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**Government Emergency Ordinance no. 188/2022 amending and supplementing Law no. 207/2015 regarding the Tax Procedure Code and Government Emergency Ordinance no. 74/2013 regarding the measures for improving and reorganizing the activity of the National Agency for Tax Administration, as well as for amending and supplementing other normative acts**

The Ordinance brings significant changes to the Tax Procedure Code, especially in the matter of fiscal controls, among the most important regulated aspects being: changes regarding the risk class/subclass following the risk analysis, the modification of the rules regarding requests for information from ANAF and the flow of communication with the tax authority, changing certain rules for carrying out the tax inspection, issuing the provisional tax assessment decision, regulating the compliance notice, changes regarding the documentary verification procedure, changes regarding the anti-fraud control and verification of the tax status of natural persons.

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#### Definition of the tax file and the administrative file of the tax control action

- The notions of "**administrative file of the tax control action**" and "**tax file**" are defined;
- It is introduced the obligation of the tax body **to provide the administrative file of the tax control action** at the written request of the taxpayer/ payer subjected to a tax control action.

#### Determination of the risk class/subclass following the risk analysis

- With respect to the risk analysis, **a new criterion – i.e. economic – to be considered** is introduced;
- Following the periodical risk analysis performed by the tax body, **the taxpayer may require the communication of the class/ subclass of tax risk in which he was classified**. However, given that the operationalization of the IT application for risk analysis is scheduled for the fourth quarter of 2025, the measure will enter into force on January 1<sup>st</sup>, 2026.

#### Request for information/ documents and the communication flow between the taxpayer and the tax body

- According to the new regulation, if documents/ information are requested in order to clarify the tax situation, **the tax body will be able to request from the taxpayer only those that were not previously in the possession of the tax body**;
- The provision of the documents, either at the tax body's headquarters or in the context of a tax control procedure/ settlement of a tax appeal, **can be done *alternatively* through post with delivery receipt, or by submitting them to the registry of the tax body or through the Virtual Private Space**.

#### Amendments regarding the tax inspection

*Amendments that will enter into force on January 1<sup>st</sup>, 2026:*

- The tax inspection performed by the central tax body will be exercised based on the principles of independence, uniqueness, autonomy and hierarchy, **without the principles of territoriality and decentralization, applicable until now**;
- In the case of tax receivables administered by the central tax body, **the selection of taxpayers to be subjected to the tax inspection will be carried out at the level of the central body of ANAF, based on the risk analysis; the tax inspection bodies will have jurisdiction throughout the entire country**;
- Article 120 of the Tax Procedure Code regarding the competence delegation is repealed;
- By way of exception to the rule of selecting the taxpayers who will be subjected to a tax inspection according to the level of risk established on the basis of the risk analysis, it is introduced **the possibility of randomly selecting taxpayers to be subjected to a tax inspection**.

*Amendments in force starting with December 29<sup>th</sup>, 2022:*

- It is regulated **a notification of compliance** which will be transmitted by the tax inspection body to the taxpayers presumed to be selected to be subjected to the tax inspection after planning and selecting the taxpayers for inspection;
- **The notification will include the identified tax risks, granting the taxpayer the possibility to reconsider its tax situation and, as the case may be, to submit or correct its tax statements**;
- It is regulated a **30-day period starting from the date of communication of the notification during which the tax inspection body will not take any action to select the subject to the tax inspection**;
- **After the expiry of the 30-day period, taxpayers with high tax risk who have not addressed the tax risks for which they were notified are mandatorily subjected to a tax inspection or a documentary check**;
- **The tax inspection notice is supplemented with a mention according to which the taxpayer is notified that during the period between the communication of the tax inspection notice and until**

- the actual beginning of the inspection, it may proceed to the submission or correction of the tax statements related to the tax periods and receivables that will be subjected to inspection;
- The tax inspection will no longer be performed, as a rule, at the taxpayer's headquarters, but at the headquarters of the tax inspection body. Only by way of exception, it will be performed at the taxpayer's headquarter, either on the initiative of the tax inspection body or at the reasoned request of the taxpayer;
  - If the inspection will be carried out at the headquarters of the tax body, **the beginning of the tax inspection is no longer needed to be recorded in the unified control register**; the beginning date will be the date stipulated in the tax inspection notice.

*Amendments relevant for pending tax inspections at the moment of entry into force of GEO:*

- It is regulated the right of the taxpayer to request the issuance of a provisional tax assessment decision after the completion of half of the legal period for carrying out the tax inspection, if he was not informed about the finalisation of a verification of a fiscal period/type of fiscal obligation in term of 5 working days;
- The provisional tax assessment decision is issued and communicated within no more than 10 working days from the date of the request, in the case of large taxpayers, or within no more than 5 working days for other taxpayers, in order to extinguish additional tax obligations. Otherwise, the taxpayer will not owe interest and non-declaration penalties starting from the day following the deadline for issuing and communicating the provisional tax assessment decision until the date on which the decision was communicated to the taxpayer;
- The provisional tax assessment decisions are debt titles that becomes enforceable upon meeting the payment deadlines provided by art. 156 para. (1) of the Tax Procedure Code, and the tax obligations established through such decisions are included/regularized in the final tax assessment decisions and are challenged together with the latter.

**Amendments regarding the documentary check**

- It is regulated the competence of the **tax anti-fraud control bodies and tax authorities performing the control of the personal tax situation to perform the documentary check throughout the entire country**, together with the tax inspection structures within the central tax body;
- **One or more operations and documents relating to a given period of time** may be subjected to documentary check;
- In case of irregularities, the taxpayer will be notified by the tax body, **requesting documents and written explanations to be submitted within a 30-day period**, starting from the communication of the notification; the taxpayer can request the extension of this period, for duly justified reasons;
- **The tax decision resulting from the documentary check issued without the hearing of the taxpayer is void** unless the taxpayer has submitted a written notice to the tax authority with respect to the waiving of the hearing.

**Amendments regarding the anti-fraud control**

- Within art. 137 of the Tax Procedure Code it is regulated the reference to the provisions of art. 6 of GEO no. 74/2013 regulating the powers and rights of the tax anti-fraud control bodies;
- **The taxpayer's rights during the anti-fraud check are now expressly regulated, such as:** the right to request the legitimation of the fiscal anti-fraud control bodies, to benefit from specialized assistance, to be informed about the observations made during the control, the right of the taxpayer's activity to be as less affected as possible, to receive a written proof in case of retention of documents, the right of certain persons to refuse to provide information etc.

**Amendments regarding the personal tax situation control**

- The above-mentioned aspects related to **the regulation of the compliance notification prior to the tax inspection, the performance of the risk analysis in order to identify the taxpayers who present a tax risk and the possibility of randomly selecting them in order to be subjected to a control action will also be applicable in the case of personal tax situation control.**

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



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