

TAX CONTROL AND APPEALING ITS RESULTS IN BELARUS



GRATA
INTERNATIONAL



Content

About GRATA International	3
Types and/or forms of tax control, the procedure for conducting	4
Procedure for appealing the results of tax control	7



About GRATA International

GRATA International is a dynamically developing international law firm which provides services for projects in the countries of the former Soviet Union and Eastern Europe: full coverage of the entire region with network of offices, highly qualified team of professionals suited for cross-border projects. Firm's reputation and expertise are confirmed by testimonials from transnational clients and leading international ratings.

A wide network of office operating under one system and platform delivers great convenience for our clients. Any office can act as a "one-stop-shop" for its clients and provide them with access to services in other cities and countries. If necessary, inter-office teams with relevant experience are assembled to provide solutions to complex tasks. Service quality is assured by a clear system of organisation of this process.

GRATA International is present in the following jurisdictions: Armenia (Yerevan), Azerbaijan (Baku), Belarus (Minsk), Cyprus (Limassol), Georgia (Tbilisi), Kazakhstan (Aktau, Almaty, Atyrau, Astana, and other cities), Kyrgyz Republic (Bishkek), Moldova (Chisinau), Mongolia (Ulaanbaatar), Russia (Moscow, St. Petersburg, Rostov-on-Don, Samara), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Turkey (Istanbul), UAE (Dubai), Ukraine (Kyiv) and Uzbekistan (Tashkent).

In addition to its offices, GRATA International has representatives in the UK (London), Germany (Frankfurt), the USA (New York), China (Beijing), Switzerland (Zurich), Malaysia (Kuala Lumpur).

GRATA International is regularly acclaimed by leading international rankings: Chambers Global, Chambers Asia-Pacific, Legal 500, IFLR1000, WWL, Asialaw Profiles, and is featured in Deals of the Year Awards by China Business Law Journal.

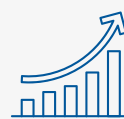
Key Industry Sectors:

- Banking & Finance
- Construction & Infrastructure
- Industry & Trade
- Mining
- Oil & Gas
- Pharmaceuticals & Healthcare
- Technology, Media & Telecommunications
- Transport



> 22

countries of presence



> 31

years of experience



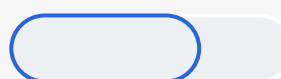
> 250

professionals



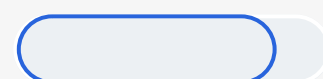
> 15

practice areas



7 700+

clients



15 000+

projects

TAX CONTROL AND APPEALING ITS RESULTS IN BELARUS



Polina Sachava

Associate

T: +375 293 73 55 00

E: psachava@gratanet.com

TYPES AND/OR FORMS OF TAX CONTROL, THE PROCEDURE FOR CONDUCTING:

Belarusian legislation regulates the procedure of tax control actions with two legal acts:

1 Tax Code of the Republic of Belarus (General Part) - Chapter 10 (hereinafter - TC)

2 Edict of the President of the Republic of Belarus of October 16, 2009 No. 510 "On Improving Control (Supervision) Activity in the Republic of Belarus" (hereinafter - Edict No. 510).

There are four types of tax control under Belarusian legislation:

OFF-SITE CONTROL (MONITORING MATCHING ACCOUNTING EXPENSES AND INCOME OF INDIVIDUALS)

Tax authority carries out off-site control at its location and without issuing a tax control notice. Such type of tax control includes reviewing the tax returns (calculations), other available documents and (or) information about the taxpayers. The main purpose of off-site control is to give the taxpayers the right to cure the law violation detected by the tax authority and to pay the extra tax, fee (duty) themselves. At present, this is the main type of out-of-court tax control.

ON-SITE CONTROL

Tax authority conducts on-site control at a company's (hereinafter – inspectee) location.

CROSS-CONTROL

Cross-control is carried out to establish (confirm) the credibility and legitimacy of transactions between the inspectee and its contractors or third parties related to transactions under control.

THEMATIC OPERATIONAL CONTROL

Tax authority conducts thematic operational control to individuals (who are not individual entrepreneurs) at the place of their activity to promptly detect and suppress law violations while they are committing in a limited territory. This type of tax control also carries out to objects, vehicles, and other places of activity to find out the cases of unregistered business activities, to collect operational information, to check the applications and appeals from entities and individuals.

The basic type of tax control carried out with the inspectee is on-site control.

The document on the basis of which the tax control begins

The **tax control notice** is the document upon which the control actions are based. It indicates the reason for the tax control, a list of the issues to be inspected, the inspected period and the tax control duration.

Nevertheless, no notice is required for the off-site and thematic operational control.

The main rights and obligations of the tax authority and the taxpayer

The taxpayers have the basic rights during the tax control as follows:

to represent their interests in the tax authorities, either personally or with a representative;

to be present during the tax control, to explain issues related to the scope of the control and to receive a tax control act (statement);

to submit clarifications concerning the calculation and payment of taxes, fees (duties) and objections concerning a tax control act (statement) to the tax authorities and to their officials;

to appeal against the tax authority's decisions and the actions (inactions) of their officials;

to fail to execute the tax authority's decisions and requests of their officials not complying with TC and other legislation;

to get acquainted with tax declarations (calculations), other documents and (or) tax information, if it does not affect the third parties' rights, freedoms and (or) lawful interests, and the materials do not contain information constituting state secrets, commercial and (or) other protected secrets.

During the tax control, the taxpayers are obliged:

to sign the tax control act (statement);

to submit the documents (copies thereof), tax information and other data concerning the inspectees' activities and property to the tax authority;

not to disturb tax officials to carry out the tax control, to keep their premises suitable for the tax control open.

The tax authority has the right:

to receive documents (copies thereof), tax information and other data concerning the inspectees' activities and property to the tax authority;

to verify documents confirming the identity and (or) authorities from the taxpayers and their representatives, to request and obtain the documents (copies thereof) and other information concerning their activity and property from the taxpayers;

to summon the inspectees, their representatives as well as third parties who have the documents and (or) information on the inspectees' activities;

During the tax control, excluding off-site control, the tax authority is entitled to:

to check cash in the cash desk and with accountable officials, securities and other property;

to inspect the taxpayer's territories, premises or other objects used for determining whether the actual data on the objects correspond to the documentation provided by the taxpayer;

to demand property inventory, as well as to verify its results and seal the register, premises, places of document storage and (or) property of the taxpayer;

to confiscate original documents of the taxpayer or to demand extracts or copies thereof;

to inspect the taxpayer and its representatives personally, to inspect the things, documents, values and means of transport in their possession.

Carrying out the tax control the tax authority must:

recover unpaid (not fully paid) amounts of tax, fee (duty), penalties and enforce the unfulfilled tax obligation by charging penalties;

demand the taxpayers cure the law violations and monitor compliance with the legal requirements;

send (hand in) decisions to the taxpayers or their representatives;

transfer tax control and other materials on tax crimes to the criminal prosecution authorities;

revoke the decisions of lower tax authorities not complying with the legislation.

The timing of the tax audit

As a general rule, the on-site control must be conducted within 30 working days. The tax control term can be extended by the tax authority's head (deputy head). If additional control is appointed, its term must not exceed 10 work days.

The term for the thematic operational control of one inspectee or its branch must not exceed 3 work days.

For reference: The specified time limits do not apply if the control is carried out by order of criminal prosecution bodies. There is no deadline set for off-site and on-site control due to the specifics of their conduct.

The documents (acts) that are handed over to the taxpayer at the end of the tax audit

The tax authority draws up [an act or a certificate](#) based on the results of the tax control (except for off-site control). If there are no tax violations, a certificate is drawn up. If there are any, an act describing the violations detected is drawn up.

If the tax authority identified errors (incompleteness) in the submitted documents during the off-site control, it sends [a notice](#) to the taxpayer suggesting amendments within 10 work days. If the taxpayer didn't make the amendments within this period, the tax authority can request supporting documents. If such assessment reveals a tax violation, the tax authority informs the taxpayer of information and (or) explanations, documents are not accepted and send an off-site control act.

The act (certificate) must be signed by the head of the inspectee (person responsible for accounting management), an official of the tax authority and third parties (if necessary).

If there are any [objections](#) to the act (certificate), it is indicated at the time of signing. They must be submitted to the tax authority not later than 15 work days from the date of signing the act (certificate). After the expiry of this period, no objections are accepted.

Tax authority reviews the inspectee's objections within 15 working days and draws up [a written opinion](#). The additional control on the objections analysis may be appointed within 10 working days from the date of their submission.

Within 30 working days from the date of tax control act delivery to the taxpayers or from the date of filing objections tax authority makes the decision. It is handed in personally or sent by registered mail to the taxpayers or their representatives.

In addition, a protocol for an administrative offence and (or) a resolution on an administrative offence may be drawn up.

The deadlines for the fulfilment of the results of the tax audit

As a rule, taxpayers could execute the tax control decision by themselves within 7 days.

PROCEDURE FOR APPEALING THE RESULTS OF TAX CONTROL:

Pre-trial settlement

➤ whether the pre-trial settlement is mandatory

Pre-trial settlement is not mandatory. Taxpayers can file a claim directly to the court.

➤ the authority where the appeal on the results of the tax audit should be filed;

A tax authority's decision may be appealed against:

1 to a higher tax authority;

2 to a court.

However, filing an appeal to a higher tax authority or a higher official does not exclude the right to file an appeal in court.

The decision may be appealed directly to the court without filing an appeal to a higher authority.

Failure to submit an appeal is a ground to reject it.

➤ the time frame for filing the appeal;

The taxpayer can appeal the tax authority's decision to a court within 1 year from the date of the decision. The deadline for filing an appeal to a higher tax authority is shorter - 30 days from the date of the tax authority's decision.

The appeal procedure is multi-stage.

1 An appeal against the decision of the tax office of the Ministry of Taxes and Duties (hereinafter - tax office) in a district, city or district in a city can be filed with the regional or Minsk city tax office (according to territoriality) or with the Ministry of Taxes and Duties (hereinafter - MTD). It must be filed within 30 days from the date of the decision.

2 An appeal against the decision of the regional or Minsk city tax office may be filed with the MTD within 30 days from the date of its adoption.

➤ the time period for consideration of the appeal

The appeal must be reviewed within one month from the date of its receipt.

➤ the powers of the authority considering the appeal; the decision on the appeal.

Following the results of the appeal review, the higher tax authority or a higher official (if there is no higher tax authority) to whom the officials issued the decision are directly subordinated, could:

● leave the decision unchanged and the complaint - without satisfaction;

● revoke the decision in full or in part;

● revoke the decision and order the additional control;

● make amendments to the decision.

The tax authority sends the decision on the complaint to the appellants (their representatives) within 3 work days from the date of the decision.

Trial settlement

regulation of tax disputes

Tax disputes resolution, where the taxpayer is the company, are regulated by the Economic Procedural Code of the Republic of Belarus (Chapter 25). Such a company should file an application to the economic court located in a region where the company operates.

time frame for going to court

An application to the economic court may be filed within 1 year from the date of the decision.

the state fee amount

The state fee is 0.5 basic value (BYN 18,50 or USD 7,00 as of May 31, 2023).

the time period for consideration of the claim

In general, the first instance court tries tax disputes within 2 months from the date of the court's order on the case appointment for hearing, which is not later than 15 days from the date of the application receipt by the court.

court decision

If the court finds the appealed tax authority's decision does not comply with the legislation and violates the taxpayer's rights and lawful interests, it is adjudicated to invalidate the tax authority's decision.

In addition, the court makes a decision on the tax authority's obligation to cure the violation of the company's rights and lawful interests in full.

when the decision comes into force

The court decision comes into force 15 work days after its making unless it is appealed.

appealing the decision of the court of first instance in higher court instances

An appeal (protest) can be filed within 15 work days after the court's decision to the appeal instance.

A cassation appeal can be filed with the Supreme Court within one month after the judgment entered into force.

A supervisory appeal may be filed within one year after the judgment entered into force.



Global Presence

Integrated Offices

- | | | |
|----------------------------------------------------------------|------------------------------------------------------------|-------------------------------|
| Azerbaijan
Baku | Kyrgyzstan
Bishkek | Tajikistan
Dushanbe |
| Belarus
Minsk | Moldova
Chisinau | Ukraine
Kyiv |
| Georgia
Tbilisi | Mongolia
Ulaanbaatar | Uzbekistan
Tashkent |
| Kazakhstan
Astana
Almaty
Atyrau
Aktau, etc. | Russia
Moscow
Rostov-on-Don
St. Petersburg | Armenia
Yerevan |

Associate Offices

- Cyprus**
Limassol
- Russia**
Samara
- Turkmenistan**
Ashgabat
- Turkey**
Istanbul
- UAE**
Dubai

Representatives

- China**
Beijing
- Germany**
Frankfurt
- Malaysia**
Kuala Lumpur
- Switzerland**
Zurich
- UK**
London
- USA**
New York