



In this issue:

National Agency of Fiscal Administration has published the model of the compliance notice together with the rules regarding the issuing procedure and its cyclicity

Following the Government's Emergency Ordinance no. 188/2022, which introduced the obligation of the tax authorities to issue a compliance notice prior to the start of a tax audit, the President of the National Agency of Fiscal Administration (NAFA) published the order approving the notice model, as well as a series of rules regarding the issuance procedure and its cyclicity.

The compliance notice and the model published by the NAFA President

At the end of 2022, the Tax Procedure Code was substantially amended by introducing the compliance notice (hereinafter the "notice"). According to the new legal provisions, the tax authorities are required to send a notice to the taxpayers which may be subject to a tax audit prior to its commencement. The tax risks identified by the tax authorities are mentioned in the notice and the taxpayers have the chance to re-analyse their tax situation and, if necessary, to correct it by submitting new tax returns.

In this sense, they have a period of 30 days to eliminate the risks, and, in case they do not take any action, they are subject to a mandatory tax inspection or documentary inspection.

On the other hand, according to the text of the law, the submission or correction of tax returns does not prevent the selection of the taxpayer for a tax audit. In any case, the tax audit cannot begin before the lapse of the 30-day period provided for in the notice.

More than three months later, the NAFA President's Order no. 420/2023 (hereinafter "the order") was published in the Official Gazette no. 291/06.04.2023, through which the model and content of the notice were approved, along with a series of rules regarding its issuance.

From the analysis of the notice model, it can be seen that it will contain the tax risks and the elements identified by the tax authority, as well as the audited periods, the taxes, fees, and contributions related to the risks identified, including the estimation of the fiscal impact, if it can be quantified, and any other relevant elements that can lead to the reassessment of the tax situation by the taxpayer. The taxpayer will have to analyse the risks and submit or correct the tax returns within 30 days from the communication date.

At the same time, it is stipulated that, if, following its own analysis, the taxpayer concludes that the identified tax risks are not confirmed, and therefore a reanalysis is not required, this will be mentioned in the information that will be sent to the tax authority.

The order also provides a series of rules regarding the procedure for issuing the notice, as follows:

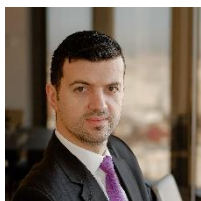
- the notice is issued based on the risk analysis conducted by the tax authority competent for carrying out the tax audit;
- the notice is issued as a result of the risk analysis whenever new fiscal risks are identified that were not previously notified and were not subject to tax controls. Compliance notices can be sent monthly, quarterly, semi-annually or annually, based on the tax period corresponding to the tax, fee, contribution in which the tax risk was identified;
- the notice will not be issued in the following situations:
 - a tax audit is necessary for the settlement of some of the taxpayers' requests or for carrying out a tax audit according to the law;
 - for taxpayers which are subject to insolvency proceedings;
 - as a result of an unexpected control, the immediate start of the tax audit is required;
 - for the extension of the tax audit to periods or tax claims, other than those included in the initial tax inspection notice;
 - the tax audit must be redone as a result of a decision to settle the appeal;
 - requests from the taxpayer/payer for the resolution of which a tax audit is necessary.

At the same time, the order sets out the activities to be carried out by the tax authorities in order to issue the notice, as well as their obligation to keep a record of the notices which were issued.

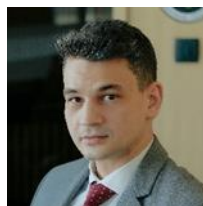
Finally, in Appendix no. 3 of the order, the new model of the tax inspection notice is provided, which transposes the provision of GEO no. 188/2022 according to which the taxpayer has the opportunity, until the start of the tax audit, to submit or correct returns related to the periods and claims that will be the subject to the audit.

In our opinion, the new provisions represent an undeniable improvement in the tax procedural legislation and we hope that they will lead to a decrease in the number of tax audits and, consequently, to less measures imposed by the tax inspection bodies.

For further questions regarding the aspects mentioned in this alert, please contact us.



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