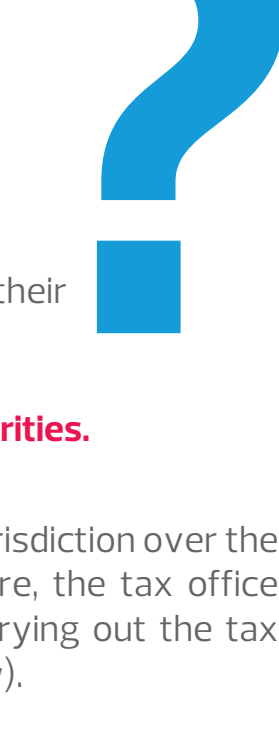


WHAT TAXPAYERS SHOULD KNOW BEFORE A TAX AUDIT



The purpose of a tax audit is to check whether a taxpayer fulfils their obligations arising from the provisions of tax law.

It is a routine action, not necessarily indicating any suspicions of irregularities.

- ▶ Tax audits are carried out by the heads of tax offices. They have jurisdiction over the place of residence or registered office of the taxpayer. Therefore, the tax office which collects taxes paid by the enterprise is competent for carrying out the tax audit. There are certain exceptions to this rule (as referred to below).
- ▶ The procedure, requirements, and time limits are well defined.

TAX AUDIT

What is it and what can it look like?

DELIVERY OF AN AUDIT NOTICE

The notice must contain:

- designation of the authority conducting the audit;
- date and place of issue;
- designation of the audited entity;
- specification of the audit scope with the indication of relevant provisions of law;
- notification of the right to file an amended return;
- signature of the person authorised to issue the notice.

AFTER 7 DAYS, THE AUTHORITY MAY INITIATE THE AUDIT

If the audit is not initiated within 30 days from the delivery of the notice, the head of the authority must send the notice again.

This is the time for the audited entity to prepare for the audit (7 days).

How to use it properly?

- verify the correctness of the tax returns covered by the audit;
- if we notice any errors, it is possible to file an amended return.

INITIATION OF THE AUDIT

Occurs by way of delivering a personal authorisation letter to carry out the audit and presenting an official identity card to the audited person or to an attorney of the audited entity. **The authorisation letter must contain:**

- designation of the authority conducting the audit;
- reference to the legal basis;
- full names of the auditors with their official identity card numbers;
- designation of the audited entity;
- specification of the scope of the audit;
- start date and expected end date of the audit;
- signature of the authorising person together with his or her position;
- notification of the rights and obligations of the audited entity.

If any of the above data is missing from the authorisation letter, the audit may not be initiated.

IMPORTANT! The scope of the audit may not exceed the scope defined in the authorisation letter.

12-48 DAYS (depending on the size of the company)

The aggregate duration of all audits of one entity may not exceed in a calendar year:

- for microenterprises – 12 business days;
- for small enterprises – 18 business days;
- for medium-sized enterprises – 24 business days;
- for other enterprises – 48 business days.

COMPLETION OF THE TAX AUDIT

The audit is completed when an audit report is delivered.

It must contain:

- designation of the audited entity;
- designation of the auditors;
- place and time of the audit;
- description of the findings;
- documentation of the evidence;
- legal assessment of the case – the subject-matter of the audit;
- notification of the rights to make objections or explanations and to file an amended return.

The time limit for making objections or explanations is 14 days from the delivery of the report.

The auditors are obliged to consider the objections and, within 14 days, notify the audited entity of the manner of their resolution, with a statement of reasons.

↓
not all were allowed by the auditors
↓
can file an amended return**

↓
all were allowed by the auditors
↓
no need to file an amended return

** If an amended return is not filed, the authority may launch a tax audit in that matter within 6 months from the completion of the audit

CUSTOMS AND TAX AUDIT

what is it and what can it look like?

INITIATION OF A CUSTOMS AND TAX AUDIT

It is conducted without prior notice. It starts on the day when an authorisation letter to carry out the audit is delivered to the audited entity.

The authorisation letter must contain:

- designation of the authority;
- date and place of issue;
- full names of the auditors;
- designation of the audited entity;
- specification of the scope and expected end date of the customs and tax audit;
- signature of the authorising person;
- notification of the rights and obligations of the audited entity.

The audit can be carried out:

- at a customs and tax office;
- at the seat of the audited entity;
- at the place where the accounting records are kept or retained;
- at every other place related to the business activity of the audited entity.

IMPORTANT! As a general rule, the auditors are not obliged to present their official identity cards, but they should present them at the audited entity's request.

Within 14 days from the delivery of the authorisation letter, the taxpayer may amend the filed returns covered by the audit.

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If the head of the customs and tax office acknowledges the amended return, the audited entity receives a notice of the acknowledgement of the amended return.

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If the amended return is not acknowledged, the audit continues.

DURATION OF THE AUDIT

IMPORTANT! If a new end date of the audit is not set, any documents obtained after the lapse of the previously fixed date may not constitute evidence in further audits or proceedings. This rule is not applicable to documents obtained in set dates.

The entrepreneurs' law concerning the aggregate limit of the duration of an audit in one calendar year **does not apply**. Thus, the authorities are only bound by the 3-month period set out in the law, which can be extended. In practice, it means that customs and tax audits may take months or years.

COMPLETION OF THE CUSTOMS AND TAX AUDIT

The audit is completed when an audit findings report is delivered. The taxpayer may not raise objections to the audit findings.

IMPORTANT! The time limit for amending the filed tax return (within the scope of the audit) is 14 days from the day when the audit findings report is delivered.

DELIVERY OF THE CUSTOMS AND TAX AUDIT FINDINGS REPORT

The audit findings report must contain:

- designation of the authority;
- designation of the audited entity;
- date of issue;
- scope of the customs and tax audit;
- information on irregularities or on their lack;
- notification of the right to file an amended return;
- notification of the obligation to inform the authority of a change of the address, if it occurs within 6 months from the completion of the audit;
- signature of the head of the office or an authorised person.

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If any irregularities are found, the authority may:

↓
refuse to acknowledge the amended return

↓
impose an additional VAT liability

↓
The completed customs and tax audit turns into tax proceedings

IMPORTANT! After filing an amended return which takes into account post-audit feedback, there is no possibility to amend it again.

TAX PROCEEDINGS

what are they and what can they look like?

TAX PROCEEDINGS ARE INITIATED EX OFFICIO OR AT A REQUEST OF A PARTY

IMPORTANT! The manner of initiation of proceedings (depending on whose initiative) impacts the start date and time limits for handling relevant matters.

The initiation date of tax proceedings is deemed to be the day on which the decision is effectively delivered or the day on which a party's request is submitted to the tax authority.

Remember:

Failure to file an amended return or failure to amend the tax return in whole taking into account irregularities found during a tax audit may result in initiation of proceedings within 6 months from the completion of the tax audit.

Failure to file an amended return taking into account the findings of a customs and tax audit automatically turns the audit into tax proceedings.

DURATION OF PROCEEDINGS (MAXIMUM 2 MONTHS)

Tax proceedings should be completed without undue delay, but not later than within a month from its start. In complicated cases, the duration can extend to 2 months. In each case when the time limit is extended, the tax authority is obliged to notify the taxpayer of the same, stating the reasons for the non-compliance with the time limit and setting a new date for the completion of the proceedings.

Both in the course and after the completion of the proceedings, the taxpayer has the right to review case files, take notes, and obtain copies and duplicates. Before issuing a decision, the authority is obliged to provide the taxpayer with a 7-day period to take a stance on the accumulated evidence on the case. For the taxpayer, it is an important time for verifying the completeness of the evidence, but also the last chance to submit an application to have it extended, if necessary.

This 7-day period means that the proceedings are close to the end, and the decision will be issued soon.

IMPORTANT! If the tax authority, after the lapse of 3 months from the start date of the proceedings, fails to deliver, at its own fault, a decision for the period from the start date of the proceedings to the date on which the decision was to be issued, no default interest is charged.

COMPLETION OF TAX PROCEEDINGS

Occurs by way of a decision issued by the authority. It resolves the case or terminates the proceedings in a different manner. **The decision must contain:**

- designation of the tax authority;
- date of issue;
- designation of the party;
- reference to the legal basis;
- outcome;
- reasons in fact and in law;
- instruction concerning the appellate procedure – if the decision is subject to an appeal;
- signature of the authorised person, with his or her full name and official position.

APPEAL AGAINST A DECISION

A decision issued in the first instance may be appealed against by the taxpayer within 14 days from the day on which the decision was delivered to the taxpayer. An appeal from a decision in the first instance is lodged through the same authority that issued the decision.

The second instance authority issues a decision in which it may:

- uphold the decision of the first instance authority;
- overturn the decision of the first instance authority and resolve the case;
- overturn the decision of the first instance authority in whole or in part and discontinue the proceedings;
- discontinue the appellate proceedings;
- overturn the decision of the first instance authority in whole and refer the case for reconsideration.

IMPORTANT! As a general rule, the decision of the second instance authority may not be less favourable to the appellant than that issued in the first instance.

APPEAL

what should we do and what can it look like?

IF WE DISAGREE WITH A DECISION ISSUED IN THE FIRST INSTANCE, WE CAN LODGE AN APPEAL

A tax decision issued in the first instance is subject to an appeal to a higher-level authority. However, in certain cases, the appeal is considered by the same authority. It happens when the decision in the first instance was issued by:

- the Head of the National Revenue Administration;
- the director of a national revenue regional office;
- a local government board of appeals.

The same rule applies to tax rulings issued by the Director of the National Tax Information.

WITHIN 14 DAYS FROM THE DATE OF THE DELIVERY OF THE DECISION, WE MAY LODGE AN APPEAL THROUGH THE AUTHORITY WHICH ISSUED THE DECISION

The tax authority to which the appeal was lodged submits it along with case files without undue delay, however, not later than within 14 days from the receipt of the appeal.

LOGGING AN APPEAL FROM A DECISION

An appeal may be lodged in writing, orally for the record, or to the e-mail address of the tax authority or via the tax portal.

To be effective, the appeal must meet the following formal requirements:

- it should contain objections to the decision, indicating specific irregularities and errors of the first instance authority;
- it should specify the subject of the appeal – the taxpayer should clearly state their claim (whether to have the decision overturned or amended);
- it should specify the scope of the claim and present evidence confirming its validity – the taxpayer should define the scope of the anticipated change and enclose evidence supporting the taxpayer's expectations.

IMPORTANT! Evidence may be accumulated beforehand or it can be new.

ISSUING A DECISION BY THE SECOND INSTANCE AUTHORITY

The second instance authority issues a decision in which it may:

- uphold the decision of the first instance authority;
- overturn the decision of the first instance authority in whole or in part and resolve the case;
- overturn the decision of the first instance authority in whole or in part and discontinue the proceedings;
- discontinue the appellate proceedings;
- overturn the decision of the first instance authority in whole and refer the case for reconsideration.

IMPORTANT! As a general rule, the decision of the second instance authority MAY NOT be less favourable to the appellant than that issued in the first instance.

If the taxpayer disagrees with the resolution in the second instance, they can appeal against the decision to a Provincial Administrative Court within 30 days from the date of the delivery of the decision. The appeal is lodged through the authority which issued it.

APPEAL TO A PROVINCIAL ADMINISTRATIVE COURT

If we disagree with the decision of the second instance authority (the director of a national revenue regional office or the head of a customs and tax office), we can lodge an appeal to a Provincial Administrative Court.

WITHIN 30 DAYS FROM THE DATE OF THE DELIVERY OF THE DECISION, WE MAY LODGE AN APPEAL THROUGH THE AUTHORITY WHICH ISSUED THE DECISION

The tax authority which received the appeal submits it along with case files and the response to the appeal.

LOGGING AN APPEAL

The appeal must meet the same requirements as a pleading and contain:

- designation of the contested decision, order, or a different act or activity;
- designation of the authority whose action is appealed against;
- specification of the breached right or legal interest.

The appeal to the administrative court is subject to a fee. In cases concerning monetary claims, its amount depends on the amount of the claim. In other cases, it is a fixed amount.

If the appellant is a company, an extract from the register of entrepreneurs of the National Court Register must be enclosed.

IMPORTANT! Lodging an appeal against a decision or order DOES NOT SUSPEND the execution of an act or activity unless the authority which issued the contested decision suspends the act or activity itself.

JUDICIAL PROCEEDINGS

The second instance authority issues a decision in which it may:

- uphold the decision of the first instance authority;
- overturn the decision of the first instance authority in whole or in part and resolve the case;
- overturn the decision of the first instance authority in whole or in part and discontinue the proceedings;
- discontinue the appellate proceedings;
- overturn the decision of the first instance authority in whole and refer the case for reconsideration.

COURT RULING

After consideration of the appeal, the court may rule as follows:

- overturn the decision in whole or in part;
- declare the decision invalid;
- declare that the decision or order was issued in breach of law.

IMPORTANT! Court rulings take the form of a judgment or order. The latter is only issued in cases where it is not required by law to render a judgment.

The ruling should be made at the court session at which the hearing was closed. Within 14 days from the pronouncement of the judgment, the court prepares a statement of reasons. In cases where the appeal is dismissed, a statement of reasons is prepared only on the application of the party, which must be filed within 7 days from the date on which the judgment was pronounced or the copy of the decision was delivered.

If the time limit to file an application is not complied with, the taxpayer loses the ability to lodge a cassation appeal, and the judgment of the Provincial Administrative Court becomes final and non-appealable.

CASSATION APPEAL TO THE SUPREME ADMINISTRATIVE COURT

IMPORTANT! A cassation appeal is a last resort appeal against judgments and orders given by a Provincial Administrative Court.

A cassation appeal to the Supreme Administrative Court may be brought by:

- a party;
- a public prosecutor;
- the Commissioner for Human Rights;
- the Ombudsman for Small and Medium-Sized Enterprises;
- the Commissioner for Children's Rights.

An appeal to the Supreme Administrative Court may not be brought if the Provincial Administrative Court issued:

- an order to reject the appeal on the grounds of failure to comply with the time limits (to lodge an appeal or to remedy formal defects);
- an order to reject the appeal where the appeal concerns a case between the same parties, which is pending or which has been resolved with a final and non-appealable decision;
- an order to discontinue the proceedings if the appellant has effectively revoked the appeal;
- an order to discontinue the proceedings in the event of the death of a party – unless a person whose legal interest is affected by the outcome of the case declares their intention to participate in the case;
- an order to discontinue the proceedings if they have become groundless for other reasons;
- an order to reject the appeal if the fee has not been paid (in spite of a reminder).

WITHIN 30 DAYS FROM THE DATE OF THE DELIVERY OF A COPY OF THE JUDGMENT WITH A STATEMENT OF REASONS, AN APPEAL MAY BE BROUGHT

The appeal is brought through the Provincial Administrative Court.

LOGGING AN APPEAL

A cassation appeal should be prepared by a qualified lawyer (advocate or attorney-at-law). In tax cases (tax and customs obligations and their enforcement), it may be prepared by a tax advisor.

The appeal may be based on the following premises:

- breach of substantive law resulting from its misinterpretation or misapplication;
- breach of the rules of the proceedings if it could have had significant impact on the decision in the case.

The appeal must contain:

- specification of the contested decision, indicating whether it refers to its entirety or part;
- specification of cassation grounds and their substantiation;
- application to overturn or amend the decision, indicating the demanded scope of the overturning or amendment;
- application to consider the appeal at a hearing or declaration on the waiver of a hearing.

If the cassation appeal fails to meet the formal requirements, the chairperson calls upon the appellant to remedy the defects within 7 days. If the time limit is not complied with, the appeal is rejected.

CONSIDERATION OF THE CASSATION APPEAL BY THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court considers the cassation appeal in a panel of 3 judges (unless it is otherwise provided for in special provisions).

Where the appeal is against a judgment, the Supreme Administrative Court renders a judgment, and in the event of an order, it issues an order.

Where the cassation appeal is allowed, the Supreme Administrative Court overturns the contested decision in whole or in part, and refers the case for reconsideration to the court which issued the ruling.

The case should be reconsidered by a different panel. If it is not possible, the Supreme Administrative Court refers the case to a different court.

IMPORTANT! The rulings of the Supreme Administrative Court become final when they are issued and may not be appealed against.