

# TAX CONTROL AND APPEALING ITS RESULTS IN TURKEY



**GRATA**  
INTERNATIONAL



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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.**

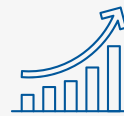
### Key Industry Sectors:

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



> 22

countries of presence



> 31

years of experience



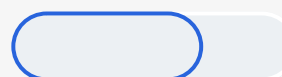
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professionals



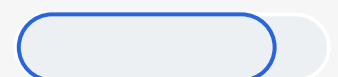
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practice areas



7 700+

clients



15 000+

projects

# TAX CONTROL AND APPEALING ITS RESULTS IN TURKEY



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In Türkiye, tax authorities regularly conduct audits over Companies, whether upon a complaint or a reasonable suspicion arising from the financial statements and/or activities of a company. As a result of the audit, the tax authority may accrue additional taxes, as well as penalties and/or criminal proceedings subject to the conditions laid out in the relevant legislation. However, there are legal and administrative remedies along the process.

## TAX AUDIT

**ALL THE COMPANIES ESTABLISHED IN TÜRKİYE ARE SUBJECT TO TAX AUDITS. THE PRIMARY AUDIT HAPPENS WITH THE ESTABLISHMENT OF THE COMPANY. THE TAX AUTHORITY INSPECTS THE COMPANY'S HEADQUARTERS TO DETERMINE WHETHER THE COMPANY IS PHYSICALLY ESTABLISHED IN THE ADDRESS.**

Following the establishment, a company is obligated to provide monthly, quarterly, and annual tax declarations arising from its operations. Even if no commercial operations are conducted, the company should provide its declarations, and pay the associated stamp duty and fees. Not providing these declarations will cause penalties to arise.

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If a company is suspected to have falsified their financial statements, or the tax authority deems that there are issues that needs to be clarified regarding the statements, it may request the company to provide an "explanation" on the subject, at any time. Based on the explanation provided by the company, the tax authority may decide to conduct an audit. In such a case, a tax inspector is tasked with the audit.

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The tax inspector will request any documents that they may deem necessary and will issue a tax report based on their findings. If the report issued by the inspector indicates that there are irregularities in the financial statements and/or declarations, or in any of the company's books and/or invoices, and thus there is a loss of tax revenue and/or any other issue that require reporting, (e.g. falsified invoices etc.) the tax authority will start an internal process to issue a penalty and petition for the criminal proceedings to start. The tax audit report issued by the inspector is uploaded to the "taxpayers' system" which is a digital system accessible to the company.

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If the tax authority decides that there is an irregularity that needs to be addressed, they will calculate the lost tax revenue, add accumulated interest, and apply the penalty amounts as per the legislation, and provide a “tax notification order” to the company. The order should include a copy of the tax audit report, as a basis for the tax notification order. The tax notification order will indicate the amount due, and the deadline for the payment, as well as the legal remedies available and the deadline for the application to these remedies.



**FOLLOWING THE TAX NOTIFICATION ORDER, IF THE PAYMENT HAS NOT BEEN MADE OR A LAWSUIT IS NOT PETITIONED, A “PAYMENT ORDER” WILL BE ISSUED.**

## LEGAL REMEDIES

There are two main remedies against a tax penalty.

The first one is the pre – trial settlement, where the taxpayer may apply to receive some form of discount or a payment plan for the tax penalties,



and the second one is petitioning for a lawsuit before a court and requesting that the tax notification order as well as the tax audit report as its basis to be annulled by the court.

### A. Pre – Trial Settlement

As a legal remedy, a pre – trial settlement may be requested from the tax authority. It is not mandatory the request it but requesting it may prove beneficial for the taxpayer depending on the specific situation. For example, if the taxpayer believes that the findings in the tax audit report are correct, and that the penalties are in order, pre – trial settlement may allow a lower penalty amount to be paid.

The taxpayer, or their authorized representative, who has the authority to apply to tax authorities for settlement in their power of attorney, may request a settlement from the tax authority, which has issued the tax notification order. The deadline for application is 30 days following the receipt of the notification. As a result of the application, a date and time regarding the meeting is scheduled by the tax authority.

The decision on settlement, if reached is signed between the tax authority and the taxpayer. The decision is definitive for each party and no appeal processes are available for the settlement. As such, the taxpayer cannot apply to the court or any other legal authority, and the tax authority may not accrue additional taxes or penalties arising from the period subjected to the inspection.

### B. Lawsuits

As per the legislation, a lawsuit against a tax notification order will automatically stop their enforcement, creating a de facto “stay.” However, in practice, the tax authorities will send a payment order even if a lawsuit has commenced against the tax notification order. In such cases, it is imperative to start another lawsuit to request cancellation of the payment order. Otherwise, the tax authority may move forward with the collections process. Lawsuits against the payment order do not stop the collections process on its own, and unlike the lawsuits against the tax notification report, a decision on stay must be issued by the court to stop the collections procedures.

The timeframe for starting a lawsuit against the tax notification orders are 30 days following the notification, like the duration for settlement application.

For the payment orders however, the timeframe is 15 days following the notification. Depending on the appeal process, the total duration for the procedures may take up to 2-3 years.



The court decision rendered as a result of the proceedings will not be final, and will be subject to appeal before Regional Courts, and if depending on the subject - matter of the penalty, before the High Administrative Court as well.

However, from the perspective of the taxpayer, if the court decides on a stay, and the decision on stay is not overturned at any point, the collection process will have stopped.

However, if the decision on stay is overturned, or the first instance court decides in favor of the tax authority, then collections procedure may move forward.

In such cases, it may be a beneficial method to pay the penalty fees to the tax authority with a "reservation" indicating that the payment is made due to the risk of collections, and that it does not mean a forfeiture or a waiver from the lawsuit and its results, so that if the decision is overturned in favor of the taxpayer, the taxpayer may request the payment of the already paid amount.

In accordance with the jurisprudence, if the taxpayer does not pay with a reservation, then they will be deemed to have forfeited their rights arising from the lawsuit, so it is imperative to provide the payment with the reservation.

## C. Settlement During Lawsuits



In practice, it is a common sighting where the taxpayer both files a lawsuit before a court and applies for a settlement at the same time. In these cases, the court will wait the results of the settlement procedure.

## CRIMINAL CONSEQUENCES

In accordance with the Turkish Law on Tax Procedure, causing a loss of tax revenue is a punishable crime.

In general, the punishment occurs in the form of penalty, as described above.



However, there are certain specialized instances where the loss of tax revenue can be punished by prison.



## OBSERVATIONS

Turkish tax regime and its applications are very complex and ever – changing. Aside from the laws and regulations regarding the taxation, the regime is also regulated by the numerous communiques issued by the Turkish Revenue Management Authority, Presidential Decrees and numerous other pieces of legislation. In addition to those, it is a common occurrence to see “temporary clauses” added and removed to and from the legislation in place.

These instances are indicated as “tax crimes” and are generally committed by fraudulent acts such as issuing fake invoices, holding “dual” books, destruction of company books, refusal to provide the company books to the tax authority etc. If all the monetary penalties are paid in some form, whether by settlement with the tax authority or by directly paying them, the criminal court will consider this fact, and will reduce the penalty.

As such, it is imperative to work in conjuncture with a certified public accountant and a lawyer so that these regulations and changes are always adhered to, and proper declarations are provided to the tax authorities. Otherwise, not following the current rules will not be regarded as a legitimate excuse, and the penalties could be applicable.



# Global Presence

## Integrated Offices

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

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