

MAXIMUM DURATION OF THE TAX INSPECTION

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Abstract: *We can define a tax inspection as the procedure by which the competent tax authority orders a tax inspection of a taxpayer. The hypothesis considered in this material mainly concerns the period of time during which the tax inspection can be carried out and, more importantly, the consequences to which the tax authority is subject in the event of failure to comply with the mandatory legal provisions concerning the maximum period of time during which the tax inspection can be carried out, given that this procedure can be suspended at the request of the tax authority to obtain additional information necessary for the control activity. Thus, this paper will take as a starting point brief considerations on how to conduct this procedure, taking as a point of reference the legislation in force at the time, following mainly the method of calculating the maximum duration in which the tax authority can conduct this procedure and the consequences of non-compliance with mandatory relevant legal provisions.*

Key words: *duration, tax inspection, procedure, additional information.*

1. Tax inspection - introductory aspects

Tax inspection is a complex tax control procedure that can be carried out by ANAF (National Agency for Fiscal Administration), through which the activity of a taxpayer/payer is checked from a tax point of view. Thus, Article 113 of Law no. 207/2015 defines tax inspection as "*the activity aimed at verifying the legality and conformity of tax returns, the correctness and accuracy of the fulfilment of obligations in connection with the determination of tax liabilities by the taxpayer/payer, compliance with the provisions of tax and accounting legislation, verification or determination, as appropriate, of the tax bases and related factual situations, determination of differences in main tax liabilities*" (Law no. 207/2015, Art. 113).

To carry out the tax inspection, the tax inspection body will mainly examine the documents in the taxpayer's/payer's tax file, check the correlation between the data in the tax returns and those in the taxpayer's/payer's accounting and tax records, including the standard tax control file, and may even request such information from third parties. It will also check the places where taxable income-generating activities are carried out or where taxable goods are located, inform the taxpayer about the findings of the tax inspection, and if any over- or under-taxation is found, determine the tax base and, if

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necessary, order precautionary measures and apply seals on the taxpayer's goods, drawing up a report.

The tax inspection may be carried out on any person or entity, regardless of their form of organisation, which must establish, withhold or pay the tax liabilities laid down by law.

Concerning the forms of tax inspection, we note that Art. 115 of Law no. 2017/2015 regulates two types of inspection, namely **general tax inspection**, which is characterized as the activity of verifying the compliance with all tax obligations and other obligations provided for by tax and accounting legislation incumbent on a taxpayer/payer for a specified period, and **partial tax inspection**, which is the activity of verifying the compliance with one or more tax obligations and other obligations provided for by tax and accounting legislation incumbent on a taxpayer/payer for a specified period. The type of tax inspection carried out will be chosen depending on the calculation of the risk analysis, this attribute belonging to the tax inspection body.

Before the tax inspection, according to Article 121 of Law no. 2017/2015, taxpayers/payers presumed to be selected for tax inspection will be notified by the tax authority of the tax risks identified in the analysis. From the date of notification, taxpayers/payers have 30 days to submit or correct their tax returns, during which time the tax inspection body will not take any action to select them for tax inspection.

After the 30-day deadline, taxpayers/payers who have not remedied the tax risks for which they have been notified will be subject to mandatory tax inspection or documentary verification.

Before the actual tax inspection, the tax inspection body will mandatorily notify the taxpayer/payer in writing of the action to be taken. Depending on the type of taxpayer subject to the tax inspection, the notice will be given 30 days before the inspection for large taxpayers and 15 days for other taxpayers/payers.

The actual start of the tax inspection will be mentioned in the tax inspection notice and the inspection cannot start before this date. The tax inspection will normally be carried out at the premises of the tax inspection body, but exceptionally, at the initiative of the tax inspection body or the reasoned request of the taxpayer/payer, the procedure may also be carried out at the taxpayer's/payer's premises.

2. Duration of the tax inspection

The tax inspection body will determine the duration of each inspection carried out on the taxpayer/payer, the inspection having a fixed duration, as provided for in Article 126 of Law no. 207/2015. Thus, the maximum duration of the tax inspection may be 180 days for large taxpayers, taxpayers/payers with secondary offices, regardless of size, and non-resident taxpayers, 90 days for medium-sized taxpayers and 45 days for other taxpayers.

If the tax authority fails to complete the inspection within a period which is twice the period referred to in paragraph 1, the tax authority shall be liable to pay the tax referred to in paragraph (1), which period will not include the time intervals during which the legal suspension operates, the tax inspection will be terminated without issuing a tax

inspection report and a notice of assessment or a decision to change the tax base.

2.1. Suspension of the tax inspection

Although the provisions of the Tax Procedure Code leave no room for interpretation when it comes to the maximum duration of the tax inspection, we often encounter various controversies in practice regarding the calculation of this period, especially when the tax authority decides to suspend the tax inspection, given that the period during which the tax inspection is suspended will not be included in the calculation of its duration. In particular, we will discuss the interpretation of the provisions of Art. 126 para. (2) thesis I of Law no. 207/2015, since the relevant judicial practice reveals an abusive behaviour exercised by the tax authority, resulting precisely from the manner of interpretation of the above-mentioned legal provision, behaviour that is prejudicial to the taxpayer both by unjustified extension of the tax inspection and by violation of the mandatory applicable legal provisions.

From the interpretation of the provisions of Article 127 of Law no. 207/2015, the suspension of the tax inspection is a right granted to the tax authority that can only be used for a specific purpose, in this case, to obtain the information necessary for the action taken to complete the tax inspection. In this respect, the tax inspection may be suspended mainly for the tax authority to carry out one or more cross-checks (essentially checking the taxable documents and operations of another taxpayer or payer concerning those of the taxpayer subject to the tax inspection), to issue a decision of the Central Tax Commission, to carry out an expert examination, to carry out specific investigations to identify persons or establish the reality of transactions and other such steps necessary to complete the inspection carried out.

As stated above, the tax inspection may be suspended until the date on which the reason for suspension ceases, but not more than 6 months from the date of suspension, according to Art. 127 para. (2) of Law no. 207/2015, and the period during which the tax inspection is suspended will not be included in the calculation of its duration. Thus, during the suspension period, all tax activity will be suspended until the tax authority obtains the information necessary to complete the tax inspection (Anghel, 2020, p. 398 „as long as the tax inspection is suspended, the specific activities of this procedure are suspended and the inspection remains inactive, without being possible to carry out any act of tax inspection, under penalty of nullity”).

In practice, the provisions of Art. 127 para. (2) of Law no. 207/2015 raise several controversies regarding the interpretation of the law, in the sense that the tax inspection body has frequently suspended the inspection undertaken for one of the reasons provided for in Art. 127 para. (1) of the same law and even though the payer/taxpayer submitted the requested documents or took the necessary steps to complete the inspection within a reasonable period, the tax authority did not issue a decision on the resumption of the tax inspection from the moment the reason for suspending the procedure ceased to exist. It should be noted that the interpretation of the above-mentioned provisions is extremely important since if the tax authority unjustifiably postpones the resumption of the tax inspection, it runs the risk of not

falling under the provisions of Article 126 para. (2) of Law no. 207/2015, which will lead to the issuance of a Tax Inspection Report and a notice of assessment beyond the legal deadline.

According to the tax authority, this postponement can be explained by the fact that the law provides for the possibility of suspending the tax inspection until the date on which the reason for suspension ceases, but not more than 6 months from the date of suspension. In the view of the tax authority, the phrase **'the date on which the reason for suspension ceases to exist, but not more than 6 months after the date of suspension'** is interpreted as meaning that, irrespective of when the documentation requested by the taxpayer/payer is submitted within the 6 months, it remains at the discretion of the tax authority to issue the decision on the resumption of the tax inspection, as long as the decision on the resumption of the inspection is made before the 6-month period has expired.

In practice, the tax authority defends itself most of the time by mentioning the fact that the provisions of Law no. 207/2015 or the interpretation of the above-mentioned phrase do not include a legal provision requiring the resumption of the tax inspection as soon as the reason for the suspension has ceased, the only condition being that the suspension does not exceed the 6 months provided for in Article 127 para. (2) of the Tax Procedure Code.

We do not support this type of interpretation as we believe that this was not the intention of the legislator when the rule in question was drafted. Thus, we consider that the legislator intended that the termination of the suspension of the tax inspection should take place when the reason for the suspension ceases to exist, i.e. when the suspension no longer has any legal justification, and the first part of the paragraph (2) of Article 127 of the Tax Procedure Code - *"In the case referred to in para. (1), the tax inspection will be suspended until the date on which the reason for suspension ceases to exist"* - is therefore applicable. The second hypothesis - *"but not more than 6 months from the date of suspension"* - must be considered if the reason for suspension continues to exist for 6 months, at which point the tax inspection must be resumed before the expiry of the 6 months, even if the reason for suspension has not ceased.

The Pitesti Court of Appeal has also expressed itself in this regard, acknowledging in essence that *"the law requires that the tax inspection be resumed as soon as the reason for suspension has ceased, there being legal provisions to this effect and compliance with the maximum period of 6 months invoked by the respondent (the tax authority) being irrelevant. Thus, Article 127 para. (2) of the Tax Procedure Code relied on by the respondent in its decision [(2) In the case referred to in para. (1), the tax inspection will be suspended until the date on which the reason for suspension ceases, but not more than 6 months from the date of suspension] must be interpreted logically in the sense that the inspection is suspended until the date on which the reason for suspension ceases; beyond that date, the suspension has no legal justification; if the reason for suspension continues for 6 months, the tax inspection must be resumed at the end of the 6 months, even if the reason for suspension has not ceased"*(Piteşti Court of Appeal).

2.2. How to calculate the maximum duration of the tax inspection

Thus, the calculation of the maximum period of time during which the tax inspection may be carried out is made according to the type of taxpayer/payer (Law no. 207/2015, Art. 126 para. 1), the time at which the tax inspection actually starts (Law no. 207/2015, Art. 121 para. 7), this period being mentioned in the tax inspection notice, but without taking into account the periods during which the tax inspection has been suspended (Law no. 207/2015, Art. 127 para. 7) for one of the reasons provided for in Article 127 para. (2) of the Tax Procedure Code, as well as the time of completion of the inspection [According to art. 130 para. (4) of the Tax Procedure Code, "the date of completion of the tax inspection is the date scheduled for the final discussion with the taxpayer/payer or the date of notification by the taxpayer/payer that he/she waives this right"].

If the tax inspection is not completed within a period twice as long as the period provided for in Article 126 para. (1) of the Tax Procedure Code, but taking into account the periods during which the procedure was legally suspended, the penalty is the termination of the tax inspection without the issue of the tax inspection report and the notice of assessment/decision not to change the tax base.

But what happens if the tax inspection body issues the Tax Inspection Report and the notice of assessment/decision not to change the tax base after the deadline provided for in Article 126 para. (1) of the Tax Procedure Code?

This situation is often encountered in practice, considering that at the time of issuing the Tax Inspection Report and the notice of assessment, the tax inspection authorities unfairly considered that they were within the legal deadline provided for in Art. 126 para. (2) of the Tax Procedure Code governing the maximum duration of the tax inspection, although this period was wrongly calculated, as a result of the exclusion of the periods during which the tax inspection was suspended, since the tax authority did not issue the decision to resume the tax inspection from the moment when the suspension no longer had a legal justification.

In this regard, the taxpayer/payer will learn about the unlawfulness of the issuance of the Tax Inspection Report and the notice of assessment due to exceeding the maximum duration of the tax inspection only when consulting the Tax Inspection Report issued by the competent authority.

In these circumstances, the taxpayer/payer may lodge an appeal (Law no. 207/2015, Art. 268 and Art. 270) within 45 days from the date of serving the tax administrative documents, requesting their annulment due to violation of the provisions of Article 126, para. 2) of Law no. 207/2015 on the Tax Procedure Code. If the tax authority rejects the appeal as unfounded, the taxpayer/payer will have the possibility to file a summons against the tax authority that issued the contested tax administrative documents, requesting the annulment of the Tax Inspection Report and the notice of assessment, based on the provisions of Article 8 of Law no. 554/2004 on administrative litigation, as well as the recovery of any damages caused by the issuance of an unlawful document.

3. Conclusions

In light of the above, the activity undertaken by the tax authorities using the tax inspection carried out must have the sole purpose of identifying, preventing and combating possible misconduct by taxpayers/payers, but this must be done in compliance with the relevant legal provisions, and the taxpayer/payer must have the right to a transparent tax inspection.

Apparently, the regulation of the maximum period of time during which the tax inspection can be carried out would not entail discussions on the method of calculation, but we note that in practice there have been individual interpretations of the legal texts in question, which have led to the issuance of illegal tax administrative documents.

As a result, as we have explained in this paper, the legal provision most often violated by the tax inspection bodies concerns the maximum period of time during which the tax inspection can be carried out regarding the manner of interpretation of the provisions governing the suspension of the tax inspection and especially the moment at which the decision to resume the inspection must be issued, and, in this context, we recommend taxpayers/payers to pay more attention to these provisions because, as practice shows, the identification of such violations of the relevant legal provisions will ultimately lead to the paralysis of the action taken by the tax inspection bodies as a result of the issuance of illegal tax administrative documents.

References

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