

# TAX CONTROL AND APPEALING ITS RESULTS IN THE GRATA INTERNATIONAL COUNTRIES



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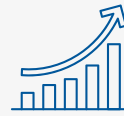
### Key Industry Sectors:

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



> 22

countries of presence



> 31

years of experience



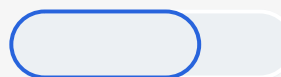
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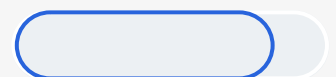
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practice areas



7 700+

clients



15 000+

projects

# TAX CONTROL AND APPEALING ITS RESULTS IN BELARUS



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## 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.



# TAX CONTROL AND APPEALING ITS RESULTS IN GEORGIA



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

Tax control can be performed only by tax authorities. Tax control procedures shall not reasonably disturb the ordinary course of business of a taxpayer and shall not suspend its activity. The types of tax control are current control and tax audit.

Re-audit of an already audited matter is prohibited without a judge's order except matters for which a person files an adjusted tax return for an already audited period.

### a. Current Control Procedures

Current control over a taxpayer's activity is performed during working hours or during the actual work of a taxpayer.



The procedures of current control are implemented without any prior notice.

**The Tax Code of Georgia considers the following current control procedures:**



Time study: to determine the level of a taxpayer's revenue, the volume of supplied goods/delivered services and the number of hired individuals, the tax authority may survey the taxpayer's economic activity and conduct a time study of the taxpayer's activity.

Tax monitoring: by assigning the authorized person for a term of up to 6 months to the place of economic activity of a taxpayer, the tax authority may conduct tax monitoring and use the information obtained to determine the taxpayer's tax obligation at the moment of a tax audit. The period of tax monitoring may be prolonged in agreement with the Head of the Revenue Service.

Controlling purchase: the purpose of controlling purchase of goods/services shall be to determine the actual volume of revenue earned from the supply of goods or services of services or reveal a violation of the Laws of Georgia.

Control over observance of rules for using cash registers: an authorized official of the tax inspection may, without a court decision, in accordance with procedures established by the Minister of Finance, exercise control over the observance of rules for using cash registers.

Visual inspection: To exercise tax control, an authorized official of the tax authority may visually inspect the premises, buildings, fixed assets and inventory holdings of a person.

Taking inventory: The head of the tax authority may, without a court decision, issue an order for taking stock of inventory holdings or fixed assets of a person holding excisable goods. The head of the tax authority may issue an order for taking stock of inventory holdings or fixed assets of a taxpayer holding non-excisable goods for a maximum of two times in a calendar year, and an inventory may be checked for a third time by an order of the Head/Deputy Head of the Revenue Service. To have an inventory checked within a reasonable time, the taxpayer's manager (director) shall set up an Inventory commission within two working days after being served with such an order. The inventory commission shall be obliged, in full and on time, to take stock of inventory holdings or fixed assets at the place of their production and storage, compare the obtained inventory with the respective accounting data, and record the results in the Inventory Report.

## b. Tax Audit

A tax audit may be a correspondence audit or a field audit:



Correspondence tax audit: a correspondence tax audit shall be conducted by an order of an authorized person of the tax authority, for auditing specific matters defined by the order. During a correspondence tax audit, the tax authority may request that accounting documents or taxation-related information be presented.

A correspondence tax audit is conducted without visiting the taxpayer's place of activity, based on the person's taxation-related information available at the tax authority, as well as on clarifications and accounting documents provided by the taxpayer.

Field tax audit: a field tax audit shall be conducted based on an order of an authorized person of the tax authority. The taxpayer shall be sent a written or electronic notice of a field tax audit at least 10 working days prior to the commencement of the audit. In case of an urgent tax audit field tax audit is conducted without prior notification.



The audit shall commence no later than 30 days after serving the notice upon the taxpayer. If the audit cannot be started within that time, the notice shall be invalid. A field tax audit may not continue for more than three months. If necessary, the audit period may be prolonged for a maximum of two additional months, in agreement with the Head of the Revenue Service.

The findings of a tax audit shall be reflected in a report. The tax authority shall make a decision on assessing or not assessing taxes or fines, based on the tax audit report. copy of such a decision shall be presented to the taxpayer along with the relevant tax notice.

## PROCEDURE OF APPEALING THE RESULTS OF TAX CONTROL

### A.

#### Dispute within the System of the Ministry of Finance

The tax authority decision can be appealed within the system of the Ministry of Finance or directly to court.



The authorities having the competence to resolve a tax dispute within the system of the Ministry of Finance of Georgia shall be the Revenue Service and the Dispute Resolution Council under the Ministry of Finance of Georgia.

A tax dispute within the system of the Ministry of Finance of Georgia shall include two stages, and it shall start with filing a complaint with the Revenue Service. The complaint shall be filed within 30-day period from the moment of serving a decision on the taxpayer.

The decision of the Revenue Service shall be appealed within 20 days either in the court or to the Dispute Resolution Council under the Ministry of Finance.

Resolving the appeal shall take up to 20 days in each instance. Though, in practice this period may last several months and even up to a year.

## B.

### Dispute within the court system

**The dispute resolution terms within the court system are as follows:**

- The first instance court – 2 months.
- The Appeal Court – 2 months
- The Supreme Court – up to 6 months.

In practice the period of dispute settlement may last up to 3 years and even longer depending on the complexity of the case.

**Court state fees on taxpayers' claims are as follows:**

- **The first instance court** – 3% of the disputed amount, not less than GEL 100 and not exceeding GEL 5 000.
- **The Appeal Court** – 4% of the disputed amount, not less than GEL 150 and not exceeding GEL 7 000.
- **The Supreme Court** – 5% of the disputed amount, not less than GEL 300 and not exceeding GEL 8 000.

## TAX AGREEMENT

**The Tax Code of Georgia provides possibility for a taxpayer to enter a tax agreement with the Revenue Service for purposes of reducing:**

Tax arrears.

Sum of a duty or the related penalty and surcharge which is administered by a tax authority.

The taxpayer submits an application for a tax agreement to the Revenue Service. The decision of the Revenue service might be one option from two: either it may refuse to sign a tax agreement with the taxpayer or submit the application, along with appended documents, to the Minister of Finance of Georgia for consideration at the Government of Georgia meeting.

The Government of Georgia shall make a decision on signing a tax agreement, defining the amount payable and the time limit of payment under the tax agreement. The taxpayer shall be obliged to discharge the liabilities under the tax agreement within the term fixed by the agreement.

# TAX CONTROL IN THE REPUBLIC OF KAZAKHSTAN



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The Tax Code of Kazakhstan [1] provides for a wide range of tax control forms, with the main ones being cameral tax control and on-site tax inspections.

Tax control is carried out by tax authorities, as well as customs authorities in relation to VAT on imports and excise duties payable in connection with the movement of goods across the border.

Any act as well as action (inaction) of the tax authority can be appealed by the taxpayer to a higher tax authority and/or courts, if they consider them unlawful and unjustified.

## CAMERAL TAX CONTROL



Due to the digitalization of tax administration, tax authorities have widely implemented cameral tax control.

Within the framework of cameral control, tax authorities remotely monitor and analyze tax reporting and other documents submitted by taxpayers, as well as other information about taxpayers received from government agencies and other sources.



If any discrepancies, errors, or violations are detected as a result of cameral control, the tax authority notifies the taxpayer about them for self-correction.

The notification from the tax authority regarding violations identified during desk control must be executed by the taxpayer within a 30-day period through self-correction of the violations. For example, this can be done by submitting additional tax reporting with the calculated tax amount or by correcting the electronic invoice.

If the taxpayer disagrees with the notification, they have the right to submit a written explanation to the tax authority with supporting documents and/or appeal the notification to higher tax authority. If the taxpayer and the tax authority do not reach a consensus, the tax authority must conduct an on-site tax inspection of the taxpayer to verify the issue and make a final decision.



○ If the tax authority's notification requires the adjustment of tax amounts or payments due to court rulings declaring transactions invalid, invalid state registration of a counterparty, or the determination that goods were not actually supplied and services were not rendered, then in case of disagreement, the taxpayer can appeal such a notification only in court.

○ If the taxpayer does not respond to the notification within the 30-day period (does not fulfill or appeal), the tax authority has the right to arrest their bank accounts or restrict the issuance of electronic invoices, and later appoint an on-site tax inspection.

○ It is important to note that the taxpayer is not subject to administrative or criminal liability in case of violations discovered based on the results of cameral control.

○ Cameral control is part of a risk management system for categorizing taxpayers into different levels and selecting them for on-site tax inspections.

## ON-SITE TAX INSPECTION

An on-site tax inspection is usually conducted at the taxpayer's location to verify the accuracy and completeness of the taxpayer's compliance with tax obligations and social payments, as well as on issues of transfer pricing and government regulation of the production and turnover of excisable goods (crude oil, alcohol, tobacco, petroleum products, etc.).



The tax inspection is carried out based on a prescription issued by the tax authority that assigned the inspection. The prescription for conducting the inspection, as well as notifications of suspension, resumption, and extension of the inspection, must be registered with the prosecutor's office. The taxpayer has the right to refuse entry to the office or premises of tax authority officials if they do not present the prescription.

## Types of tax inspections:

### BY REGULARITY:

- 1 Periodic tax inspections, for which taxpayers are selected based on the risk management system at the beginning of each half-year. Lists of taxpayers subject to inspection are published by tax authorities;
- 2 Unscheduled tax inspections, which are appointed, for example, based on the taxpayer's request, within the framework of criminal proceedings, etc.

### BY SUBJECT MATTER:

- 1 In the framework of a comprehensive tax inspection all types of taxes and obligatory payments are subject to inspection;
- 2 Thematic tax inspection - separate types of taxes, obligatory payments or separate issues are inspected;
- 3 Counter tax inspections - mutual settlements with counterparties are checked to confirm the fact and nature of transactions;
- 4 A time inspection is carried out to establish the actual income and expenses of the taxpayer during the period of the inspection.

The duration of a tax inspection is up to 30 business days from the date of issuing the prescription, with the possibility of extension up to 180 business days. The tax authority is authorized to suspend the inspection period during the collection of requested documents and information.



In the framework of a tax inspection, the tax authority has the right to require the taxpayer to submit accounting and primary documentation, written explanations, including from employees, access to view the information software used to automate accounting and tax accounting, to inspect property and conduct inventories, request information about the taxpayer and their activities from government agencies, banks, and other organizations, including information protected by law as confidential, send requests to foreign states, etc.

**FOLLOWING THE TAX INSPECTION, THE TAX AUTHORITY ISSUES A TAX INSPECTION REPORT, WHICH INCLUDES INFORMATION ABOUT THE TAXPAYER, A DESCRIPTION OF THE CONDUCTED INSPECTION, INCLUDING IDENTIFIED VIOLATIONS, AND CONCLUSIONS DRAWN BY THE TAX AUTHORITY BASED ON THE RESULTS OF THE TAX INSPECTION.**



If a taxpayer has undergone a periodic tax inspection, the tax authority must firsthand over a preliminary tax inspection report to the taxpayer. The taxpayer has the right to submit objections to higher tax authorities if they disagree with the conclusions drawn in the preliminary tax inspection report. After considering the objections, the tax authority issues a final tax inspection report.



If a periodic tax inspection has been conducted, the tax authority must first deliver a preliminary tax inspection act to the taxpayer. The taxpayer has the right to file objections to the higher tax authorities if he disagrees with the conclusions made in the preliminary act of the tax inspection. After considering the objections, the tax authority issues a final tax inspection report.



If violations are revealed as a result of the tax inspection, in addition to the tax inspection report, the tax authority issues a notice based on the results of the tax inspection. In this notice, the tax authority may, for example, assess additional amounts of taxes, payments, and penalties against the taxpayer, and/or reduce the amount of loss, confirm or refuse the refund to the budget of excess VAT claimed by the taxpayer, etc.

It is important to note that the taxpayer will be subject to administrative or criminal liability for violations revealed by the results of the tax inspection.



Notification on the results of a tax inspection must be either executed by the taxpayer or appealed by him to the Appeals Commission of the Ministry of Finance within 30 business days.



For the period of appealing the notice on the results of a tax inspection the tax authority restricts the taxpayer's disposal of fixed assets by a value equal to the appealed amount.

## **PRE-TRIAL SETTLEMENT OF A TAX DISPUTE**

The complaint must be reviewed, as a general rule, within 30 business days, with the possibility of extending the deadline to 90 business days. When reviewing the complaint, the Ministry of Finance has the right to appoint a thematic tax inspection to examine specific issues. The Ministry is also entitled to send inquiries to government agencies, organizations, and foreign countries. The review period of the complaint is suspended during the period of conducting a thematic tax inspection, as well as during the process of sending inquiries and receiving responses to them. Based on the review of the complaint, the Ministry issues a reasoned decision.

The taxpayer has the right to appeal the notice on the results of the tax inspection in court, If they disagrees with the results of the complaint review by the Ministry of Finance.

## JUDICIAL SETTLEMENT OF A TAX DISPUTE

**There is a three-tier judicial system in Kazakhstan. Tax disputes are considered within the framework of administrative court proceedings.**

The deadline for filing an administrative lawsuit regarding the results of a tax inspection in the first instance court is 1 month from the date of receiving the decision of the Ministry of Finance.



To file an administrative lawsuit, the taxpayer must pay a state fee of 1% of the disputed amount of taxes, payments, and penalties, but not exceeding 20,000 monthly calculation indexes. [2]

The administrative lawsuit is heard by a single judge with the participation of the parties involved: the taxpayer as claimant, the tax authority as respondent, representatives of the prosecutor's office, as well as third parties if necessary (such as representatives of the local executive body, Ministry of National Economy, etc.).



The total period for considering an administrative lawsuit in the first instance court cannot exceed 3 months. Based on the review of the lawsuit, the court issues a decision.

The decision of the court of first instance can be appealed to the court of appeal by filing an appeal within 2 months from the date of its delivery to the taxpayer in writing. The appeal shall be considered by judges collegially within 3 months. Based on the results of the appeal, the court shall issue a resolution.



The decision of the court of appeal comes into force within 1 month from the date of its delivery in written form. Within this period the taxpayer may appeal it in cassation to the Supreme Court of the state. In order to file a cassation appeal the taxpayer must pay the state duty in the amount of 0,5% of the appealed amount of accrued taxes, payments and penalties, , but not exceeding 20,000 monthly calculation indexes.



The cassation appeal is considered by judges collegially (not less than three judges). The cassation appeal shall be considered within 6 months from the date of receipt by the Supreme Court of the court case materials of the lower courts. Based on the results of consideration of the cassation appeal, the Supreme Court shall issue a resolution, which enters into legal force from the date of its announcement.



Resolution of the Supreme Court issued as a result of consideration of cassation appeals may be reviewed in exceptional cases on the proposal of the Chairman of the Supreme Court or a protest of the Prosecutor General, if the decision violates public interests, the uniformity of the application of law norms by the courts.

[2] In 2023, this threshold is 60,900,000 tenge or approximately 135,000 US dollars.

# TAX CONTROL AND APPEALING ITS RESULTS IN MOLDOVA



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## 1. TYPES AND/OR FORMS OF TAX CONTROL, THE PROCEDURE FOR CONDUCTING

The need to know the types and/or forms of tax control is important for legal entities. It is very important for the party under verification to know its rights and obligations as a taxpayer in the event of a tax audit. Failure to comply with them can result either in the violation of rights, or in the application of coercive measures by the control authorities (by applying fines, stopping operations on company's bank accounts, etc.). On the other hand, the taxpayer's very good knowledge of his rights can help to avoid abuse by the authorities.



Art. 129 para. 11 of the Fiscal Code provides for the notion of tax control - verification of the correctness with which the taxpayer fulfills the fiscal obligation and other obligations provided for by fiscal legislation and other normative acts, including verification of other persons in terms of their connection with the taxpayer's activity through methods, forms and operations provided for of the Fiscal Code. The purpose of the tax control is to check how the taxpayer complies with the fiscal legislation in a certain period or in several fiscal periods.

**Tax control can be carried out by representatives of the fiscal authorities only on the basis of a written decision issued by the management of the fiscal authority.**

**The main rights and obligations of the taxpayer in the event of a tax control**

### THE MAIN RIGHTS OF THE TAXPAYER:

- the right to a fair attitude on the part of the authorities with fiscal administration attributions and their representatives;
- the right to represent its interests before the concerned authorities either personally or through a representative;
- the right to appeal the decisions, actions or inactions of the tax administration authorities or their officials;
- the right to a fair fiscal treatment and the interpretation of doubts arising from the application of fiscal legislation in favor of the taxpayer, etc.



## THE MAIN OBLIGATIONS OF THE TAXPAYER:

- to keep accounting records according to the forms and manner established by the legislation;
- to present truthful information about the income resulting from entrepreneurial activity, as well as about other objects of taxation;
- to present at the first request of the authorities record documents, fiscal statements, other documents and information regarding the activity of the entrepreneur, taxes and fees calculated and paid, etc.;
- to ensure the authorities free access to the company's premises (e.g. production premises, warehouses, commercial premises, etc.);
- to assist in the performance of the fiscal control, to sign the act regarding the result of the control and to give explanations in writing or orally;
- to comply with the decisions of the authorities with fiscal administration attributions on the results of the control carried out, etc.

**Types of tax control. Tax control can be exercised in two forms:**

- ✓ **Tax control at the office of the tax body (chamber tax control).** Chamber tax control consists in verifying the correctness of the preparation of fiscal reports, of other documents presented by the taxpayer, which serve as the basis for the calculation and payment of taxes and fees, of other documents at the disposal of the fiscal body or other body with fiscal administration powers (hereinafter – “control body”), as well as in the verification of other circumstances related to compliance with fiscal legislation.

When it reveals errors and/or contradictions between the indications of the reports and the documents presented, the control body is obliged to communicate this to the taxpayer, asking him to modify the respective documents within the established term.



The control body carries out the fiscal control without adopting a written decision on the targeted objective. If the detection of the fiscal violation is possible within the framework of the chamber tax control, and the on-site audit is not necessary, the control body can draw up the fiscal audit report.



**On-site tax control.** The purpose of the on-site tax control is to verify compliance with the fiscal legislation by the taxpayer or another person subject to control, which is carried out by the control body at their location. The on-site tax control related to a taxpayer may include one or more types of taxes and fees. On-site tax control can be carried out only on the basis of a written decision of the management of the control body.

## At what time can the company be subject to tax control?

Tax control is carried out during the hours of the body exercising tax control and/or those of the taxpayer. **The duration of an on-site tax control must not exceed 2 calendar months.** In exceptional cases, the management of the control body can decide to extend the duration of the control by no more than 3 calendar months or stop the control. The period of suspension of the control and presentation of documents is not included in the duration of the control, the latter being calculated from the day of its commencement until the day of signing the respective act, inclusive.

**In the framework of tax control, the bodies empowered with the right to carry out tax control draw up a series of documents:**

**1** **Subpoena** is a written document in which the person is invited to the fiscal body to submit documents or to present another kind of information, relevant for the determination of the fiscal obligation. The tax authority has the right to subpoena any person to testify or produce documents. The subpoena indicates the purpose of the subpoena, the date, time and place where the subpoenaed person must appear, his obligations and responsibility.

**2** The **tax control act** is a document drawn up by the fiscal officer or other responsible person of the body exercising the control, in which the results of the fiscal control are recorded. The act will objectively, clearly and accurately describe the violation of fiscal legislation and/or the method of recording the objects of taxation, with reference to the respective recording documents and other materials, indicating the violated normative acts. Each fiscal period will be reflected in the act, specifying the fiscal violations detected in it. The control act is drawn up regardless of the fact of finding fiscal violations.



This act describes the findings of the control, the period subject to the control, the taxes and fees verified, as well as other information that was the basis of the control / finding of fiscal violations.

The control act itself is not binding in order to exercise obligations / pay taxes, but serves as a basis for issuing the decision on the results of the control. The taxpayer is obliged to sign the control document, including in case of disagreement with the results of the control. The control act is signed by the head of the company and/or another representative delegated in this regard.



**3** The report is a document drawn up by the tax officials or another responsible person of the body that exercises the control, in which the fact of picking up the documents and/or the control machines is recorded. The report is signed by the person who drew it up (representative of the fiscal inspectorate) and by the person from whom the documents and/or control machines were collected or by the assisting witnesses.



If the person from whom the documents and/or control machines are collected refuses to sign the report, the refusal will be recorded in it.

**4** The decision is an act issued by the fiscal body or by the tax and local tax collection service related to the exercise of the powers of these bodies and is issued when a fiscal control is initiated. The decision regarding the initiation of the fiscal control will contain the list of persons proposed for the control, taking into account the decreasing value of the difference between the estimated taxable income and the declared one and the ability to carry out a number of controls.

## 2. PROCEDURE OF APPEALING THE RESULTS OF TAX CONTROL

### 2.1. Pre-trial settlement

#### A. What should be done in case of disagreement with the control results?

If you do not agree with the results of the tax audit, you have the right to appeal them by submitting a written disagreement to the authority that performed the tax audit, citing all the facts and evidence that justify your position. This disagreement is to be submitted within 15 calendar days, from the date of signing the fiscal control act. The disagreement presented with the expiration of this term will not be taken into consideration when examining the case of fiscal violation and adopting the decision.

#### B. In what term will the tax violation case be examined?

**The authority that carried out the fiscal control is obliged to examine the case of fiscal violation within 15 days from the date:**

- presenting the disagreement (if it was presented in time), or
- the expiration of the deadline for presenting the disagreement (if it has not been presented).

This term can be extended by 30 days by the decision of the fiscal authority, including in the case of presenting the reasoned approach of the taxpayer. The disagreement submitted to the hierarchically superior control authority will not be examined, and in the end it may generate the omission of the 15-day deadline for its submission to the authority that performed the control.

In the case of submitting a reasoned disagreement with the annexation of supporting documents, the fiscal authority may order an additional verification of the information provided. When examining the case of fiscal violation, the results of both the initial and the additional control will be taken into account (through which, for example, based on the submitted disagreement, the circumstances that attest to the absence of fiscal violation can be ascertained).

**In the case of controls carried out by the tax authority, the latter is obliged to notify the preventive taxpayer (by subpoena) about the place, date and time of the examination of the tax violation case. The case of fiscal violation can be examined without the presence of the responsible persons of the taxpayer or his representative only in the situation where there is information regarding the notification to the taxpayer about the place, date and time of the examination of the case and no requests have been received from him to postpone the examination the case.**

### Appealing the sanctioning decision. What should be done if a sanctioning decision has been issued?

If the tax authority has issued the decision to apply a tax penalty, without taking into account the arguments brought to the disagreement, you have the right to appeal this decision. The appeal is submitted to the fiscal authority that issued the decision, within 30 days from the date of its receipt. In case of missing the mentioned term, the appeal will not be examined. If the deadline for filing the appeal was missed for valid reasons, the fiscal authority can reinstate the sanctioned person and examine the appeal. In this case, the appeal must contain the statement of the reasons for skipping the deadline and the request to reinstate it within the deadline. Filing the appeal does not suspend the execution of the appealed decision. The taxpayer must expressly request the suspension of the execution of the decision based on relevant arguments.

**Courts return summons requests regarding the annulment of the fiscal body's decision, if the plaintiff did not comply with the prior procedure for resolving the dispute out of court (did not appeal the decision to the issuing authority).**

The fiscal authority examines the appeal within 30 days. This term can be extended by no more than 30 days, a fact about which the taxpayer must be notified. When examining the appeal, the taxpayer is invited to give explanations, having the right to submit confirmatory documents. The case can be examined in the absence of the taxpayer if he was summoned in the established manner and, for unfounded reasons, did not appear or if he requested examination of the appeal in his absence.

After examining the appeal, the tax authority can order:



During the examination of the appeal, the obligation to prove the incorrectness of the decision issued by the tax authority is placed on the person who is contesting.

## 2.2. Court settlement of tax dispute

**What should be done if the appeal against the sanctioning decision was rejected or partially satisfied?**

If the tax authority rejected or only partially satisfied the appeal, you have the right to appeal the respective decision either administratively (to the higher hierarchical body - the Main State Fiscal Inspectorate) or in court. The request to sue against the decision of the fiscal authority is submitted to the competent court within 30 days from the date of receipt of the decision to reject the appeal.

### THE SUMMONS REQUEST IS NOT SUBJECT TO A STATE FEE.

You have the right to request the collection from the fiscal body of the damage caused by the contested sanctioning decision. When examining in court the action regarding the annulment of the tax authority's decision, the burden of proof of the legality of the decision rests with the tax authority. Simultaneously with the filing of the summons, you have the right to request the suspension of the execution of the contested decision.

### How can the court decision by which the request to annul the decision of the fiscal body was rejected be appealed?

If you consider that the court's decision is illegal or unfounded, you can appeal it to the Court of Appeal. The appeal request is submitted to the court that adopted the decision. The appeal period is 30 days from the pronouncement of the decision. The appeal exercised within the deadline is suspensive of the execution of the decision. The decisions of the Courts of Appeal become final from the moment they are pronounced and are subject to enforcement. If you consider that the decision of the court of appeal is illegal, you have the right to appeal it to the Supreme Court of Justice. The appeal is submitted within 2 months from the date of communication of the full decision. The declaration of appeal against the decisions of the court of appeal does not suspend the execution of the decision.



To sum up, the subject of tax controls proved to be a complex one, both from the perspective of fiscal authorities concerned with combating tax evasion, and from the perspective of taxpayers interested in ensuring fair treatment and non-admission of abuses by inspectors. The experience of Grata International Moldova has demonstrated over time that the involvement of a mixed team of qualified tax and legal consultants, especially from the initial phase of tax control, can contribute decisively to ensuring a fair tax treatment and to preventing violations of the taxpayer's rights.

# TAX CONTROL AND APPEALING ITS RESULTS IN MONGOLIA



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

The Tax Administration shall conduct tax audits in accordance with both general and special guidelines. These audits will be assigned and carried out in a comprehensive or partial manner, ensuring compliance with international standards and legislation as specified in Article 41.2 of the General Law on Taxation. Moreover, the tax administration may conduct simplified tax audits, taking into account the risk profile of the taxpayer pursuant to Article 41.3 of the General Law on Taxation. The tax administration shall conduct the audit on fulfillment of the taxpayer's obligations under this Law on the basis of the risk assessment or the taxpayer's request.

**The main rights and obligations of the tax authority and the taxpayer: According to Article 41.10 of the General Law on Taxation, the Tax Administration shall exercise the following powers for carrying out tax audits:**



1. to summon the taxpayers and the counterparty on reasonable grounds, and obtain explanations with respect to their activities;

2. to conduct general operations specified in Chapter 5 of this Law as follows:

- Accessing the Premises and Warehouses;
- Collection of Data, Information, and Documentation;
- Conducting Inspections;
- Conducting Inventory Audits; and
- Time and Motion Study.

3. to obtain explanations and references in relation to tax and accounting reports, accounts records, other financial documents, and information in the integrated tax registration and information database.



**According to Article 41.12 of the General Law on Taxation, taxpayers shall have the following rights and obligations in relation to tax audits:**

- 1. to protect their rights and legitimate interests personally and/or through their authorized representative or technical adviser, to be present during a tax audit, and provide evidence and justification;

2. to obtain or provide an explanation on tax assessments and payments, and the progress and outcome of audits; and

3. to provide the tax administration with the financial and other documents necessary for the tax audit, electronically or on paper as required, and to undergo the tax audit.

The timing of the tax audit: Under Article 41.5 of the General Law on Taxation, taxpayers shall be notified at least ten (10) business days before a tax audit is conducted.

The documents (acts) that are handed over to the taxpayer at the end of the tax audit: In accordance with Article 79.1 of the General Law on Taxation, when exercising its full powers in relation to tax collection, supervision, and conducting tax audits, the Tax Administration shall validate its decisions by producing notifications, demand letters, act on the seizure of assets, seizure letter, tax re-assessment acts, value-added tax assessment, payment validation act, report letter, notes, tax refund act, invoices/bills and pre-invoices, letters of notification, demands, request for withholding, act on the calculation of allocations, notices on the summons, notifications on the seizure of asset, recommendations, and other relevant documents.

The deadlines for fulfilling the results of the tax audits: The tax administration shall send a tax bill for payment of tax debt to a taxpayer and as for taxes, due losses, and penalties established by the tax re-assessment act or penalty notices, it is stipulated to be paid within 15 working days after the decision is handed down.

Where it becomes clear that a taxpayer is unable to pay tax debt due to one of the circumstances stated in the General Law on Taxation, the respective tax administration may grant a grace period, extending the payment due date up to one (1) year at the taxpayer's written request in accordance with Article 53.1 of the General Law on Taxation.

Where it becomes clear that a taxpayer is unable to pay tax debt due to one of the circumstances stated in the General Law on Taxation, the respective tax administration may grant a grace period, extending the payment due date up to one (1) year at the taxpayer's written request in accordance with Article 53.1 of the General Law on Taxation.

Moreover, when a taxpayer is unable to pay tax debt within the grace period prescribed above due to a reasonable excuse, the relevant Tax Administration may extend the grace period again based on a request of the taxpayer.

The extension for the grant shall not exceed two (2) years, in total, including the initial grace period in accordance with Article 53.2 of the General Law on Taxation.

## PROCEDURE FOR APPEALING THE RESULTS OF TAX CONTROL

### PRE-TRIAL SETTLEMENT

A.

whether a pre-trial settlement is mandatory;



Yes, in accordance with Article 81.1 of the General Law on Taxation, the taxpayers shall be entitled to file complaints and recover caused damages under the administrative procedures with regard to the decisions made by the Tax Administration and the state tax inspectors, except for the proceedings on examination and resolution of violations by the tax administration and the state tax inspectors, in accordance with the jurisdictions as follows:

1

Complaints appealing the decisions of a state tax inspector, except for the tax re-assessment act, shall be filed to the head of the relevant tax administration which directly supervising him/her;

Complaints appealing the decisions of the tax administration shall be filed to the head of its higher-level tax administration;

2

3

Complaints appealing the tax re-assessment act issued by the state tax inspector shall be filed to the Dispute Resolution Council in accordance with the relevant jurisdiction.

B.

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

Article 46.1 of the General Law on Taxation states that "a Tax Dispute Resolution Council shall work under the Tax Office in order to resolve complaints filed by taxpayers in connection with the tax acts stated in the General Law on Taxation.

C.

the time frame for filing the appeal

According to Article 47.1 of the General Law on Taxation, a taxpayer, an authorized representative of the taxpayer, or a professional tax consultant shall have a right to file a complaint to the respective Dispute Resolution Council within 30 days after receiving the tax re-assessment act.

D.

the time period for consideration of the appeal

In accordance with Article 47.15 of the General Law on Taxation, the Dispute Resolution Council shall resolve a complaint within 30 days after filing the taxpayer's complaint and hand over the decision to the parties of the disputes.

E.

the powers of the authority considering the appeal

**Under Article 47.5 of the General Law on Taxation, the complaint shall be settled by the following jurisdictions:**

A complaint of a taxpayer that belongs to the tax administration of aimag, Capital City and city with state-grade shall be resolved by the Dispute Resolution Council at that tax administration of the respective aimag, Capital City and city with state-grade;

The Dispute Resolution Council at the state administrative organ in charge of tax matters shall resolve a complaint of a taxpayer that belongs to the major taxpayers' unit.

F.

the decision on the appeal

As stipulated by Article 47.10 of the General Law on Taxation, the Dispute Resolution Council shall make a decision to either change, invalidate, maintain, or suspend the amount certified by the tax act and send back it to the Tax Office, and the decision shall be formally documented as a Resolution. If either one of the following conditions stated in this Law occurs while the Dispute Resolution Council discuss the complaint, the re-assessment act shall be sent back to the higher-level tax administration for a review of the re-assessment for a period of up to three months and the re-assessment act complaint upon can be suspended.

## COURT SETTLEMENT OF TAX DISPUTE

### Cognizance of tax disputes

According to Articles 81.1.4 and 47.18 of the General Law on Taxation, the taxpayers shall be entitled to file complaints appealing the decisions made by the Dispute Resolution Council to the court (or the administrative court) and it can only be altered by a court ruling.

### Time frame for going to court

If a taxpayer disagrees with Dispute Resolution Council's decision, the taxpayer shall have a right to appeal to the court within 30 days after the delivery of the council's decision.

### The state stamp duties

Claims relating to non-property interest and claims that cannot be valued shall be 70 200 tugrugs( app 21USD) as stated by Article 7.1.2 of the Law on Stamp Duties.

### The time period for the claim

In accordance with Article 55.1 of the Law on Administrative Procedure, if the judge considers that there are no grounds for a refusal to receive the claim specified in this law, he/she shall issue an order to initiate a case within seven days from the date of receipt of the claim or the date of completion of the claim requirements. Afterward, unless otherwise provided by law, a case shall be adjudicated within 60 days of the case as stipulated by Article 63.1 of the Law on Administrative Procedure. Whereas, if the case is returned by the appellate court for re-trial, the case shall be adjudicated within 30 days of the court receipt in accordance with Article 63.2 of the Law on Administrative Procedure. If necessary, the Judge Council of the court may extend the period specified in Articles 63.1 and 63.2 of this law up to 30 days for the first time, and up to 15 days for the second time, based on the advice of the judges of that court.

## The Court decision

**According to Article 106.3 of the Law on Administrative Procedure, the court of the first instance shall review the administrative case at the court hearing and issue the following decision:**

- 1 to annul the administrative act or administrative contract if it is found unlawful and the plaintiff's rights and legal interests are violated due to it;
- 2 to determine the administrative act or administrative contract is clearly unlawful;  
to determine the disputed act was unlawful if after lodging a claim for annulment of an administrative act and the act was canceled or annulled, or it was implemented in another way, and there is an interest of the plaintiff;
- 3 to order the administrative body to issue the necessary administrative act or to determine the unlawful omission if the decision to refuse to issue an administrative act or the omission of non-issuance is unlawful and the right and legal interest of the plaintiff is violated because of it;
- 4 to establish whether there is a legal relationship and to confirm it;
- 5 to reduce the amount of fee on the administrative act which establishes fee rate;
- 6 to award for the damages or to change the damage amount that caused to a natural person and legal entity due to illegal activity by an administrative agency;
- 7 to annul or establish an administrative normative act is invalid if it is unlawful and the plaintiff's right and legal interest has been violated or may potentially be violated due to it;
- 8



- 9** to annul if it is found that the law has been violated or that it rendered unable to implement the public legal function for the claim lodged by an administrative agency;
- 10** to annul or determine clearly unlawful if the public interest has been violated or may potentially be violated due to unlawful administrative activity;
- 11** to suspend the administrative act for up to six months until a new act is issued by the administrative agency if the court deems it is necessary to clarify the condition of the case further, and if the scale of further clarification exceeds the court's analysis ability;
- 12** to satisfy the claims in full;
- 13** to satisfy a part of the claims and dismiss the rest;
- 14** to dismiss the entire claim.

## When the decision comes into force

The court decision becomes effective after being handed down and heard in accordance with Article 108.2 of the Law on Administrative Procedure.

## Appealing the decision of the court of first instance in the appealing court

Unless otherwise provided by law, the case participants, their representatives and attorneys shall have the right to lodge an appeal with the appellate court within 14 days after receiving the court decision which was issued after adjudicating in the first-instance case proceeding.

# 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.



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.

## 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.

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.



# TAX CONTROL AND APPEALING PROCEDURE IN UZBEKISTAN



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## TYPES AND/OR FORMS OF TAX CONTROL.

Tax legislation of the Republic of Uzbekistan envisages 2 (two) types of tax control, which include tax inspection and tax monitoring. The former will be subject to further discussion in the following paragraphs.

### 1.1.

#### Types of tax inspections and the conducting procedure:

**Tax inspections envisaged under the Tax Code of the Republic of Uzbekistan are conducted to monitor compliance with tax laws by taxpayers, payers of levies and tax agents. Tax authorities are entitled to conduct the following 3 (three) types of tax inspections:**

-  a cameral (in-house) tax inspection;
-  an on-site tax inspection;
-  an audit of tax operations.

**Please see the in-depth description of the abovementioned tax inspection types:**

## Pre-verification analysis.

Prior to the start of the cameral tax inspection, the tax authorities have a right to conduct a pre-verification analysis, which is an automated analysis of submitted tax reports and other information about the taxpayer's activities without the taxpayer's participation and any order of the head (deputy head) of the tax authority. If, there have been revealed discrepancies and (or) errors in the submitted tax reports during the pre-verification analysis, the taxpayer is obliged to submit an updated tax report or justification of the identified discrepancies within 10 (ten) business days upon receipt of the notification. If tax payer fails to fulfill such an obligation, a cameral (in-house) tax inspection is the next step of the tax control. The pre-verification analysis is completed once the updated tax reports or justification of the identified discrepancies are filed or a cameral (in-house) tax inspection is appointed.

## A cameral (in-house) tax inspection.

Tax authority conducts a cameral tax inspection on the basis of an analysis of tax reporting, financial statements filed by a taxpayer / tax agent, as well as other documents regarding a taxpayer's activities which are in the possession of the tax authority.

[1] <https://lex.uz/ru/docs/4272619>

[2] <https://lex.uz/ru/docs/6277774>

**A cameral tax inspection is performed on the basis of a specific order issued by the director (deputy director) of the tax authority. In particular, the order shall contain the following:**

- the name and identification number of the taxpayer;
- the full name, patronymic and position of the inspectors;
- the timing of the inspection;
- the inspected period;
- the types of taxes to be inspected.

**In the course of a cameral tax inspection, the tax authority is entitled to request the following:**

- accounting documents,
- explanations with respect to the submitted tax reporting and accounting documents,
- other information related to the calculation and payment of taxes and levies.

The requested information has to be provided within 5 (five) days from the date of the request, which may be extended by the tax authority at the request of the taxpayer as long as the reasons and the required time limit for the late submission are provided.

**The cameral tax inspection is considered as completed when: spection types:**



the amendments / corrections to the tax reports are required;



no discrepancies and (or) errors have been identified.

The taxpayer shall be obliged to submit the updated tax report(s) or a conclusion of the organization of tax consultants on the corresponding taxes and levies or justification for the revealed discrepancies with the submission of supporting documents, within 10 (ten) days from the date of request for amendments / corrections.

The review period of the filed document is 15 (fifteen) days and if the tax authority accepts and agrees with the provided justifications then a previously sent request or an updated request to amend the tax reports will be cancelled. If no updated tax reports (including after the updated request) or justification for the discrepancies are provided or the provided justifications have been deemed insufficient, then an audit of tax inspection might be assigned.

The period of a cameral (in-house) tax inspection shall not exceed overall period of 60 (sixty) days.

### An on-site tax inspection.

**Tax authority conducts an on-site tax inspection with regard to certain obligations of taxpayers in the area of the calculation and payment of taxes and levies. An on-site tax inspection includes checking of the following:**



accounting documents;



the movement of inventories and monetary resources and



other information related to the taxpayer's activities.

During the on-site tax inspections, the tax authorities are entitled to implement preventive measures and time-keeping surveys, to check the use of cash registers and payment terminals and other tax control measures.

**An on-site tax inspection is performed on the basis of a specific order issued by the director (deputy director) of the tax authority. In particular, the order shall contain the following:**

- the name and identification number of the taxpayer;
- the full name, patronymic and position of the inspectors;
- the timing of the inspection;

the inspected period;

the types of taxes to be inspected and

purpose of the inspection.

The beginning of an on-site tax inspection is the date of the order while the end date is the receipt of the conclusion in the form of act with respect to the on-site tax inspection, which in summon shall not exceed ten (10) days.

## An audit of tax operations.

**Tax authority conducts an audit of tax operations for the purposes of verification of the correctness of the calculation and payment of taxes and levies for a certain period. The notice for the planned audit of tax operation is sent to the taxpayer 30 (thirty) days prior to the inspection (if there are no signs of tax evasion). The notification shall contain the following information:**

- the date of the start of the audit of tax operations;
- a list of issues to be verified;
- a preliminary list of requested documents and other data required for conducting an audit of tax operations.

**An audit of tax operations is conducted on the basis of the order and the program approved by the director (deputy director) of the tax authority, which shall include the following details:**

the name and identification number of the taxpayer which is being audited;

full name, patronymic and position of the inspectors;

the time limits and purpose of the audit of tax operations.

The period for an audit of tax operations shall be 30 (thirty) days, which might be extended for the period not exceeding six (6) months. The results of an audit of tax operations shall be provided to the taxpayer in the form of act on tax audit within 3 (three) days after completion of the inspection.

### General rights of taxpayers during the mentioned above inspections:

- ✓ not to fulfill the demands of representatives of tax authorities unrelated to the inspections;
- ✓ to participate in tax inspections in person or through a representative;
- ✓ to give explanations to the inspecting tax authorities related to the execution of the tax legislation;
- ✓ not to file to the tax authority the requested documents (copies thereof) provided during the previous inspections or field tax inspections or during tax monitoring;
- ✓ to challenge the expert and request the appointment of an expert of his/her choice;
- ✓ to be present during the expert examination upon the permission of the tax authority's official and give explanations to the expert and get acquainted with the expert's report;
- ✓ to get acquainted with the materials of the tax inspection and receive conclusions in the form of an act;
- ✓ to appeal against unlawful acts of tax officials.
- ✓ To submit the opinion of a tax consultant organization as substantiation of inconsistencies indicated in the statement on the results of a cameral tax audit.

## PROCEDURE OF APPEALING THE RESULTS OF TAX CONTROL:

Tax Code of the Republic of Uzbekistan entitles taxpayers with a right to appeal the results of an on-site tax inspection as well as an audit of tax operations in a pre-trial settlement and through the court settlement. In particular, the court settlement of the appealing can be applied once the results of the pre-trial settlement do not meet the expectation of the taxpayer.

### 2.1. Pre-trial appealing



In the pre-trial appealing procedure, taxpayer can contest the results of the tax inspections to a higher tax authority within 1 (one) month period from the day on which the taxpayer concerned became aware or should have become aware of the violation of his rights. The results of the tax inspections conducted by the district tax authority can be contested to the city tax authority once the taxpayer file an appeal. District tax authority is obliged to transmit the filed appeal along with provided material to the city tax authority within 3 (three) business days.

**Tax legislation also stipulates the basis for a higher tax authority to dismiss the appeal:**

- signing of the appeal by unauthorized party;
- filing the appeal after the expiry of the time limit and if no restoration basis is applicable;
- in the event of withdrawal in whole or in part of the appeal;
- filing of an appeal, which was previously filed on the same grounds;

- filing of an appeal, which violates the set order as well as requirements prescribed in the Tax Code;
- filing of an appeal as part of an initiated criminal file, or if the subject matter of the appeal is addressed to the court.

A taxpayer receives notification on whether the appeal was accepted or dismissed within 5 business days and if the appeal is accepted then further decision of the higher tax authority shall be issued within 3 business days.

**A higher tax authority on the basis of the considered appeal and its supporting materials issues one of the following decisions:**

- dismiss the appeal;
- rescind the non-normative act of the tax authority;
- rescind the decision of the tax authority in whole or in part;
- rescind the decision of the tax authority in full and adopt a new decision on the case;
- declare the actions or inaction of the tax authorities' officials unlawful and issue a substantive decision.

### 2.2. Court settlement procedure

Taxpayers are entitled to appeal the results of the tax inspections at the Administrative courts of the Republic of Uzbekistan within 6 (six) months period from the moment when the taxpayer concerned became aware of the violation of his/her rights, freedoms and legitimate interests.

The fees for the appealing at the Administrative courts including, but not limited to 10 (ten) Basic Calculation Value [1], the postage expenditures associated with the sending of court notices and court acts, the amounts to be paid for the expert examination appointed by the court, the summoning of the witness, the examination of evidence on the spot, the costs associated with holding the court session via videoconferencing, as well as other costs related to the consideration of the case.

The Administrative court considers the filed appeal of the taxpayer within 5 (five) business days and issues one of the following decisions:

- 1 accept the appeal;
- 2 refuse the appeal;
- 3 return or transfer to another court according to jurisdiction.

The Code of the Republic of Uzbekistan on Administrative Proceedings stipulates that the court proceeding at the Administrative court shall be completed within no more than 2 (two) months period. The court decision comes into force after 1 (one) month and the taxpayer has a right to file an appeal during this period to the higher court instances.



In particular, the decision of the inter-district courts is considered at the Administrative courts of regions and Tashkent city, while the highest authorized instance is Judicial Board for Administrative Cases of the Supreme Court of the Republic of Uzbekistan.

OTHER DETAILS.

The tax legislation of the Republic of Uzbekistan divides the taxpayers into the following categories, on a scale from 1 to 100:

- 1.81% — 100% — highest risk;
- 2.30% — 80% — average risk;
- 3.1% — 29% — low risk.

THE LEVEL OF TAX RISK IS DETERMINED 1 (ONCE) EVERY SIX MONTHS. HOWEVER, THE RISK LEVEL OF TAXPAYERS WHO DO NOT HAVE A HIGH LEVEL (IF THE UNPAID TAX DEBT LEAVES NO MORE THAN 30 DAYS) IS DETERMINED 1 (ONCE) A QUARTER.

Tax authority use one the following information to analyze the tax risk of taxpayer:

- 1 tax and financial reports submitted by taxpayers; information reflected in personal account cards;
- 2 information submitted to the tax authorities by government agencies, institutions and organizations;
- 3 information provided by competent authorities of foreign countries within the framework of agreements on information exchange;
- 4 information from mass media;
- 5 information from the materials of audits of the tax operations;
- 6 information on tax violations discovered by courts and law enforcement authorities;
- 7 appeals of individuals and legal entities regarding the facts of tax violations;
- 8 statistical data;
- 9 information obtained from other sources not prohibited by law.

Tax authorities assign an audit for tax operations to the taxpayers with a high level of tax risk, and other tax inspections can be applied to the remaining risk categories. From the perspective of tax payers, the tax legislation of the Republic of Uzbekistan is fair, which is the main incentive for the taxpayers to comply with the provisions of tax legislation.

[1] Calculating amount of charges amounting 330 000 Uzbek soums on June 2023 (equivalent to approximately 30 US Dollars)



# TAX CONTROL IN THE RUSSIAN FEDERATION AND APPEALS AGAINST THE RESULTS



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## 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.

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;
- Conduct a financial audit of your company to identify and prevent cases of financial embezzlement in the organisation;
- Set up an effective accounting system in the company;
- Prepare for any government audit in advance.

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