

Main features and peculiarities of conducting an electronic tax audits in Ukraine

Основні ознаки та особливості проведення електронних податкових перевірок в Україні

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Ключові слова:

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Problem statement. At present, Ukrainian legal literature pays considerable attention to the issues of conducting documental remote audits, considering them more effective as a result of a greater control over the various aspects of the financial and economic activity of the entity.

With the integration of the national tax system to the progressive world experience, since 2014 in the arsenal of native tax officers, appear a new, previously unknown, control means taxpayers – service electronic tax audit. This type of inspection was established to exercise self-control tax payers with the help of fiscal service.

An electronic audit is created for the purpose of self-control by taxpayers with the help of the bodies of the fiscal service, and therefore relevant in nowadays conditions is an analysis of the features of this type of audit, clarification of legal aspects of its implementation, the design of the results and the possibility of appeal of these results.

The analysis of recent researches and publications. It should be noted that although in the publications of such scholars as O.V. Yakovlenko, V.A. Turzhansky and A.O. Bezpalova the first steps have been already taken in order to improve the mechanism of electronic audit, but in general, the issue of legal regulation of this type of audit and analysis of the procedure of its implementation in the scientific publications is shown quite fragmented, that is due to the novelty of this type of audit.

The purpose of the article is to identify the features of electronic tax audit in Ukraine, analysis of the procedures of conducting and the presentation of the results of this type of audit.

Statement of basic materials. At present, audit is the most effective form of tax control in terms of providing tax incomes to the budgets in Ukraine.

At the same time, indicators of court cases related to the conduct and conclusions of documentary audits show that their number does not decrease. That is why, in order to reduce the number of tax inspections and reduce the burden on taxpayers, this kind of audit was created as electronic.

If we analyze the experience of other countries, it should be pointed out that the introduction of electronic audit by the European tax authorities is due to the fact that in the conditions of rapid technological progress, paper document circulation actually descends in recent years, assigning to new technologies.

According to the European Organization for Tax Administrations (IOTA), almost all tax authorities in Europe use the electronic tests mechanism. Most of them use electronic audit in all areas of taxation that they are in charge of. Exception is, in particular, Bulgaria and Switzerland, where only VAT and other indirect taxes can be verified electronically¹.

The experience of European countries shows that the feature of electronic audit is the ability to check the greater number of transactions in a shorter period of time. This result in Europe is achieved through the use of special software and the maximum automation of the process of processing documents and data.

¹ IOTA – Intra-European Organization of Tax Administrations. Report for Tax Administrations «Audit Procedures. EDP Audit». URL: <https://www.iota-tax.org/images/stories/library-files/1018-vl.pdf>.

As a positive example, the experience of the German Ministry of Finance, which, in response to an increase in the number of enterprises that use electronic accounting (digital) in their activities, adopted the Basic Principles for Access to Data and Audit of Electronic Documents.

The key points in this paper are to determine the options for access to enterprise data, the technical requirements for documents for audit, the responsibility for refusing or delaying access time to information².

According to paragraph 75.1 of Article 75 of the Tax Code of Ukraine (hereinafter – TCU), electronic tax audit is carried out on the basis of an application filed by the taxpayer with a low risk, determined in accordance with the paragraph 77.2 of Article 77 of the Tax Code, to the regulatory authority with which he is registered for tax purposes. The application is submitted within 10 days prior to the start of the electronic audit³.

Based on this definition one can distinguish essential features of electronic audit.

So, the first feature is its voluntary nature. This is evidenced in particular by the possibility for the legislator to independently initiate an audit in the form of filing an application by the taxpayer. That is, any enterprise or self-employed person, if desired, has the right to apply for an inspection. At the same time, the decision of the controlling body to carry out other types of inspections does not depend on the taxpayer.

The second feature is the risk rating criterion that a taxpayer who intends to carry out this type of audit must comply. Such a subject may be only a payer, with a negligible degree of risk, determined in accordance with clause 77.2 of Article 77 of the TCU. In other types of audits, on the contrary, companies with medium or high risk are inspected. The criteria for the division of taxpayers into groups with insignificant, medium and high risk are stipulated by the order of the Ministry of Finance of Ukraine dated 02.06.2015, № 524 “On Approval of the Procedure for Formulating a Plan-Schedule for Documentary Planned Audits of Taxpayers”⁴.

The third sign of electronic audit is the non-requirement of its results. According to the results of an electronic test, the tax authority issues a certificate and does not issue a tax decision. If the taxpayer agrees with the tax authorities’ conclusions tax reports, he can independently clarify the data of the tax reporting and, accordingly, pay extra the tax liability.

Regarding the procedure itself, it should be noted that the application is submitted 10 calendar days before the expected beginning of the electronic audit, but not earlier than the official announcement of the central executive body, which ensures the formation and implementation of the state tax and customs policy, the introduction of such an audit for relevant taxpayers: who apply a simplified tax system, accounting and reporting; micro, small business entities; medium business; other taxpayers. The form of the application, the procedure for its submission, and the decision to conduct an electronic test are established by the central executive body, which ensures the formation and implementation of the state tax and customs policy.

The procedure for submission of an application for a documentary non-stop unscheduled electronic audit by the taxpayer and decision-making by the controlling authority to carry out such audit (hereinafter – the Procedure) was approved by the order of the Ministry of Finance of Ukraine dated November 20, 2015, № 1040⁵.

An application of a taxpayer to conduct an electronic test is submitted in the form prescribed by the Order by the head or an authorized representative of the taxpayer to the supervisory body, in which he is on the tax account, not later than 10 calendar days before the expected beginning of the electronic audit.

Electronic audit may be made for taxpayer-defined periods of time for which no documentary planned or unscheduled inspections were not carried out (on issues that the taxpayer intends to examine) and in case of submission of corresponding declarations (settlements) to the territorial office of the SFS of Ukraine. Such tax period can not be less than one basic tax (reporting) period from the corresponding tax.

² Grundsätze zum Datenzugriff und zur Prüfbarkeit digitaler Unterlagen. URL: www.ihkmuenchen.de/ihk/documents/RechtSteuern/Steuerrecht/Einkommensteuer/GDPdU_zu-ihrer-information-grundsaeetze-zum-datenzugriff-und-zur-pruefbarkeit-digitale-1.pdf.

³ Tax Code of Ukraine dated 02.12.2010, № 2755-VI. URL: <http://zakon5.rada.gov.ua/laws/show/2755-17>.

⁴ On Approval of the Procedure for formulating a plan-schedule for documentary planned audits of taxpayers: Order of the Ministry of Finance of Ukraine dated 02.06.2015, № 524. URL: <http://zakon5.rada.gov.ua/laws/show/z0751-15>.

⁵ On Approval of the procedure for submission of an application for a documentary non-stop unscheduled electronic audit by the taxpayer and decision-making by the controlling authority to carry out such audit: Order of the Ministry of Finance of Ukraine dated 20.11.2015, № 1040. URL: <http://zakon5.rada.gov.ua/laws/show/z1522-15>.

It should be noted that the nature of the electronic audit determines the submission for its carrying out to the controlling body, subject to the conditions for the registration of electronic signature of the accountable persons in electronic form, which, in accordance with the TCU, are related to the calculation and payment of taxes and fees. The general format and procedure for submitting such information are established. The general format and procedure for submitting such information are established by the central executive body, which ensures the formation and implementation of the state tax and customs policy.

The procedure for submission of documents in electronic form for conducting an electronic audit has been approved by the order of the Ministry of Income and Collections of Ukraine dated December 31, 2013, № 898⁶.

Meanwhile, it should be pointed out that for the domestic tax system, the requirement for the taxpayer to keep accounting and primary documents in electronic form is actually a pre-emption of time. To date, there are e-filing programs that allow you to create, impose an electronic digital signature and print, and also exchange electronic primary documents, but the percentage of taxpayers who use such features is not large enough today.

The decision on conducting / non-conducting an electronic audit is taken by the head of the territorial office of the SFS, to which the taxpayer has submitted an application, within 10 calendar days from the date of receipt of such an application.

It should be emphasized that such a decision on the form and details differs from the order of conducting scheduled and unscheduled documentary as well as factual audits, the presence of which in accordance with Articles 77, 78 and 80 of the Tax Code is mandatory.

The decision on conducting / non-conducting an electronic audit should be sent to the taxpayer no later than the next business day from the date of its adoption.

Regarding the possibility of challenging a decision to refuse an electronic audit, it should be noted that, in accordance with sub-paragraphs 3.1 and 3.3 of section III of the Order № 1040, the controlling authority, based on the information specified by the taxpayer in the Application and its attached documents for conducting an electronic audit, and tax information, available to the supervisory authority, decides to conduct / not conduct such audit.

The decision not to carry out audit may be taken by supervisory body if, according to the results of the analysis of the information, it is established, in particular, the following circumstances: electronic accounting is conducted in violation of the Instruction on the application of the plan of accounting for the accounting of assets, capital, liabilities and business operations of enterprises and organizations, approved by the order of the Ministry of Finance of Ukraine dated 30.11.99 № 291; Failure to provide taxpayer together with the Application to the controlling body, subject to the conditions for the registration of electronic signature of accountable persons in electronic form, which according to the TCU relate to the calculation and payment of taxes and fees, in the format established by paragraph 85.2 of Article 85 of the Code and other reasoned grounds that do not technically allow you to conduct a documentary audit electronically.

At the same time, in accordance with Section 3.6 of Section III of the Order № 1040, the decision not to conduct an electronic audit does not restrict the possibility of a taxpayer's repeated appeal with a Statement to the controlling body.

The appeal in administrative or judicial decision on conducting / non-conducting of electronic audit is neither provided by the Tax Code nor the Order № 1040. Such a conclusion is made in particular by the State Fiscal Service of Ukraine in its letter dated 04.09.2014 № 2843/6/99-99-22-03-01-15⁷.

As for the elaboration of the conclusions of the electronic audit, it is expedient to indicate that according to paragraph 86.11 of Article 86 TCU, based on the results of such a audit, compiles a duplicate certificate signed by the officials of the supervising body that carried out the audit and is registered with the supervising body within three working days from the date of the expiration of the time period set for the audit.

⁶ Order of the Ministry of Income and Collections of Ukraine dated 31.12.2013, №. 898. URL: <http://zakon2.rada.gov.ua/laws/show/z0305-14>.

⁷ Letter of the State Fiscal Service of Ukraine dated 04.09.2014, № 2843/6/99-99-22-03-01-15. URL: <https://www.profiwins.com.ua/uk/letters-and-orders/gna/5277-2843.html>.

An electronic audit certificate after its registration is handed over personally to the taxpayer or his legal representatives for familiarization and signing within five working days from the date of delivery.

In the event of disagreement between the taxpayer or his legal representatives with the findings of audit or the facts and data contained in the certificate, compiled on the basis of the results of an electronic audit, they are obliged to sign such a certificate and have the right to file their objections, which are an integral part of such a certificate, together with a signed copy of the certificate.

Such objections are considered by the controlling body within five working days from the date of their receipt and a response is sent to the taxpayer in the manner prescribed by Article 58 TCU for sending tax-based decision-making messages. Such an answer is an integral part of the electronic audit. The taxpayer has the right to participate in the consideration of objections, which he indicates in the objections filed.

It should be noted that, in accordance with clause 50.3 of Article 50 of the TCU, if the taxpayer fails to provide a rectifying calculation within 20 working days after the date of the issuance of the certificate of conducting an electronic audit that violates the tax law, the relevant control body has the right to conduct a non-scheduled taxpayer's audit for the relevant period.

In the case where the taxpayer has not been provided with a corrective calculation, the controlling authority organizes an unscheduled inspection of such a taxpayer taking into account the requirements of Articles 78, 81, 82, 86 of the TCU. According to the results of such audit by the controlling body within the scope of Article 58 of the TCU, a tax notice is issued, which, in accordance with Article 56 of the TCU, may be appealed against by the taxpayer by administrative or judicial procedure.

That is, the results of the electronic audit are agreed in definite terms, which does not exceed the term of the taxpayer's refinance calculation based on the results of such audit. At the same time, there is no provision for an administrative or judicial appeal on the results of conducting an electronic audit by the Tax Code. This statement is consistent with the letter of the State fiscal service of Ukraine dated 27.08.2014 № 2402/6/99-99-22-03-01-15⁸.

Thus, an analysis of the concept, features, procedure of conducting and appealing against the results of electronic audit indicates that the latter holds a special place in the system of tax audits, and therefore, in Chapter 8 of the Tax Code, it is worthwhile to introduce a separate article entirely devoted to the procedure of electronic audit.

Conclusions and suggestions. Summarizing the above, it should be noted that, in general, the introduction of the electronic tax audit service should be considered as a progressive step. Given the fact that it is not obligatory, it does not create an additional burden for the taxpayer, but due to the novelty and little confidence in this type of audit by taxpayers, further implementation of this service should be carried out gradually, and borrowing European experience in methods automated processing of documents during an electronic audit should be carried out taking into account the requirements of domestic legislation, as well as the availability of technical capacity of the fiscal services and responding day software for its implementation.

Summary

By analyzing the normatively-fixed definition of "electronic audit", a description of its peculiarities is made, the features that distinguish this audit from other types carried out by tax authorities are defined. On the basis of conducted consideration of the order of appointment, filing documents for conducting and appeal of the conclusions of the supervisory authority based on the results of the completion of the electronic audit, proposals were made to improve the tax legislation of Ukraine.

⁸ Letter of the State Fiscal Service of Ukraine dated 27.08.2014, № 2402/6/99-99-22-03-01-15. URL: <https://buhgalter911.com/normativnaya-baza/pisma/gfsu/otnositel'no-obghalovaniya-rezulytatov-806027.html>.

Анотація

Шляхом аналізу нормативно закріпленого поняття «електронна перевірка» здійснено характеристику її ознак, визначено риси, які відрізняють вказану перевірку від інших видів, що проводяться податковими органами. На основі проведеного розгляду порядку призначення, подання документів для проведення та оскарження висновків контролюючого органу за результатами завершення електронної перевірки сформувано пропозиції з удосконалення податкового законодавства України.

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