

VIEWS ON VAT FISCAL INSPECTION

Radu Dorin LENGHEL

***Abstract:** Fiscal inspection represents the activity which has as object the checking of legality and conformity of tax returns, accuracy and correctness of fulfilment of obligations in connection with the establishment of fiscal obligations by the taxpayer, observance of provisions of fiscal and accounting legislation, checking or establishment, as applicable, of tax bases and factual situations, establishment of differences of main fiscal obligations.*

Fiscal inspection is exercised on any persons and entities, regardless of their form of organization, at taxpayers and payers, who are those persons who, in the name of taxpayer, have the obligation to pay or withhold and pay or collect and pay, as applicable, taxes, duties and social contributions. The internal audit assures the monitoring of activities carried out in the company, including the internal control activity.

***Keywords:** fiscal inspection, fiscal inspection report, VAT control, reconstruction of fiscal inspection, rechecking of fiscal inspection.*

1. Preparation of fiscal inspection regarding VAT

Selection of taxpayers

Selection of taxpayers is substantiated on the following elements:

- information regarding the voluntary conformity of taxpayer, included in the fiscal file of taxpayer;
- observations made after the previous fiscal inspection;
- existence of a fiscal inspection request made by the taxpayer;
- existence of clues reported by other fiscal administrations, other institutions with control assignments or complaints made by third parties.
- the taxpayer presents a high fiscal risk specific to his object of activity.

The performance of activity of fiscal administrations depends on the resources allotted, in efficiency conditions.

Thus, the fiscal administration has to perform the fiscal check in conditions of efficiency with available resources, starting from the reality that not all taxpayers can be included in the control plan, because this requires either the increase of the number of tax inspectors or the realization of superficial control actions.

The identification of fiscal risks leads to the efficiency of control activity, being controlled only the taxpayers with high fiscal risk. Thus, the risk analysis represents the basis for selection of taxpayers who have to be included in control, in order to establish the fiscal implications of identified risks. The performance of fiscal risk analysis is an activity which is carried out currently for updating the activity plan of fiscal inspection, with the final purpose of

improving the performance of fiscal inspection activity. The fiscal inspection activity is organized and carried out based on annual, quarterly and monthly programmes.

The General Division of Fiscal Inspection Coordination of ANAF elaborates and proposes for the approval of ANAF management the annual, quarterly and monthly programmes which contain the main objectives and guidelines based on which the structures with fiscal inspection assignments from ANAF carry out their activity. The annual, quarterly and monthly programmes elaborated by the General Division of Fiscal Inspection Coordination, related to the activity of fiscal inspection system can be completed with actions of emergency nature, ordered or approved by the management ANAF.

The unitary treatment of taxpayers does not mean an uniformization, respectively the inclusion of all taxpayers in fiscal inspection, but on the contrary the hiring of fiscal inspection resources for the taxpayers who do not comply voluntarily.

The unitary treatment of taxpayers leads also to the increase of voluntary compliance in the light of the taxpayers who get to know that they will not be checked if they voluntarily comply with their fiscal obligations.

Fiscal inspection notice

The fiscal inspection notice represents the document by which the fiscal inspection bodies notify the taxpayer about the fiscal inspection which will be carried out in his office. The fiscal inspection begins by communication of a fiscal inspection notice.

The start of fiscal inspection is made in different intervals of time, from the communication of fiscal inspection notice as follows: within 30 days for large taxpayers, within 15 days for the other taxpayers. It is not necessary to communicate the fiscal inspection notice in the following situations: in view of resolution of taxpayer's requests; in case of actions required by certain authorities according to the law; in case of check on the spot and cross-check; in case of reconstruction of control as a result of existence of a decision for settlement of contestations of a taxpayers.

Selection of fiscal inspection team

The selection of fiscal inspection team involves:

- the selection of fiscal team members, depending on the degree of loading of tax inspectors and the complexity of check themes and their rotation;
- analysis of weaknesses, by studying the fiscal file of taxpayers;
- professional training of tax inspectors, by analysis of legislation related to check themes;

- choosing the moment and duration of check, recommending the avoidance of checks in the busiest period of activity, and the duration of check should be reduced and limited strictly to the checking of objectives established;
- the issue of a service order by which the fiscal inspection team is mandated.

After the studying of components of fiscal file, the fiscal inspection body will establish the risks elements they will propose for the fiscal inspection. In case of identification of special observations resulted from the last fiscal inspection action, they will be pursued in the fiscal inspection for which the documentation is made.

2. Realization of VAT fiscal inspection

The realization of fiscal inspection consists of the performance of the following activities:

- establishment of the place of fiscal inspection;
- establishment of duration of fiscal inspection;
- intervention on the spot and application of specific procedures of fiscal inspection.

Setting the place for carrying out the fiscal inspection

The fiscal inspection is usually carried out in the work spaces of the taxpayer. The taxpayer has to make available an adequate space and the logistics necessary for the carrying out of fiscal inspection. If an adequate work space does not exist or cannot be made available for the carrying out of fiscal inspection, then the inspection activity can be carried out at the office of fiscal body or in any other place mutually agreed upon with the taxpayer.

Duration of fiscal inspection

Normally the duration of a fiscal inspection is 3-5 days. The maximum duration of the fiscal inspection is differentiated depending on the size of taxpayer:

- 180 days for large taxpayers and for taxpayers who have secondary offices, regardless of size;
- 90 days for middle-sized taxpayers;
- 45 days for the other taxpayers.

The fiscal inspection is performed in the statute of limitations of the right to establish fiscal receivables. The period subject to fiscal inspection begins from the end of previous checking period.

The fiscal inspection is usually carried out during the working hours of the taxpayer, but can be carried out also outside of working hours of the taxpayer/payer with his/her written consent and with the approval of manager of fiscal inspection body.

Intervention on the spot

On the spot the intervention of fiscal inspection team involves three major stages:

- presentation of inspection team at taxpayer (the first intervention on the spot);
- carrying out of fiscal inspection;
- final discussion with taxpayer.

Presentation of fiscal inspection team at the taxpayer's office

At the first intervention on the spot they execute the following categories of works:

- presentation of members of fiscal inspection team to the management of checked entity, when they identify themselves and communicate the service order to the taxpayer;
- scheduling of fiscal inspection, they establish the calendar of the future interventions;
- identification of the place set for carrying out the fiscal inspection;
- responsible persons for supply of documents, who will assure the assistance of control team.

Carrying out itself of tax inspection

The fiscal inspection body decides to perform a general or partial fiscal inspection based on the risk analysis.

The fiscal inspection can extend to all the relevant reports for taxation, if they present interest for the application of fiscal or accounting legislation.

With reference to VAT, the control bodies will check:

- if the purchase invoices have connection with the object of activity and are correctly booked ;
- if the selling invoices were issued by the taxpayer and are correctly booked;
- if there are correlations between the VAT returns and the purchase and sales day books ;
- if the total purchases and sales from the purchase and sales day books or the accounting registers correspond to total receipts and payments;
- if the deliveries and acquisitions were correctly and fully booked, in the purchase and sales day books, account records, VAT returns, trial balances;
- whether the deductible VAT, collected VAT, payable VAT or repayable VAT was correctly determined;
- whether the VAT owed to the state budget was paid in deadline.

The companies which are subject to a fiscal check regarding the repayment of VAT should have in view that the fiscal authorities can request any documents they consider necessary.

Thus, these documents can be:

- commercial contracts, invoices and customs documents in case of exports or imports made;
- purchase and sales day books;
- VAT tax returns submitted for the fiscal periods for which the VAT repayment is requested;
- trial balances;
- supporting documents, for example: statements of works, bills of quantities, transport documents, driver logbooks etc.
- -other documents specific to the field of activity

Also, after the determination of payable VAT or the receivable VAT for the operations from the fiscal reporting period, the taxable persons have to perform the tax settlements, by VAT return. In VAT return we establish the differences between the receivable VAT cumulated and payable VAT cumulated, which represents the settlements of VAT and establishment of payable VAT balance or the balance of receivable VAT.

Thus, if cumulated payable VAT exceeds the negative amount of cumulated VAT, a payable VAT balance results in that fiscal reporting period. If the negative amount of cumulated VAT is higher than the cumulated payable VAT, a balance of receivable VAT appears in the same period. The repayment cannot be requested if the balance of the negative tax amount of the fiscal reporting period is lower than 5,000 lei inclusively. The negative balance with this value is reported obligatorily in the VAT return of the following fiscal period.

The persons registered for VAT purposes can request to be repaid the balance of receivable VAT of the reporting period by checking the corresponding case of the VAT return from the fiscal reporting period, which is also repayment request or can report the balance of receivable VAT in the VAT return of the following fiscal period. In addition, the taxpayers can request the compensation of the receivable VAT approved for repayment with certain types of fiscal receivables, according to the Fiscal Procedural Code.

The VAT returns are submitted by the taxpayers registered for VAT purposes to the competent fiscal body by the national electronic system.

According to the Fiscal Procedural Code, the repayment requests are settled in the chronological order of their registration to the fiscal body, within 45 days from registration, which can be extended, in case of documentary analysis made by the fiscal body with the period between the issuing date of notice for presentation of required documents and the presentation date of documents to the fiscal body.

If the whole receivable VAT required for repayment or only a part of it comes from periods for which VAT was subject to fiscal inspection and a decision for unchanging the tax base was issued, the competent fiscal body issues the *VAT Repayment Decision*, by which it approves the repayment of

VAT for the respective periods and amounts, and the VAT to be repaid from unchecked or checked periods, but for which a decision for unchanging the tax base was not issued will make the object of inspection. The period when the fiscal inspection can perform the subsequent check for the repayments of VAT, both for small taxpayers and for middle-sized and large taxpayers is 4 years.

Final discussion with taxpayer

The fiscal inspection ends by a final discussion and the fiscal inspection body communicates to taxpayer/payer the fiscal inspection draft report, in electronic format or on paper, by giving him/her the opportunity to express his/her point of view. For this purpose, with the communication of Draft report, the fiscal inspection team communicates the date, time and place when the final discussion takes place. The taxpayer has the right to express in writing the opinions regarding the observations made by the fiscal inspection team within 5 days.

In case of large taxpayers the deadline for presentation of an opinion is maximum 7 working days.

The request of fiscal inspection team addressed to taxpayer, to give a declaration on own responsibility shows that all the documents and information regarding the checked period were made available to the fiscal inspection team.

Case study regarding the VAT fiscal inspection

Establish the payable VAT, interests, delay penalties and possible fines, knowing that for the cumulated period of year 2017, the fiscal inspection has acknowledged:

1. VAT input tax according to balance 70,000 lei of which:
 - after the fiscal check 70,000 lei;
2. VAT output tax according to balance 80,000 lei of which:
 - after the fiscal check 100,000 lei;
3. all debts were paid by bank expense statement in the legal deadline.

Resolution:

1. Determination of payable VAT by the control teams (Tvac):

$$\text{Payable VAT (Tvac): payable VAT (c) – payable VAT (balance) = (100.000 – 70.000) - (80.000 – 70.000) = 30.000 – 10.000 = 20.000 lei}$$

2.Registration in accounting of payable VAT established by the control teams:

$$635 = 4423 \quad 20.000 \text{ lei}$$

3. Determination of delay interests for the year 2017:

$$Mi=20.000*365*0,02\%=1.460 \text{ lei}$$

$$6581 = 4481 \quad 1,460 \text{ lei}$$

4. Determination of non-declaration penalties for the year 2017
 $P_i = 20.000 * 365 * 0,08\% : 5.840 \text{ lei}$

$$6581 = 4481 \quad 5,840 \text{ lei.}$$

5. Determination of fine in accounting law in amount of 1.000 lei:

$$6581 = 4481 \quad 1,000 \text{ lei.}$$

6. Reduction by 75 % of non-declaration penalty for the payment in deadline, in amount of 4,380 lei:

$$4481 = 7588 \quad 4,380 \text{ lei.}$$

7. Payment of outstanding fiscal obligations overdue within 20 days:

%	5121	<u>23,920 lei</u>
4423		20,000
4481		3,920

3. Finalization of VAT fiscal inspection

At the end of check, the fiscal inspection team will obligatorily draw up the fiscal inspection documents specific to the form of fiscal inspection. For the non-payment in deadline of the main fiscal obligations owed to the state budget delay interests and delay penalties will be applied. Since 1st January 2016, the amount of delay interests is 0.02% per day of delay. The level of delay penalty is 0.01% for each day of delay.

For the main fiscal obligations not declared or incorrectly declared by taxpayer and established by the fiscal inspection body by taxation decision, the taxpayer/payer owes a non-declaration penalty of 0.08% for each day (the fiscal body does not establish the non-declaration penalty if it is lower than 50 lei). The non-declaration penalty established by the fiscal inspection body by taxation decision is reduced, at the taxpayer's request, by 75% if the main fiscal obligations established by decision:

a) are extinguished by payment or compensation until the legal deadline;

b) are scheduled for payment according to the law. In this case, the reduction is given at the end of scheduling for payment.

The main fiscal inspection documents drawn up are:

a) fiscal inspection report

b) control report

c) Report for observation of contraventions

a) *Fiscal inspection report*

The results of fiscal inspection will be written down in a fiscal inspection report. It is drawn up whether we notice differences in addition or in minus to the initial fiscal receivable that existed at the beginning of fiscal

inspection. The valorisation of observations inserted in the fiscal inspection report will be materialized in the issue of taxation decision, if the taxation basis changes. If the tax base does not change, the fiscal inspection team will draw up a decision for non-changing of taxation basis. To the fiscal inspection report they enclose whenever it is applicable, documents regarding observations made at the taxpayer's office or at his/her secondary offices, such as reports signed on the occasion of unannounced checks or investigation on the spot and other annexes.

b) Control report

The control report is an act of control, in which are written the observations of fiscal inspection bodies resulted from unannounced control actions, cross-check, investigation on the spot or reporting of criminal acts. The valorisation of check observations written down in report will not materialize in the issue of a taxation decision.

c) Report for observation of contraventions

By normative acts specific to the fiscal field, mainly the Fiscal Procedural Code, we sanction deeds which fulfil the necessary conditions to be classified as contraventions. The sanction will be applied by drawing up a report for observation of contraventions. If after tax inspection the tax basis written down in the fiscal inspection report is changed, the fiscal inspection body will issue a taxation decision regarding the additional fiscal obligations of payment. If after the fiscal inspection the tax basis written in fiscal inspection report is not changed, the fiscal inspection body will issue a decision for non-changing of tax basis. The taxation decision represents the debt instrument regarding the payment obligation of the taxpayer and it will be communicated to the taxpayer within 30 working days from the conclusion date of fiscal inspection.

For the differences of main fiscal obligations and for accessory fiscal obligations established according to the law, the payment deadline is established depending on their communication date as follows:

- If the communication date is between 1st and 15th of the month, the payment deadline is until 5th of the following month;
- If the communication date is between 16th and 31st of the month, the payment deadline is until 20th of the following month.

The non-fulfilment of measures disposed in the deadlines and conditions established by the fiscal inspection body is sanctioned with fine between 12,000 and 14,000 lei.

4.Reconstruction of fiscal inspection

If following the Decision for resolution of complaints the contested fiscal act (taxation decision) issued in the fiscal inspection procedure is totally

or partially dissolved, the fiscal inspection body reconstructs the fiscal inspection.

The reconstruction of fiscal inspection has to observe strictly the fiscal periods and the reasons for the decision of resolution of complaint which led to dissolution, as they are mentioned in decision.

The reconstruction of the fiscal inspection is made by another fiscal inspection team than the one who signed the dissolved act.

5.Rechecking of fiscal obligations

The manager of fiscal inspection body can decide to recheck certain types of fiscal obligations for a certain taxable period, as a result of appearance of supplementary data that are not known by the inspection body.

By supplementary data we understand information, documents or other acts obtained as a result of unannounced checks performed in other taxpayers or communicated to the fiscal body by the criminal prosecution bodies or by other public authorities or obtained in any way by the fiscal inspection body, which can change the results of the previous fiscal inspection.

At the beginning of rechecking action, the fiscal inspection body is obliged to communicate the taxpayer the Rechecking Decision, which can be contested.

The decision is communicated to the taxpayer before the start of fiscal inspection, in 30 days for large taxpayers and in 15 days for the others.

6.Conclusions

The fiscal inspection represents the activity which has as object the checking of legality and conformity of tax returns, accuracy and correctness of fulfilment of obligations in relation to establishment of fiscal obligations by the taxpayer, the observance of provisions of fiscal and accounting legislation, checking or determination, as applicable, of tax bases and related de facto situations, establishment of differences of main fiscal obligations.

Thus, the fiscal administration has to perform the fiscal check, in efficient conditions with available resources, starting from the reality that not all taxpayers can be included in the control plan, because this requires either the increase of the number of tax inspectors or the realization of superficial control actions.

The unitary treatment of taxpayers does not mean an uniformization, respectively the inclusion of all taxpayers in fiscal inspection, but on the contrary the hiring of fiscal inspection resources for the taxpayers who do not comply voluntarily.

The unitary treatment of taxpayers leads also to the increase of voluntary compliance in the light of the taxpayers who get to know that they will not be checked if they voluntarily comply with their fiscal obligations.

The fiscal inspection body can decide to perform a general or partial fiscal inspection based on risk analysis.

The fiscal inspection can extend to all the relevant reports for taxation, if they present interest for the application of fiscal or accounting legislation.

The fiscal inspection ends by a final discussion and the fiscal inspection body communicates to taxpayer:

The fiscal inspection draft report, in electronic format or on paper, by giving him/her the opportunity to express his/her point of view. At the end of check, the fiscal inspection team will obligatorily draw up the fiscal inspection documents specific to the form of fiscal inspection. For the non-payment in deadline of the main fiscal obligations owed to the state budget they will apply delay interests and delay penalties.

Bibliography

1. Oprean, I., Lenghel, R.D., Oprean, D.B, *Auditarea situațiilor financiare*, Editura Risoprint, Cluj-Napoca, 2015;
2. Lenghel, R.D., *Control și audit financiar*, Editura Risoprint, Cluj-Napoca, 2011

Note on the author

Radu Dorin Lenghel, doctor in economics, reader in the Department of Finances and Accounting from the Faculty of Economic Sciences Cluj-Napoca. He is the author of many scientific works and specialized books in the field of accounting, control and financial audit. Now he is the titular professor of Bachelor's and Master's Degree courses on the subjects: *Financial control and financial audit*, *Audit of financial statements*, *Internal control and internal audit*, *Accounting of public institutions*, *management accounting*.