

CHAMBERS GLOBAL PRACTICE GUIDES

Tax Controversy 2023

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Armenia: Law & Practice

Artur Hovhannisyan
and Tirayr Karapetyan
Concern Dialog Law Firm



ARMENIA



Law and Practice

Contributed by:

Artur Hovhannisyan and Tirayr Karapetyan
Concern Dialog Law Firm

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Contributed by: Artur Hovhannisyan and Tirayr Karapetyan, Concern Dialog Law Firm

Concern Dialog Law Firm is a Yerevan-based full-service law firm established in 1998. The firm provides services in litigation, representation and legal advice. In addition to corporate and business law (the common specialisation for most ranked firms in Armenia), the firm also specialises in criminal and family law and has

a robust dispute resolution practice. 16 of the firm's 70 employees are licensed attorneys. Concern Dialog has been a member of the TAGLaw Alliance of Independent Law Firms since 2010 and the Dentons' Nextlaw Referral Network since 2017, which allows the firm to provide services practically worldwide.

Authors



Artur Hovhannisyan is a partner of Concern Dialog Law Firm, heading its public, administrative and tax law practice. Artur joined the firm in April 2019 as a counsel. Previously, he worked

at the Ministry of Justice of the Republic of Armenia. From 2017–2019, he was the First Deputy Minister of Justice of the Republic of Armenia. During his time at the Ministry, Artur co-ordinated the processing of over a decade's worth of policy documents and more than 400 legislative acts, including the Constitutional Law on the Judicial Code. He has also acted as a main speaker at the National Assembly during discussion of numerous draft legal acts. Artur has been a member of the Chamber of Advocates of Armenia since 2013.



Tirayr Karapetyan is an experienced lawyer with a demonstrated history of working in both the public and private sectors. Currently, Tirayr is a senior associate and attorney at

Concern Dialog Law Firm, specialising in criminal law and criminal proceedings. He provides protection and representation for companies' clients in criminal cases. Tirayr joined Concern Dialog in 2023. Before that he worked at the Prosecutor's Office of the Republic of Armenia from 2013 until 2021, executing the powers and functions assigned to the Prosecutor by the Constitution of the Republic of Armenia, the Law on the Prosecutor's Office, and the Code of Criminal Procedure. Tirayr has been a member of the Chamber of Advocates of Armenia since 2020.

Concern Dialog Law Firm

1 Charents St,
2nd Floor
Yerevan 0025
Armenia

Tel: +374 60 27 88 88
Email: Info@dialog.am
Web: www.dialog.am



1. Tax Controversies

1.1 Tax Controversies in This Jurisdiction

Tax controversies usually arise as a result of tax control, particularly from tax inspections (complex or thematic inspections), tax examinations (internal or field examinations) and operational and intelligence measures. They can also arise when a taxpayer makes changes in its previously submitted tax reports.

1.2 Causes of Tax Controversies

Taxpayers whose yearly turnover does not exceed AMD115 million may pay turnover tax (simplified tax) instead of 20% VAT (value added tax) and/or 18% profit tax. This tax often gives rise to controversies when the tax authority decides that a taxpayer should not have fallen under the simplified tax, or that the taxpayer has intentionally split its business into several entities to pay such simplified tax.

Another common problem occurs when, in determining the taxable base with profit tax, the entrepreneur deducts incurred expenses from the profit, and the tax authority does not consider these reasonable and demands the payment of profit tax on them as well.

Another common issue which leads to tax controversies occurs when a taxpayer performs VAT offsets (deductions) and the tax authority does not consider these reasonable.

1.3 Avoidance of Tax Controversies

Taxpayers must avoid dividing their businesses into small entities for the purpose of paying simplified tax. They need to keep qualified accountants or outsource such function to qualified accounting companies.

Armenian law (ie, the Tax Code) provides for the possibility of receiving relevant notices/explanations from the tax authority on complicated legal requirements and regulations, as well as regarding the obligations, powers and actions of the tax authority and its officials.

1.4 Efforts to Combat Tax Avoidance

This is not applicable in this jurisdiction.

1.5 Additional Tax Assessments

For a taxpayer to appeal the imposition of additional tax obligations on it, there is a requirement to pay on such obligations and to guarantee payment. Moreover, where the taxpayer appeals, tax liability is suspended until the end of the relevant court case.

2. Tax Audits

2.1 Main Rules Determining Tax Audits

The planning of complex tax inspections within the scope of tax control is performed through a risk-based tax inspection system. Taxpayers are classified under one of the following three groups:

- high risk;
- medium risk; and
- low risk.

Classification is based on different factors, such as:

- profitability (yield) level;
- inspection results;
- absence of profit or presence of loss;
- indicators of comparison of profitability levels for previous years;
- existence of tax benefits;
- existence of deferred taxes; and

- presence of external economic activity, etc.

2.2 Initiation and Duration of a Tax Audit

The tax authority approves the annual plan for complex tax inspections every year. Depending on the level of risk, complex tax inspections may be carried out on the same taxpayer with the following frequency:

- in cases of high risk – not more frequently than once in the tax year;
- in cases of medium risk – not more frequently than once in three successive tax years; and
- in cases of low risk – not more frequently than once in five successive tax years.

The duration of the tax inspection is 15 consecutive working days, with the possibility of prolongation for not more than 90 working days for certain reasons.

For statute of limitations rules, no tax liability may arise where the tax liability has been imposed on the taxpayer upon completion of the third tax year immediately following the tax year in which it had been applied.

The tax inspection does not suspend or interrupt the statute of limitations period, and the statute of limitations rules do not prevent the tax inspection.

2.3 Location and Procedure of Tax Audits

As a rule, tax inspections occur on the taxpayer's premises, and the taxpayer is obliged to ensure adequate working conditions for the exercise of the tax inspection, including by furnishing the officials conducting tax control with the documents, data (printed or electronically) and other information required for the tax inspection.

2.4 Areas of Special Attention in Tax Audits

As previously stated, the taxpayer is obliged to ensure adequate working conditions for the exercise of tax control, including by furnishing the officials conducting tax control with the documents, data and other information required for the calculation and payment of tax, or by making a payment and/or providing copies or photocopies thereof.

Taxpayers have the right at any stage of tax control to engage specialists, experts, auditors and/or lawyers.

2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

No information is available on this topic for this jurisdiction.

2.6 Strategic Points for Consideration During Tax Audits

A taxpayer should be satisfied that the actions of the tax authorities are legal. The relevant notice should contain:

- the full and abbreviated name of the audited company;
- the composition of the auditing group that has the right to access the premises;
- the list of relevant taxes; and
- the audited period.

It is not permitted to inspect the same period twice. Inspectors must prove their identity with an ID. The wording "all taxes and fees paid" is illegal, and a decision must contain a complete list of taxes to be checked.

The inspection is strictly regulated by law. A complete list of required documents must be specified in the tax requirement. If the list is too vague, exactly what the inspector wants to see must be specified in writing. Tax authorities have the right to demand and study only primary accounting documents and registers. The taxpayer is not required to provide analytical reports or summary reports on its activities.

The tax inspector is obliged to familiarise the representative of the company with a draft of the relevant final act, and the taxpayer should be sure that it fully and correctly indicates the subject and timing of control activities, as well as the identified violations.

3. Administrative Litigation

3.1 Administrative Claim Phase

A taxpayer may bring a claim against the decision of the tax authority, either to the Appeal Commission of the Tax Committee of Armenia or the Administrative Court of Armenia. The administrative claim phase is optional before initiating a judicial phase. The Appeal Commission is comprised of a chairperson and eight members, who manage their work in the Commission along with the positions they hold in the tax service.

The individual legal act adopted by the tax authority and having entered into force may be appealed against within two months from the day it entered into force. Actions or omissions of the tax officer may be appealed against within two months from the day they were carried out or occurred.

The Appeal Commission may render one of the following decisions:

- dismissing the proceedings of examination of the complaint;
- granting the complaint;
- partially granting the complaint;
- rejecting the complaint; and
- conducting a re-inspection.

3.2 Deadline for Administrative Claims

The tax authority must make a decision on the appeal within 30 days. In specific cases, the period may be extended for 15 days by decision of the head of the tax authority, and the applicant must be informed of this. Where no response is given regarding the complaint within the mentioned time limits, the decision of the Appeal Commission of the tax authority on whether to grant the complaint shall be deemed adopted.

The taxpayer may bring a claim to the court during administrative hearings at the tax authority, and in this case the administrative process would be terminated.

The taxpayer may also bring an application to the court when the tax authority has either made a decision against them or does not make any decision at all.

4. Judicial Litigation: First Instance

4.1 Initiation of Judicial Tax Litigation

The taxpayer, personally or through a representative, may bring a claim against the decision of the tax authority to the Administrative Court of Armenia within two months of receiving the decision. The application should be submitted on paper, and a copy of the decision should be attached to the claim.

4.2 Procedure of Judicial Tax Litigation

Upon receiving a claim, the court decides whether to accept the claim and to request from the tax authority all the documents relevant to the administrative proceedings (in cases where there are mistakes in the claim or the attached documents are missing, the claim should be returned).

A preliminary court session is held, during which the subject of the claim, its basis and the defendant's objections are clarified. After a preliminary session, another session (the main judicial trial) is held, during which the court:

- examines the evidence;
- hears the final speeches of the claimant and defendant;
- closes the hearing; and
- makes a final decision on the case.

4.3 Relevance of Evidence in Judicial Tax Litigation

The relevant documents are examined and the witnesses heard during the main judicial hearing session.

4.4 Burden of Proof in Judicial Tax Litigation

In administrative (civil) tax litigation proceedings, the burden of proof rests on the tax authority that adopted the intervening administrative act in terms of the facts that served as a basis for it.

In criminal proceedings, the accused does not have to prove their innocence or provide any support to the authority conducting the criminal proceedings. The burden of proving the accused's innocence cannot be placed on their defence counsel, legal representative, property defendant or personal representative.

4.5 Strategic Options in Judicial Tax Litigation

A taxpayer may mention legal arguments either in the claim or during the judicial hearing. The factual basis of the claim should be mentioned in the claim; otherwise, the new factual basis may be brought to the court by making amendments to the claim. The settlement with the tax authority may be handled before closing the trial. The taxpayer may bring evidence even as attachments to the claim or separately during the court hearing.

4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation

International treaties ratified by Armenia are an integral part of the Armenian legal system. The precedent law of the ECHR is applied by the Armenian courts. Scientific articles can be used by the courts on a voluntary basis.

5. Judicial Litigation: Appeals

5.1 System for Appealing Judicial Tax Litigation

Where a court decision is against the taxpayer, it can be appealed at the Administrative Court of Appeals regardless of the nature of the controversy, its value or other reasons. The tax authority also may bring an appeal.

5.2 Stages in the Tax Appeal Procedure

An appeal against the decision of the administrative court may be brought to the Administrative Court of Appeals, and the cassation appeal may be brought against the decision of the Administrative Court of Appeals to the Administrative Chamber of the Court of Cassation. The appeal procedure may be either oral (one court hearing) or written (the higher court may make a decision without hearing).

5.3 Judges and Decisions in Tax Appeals

Cases before an administrative court are examined by a single judge. At the Administrative Court of Appeals, the appeal against a conclusive judicial act is examined by a panel of three judges. At the Court of Cassation, a cassation appeal is examined by a panel of judges composed of the majority of all the judges of the relevant chamber of the Court of Cassation. The selection of judges at the administrative court and the Administrative Court of Appeals is performed automatically by computer program.

6. Alternative Dispute Resolution (ADR) Mechanisms

6.1 Mechanisms for Tax-Related ADR in This Jurisdiction

This is not applicable in this jurisdiction.

6.2 Settlement of Tax Disputes by Means of ADR

This is not applicable in this jurisdiction.

6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

This is not applicable in this jurisdiction.

6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

According to Armenian tax legislation, a taxpayer may bring an application regarding requirements of the legal acts regulating tax relations, as well as regarding the obligations, powers and actions of the tax authority and the officials of the tax authority, and the tax authority must notify the taxpayer of the requested information. The content of the notice is mandatory for the tax authority, and it may not impose additional

tax obligations on the taxpayer if the taxpayer was guided by the notice.

6.5 Further Particulars Concerning Tax ADR Mechanisms

This is not applicable in this jurisdiction.

6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

This is not applicable in this jurisdiction.

7. Administrative and Criminal Tax Offences

7.1 Interaction of Tax Assessments With Tax Infringements

Additional tax liabilities of the taxpayer are determined through administration within the framework of tax control. Where unpaid taxes are detected by the tax authority, this does not automatically lead to initiation of administrative proceedings or initiation of criminal proceedings. In the case of detection of a possible tax offence, the tax authority draws up a report, a decision on which is entrusted to the head of the tax authority's structural division. This may be followed by the initiation of administrative or criminal proceedings, depending on the procedural features.

7.2 Relationship Between Administrative and Criminal Processes

The actions of the tax authority, including the relevant adopted administrative acts, are liable to appeal only by sending a complaint to the superior tax officer or by filing a lawsuit with the administrative court.

7.3 Initiation of Administrative Processes and Criminal Cases

Following discovery of a violation, as a rule the tax authority initiates administrative proceed-

ings in each case. If the additional tax liabilities exceed the amount of AMD10 million, and the alleged act contains features of the crime of non-payment of taxes, duties or other fees, criminal proceedings may be initiated based on the corresponding notification of the tax authority.

7.4 Stages of Administrative Processes and Criminal Cases

The tax administrative process comprises general administrative proceedings of interrelated stages: initial, current and final proceedings. The criminal tax process consists of a pretrial (investigation) process and a trial process as the general criminal proceeding.

Criminal tax cases may be heard by the first instance criminal court of general jurisdiction, and in some special cases by the Anti-Corruption Court. If administrative justice and criminal justice are executed by different courts and through different legislation, the court hearing the criminal tax case cannot be the same court as that hearing the tax adjustment. The latter is heard by the administrative court.

7.5 Possibility of Fine Reductions

The upfront payment of the additional tax assessment can lead to reductions of potential fines, since, as a rule, if the taxpayer has a set-off (reduction) amount for a specific type of tax, it is subject to deduction from tax liabilities for the same type of tax.

7.6 Possibility of Agreements to Prevent Trial

A person is exempted from criminal liability if they fully pay taxes, duties or other mandatory payments, as well as the penalties calculated for non-payment. This is the case for:

- evasion from taxes, duties or other mandatory payments;
- creating, organising or managing a financial pyramid; and
- deliberate bankruptcy and false entrepreneurial activity, etc.

7.7 Appeals Against Criminal Tax Decisions

The decision of the court of first instance on a criminal tax offence may be appealed to the Criminal Court of Appeal in accordance with the general provisions of appeal stipulated by the Criminal Procedure Code.

7.8 Rules Challenging Transactions and Operations in This Jurisdiction

The GAAR, SAAR, transfer pricing rules or anti-avoidance rules are not applicable to the initiation of administrative or criminal tax cases in Armenian jurisdiction.

8. Cross-Border Tax Disputes

8.1 Mechanisms to Deal With Double Taxation

Double tax treaties between the Republic of Armenia and other foreign countries are considered international treaties, are part of Armenian legislation and take precedence over other laws.

An additional tax assessment made by the Armenian tax authority may always be appealed at the Armenian administrative court regardless of the residency of the taxpayer.

8.2 Application of GAAR/SAAR to Cross-Border Situations

No information is available on this topic for this jurisdiction.

8.3 Challenges to International Transfer Pricing Adjustments

No information is available on this topic for this jurisdiction.

8.4 Unilateral/Bilateral Advance Pricing Agreements

No information is available on this topic for this jurisdiction.

8.5 Litigation Relating to Cross-Border Situations

No information is available on this topic for this jurisdiction.

9. State Aid Disputes

9.1 State Aid Disputes Involving Taxes

No information is available on this topic for this jurisdiction.

9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid

No information is available on this topic for this jurisdiction.

9.3 Challenges by Taxpayers

No information is available on this topic for this jurisdiction.

9.4 Refunds Invoking Extra-Contractual Civil Liability

No information is available on this topic for this jurisdiction.

10. International Tax Arbitration Options and Procedures

10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)

This is not applicable in this jurisdiction.

10.2 Types of Matters That Can Be Submitted to Arbitration

This is not applicable in this jurisdiction.

10.3 Application of the Baseball Arbitration or the Independent Opinion Procedure

This is not applicable in this jurisdiction.

10.4 Implementation of the EU Directive on Arbitration

This is not applicable in this jurisdiction.

10.5 Existing Use of Recent International and EU Legal Instruments

This is not applicable in this jurisdiction.

10.6 New Procedures for New Developments Under Pillar One and Two

This is not applicable in this jurisdiction.

10.7 Publication of Decisions

This is not applicable in this jurisdiction.

10.8 Most Common Legal Instruments to Settle Tax Disputes

This is not applicable in this jurisdiction.

10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes

This is not applicable in this jurisdiction.

11. Costs/Fees

11.1 Costs/Fees Relating to Administrative Litigation

There are no fees for bringing an administrative appeal to the tax authority.

11.2 Judicial Court Fees

Judicial costs include the fees of the representative/advocate (in cases of representation at a court hearing) as well as the court fees, which are as follows:

- for claims submitted to the administrative court – AMD10,000;
- for appeals against judicial acts of the administrative court – AMD20,000; and
- for appeals against judicial acts of the Administrative Court of Appeals – AMD30,000.

In cases where the decision of the tax authority also involves administrative responsibility, the state judicial fee consists of a fixed fee plus a percentage from the amount of administrative liability.

11.3 Indemnities

Where the appealed administrative act causes damages to the taxpayer, after the court declares it invalid, the taxpayer may demand compensation from the tax authority.

11.4 Costs of ADR

This is not applicable in this jurisdiction.

12. Statistics

12.1 Pending Tax Court Cases

This is not applicable, as such statistics are not maintained in the judicial system of the Republic of Armenia, and there are no statistics for each judge.

12.2 Cases Relating to Different Taxes

This is not applicable, as such statistics are not maintained in the judicial system of the Republic of Armenia.

12.3 Parties Succeeding in Litigation

This is not applicable, as such statistics are not maintained in the judicial system of the Republic of Armenia.

13. Strategies

13.1 Strategic Guidelines in Tax Controversies

Where the tax authority has decided that the taxpayer has underpaid taxes, in many cases (during appeals) it may emerge that the results of the inspection do not correspond to reality.

If the taxpayer is sure that the results of the audit are correct and that they have incurred additional tax liability, the sooner they pay towards this liability, the less interest and penalty amount will be assessed on it.

If the taxpayer is not sure about the violations recorded by the tax authority, they should involve the appropriate specialists (lawyers, accountants) and appeal the relevant act.

In many cases, when the amount of underpaid tax determined by the tax authority is large, the tax authority initiates a criminal prosecution and thereby tries to intimidate the taxpayer into paying the taxes they have assessed. The taxpayer should not be overly afraid of criminal prosecution, and should seek to avoid it and take protective measures if they believe that the demand of the tax authority is not legitimate.

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