

Court practice on tax and customs disputes

Special edition №13



1. Company against State Revenue Department of Almaty

Period under review: 2015

Type of review: complex tax audit

Amount of assessments: approximately KZT 4 mln

Court instance: Appeal Court

Date: July 2015

Major issues: property tax base

Issues:

The tax authorities disagreed with the company's classification of assets as long-term which resulted in additional property tax assessments.

According to IAS 5, enterprise should classify long-term assets as subject to sale if book value of such asset is reimbursed upon its realization rather than due to the ongoing use. At that the enterprise should have expectations that sale will meet the requirements to be regarded as final sale within one year following the classification.

Since assets had not been sold by the taxpayer, the tax authorities insisted on their classification as fixed assets (buildings, constructions) and assessed additional property tax liabilities.

The position of the court:

The court of the first instance and appellate courts decided in favor of the tax authorities in full.

Our recommendations:

We recommend paying due attention to recognition of assets for accounting purposes in accordance with IFRS requirements.

In particular, it is crucial to determine whether assets under consideration are aimed for sale within one year or designated for ongoing use in company's operations.

2. Company against State Revenue Department of Almaty

Period under review: 2009 - 2013

Period of the tax audit: 2014

Type of review: thematic tax audit of CIT and VAT liabilities

Amount of assessments: approximately KZT 50 mln

Court instance: Appeal Court

Date: August 2015

Major issues: bonuses / discounts

Issues:

The tax authorities classified bonuses for meeting targets on purchase volume of goods as provision of services subject to VAT.

The court position:

Court decided in favor of the tax authorities in full without consideration of the company's claims.

Our position:

According to PwC position, provision of bonuses and discounts for meeting targets on purchase volume of goods could not be treated as provision of services. In our view, receipt of bonuses and discounts represents right for fulfilment of contractual terms rather than obligation to perform certain actions on a fee basis.

3. Company against Customs control department of Almaty

Period under review: 2009 - 2010

Period of the tax audit: 2013

Type of review: customs audit

Amount of assessments: approximately KZT 500 thousand

Court instance: Appeal Court

Date: August 2015

Major issues: determination of customs value of goods

Issues:

Customs authorities insisted on inclusion of compensation for delay in payment into customs value of supplied goods. Based on the position of the customs authorities, customs value of goods should be determined based on price of the transaction while underlying supply agreement directly states that price of the transaction includes all expenses tied with execution of the contract.

The position of the court:

The court of the first instance and appeal courts decided in favor of the tax authorities in full without consideration of the company's claims.

Observations:

We recommend paying proper attention to provisions of supply agreements and considering availability of other related contracts (e.g. royalty agreements) in order to comply with the requirements of customs legislation on determination of customs value.

4. Company against State Revenue Department of Almaty

Period under review: 2009 - 2013

Period of the tax audit: 2013

Type of review: complex tax audit

Amount of assessments: approximately KZT 1,5 bln

Court instance: Cassation Court

Date: September 2015

Major issues: offset of import VAT

Issues:

The tax authorities disallowed offset of input VAT paid on goods imported from other state of the Customs Union. The decrease was due to no stamp of the tax authorities on statement on imported goods in the reporting period.

The court position:

Court decided in favor of the tax authorities in full without consideration of the company's claims.

Observations:

In order to mitigate tax risks we recommend paying due attention to payment of VAT within the established deadlines and managing timely submission of statement on imported goods and payment of indirect taxes for getting stamps of the tax authorities.

5. Company against State Revenue Department of Aktobe oblast.

Period under review: 2009 - 2011

Period of the tax audit: 2013

Type of review: thematic tax audit

Amount of assessments: approximately KZT 1,5 bln

Court instance: Supreme Court

Date: October 2015

Major issues: commercial discovery bonus and reclassification of reserves

Issues:

The tax authorities assessed additional amounts of commercial discovery bonus due to reclassification of oil reserves from category C1 to B. Certain clarifications on the oil field were made during the operation stage so that oil reserves were recalculated.

The position of the court:

The first instance, appeal and cassation courts ruled that commercial discovery occurs during the exploration period only. As the company was no longer exploring, commercial discovery was argued. The Supreme Court sent the case for reconsideration.

Status:

We are involved in negotiations between the Geological Committee and the State Revenue Committee to get their interpretation of the legislation.

6. Company against the State Revenue Department of Astana

Period under review: 2010 - 2012

Period of the tax audit: 2015

Type of review: complex tax audit

Amount of assessments: approximately KZT 750 mln

Court instance: Specialized Inter-district Economic Court of Astana

Date: September 2015

Major issues: expenses on repair of fixed assets

Issues:

The tax authorities challenged immediate deduction of expenses tied with capital repair of freight cars because the taxpayer failed to increase value of fixed assets as it is required by IFRS.

The court position:

The court decided in favor of the tax authorities in full.

Observations:

We recommend to follow IFRS requirements while making the decision on immediate or capital nature of incurred expenses.

Based on IFRS, expenses aimed at increase of future economic benefits from use of fixed assets extending their useful life are subject to capitalization.

We recommend applying critical approach to the substance of expenses on repair of fixed assets.

It is necessary to identify whether incurred expenses are aimed at maintenance of fixed assets (e.g. acquisition of miscellaneous supplies or components) or at capital repair for extension of fixed assets' useful life.

If you are interested in additional information, please contact PwC consultants working within the group servicing your company, or approach any of the below persons.

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