firm.
    - Said fines are published in the Ministry of Finance website.
  - Administrative penalties of L. 3693/2008:
    - Recommendation, reprimand, fine up to €50,000, temporary suspension of professional license up to one year, permanent deletion from the Certified Auditors registry.
    - The above sanctions are also imposed against the Audit Firm, to which the Certified Auditor performing the audit belongs, with the difference that the maximum fine amounts to €1,000,000 and under the condition that a management member was involved in the violation.
    - The Certified Auditors / Audit Firms are jointly liable in cases where no intention exists from their side but a loss in the State’s revenues is incurred. In such case, a fine is imposed up to ten (10) times of their fees.
    - In case where violation has been incurred by intention, administrative and penal sanctions are applicable according to the provisions for anti-money laundering legislation.