

TAX CONTROL IN THE RUSSIAN FEDERATION AND APPEALS AGAINST THE RESULTS



GRATA
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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.

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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.

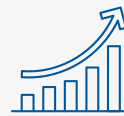
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> 22

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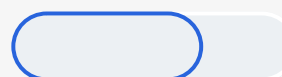
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professionals



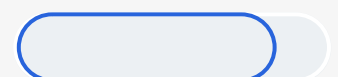
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Oksana Afanasyeva

Partner

T: +7 812 384 4838

E: oafanasyeva@gratanet.com



Maria Klimenkova

Associate

T: +7 812 384 4838

E: mklimenkova@gratanet.com

PART 1. TYPES AND FORMS OF TAX CONTROL. ORDER OF CARRYING OUT.

A tax audit can be a big challenge for any business. In addition, such an audit can have a big impact on the financial position of your company. Therefore, it is important to know more information about tax audit to be prepared for this procedure in order to protect your company and its interests.

In Russia today there are several forms of tax control.

Tax legislation of the Russian Federation provides that tax control is carried out by tax officials through tax audits, obtaining explanations from taxpayers, checking data on accounting and reporting, inspection of premises and territories used for generating income (profit), as well as in other forms provided for by the Tax Code of the Russian Federation of 31.07.1998 N 146-FZ (hereinafter referred to as the RF Tax Code).

CALLING A TAXPAYER TO A COMMISSION.

There are various commissions in the structure of the tax authorities: commissions for tax base legalisation, commissions for VAT, commissions for arrears, etc. The task of these commissions is to prevent tax violations and correct violations voluntarily by the taxpayer.

A DESK TAX AUDIT (DTA).

A DTA is an inspection by the tax inspectorate of the tax return data.

The period of desk tax audit is 3 months from the date of submission of the returns. If errors, discrepancies or inconsistencies of information are identified during the desk tax audit, the tax authority informs the taxpayer about this with a request to submit explanations (documents) and/or make corrections to the tax declaration. The deadline for submitting explanations is: 5 working days from the date of receipt of this demand. Amendments to the declaration are made by filing a revised declaration.

IF IRREGULARITIES ARE IDENTIFIED, A DTA ACT IS DRAWN UP WITHIN 10 WORKING DAYS FROM THE DATE OF COMPLETION OF THE DESK AUDIT. THE TIME LIMIT FOR FILING OBJECTIONS TO AN DTA ACT IS 1 MONTH.

ON-SITE TAX AUDIT (OTA).



An on-site tax audit is carried out on the territory of a taxpayer on the basis of the decision of the head (deputy head) of the tax authority.

Taxpayers are audited for 3 years preceding the year of the Decision on the audit and for the accounting periods of the current year.





The period of the audit is 2 months from the date of the audit Decision. The Federal Tax Service (FTS) has the right to extend this period to 6 months in exceptional cases stipulated by the Tax Code.

Taxpayers are selected for the On-site tax audit inspections by the tax authorities in accordance with the Concept of Planning System for On-site tax audits and Self-Assessment Criteria for Taxpayers (Annexes No. 1 and No. 2 to the order of the Federal Tax Service of 30.05.2007 N ìì-3-06/333@).



In accordance with the main goals and principles of the above Concept, taxpayers are selected for OTA after a thorough and comprehensive analysis of all information available to the tax authorities about taxpayers, including information obtained from external sources.

Tax officials analyse:

1) Amounts of taxes calculated and paid.

2) Taxpayers' financial statements (tax, accounting) in order to identify significant deviations from previous periods and inconsistencies (discrepancies) between the data in the statements.

3) Factors and reasons affecting the formation of the tax base.

In the course of an on-site tax audit the following tax control procedures are possible: stocktaking, interrogation, inspection, summoning as a witness, requesting documents (information), seizure, engagement of an interpreter, expert examination.

On the last day of OTA, a certificate is issued, the date of drawing up of which marks the end of the OTA. Further, within 2 months the tax authorities draw up an Act. This Act is delivered to the taxpayer within 5 days.

Objections to the Tax Audit Act shall be filed within 1 month from the date of receipt of the Act. The tax authority has the right to decide on conducting or refusal of additional tax control measures.

The following measures may be taken as additional measures: obtaining of documents, interrogation of witnesses, expert examination.

Objections to the Supplements to the Act of the tax audit may be filed by the taxpayer within 15 days after the date of receipt of the Supplements.

The Decision based on the results of OTA comes into force after 1 month from the date of delivery to the taxpayer.

REPEATED FIELD TAX AUDIT (RTA).

As a general rule, the tax authorities may not conduct two or more OTA of the same taxes for the same period. However, under certain circumstances a repeat field tax audit can be carried out, irrespective of the time of the previous audit, on the same taxes and for the same period. The audited period in this case is also limited to 3 years preceding the year in which the decision on the RTA is made.



In accordance with Article 89 of the Tax Code of the Russian Federation, a RTA may be carried out both in order to control the activities of the auditing authority and in case the taxpayer submits a revised tax declaration in which the amount of tax is less than the previously declared amount of tax. The period for which the corrected tax declaration is submitted is checked within the framework of this RTA.

TAX MONITORING.

Tax monitoring is an audit based on remote access to the taxpayer's information systems and accounting and tax reports. A significant advantage of this mechanism is that, as a general rule, there is no OTA and no DTA for the period which is being audited during tax monitoring.

An organisation has the right to apply for tax monitoring if the following conditions are met at the same time:

- ✓ 1) the aggregate amount of taxes is not less than 100 million roubles;
- ✓ 2) the aggregate amount of income received according to the financial statements is at least RUB 1 billion
- ✓ 3) the aggregate value of assets as at 31 December of the latest accounts is at least RUB 1 billion

The tax authority has the right to request the necessary documents and explanations from the organisation, to engage an expert and a specialist, to conduct an inspection.

If a violation is established, the tax authority sends a notification to the organisation within 10 days that there are grounds for a reasoned opinion.

In case a company disagrees with the results of tax monitoring, a mutual agreement procedure is envisaged.

PART 2. PROCEDURE FOR APPEALING AGAINST THE RESULTS OF TAX CONTROL.

Every person has the right to appeal against the results of actions of the tax authorities.

However, it is possible to appeal to court only after the stage of appeal to a higher tax authority.

APPEALING TO A HIGHER TAX AUTHORITY.

In case of disagreement with the decision of the tax authority, the taxpayer may file an appeal before it comes into effect.

When appealing to a higher tax authority the taxpayer has the right to submit additional documents, but the reasons why these documents were not submitted earlier must be explained. The complaint is considered without the participation of the person who filed it. The complaint may be withdrawn before a decision is made on it.

Based on the results of the appeal, the Decision of the higher tax authority is delivered to the taxpayer within 3 days of its adoption.

A LAWSUIT IN COURT.

The next step could be appealing to a court.

Court cases in the sphere of entrepreneurial and other economic activities are considered by the arbitration court according to the general rules of claim proceedings provided by the Arbitration Procedural Code of the Russian Federation. The statement of claim must be filed within 3 months of the infringement of rights and legitimate interests.

Term of consideration: up to 3 months.



The specified term can be prolonged on the basis of a motivated statement of the judge - up to 6 months (in connection with special complexity of a case, with a considerable number of participants of arbitration process).

1

The decision of the Arbitral Tribunal of first instance may be appealed to the Court of Appeal. The appeal may be lodged within 1 month (from the date of the reasoned ruling).

2

If the taxpayers do not agree with the ruling of the court of appeal, they have the right to appeal to the court of cassation within 2 months from the date of the ruling.

3

Judicial acts which have come into force, mentioned in part 3 of article 308.1 of the Commercial Procedural Code of the Russian Federation, can be reconsidered by the Presidium of the Supreme Court of the Russian Federation under the supervisory appeals of persons participating in a case, and other persons mentioned in article 42 of the Commercial Procedural Code of the Russian Federation.

CONCLUSION.

In 2022, additional business support measures were introduced in Russia, in particular, on-site tax audits for accredited IT companies were suspended until March 3, 2025 (Letter No. SD-4-2/3586@ of the Federal Tax Service of Russia of 24.03.2022).

In relation to other business representatives, tax audits are conducted according to the general procedure.

The tax control system in the Russian Federation is multi-stage and rather complex. Engaging GRATA International tax specialists will allow you to:

- Interact effectively with the tax and judicial authorities, allowing you to significantly reduce the risks of additional charges and fines for tax offences;
- Set up an effective accounting system in the company;
- Conduct a financial audit of your company to identify and prevent cases of financial embezzlement in the organisation;
- Prepare for any government audit in advance.



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