

ASSESSMENT PROCEDURE

TAX LAW 2009

The Assessment procedure under Tax Laws 2009 follows after filing of tax return under section 2 of chapter four covering articles 14-17. Briefly, all taxpayers carrying on an activity (as defined in Article 1 as....."any profession, vocation, service etc carried on to derive a profit or income etc") are required to file returns within 4 months from the end of accounting year. Extension of time beyond 4 months is allowed on application and approval for such extension. There is scope for filing a revised return to correct mistakes or complete omissions with the prior approval of the department.

Audited Accounts are to be attached to the return where the capital exceeds QR 100,000 or where the annual taxable income exceeds QR 100,000 or the head office is outside the state.

The assessment of Tax is part of Chapter 5 of the Law: Powers and duties of the department and Chapter 5 of the regulation: Auditing and Assessment procedures. The tax will be assessed on the basis of taxable income in the return, if such a return is accepted by the department. The department can audit the taxpayers return and attached documents as it deems necessary to ascertain the conformity of the information contained in the Return. Assessment decisions are conveyed to the taxpayers. The department may for the purposes of assessment carry out in terms of Article 40 of the regulation, a field examination of the place where the activity is carried on, examine the books, ledgers, accounts and statements provided for in Para 3 of Article 22 of the Law at the department or taxpayers office and keep copies thereof, if it deems necessary. The department can also examine third party's books and ledgers so as to collect information on the tax due by another taxpayer.

The department issues its decision (similar to an assessment order) as to the assessment in accordance with the following cases.

- a) If the department agrees on the return, it shall issue an assessment decision in accordance with the return on the form 4-1 Assessment;
- b) If the department after perusing amends the return, it shall issue an amending assessment decision on the Form 4-2 assessment;

In such cases as provided in Article 24 of law and Article 43 of Regulation decision include the statement of facts, information and presumptions on the basis of which tax was assessed and give reference to the relevant law and regulations. The decision shall

state the taxable income, the tax due and the financial penalties related thereto. The taxpayers right to object and appeal in accordance with provisions of Article 28 to 34 of the law.

PRESUMPTIVE ASSESSMENT – Article 23

Where there are circumstances prescribed in Article 23 of Tax law namely, where the taxpayer does not submit the annual return or the accompanying documents (balance sheets etc) within the periods prescribed in Article 14 to 16 of the tax law or does not keep the books or register provided in Article 18 of the Tax law or where these books or registers are inaccurate or irregular or where the taxpayers fail to provide the information, clarifications, books, registers or other documents required by the department or provide inaccurate or irregular registers, books or documents. These circumstances make it impossible to make an assessment on basis of actual income of the taxpayer. In these circumstances, the department will have a right to disregard the Return and to assess tax on a presumptive basis.

While making such assessment; the department will use information and evidence and data available with them and objective presumptions available with the department. Some of the presumptions would be the data available with the taxpayers accounts even if the latter were disregarded because it was considered inaccurate. The type and characteristics of taxpayers activity, data related to similar cases, reports and statements issued by independent bodies related to taxpayers activity would be considered for arriving at the presumptions. Where tax has been assessed on presumptive basis the decision shall be conveyed in Form no. 4-3 Assessment.

Re – Assessment – Article 25

The assessment procedure provides for re – assessment of taxpayer income for the same year which is previously assessed.

From the wordings of the Article it appears that even where the assessment has been completed by accepting the return income such cases can also be re – assessed in terms of Article 25. The Reassessment can take place only when the department discovers new information affecting the taxpayers tax liability which was not taken into account in determining the previous assessment. For the purposes of re – assessment the same rules as applicable to assessment will prevail. The power of the department to re – open old and closed assessment renders the completed assessments tentative. Moreover, such powers are extensive and exercisable at anytime during the next 10 years. These powers do not limit itself to only additions made on the new discovery of evidence but extends to the assessment de novo.

Revision of Return – Article 14

In terms of paragraph 5 of Article 14 of Law, the taxpayer may file an amended or revised Return correcting the omission and mistakes. The effect of filing such a return is that the original return is rendered void and repeals the original return. There is no time limit for filing such an amended Return and it appears that such a return can be filed at any time before its assessment. There also appears no limit on the number of Revised or amended Return and therefore it is possible to amend the return more than once.

Rectification of Return – Article 31

Article 31 of the Regulation provided for correction of material mistakes and other computation mistakes in the Return filed by the taxpayer. This is different from the assessment decision and refers to obvious mistakes which are apparent from records. Tax liability on such rectification, additional tax liability shall be intimated to the tax payer.

Limitation of Assessment

The statute of limitation in Article 57-59 provides for limitation for assessment in different situations. Where the taxpayer submits a return the right of the department to assess tax and penalties expires after 5 years following the year in which the taxpayer submitted the Return. This means the return filed upto April 2012 (last day prescribed) with respect to tax year ending Dec 2011 will have to be assessed by Dec 2017 (i.e. 5 years following the year of filing Return i.e. 2012).

In case of Revised Return the period of limitation will be with Reference to the Revised Return and not the Original Return.

In case when the taxpayer fails to submit the return the right of the department to assess the tax and financial penalties expires after 10 years following the taxable year in respect of which the taxpayer did not file the return.

In case where the taxpayer has not obtained the tax registration card the period of limitation shall be 10 years of tax after the discovery of the activities of the tax payer.

The limitation to collect tax and financial penalties shall expire after 10 years following the year in which the tax and financial penalties has become due. The taxpayers right to claim refund of taxes and financial penalties paid unduly shall expire on 5 years from the date on which it was established that the department has no right to collect the tax and financial penalties.

Objections and Appeals [Article 28 - 35]

The taxpayer may object to the tax assessment decision within 30 days of the date of decision. No particular form has been prescribed. The filing of objection has the effect of suspension of the execution of tax assessment and the additional tax demand. Non-filing of objection results in confirming the tax assessment and the demand becomes payable.

The department shall consider the objections and may request for additional information. It shall give its decision on the objections within 60 days from the date of objection. Where no decision is conveyed within 60 days it will be a deemed refusal and the tax assessment decision stands confirmed.

The taxpayer may under article 31 of the tax law submit an appeal within 30 days of the decision on the objection or the expiry of 60 days where no communication is received. The appeal shall be filed before the Tax appeal committee. Non – filing of appeal renders the tax assessment decision final after taking the effect of the decision on the objection. Importantly, the filing of tax appeal shall not suspend the department's decision or shall not prevent the execution of the tax assessment. Consequently, the amount demanded becomes due and payable

The appeal is heard by a committee consisting of 5 members of which atleast 4 should be present. The proceedings are held in a camera. The need for holding revenue related proceedings in camera is not understood.

There is a provision in Article 35 for a second appeal before the administrative chamber of the court within sixty days of the committee decision.

Financial Penalties [Article 40 – 42]

a. For non - filing of tax Return	QR 100 per day with maximum of QR 36,000
b. For failure to pay tax	1.5% of the tax amount per Month.
c. For not obtaining tax Regulation number within 30 days of C.R	QR 5000
d. For nonprofit companies exempt from tax and who do not submit documents under Article 15	QR 10,000
e. For non – submission of audited accounts and not maintaining books of accounts	QR 15,000
f. For failure to withhold tax under Article 20	Equal to the amount of tax not with held, in addition to the payment of tax due.

These financial penalties are in addition to the tax amount and withholding tax that is due.

Concealment of Income

Severe financial penalties along with imprisonment are imposed where there is a case of concealment or sanctions in accordance with Article 43-48 of the law.

A fine not exceeding QR 15000 and imprisonment not exceeding three months or with either will be levied on any taxpayer or person in charge who

1. Presents falsified or fictitious books, registers or documents;
2. uses fraudulent methods including the presentation of falsified, fictitious or incorrect statements or documents for the purpose of obtaining a deduction, a tax exemption or a refund of the tax already paid;
3. intentionally conceals the true income or any taxable activity;
4. carries on any action intended to prevent the employees of the Department from fulfilling their duties.

In addition to this penalty, the tax payer or the person in charge commits an offence of the nature provided in para 2 & 3 above, shall be subject to a fine of 20% of the tax due. The penalties shall be doubled where a similar offence is committed within five years.

Authors:

1. Alok K Saksena
Licensed Partner, Alok K Saksena Auditing & Accounting
2. Anshuman Chaturvedi, Chartered Accountant