



Dragi colaboratori,

Va supunem atentiei cateva aspecte legate de abordarea organelor fiscale in cadrul unei misiuni de refacere a inspectiei fiscale sau a unor verificari succesive, aspecte ce rezulta atat din publicatii de specialitate cat si din practica noastra.

Potrivit dispozitiilor art. 5 alin. 1 din Codul de Procedura Fiscala:

“Organul fiscal este obligat sa aplice unitar prevederile legislatiei fiscale pe teritoriul Romaniei, urmarind stabilirea corecta a creanțelor fiscale”.

Astfel inspectorii fiscali trebuie sa aiba o abordare unitara atunci cand verifica, la perioade succesive, activitatea unei companii.

Altfel spus, daca la un control anterior tratamentul fiscal al unei operatiuni fost considerat ca fiind corect, la controlul ulterior, tratamentul fiscal pentru acelasi tip de operatiune nu va putea fi considerat eronat decat cu o motivare solida, in conformitate cu prevederile art. 6 din Legea nr. 207/2015, privind Codul de procedura fiscala.

In cazul in care inspectorii fiscali nu tin cont de faptul ca o autoritate competenta, a confirmat deja un tratament fiscal, pentru aceeasi operatiune, institutia abilitata cu solutionarea contestatiilor va dispune anulara actului de control si refacerea inspectiei, obligand inspectorii fiscali sa

Dear collaborators,

We are submitting to your attention some issues on the approach of tax authorities regarding retesting tax inspection or successive checks, which are both result of specialized publications as well as from our practice.

According to the provisions of Article 5 paragraph (1) of the Tax Procedure Code: "The tax authority is required to apply the provisions of the Romanian tax law in a uniform manner, aiming at the correct establishment of the tax claims".

Thus tax inspectors must take an unified approach when checking a company's work at successive periods.

In other words, if, in a previous check, the tax treatment of a transaction was considered correct, at subsequent control, the tax treatment of the same type of transaction can only be considered to be wrong with a sound justification, in accordance with article 6 of Law no. 207/2015, on the of Tax Procedure Code.

If tax inspectors fail to take account of the fact that a competent authority has already confirmed a tax treatment for the same operation, the institution responsible for review shall order the act of control to be canceled and the inspection to be recarried out, forcing tax inspectors to explain why they

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argumenteze de ce nu iau in considerare tratamentul fiscal validat anterior.

Tinand cont de prevederile legale mai sus mentionate, exista posibilitatea in cazul unei actiuni in justitie pe aceasta tema, ca instanta sa emita o hotarare judecatoreasca favorabila contribuabilului si anume suspendarea deciziei de impunere, considerand abordarea organului fiscal ca nefiind in concordanta cu prevederile legale.

Este de retinut ca autoritațile fiscale intenționeaza **sa transfere activitatea de soluționare a contestațiilor** de la Agenția Națională de Administrare Fiscala la Ministerul Finanțelor Publice.

do not take into account the previously validated tax treatment.

Taking into account the above legal provisions, there is scope for legal action on this matter, that the court issue a favorable judgment to the taxpayer, namely the suspension of the tax ruling, considering that the tax authority's approach is not in accordance with legal provisions.

It is to be noted that the tax authorities intend **to transfer the complaint handling activity** from the National Agency for Fiscal Administration to the Ministry of Public Finance.

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