**ANALYTICAL REFERENCE**

**c.Shymkent «19» april 2022г.**

**I. INTRODUCTORY PART**

In the Department of State Revenue for the city of Shymkent (hereinafter - the Department) In accordance with the order of the Department "On Internal Analysis of Corruption Risks" dated 03/29/2022 No. 93, an internal analysis of corruption risks in the activities of tax and customs administration units was carried out in the following direction: identification of corruption risks in organizational and managerial activities and regulatory legal acts affecting the activities of tax and customs administration units.

The head of the working group is the Deputy Head of the Department E.Turysov, members of the working group: T.Tlenshin, I.Rahmanberdi, A.Zhunusbayev, Zh.Akaev, B.Omartaev, T.Turganbayev, Zh.Toybazarova, Zh.Beisenbayeva, A.Sametova, E.Tauasarov, S.Yeshankulov, K.Sultanov.

**I. DESCRIPTIVE PART**

1. **Personnel management**

As for personnel management issues, no corruption risks were identified during the internal risk analysis in the Department's activities.

1. **Conflict of interest settlement**

During the internal risk analysis, no corruption risks were identified in the activities of the Department for the settlement of Conflicts of Interest.

1. **Provision of public services**

During the internal risk analysis, corruption risks in the activities of the Department for the Provision of Public Services were not identified.

1. **Implementation of permissive functions**

On the implementation of permitting functions in the period of the internal risk analysis in the activities of the Department corruption risks were not identified.

1. **Implementation of control functions**

**5.1** **Name of corruption risk : «**Corruption risk in terms of failure to take measures to restrict the taxpayer's property (inventory of property)».

**Description of corruption risk :**

**1.** One of the ways to ensure the fulfillment of a tax obligation not fulfilled on time is to restrict the disposal of the taxpayer's property.

According to paragraph 6 of Article 120 of the Tax Code of the Republic of Kazakhstan, it is provided that no later than five working days from the date of delivery to the taxpayer (tax agent) of the decision to restrict the disposal of property, the tax authority sends a copy of such a decision to the authorized state bodies for registration of encumbrance of rights to property, the rights to which or transactions on which are subject to state registration, or property, subject to state registration. At the same time, paragraph 7 of Article 120 of the Tax Code of the Republic of Kazakhstan provides that after ten working days from the date of delivery to the taxpayer (tax agent) of the decision to restrict the disposal of the property of the taxpayer (tax agent), the tax authority makes an inventory of the property restricted in the presence of the taxpayer (tax agent) by drawing up an inventory of the property in the form established by by the authorized body.

The inventory report of the property restricted in the disposal is drawn up in two copies and signed by the person who compiled it, as well as by the taxpayer (tax agent) and (or) its official.

Subsequently, Article 124 of the Tax Code of the Republic of Kazakhstan provides for the recovery of the taxpayer's (tax agent's) property due to arrears to the budget by issuing a resolution on foreclosure on property at the disposal of the taxpayer (tax agent).

The resolution on foreclosure with the attachment of a copy of the decision to restrict the disposal of property and the act of inventory of property is sent to the authorized legal entity (CROI).

In practice, tax officials electronically (via the INIS of the Republic of Kazakhstan) send a copy of the decision to restrict the disposal of property to a branch of the non-profit JSC State Corporation Government for Citizens for registration of encumbrances of property rights, rights to which or transactions for which are subject to state registration, or property subject to state registration.

And government agencies such as the Police Department, The Department of Agriculture and Veterinary Medicine sends copies of the decision to restrict the disposal of property through ESEDO.

In this case, due to forgetfulness or unjustified preference, an official of the tax authority may untimely (more than five working days from the date of delivery to the taxpayer of the decision to restrict the disposal of property by the tax authority) send a copy of the decision to the above-mentioned state -authorized bodies (Police Department, Department of Agriculture and Veterinary Medicine) for registration of encumbrance of property rights, the right to which or transactions for which are subject to state registration, or property subject to state registration.

Which gives time for the removal or re-registration of vehicles.

In addition, in practice, there are facts when officials of the tax authority, due to the absence of a taxpayer's representative, delay the preparation of an inventory report of property limited at their disposal.

At the same time, corruption risks on the part of tax officials are not excluded, which consist in deliberately not drawing up an inventory report and delaying the process of selling property.

**Recommendations for eliminating of corruption risk :**

In order to exclude conditions for the manifestation of corruption risks and direct contact with taxpayers, when handing over to the taxpayer decisions on limiting the disposal of property and drawing up an inventory of property, as well as preventing artificial delay in the procedure for the sale of the debtor's property, send a proposal to the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan

1) on consideration of the issue of amendments and additions to the Tax Code of the Republic of Kazakhstan (Articles 120, Article 124), providing for the possibility of drawing up an inventory of property (real estate and transport) without the participation of the taxpayer on the basis of information from authorized bodies with subsequent referral to an authorized legal entity;

2) on automating the sending of a copy of the decision to restrict the disposal of property to the authorized state bodies (Police Department, Department of Agriculture and Veterinary Medicine) via the INIS or ISNA information system.

**5.2** **Name of corruption risk: «**Corruption risk of illegal red tape of taxpayers when processing tax applications for termination of activities».

**Description of corruption risk:**

In 2021, a criminal case was initiated against an employee of the UGD upon receipt of funds in the amount of 50 thousand tenge for assistance in the liquidation of the LLP (the employee was convicted of fraud).

According to the results of the consideration of the criminal case, it is clear that one of the reasons for the commission of a criminal offense was the lack of clear and detailed mechanisms for processing tax applications for termination of activities.

The "Rules for the provision of public services by state Revenue bodies of the Republic of Kazakhstan", approved by the Order of the Minister of Finance of the Republic of Kazakhstan dated 10.07.2020 No. 665, regulates the issues of receiving and considering a tax application for termination of activity (legal entities, including both payers and non-payers of VAT) are not separately regulated.

Articles 66 and 67 of the Tax Code define the procedure for the fulfillment of tax obligations by certain categories of individual entrepreneurs and persons engaged in private practice upon termination of activity.

Article 66 of the Tax Code establishes the specifics of the fulfillment of the tax obligation by individual entrepreneurs and persons engaged in private practice who terminate their activities by conducting desk control with the subsequent drawing up of an opinion.

The conclusion reflects the results of desk control and the status of calculations on taxes, payments to the budget and social benefits, where one copy of the conclusion is handed over to an individual entrepreneur under a signature or sent to him by registered letter with a notification.

At the same time, if violations are revealed by the results of desk control, an individual entrepreneur or a person engaged in private practice is issued a notification on the elimination of violations identified by the results of desk control from the date of receipt of the conclusion.

In this case, drawing up an opinion and submitting it for signature makes it possible to contact the taxpayer for a positive solution of the issue in favor of the taxpayer.

Article 67 of the Tax Code defines the list of documents that, in the event of a decision to terminate the activity, must be submitted to the tax authority at its location.

At the same time, since December 2020, the filing of a tax application for termination of activity in accordance with articles 66, 67 of the Tax Code has been automated electronically in the taxpayer's office.

However, in practice, when a tax application for termination of activity is sent electronically through the taxpayer's office, the system refuses to accept the application, while the reason for the refusal is not indicated in the taxpayer's office.

To find out the reasons for the refusal to accept the application, the taxpayer must contact the "Centers for receiving and processing information about taxpayers and tax registration" of the UGD.

In addition, many taxpayers do not know or, as a result of the absence of an EDS, apply to the UGD with a statement on termination of activity.

This makes it possible to establish contact with employees of the Department of Internal Affairs, depending on the occurrence of corruption risks.

**Recommendations for eliminating of corruption risk:**

In order to exclude conditions for the manifestation of corruption risks in the framework of consideration of a tax application for termination of a taxpayer's activity, send a proposal to the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan

1) on the inclusion of the procedure for receiving and considering a tax application for the termination of the activities of taxpayers (including VAT payers) in the relevant list of Rules for the provision of public services of state revenue bodies;

2) send conclusions based on the results of desk control in electronic form or by registered letter with notification. In case of detection of violations based on the results of desk control, together with the prepared conclusion, send a notification on the elimination of violations identified by the results of desk control, in electronic form or by registered letter with a notification;

3) ensure that the taxpayer's office reflects the reason for the refusal to accept a tax application for termination of activity in the form of a notification.

1. **Other issues arising in connection with organizational and managerial activities**

**6.1 Name of corruption risk: «**Corruption risk in preference to the approval of the interim manager in the bankruptcy procedure».

**Description of corruption risk:**

«Rules for the selection of a temporary manager, if the applicant is a creditor for taxes and customs payments, a state body or a legal entity with the participation of the state", approved by Order of the Ministry of Finance of the Republic of Kazakhstan dated 04/29/2020 No. 426 (hereinafter – the Rules).

According to paragraphs 5-6 of these Rules, the choice of a temporary manager is carried out by the creditor from among the persons who are in the register of notifications of persons entitled to carry out the activities of the administrator, whose residential address is located in the relevant regions, cities of republican significance and the capital in which the debtor is registered.

The temporary manager is selected from among the administrators belonging to group 1.

If there are several administrators in Group 1, then a person is elected as a temporary manager, **having the least experience as an administrator.**

In 2022, the UGD initiated 13 applications for declaring debtors bankrupt, no decisions have been made yet, but bankruptcy cases were initiated by a court decision.

According to these facts, temporary managers were appointed by orders of the Department on the basis of representations of the UGD as creditors.

1) E.Karabalin (6 cases) (work experience 0.3 years);

2) N.Stakhanov (2 cases) (experience 7.3 years);

3) M.Musaev (2 cases) (experience 1.8 years);

4) R.Shemetova (1 case) (experience 8.9 years);

5) Z.Baishuak (1 case) (experience 19.1 years);

6) E.Satybaldiev (1 case) (experience 7.2 years).

However, in the register of persons authorized to carry out the activities of administrators (KGT website), there are other persons who have less work experience than these persons.

So, for example: O.Zhuman – work experience of 0.1 years, Z.Aldabergenov – work experience of 0.1 years, A.Zhumanuly – work experience of 1 year, B.Izbasar – work experience of 1.5 years, K.Esnazarova – 2.7 years, etc.

Thus, it can be seen that when choosing a temporary manager, the creditors, that is, the UGD, do not comply with the requirements of the Order of the Ministry of Finance of the Republic of Kazakhstan No. 426 dated 04/29/2020.

In turn, according to paragraph 10 of the Rules for the selection of a temporary manager, the Department, if the procedure for selecting a temporary manager is not followed, within three working days from the date of identification, sends a reasoned refusal to the creditor to appoint the elected person as a temporary manager. However, the agency does not take measures to identify such violations.

In this case, corruption risks on the part of officials of tax authorities and specialized departments of the Department, consisting in the interest in choosing a temporary manager, on the part of creditors, that is, on the part of the UGD, are not excluded.

**Recommendations for eliminating of corruption risk:**

- In order to exclude conditions for the manifestation of corruption risks, as part of the selection of a temporary manager, send a proposal to the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan on the development of methodological recommendations and provide in it rules on the recusal and bringing to administrative responsibility of temporary managers in case of refusal to recusal.

**6.2 Name of corruption risk: «**Corruption risk of red tape when considering applications for changing the place of delivery of goods under customs control, in case of breakdown of vehicles and other circumstances».

**Description of corruption risk:**

According to paragraph 7 of Article 225 of the Code of the Republic of Kazakhstan "On Customs Regulation in the Republic of Kazakhstan", the procedure for performing customs operations related to obtaining permission from the customs authority to change the place of delivery of goods is defined.

Paragraph 7 of this Article states that if, during the transportation (transportation) of goods in accordance with the customs procedure of customs transit, the destination is changed in accordance with the legislation of the Republic of Kazakhstan on transport, the place of delivery of goods may be changed with the permission of the customs authority.

However, in practice, changes in the customs authority of destination occur due to incorrect indication of the destination authority. As a rule, such mistakes are made by the customs authorities of the Russian Federation and the Republic of Belarus.

But the legal grounds for changing the customs authority of destination for reasons other than paragraph 7 of Article 225 are not spelled out in the Code.

In this case, the actions of customs officers do not comply with the NPA, which creates corruption risks due to the diverse interpretation of the law.

**Recommendations for eliminating of corruption risk:**

- In order to exclude conditions for corruption when changing the place of delivery of goods under customs control, we propose to send a proposal to the SRC of the Ministry of Finance of the Republic of Kazakhstan to develop a "Procedure for changing the place of delivery", to determine the conditions and reasons for such an operation.

We also propose to make appropriate changes to the decision of the EEC Board No. 170 of December 13, 2017. "On some issues of the application of the customs procedure of customs transit", introducing the above reasons for changing the place of delivery of goods.

*Appendix: Risk Map*

**Head of the working group E.Turysov**

Composition of the working group:

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | Т.Тlenshin | 7. | А.Sametova |
| 2. | I.Rakhmanberdi | 8. | Е.Tauasarov |
| 3. | A.Zhunisbayev | 9. | Zh.Akaev |
| 4. | S.Eshankulov | 10. | B.Omartaev |
| 5. | Zh.Beisenbayeva | 11. | К.Sultanov |
| 6. | Zh.Toybazarova | 12. | Т.Turganbayev |