Tax & Legal Weekly Alert

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Risk analysis performed by the tax authorities. Formalities and implications

Considering the fact that, in the past two months, the General Directorate for the Administration of Large Taxpayers ("**DGAMC**") started sending official notifications to large taxpayers regarding some risk indicators used in the risk analysis, the question arises whether these have any fiscal consequences and if it requires a formal reply from the latter.

Although the documents have, at a declarative level, a purely informative purpose and do not explicitly seek to obtain additional information/ details/ clarifications from the taxpayers, it is recommended to provide explanations on the risk indicators and clarify any possible inconsistencies.

In this way, the large taxpayers would, on one hand, demonstrate a diligent behaviour by willingness to cooperate with the tax authorities and, on the other hand, prevent a possible assignment in higher risk category with all the consequences of such assignment.

What does the addresses sent by the tax authorities represent?

Taxpayers' selection for tax audit is made, according to the Fiscal Procedure Code ("**FPC**"), by the competent tax authority, based on the risk rating established on the basis of a risk analysis.

The risk analysis is performed to identify, assess and manage the risk of tax non-compliance, representing a landmark in the tax administration of the taxpayers.

Starting with July, DGAMC began sending taxpayers formal addresses regarding the risk indicators identified in their specific activity that might influence their risk rating.

In lack of any specific legal requirements in place, regarding the indicators influencing the risk rating identified in practice until now, we identified the following:

- From a VAT perspective – several inconsistencies on the VAT reporting obligations of the notified taxpayers in relation to their third parties, namely between deliveries/ acquisitions made on national territory;
- From a TP perspective - registration of a profit margin below the average of the market;
- From a financial perspective – variation of certain financial indicators such as labour productivity, indebtedness, liquidity, rotation speed of fixed assets etc.;
- Amount of additional tax liabilities established following a previous tax audit.

These are only generally mentioned in the recent addresses sent to taxpayers by the tax authorities.

Although the addresses provided have, according to the tax authorities, a purely informative character and do not have a fiscal effect on the notified taxpayers, we point out that the existing inconsistences on the indicators can represent, from tax authority's perspective, a possible tax non-compliance.

At the same time, from a taxpayer perspective, establishing these risk indicators underlying the abovementioned risk rating might represent a signal for starting a tax audit.

In the lack of any legal remedy at this moment, for challenging the risk rating unilaterally set by the tax authority, the active involvement of the taxpayer in the risk analysis procedure by clarifying the issues regarding the existence/ absence of risk indicators is essential.

Therefore, by providing any additional information/ details/ clarifications denying the existence of issues (identified by tax authorities) that can negatively impact the risk rating is recommended and, we say, is necessary.

We would like to reiterate that these addresses/ notifications come out in the context of a proposal for amending the FPC, currently under public debate, and from the business community's suggestions aiming the following:

- transparency on indicators used in the risk analysis;
- setting up specific procedures to allow reconsidering a previous risk rating in case that the issues identified by the tax authorities are no longer valid;
- setting up legal remedies for challenging the results of the risk analysis performed by the tax authorities.

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

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