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## TAX CONTROL IN THE FUNCTION OF THE PROTECTION OF FISCAL INTERESTS OF THE REPUBLIC OF SERBIA

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**Abstract:** The paper deals with measures of preventive, corrective and repressive character undertaken by tax authorities in order to protect the fiscal interests of the Republic of Serbia. The aim of the research is to show that the amount of collected public revenues to a considerable extent depends on the correctness and accuracy of the work of tax authorities in the procedures of tax control. The author points to the tax control carried out by the Tax Administration and tax control carried out by the competent authorities of local self-government units. The legislator's efforts to maintain a balance between wide powers the authorities have and the corresponding obligations of taxpayers and other controlled persons are also being pointed out. Primarily, the accent is on the right and duty of the tax inspector, when certain conditions are fulfilled, to take away goods from taxpayers and other controlled persons or temporarily prohibit the performance of their activities, as well as the set of rights available to them to protect own interests.

**Keywords:** tax control, tax inspector, taxpayer, seizure of goods, temporary ban of performing activities.

### INTRODUCTION

Tax control in the Republic of Serbia is regulated by the Law on Tax Procedure and Tax Administration (The Official Gazette of The Republic of Serbia, No. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 63/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15, 112/15,

15/16, 108/16, 30/18, 95/18 and 86/19). Taxes, for purposes of this law, mean all revenues collected by the Tax Administration. This also applies to the original public revenues of local self-government units that control those units in a public law relationship, including the original

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public revenues adopted, as well as other acts in the administrative procedure.

The legislator defined the tax control as a procedure for checking and determining the legality and regularity of fulfilling the tax obligation, as well as the procedure for checking the accuracy, completeness and compliance with the law or other regulations of the data reported in the tax return, tax balance, accounting reports and other records of the taxpayer, performed by the Tax Administration in accordance with the law (Article 128, paragraph 1 of the Law on Tax Procedure and Tax Administration). Tax control is carried out through a tax procedure. Considering the frequency of the conduct and the importance of the lawful realization of the rights and legal interests of the parties in tax administrative matter, the provisions of the tax procedure represent one of the most important special administrative procedure (Lončar, 2016).

Tax control has three functions: 1) preventive; 2) corrective and 3) repressive. Its preventive role is shown, first and foremost, by encouraging taxpayers to abide by laws and other regulations, in order to avoid the consequences of the likely discovery of omissions (Popović, 2003). If irregularities or failures in the performance of obligations arising out of a tax relationship are found in tax control, the taxpayer is ordered to eliminate them, which is corrective function of tax control. The repressive function of tax control is reflected in taking measures to eliminate identified violations of

laws and irregularities in the application of regulations.

The Tax Administration<sup>2</sup> and the competent authorities of local self-government units are authorised to perform tax control. In the course of tax control, the tax authority enters into a tax-juristic relationship with a taxpayer. The most important component of the tax law is the tax property relationship, which makes “its core” (Tipke, 1993: 138). This relationship contains property requirements and obligations, which can be diverse (Popović, 2010: 98). Based on the legal nature of the tax relationship, it is concluded that it is necessary that the tax authority has great powers in the procedure of tax control, all with the aim of protecting the fiscal interests of the state. The legislator strived to establish a balance between the great power the tax authority has and the corresponding obligations of taxpayers, on the one hand, and the rights of taxpayers, on the other (Popović, 2003: 43–44). This particularly refers to the relationship between the tax authority and taxpayer in tax control procedure, given the fact that the power of the tax authority in this procedure is the greatest.

The aim of the research is to show that the level of collected public revenues to a large extent depends on the activities undertaken by the tax authorities through tax control activities. During the research of this topic, we conducted an analysis of some data on the work of the Tax Administration in the field of tax control for the period from 2014 to 2017.<sup>3</sup>

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2 According to Article 3 paragraph 2 of the Law on Ministries, Tax Administration as an administrative authority within the Ministry of Finance, in addition to the tasks of tax control, performs also professional affairs and affairs of state administration related to the registration and guidance of a unique taxpayer register; tax assessment; regular and enforced tax payment and secondary taxation; detection of tax crimes and their perpetrators; application of international agreements on the avoidance of double taxation; a unique tax information system; tax accounting, as well as other activities determined by law.

3 The paper presents data from the work of the Tax Administration, which was submitted to the author on his request in the Act number 037-02-00398 / 2018-k0160 of 10 August 2018.



## TAX CONTROL BY THE TAX ADMINISTRATION

### *Starting tax control*

Tax control is carried out on the basis of an annual or extraordinary control plan. The Annual Tax Control Plan is issued by the Director of the Tax Administration. It is based on the assessment of taxpayers and tax risk of the taxpayer. In determining this plan, the impact of tax control on the efficiency of tax collection in certain activities must be taken into account. An extraordinary tax control plan is made by the Minister in charge of finance in cases where there is a market disruption or there is evidence that the volume of illegal trade has increased. Tax control of a person who performs an unregistered activity is carried out without a control plan.

Tax control is performed by a tax inspector, who represents an official person authorized to carry out such control. Tax control can start in two ways: 1) by sending a control order, or 2) by making a call. The Tax Administration shall issue the order for filed control or tax return to the taxpayer immediately prior to commencement or through the official person of the tax authority, or to the e-mail address of the taxpayer, in the manner prescribed by law. Here we point out two weaknesses in the normative regulation of tax control. First, in Article 124 paragraph 1 of the Law on Tax Procedure and Tax Administration, the legislator used a formulation - a "field control order". However, in positive tax legislation, as it was before, tax control is not divided into office and field, but there is unique control. Secondly, we consider that it is not clear enough to regulate the initia-

tion and conduct of tax control by delivering a call, since it is not specified what is meant by the term call in this case.

The procedure of tax control is carried out without submitting an order or call for tax control to taxpayer in case of: 1) control that is carried out on the basis of an extraordinary plan; 2) control of the recording of transactions through fiscal cash registers; 3) control over work engagement of a person; 4) control of the delivery of products to excise warehouses; and 5) control of the person performing unregistered or undeclared activity. The tax inspector is obligated to show the official identity card to the taxpayer.<sup>4</sup>

The Tax Administration may postpone the implementation of tax control if the taxpayer submits an oral complaint immediately upon receipt of the control order, stating the reasons for postponing the control, but within 24 hours from the receipt of the order he/she is obligated to submit a complaint in writing to the Tax Administration. According to this complaint, pursuant to Article 124 paragraph 6 of the Law on Tax Procedure and Tax Administration, the Tax Administration makes a conclusion against which the remedy is not allowed. It should be noted that the provisions of the Law on Tax Procedure and Tax Administration are inconsistent with the provision of Article 149 paragraph 1 of the Law on General Administrative Procedure (The Official Gazette of The Republic of Serbia, No. 18/16 and 95/18), according to which the complaint is decided by a decision against which an appeal can be made.

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<sup>4</sup> According to Article 162, paragraph 3 of the Law on Tax Procedure and Tax Administration, the act on the official identity of a tax inspector is made by the Minister in charge of finance.



In Article 124 paragraph 5 of the Law on Tax Procedure and Tax Administration, the legislator gave a discretionary power to the tax inspectorate that, when it assesses that an oral objection has been declared to interfere with tax control, the control procedure is initiated, and it is obligated to indicate in the record on tax control the reasons on which it made such a “decision”. Although the Law states that a “decision” is made, the decision is, in fact, not passed, which is a weakness of this provision. We believe that it should be prescribed that a tax inspector in such

cases issues a written act, which in the sense of Article 34 paragraph 1 of this law would be a tax act. Although this law does not stipulate that an objection may be raised as a result of such treatment of a tax inspector, we consider that the application of Article 28, paragraph 1 and Article 147, paragraph 1 of the Law on General Administrative Procedure can be objected in this case, since the commencement of tax control is a material act that meets the requirements to be administrative action referred to in Article 27 of same Act.

### *Place and time of tax control and duty of the taxpayer*

1. Depending on the subject of the control, tax control can be carried out: 1) in the business premises of the taxpayer; 2) in the official premises of the Tax Administration, or 3) elsewhere. A taxpayer is obliged, if tax control is carried out in his business premises, to provide the appropriate place for the work of the tax inspector. If there is no proper place for performing tax control, with the consent of the taxpayer, control can be carried out in his residential premises, or elsewhere determined by the Tax Administration, in accordance with the law. Upon approval of the court, the tax inspector has the right to enter the flat of the taxpayer for the purpose of control.

If tax control is not performed in the business premises of the taxpayer, the tax inspector is obliged to inspect the premises and make a note of it, which is entered in the record of the tax control.

The taxpayer and his proxy or representative must be given the opportunity to attend a review of land, premises of apartment. If these persons do not use the opportunity to attend the inspection

of land, premises or apartment, and the tax inspector assesses that this disables or postpones the implementation of tax control, they will also exercise control without their presence, in the presence of two adult witnesses. The tax inspector brings these facts into the record.

2. Tax control is carried out during the working hours of the taxpayer, and exceptionally after the expiration of the working hours, if the purpose of the control so requires, or if the taxpayer agrees. The tax inspector may temporarily seal the business or warehouse space of the taxpayer after the expiration of the working time of the taxpayer. This measure remains the longest until beginning of the working time of the taxpayer on the first following working day. According to Article 126 paragraph 4 of the Law on Tax Procedure and Tax Administration, a conclusion is reached, against which the remedy is not allowed.

3. The taxpayer is obliged to participate in the determination of the facts and to give information and statements at the request of the tax inspector. He is obliged



to enable the tax inspector to inspect the state of goods (raw materials, reproduction material, semi-finished products, finished products and other goods) and equipment, as well as to enable insight into business books, records and other documents. If it is not possible to attend tax control, the taxpayer will assign a person who will fulfil these obligations on his/her behalf. Non-performance of

these obligations of the taxpayer does not delay the execution of tax control.

The tax inspector may request information, i.e. insight into the documentation and from the employees of the taxpayer or other persons. He requests such a request verbally. Employees, that is, other persons, are obliged to make the data they possess, i.e. the documentation, available to the tax inspector.

### *Tax control report*

The tax inspector prepares a report on tax control. Each page of the record must be marked with a regular number and signed. The minutes shall be submitted to the taxpayer. The taxpayer shall have the right to file objections within a period of eight days from the date of receipt of the minutes on the tax control report, except for the part of the minutes in which it was established that the tax inspector ordered certain measures with an oral decision when he assessed that the collection of the tax is jeopardized.

The record of tax control shall be submitted without delay upon the completion of control, when it comes to control: 1) which is done on the basis of an extraordinary plan; 2) recording on transactions through fiscal cash registers; 3) regarding work engagement of the person; and 4) of a delivery and delivery of products to excise warehouses. The taxpayer has the right to file objections to the report on these tax controls within two days from the date of receipt of the minutes. This is an inappropriately short term, and we think it needs to be extended to eight days. If remarks are

submitted in a foreign language within the prescribed time limit, they will be deemed to be submitted in due time if a translation of the remark into the Serbian language is submitted within the next two days by the authorized person.

The taxpayer may present new evidence and facts in his remarks. If, due to these new evidence and facts, the factual situation ascertained in the minutes or to amend earlier legal assessments should be changed, the tax inspector is obliged to compile an additional record of such evidence and facts or new legal assessments within five days from the date of receiving the remarks. An objection to the supplementary record cannot be made.

When a tax inspector, after submitting the record or supplementary record, finds out new knowledge or facts that influence the established factual situation, he shall compile an addendum to the minutes submitted to the taxpayer. The taxpayer has the right to file objections within a period of eight days from the date of receipt of the minute.





### *Bringing in a tax solution in the process of tax control*

1. Based on the records on the performed tax control, the supplementary record, or the supplementary record of the tax control, the Tax Administration shall issue a tax decision on determining the tax to the taxpayer who, contrary to the law, did not perform the determination of the tax liability or made it incorrect or incomplete, applied, or failed to correctly apply the regulation when determining the tax, as determined by tax control.

The decision is made within 60 days from the date of delivery of the minutes, supplementary minutes, or addition of the minutes on the tax control. The decision requires the taxpayer to pay, within 15 days from the date of delivery of the decision, the established tax liability to the prescribed public account receipts, or to eliminate other identified irregularities.

By this decision, the Tax Administration instructs the taxpayer and files a tax return in which it will eliminate the identified irregularities if the tax return is the basis for recording the amount of the tax. If the taxpayer fails to file a tax return according to the order from the decision, the Tax Administration files a tax return instead of a taxpayer.

In 2014, the Tax Administration carried out 35,416 tax controls, which resulted in 2,708 tax assessment decisions due to fact that taxpayers, in contravention of the law, did not perform the determination of the tax liability, or made it incorrect or incomplete. In 2015, 24,941 tax controls were executed, with 3,101 tax assessment decisions. In 2016, 22,516 tax controls were executed, with 3,288 tax assessment decisions. In 2017, 18,265 tax controls were executed, with 3,097 tax assessments decisions

(Tax Administration Act No. 037-02-00398/2018-K0160 of 10 August 2018).

When in the course of tax control it is determined that a person performs an unregistered or undeclared activity, the tax liability of that person is determined by a decision, using the method of assessment of the tax base by parity. The assessment of the tax base by the method of parity is carried out in one of the following ways: 1) the assessment based on the available regular business documentation on the business in a certain period shorter than the taxation period (daily, weekly or monthly) by estimating the tax base for the taxable period on the basis of the information on that part of the business operation; 2) assessment of the database and the facts of the realized turnover (daily, weekly or monthly) determined by inspection or control, based on these data and facts, the tax base is assessed for the period for which the tax is determined, or 3) by comparison with the data of others taxpayers who perform the same or similar activity in the same or similar location, under approximately equal conditions.

Tax liability on the basis of income generated by the unregistered or undeclared activity is determined by applying the tax rate according to which the income tax is paid to other income, without recognizing the standardized costs. Other income, for example, includes: 1) revenues from the collection and sale of secondary raw materials; 2) revenues from the collection and sale of forest fruits and medicinal herbs, i.e. sale of other goods realized by performing temporary or occasional affairs, if they are not taxed on other basis in accordance with the law, and 3) revenues from the sale of agricul-



tural and forest products and services, as well as growing and selling mushrooms, bee hives (bees) and snails. The tax rate on these revenues is 20% (Article 86 of the Law on Income Taxes of Citizens).

When in the course of tax control it is established that a person who carried out an unregistered or undeclared activity puts goods into circulation, the tax inspector takes away the goods he found during the control by the decision. The tax inspector may temporarily seize the equipment by which the taxpayer performs an unregistered or undeclared activity, which he finds in the control procedure. Temporarily seized equipment can be left for safekeeping to the person from whom it was temporarily seized until the expiration of 30 days, during which a person performing unregistered or unreported business activity must register or report such activity to the competent authority, if it is estimated that the costs of seizing and safekeeping would be disproportionately high in relation to the tax liability. If a person who performs

an unregistered or unreported activity, within the specified time period, registers or reports the activity, pays the established tax liability and removes the other established irregularities, the seized equipment will be returned to him/her. If the person performing unregistered or unreported business activity fails to act in compliance with the orders from the Tax Administration decision, the seized equipment will be permanently seized.

If a person, to whom a decision establishing the unregistered or unreported business activity had been previously delivered, and who had acted upon this decision within the deadline, during a subsequent audit is found to be performing unregistered or unreported business activity and supplying the goods, the tax auditor will issue a decision on permanent confiscation of the goods and equipment found during the tax audit procedure. In turn, the tax inspector permanently takes away the goods and equipment he found during the tax control procedure.

### *Taking measures to eliminate identified irregularities in the application of tax regulations*

Measures for elimination of identified irregularities in the application of tax regulations, with regard to the conduct of tax control, can be divided into those undertaken: 1) during the control itself and 2) after the performed control.

1. During tax control, the tax inspector is obliged, when certain conditions are met, to confiscate the goods from the controlled person or to temporarily prohibit him from performing his activity. The tax inspector orders the measures during the tax control with a decision.

a) During tax control, a tax inspector is obliged to confiscate goods from

a controlled person when certain conditions are met. This will be done in following cases:

- 1) When there is a suspicion that the goods or raw materials or production materials used have been purchased without a tax calculated or in another manner contrary to the regulations, and the taxpayer has no evidence of their purchase complying with the regulations and payment of taxes, if prescribed;
- 2) When the goods are placed on the market by a person who is not registered, or authorized to perform this activity;



3) When the production of goods for the purpose of placing on the market, or when the sale of goods is performed, and the goods are not properly recorded in the books of account and other prescribed records;

4) When goods are transported without the required documentation (invoice, bill of lading, bill, etc.);

5) When the goods are sold outside the registered business premises or other place designated for sale by the competent authority.

In these cases, the tax inspector shall also confiscate the transport or other means by which the goods are transported or put into circulation if the value of the goods exceeds one third of the value of that asset. A transport or other means shall be confiscated even if the value of the goods is not more than third of the value of that asset, if, after manufacture, it is additionally equipped with a special space for hiding or secret transport of goods.

In the course of tax control, the tax inspector may, with the confirmation, temporarily seize the books, records, other documents or documents until the completion of the tax procedure. If the taxpayer keeps business books, records and other documentation automatic data processing devices, the tax inspector may, with the confirmation, temporarily seize the funds for automatic data processing until the completion of the tax control procedure. The tax inspector may order all above-mentioned measures by an oral decision, when assessing that tax collection has been compromised. In this case, the tax inspector is obliged, within three days from the date of the oral decision, to issue the decision in writing and submit it to the taxpayer.

In 2014, the Tax Administration adopted 154 decisions on the seizure of

goods, in 2015 it passed 222 decisions, in 2016 it passed 258 decisions, while in 2017 it passed 211 decisions (Tax Administration Act No. 037-02-00398 / 2018-K0160 of 10 August 2018).

b) During the tax inspection, the tax inspector shall impose a taxpayer a ban on performing activities for a period of up to one year if he determines that:

- the activity is performed so that the goods and services are not accompanied by authentic documentation of significance for determining taxes (invoices, statements of the buyer);
- avoids the establishment and payment of taxes by not paying the daily market, in accordance with the regulations;
- avoids the establishment and payment of taxes by the engagement of persons who do not have a completed employment contract or other act of work engagement made in accordance with the regulations on employment relations, and if they are not, in accordance with the regulations, notified to the competent organization of compulsory social security;
- if the turnover from the sale of goods or the provision of services is not registered through the fiscal cash register or in another prescribed manner.

Prohibition to perform activities for a taxpayer whose irregularities have been identified during the course of tax control, shall be pronounced:

1) for a period of up to 15 days – if an irregularity is found for the first time during the control procedure of the taxpayer;

2) for a period of up to 90 days – if an irregularity is detected during the con-





control procedure with the taxpayer for the second time;

3) for up to one year – if the irregularity is established for the third time during the control procedure with the taxpayer.

Prohibition of performing activities is pronounced for irregularities established in the period of 24 months from the first established irregularities in the procedure of tax control. Prohibition of performance of activities to the taxpayer shall be imposed on the business premises of taxpayers in which the irregularities were identified in the course of tax control. The facilities in which the activity is prohibited are visibly marked with the Tax Administration's mark.<sup>5</sup>

If the taxpayer carries out the sale of excise goods that are not marked in the prescribed manner, the protective measure shall be pronounced – prohibition of performing activities for a legal entity or entrepreneur for a period of three months to one year.

In 2014, the Tax Administration carried out 26,374 controls for registering traffic, with 6,760 controls during which irregularities were found, so decisions were made on the temporary ban of 3,546 facilities. In 2015, 10,932 controls were recorded for registering traffic, with 3,662 controls where irregularities were found, so decisions were made on the temporary ban on 2,548 facilities. In 2017, 6,590 controls were recorded for registering traffic, with 2,598 controls where irregularities were found, so decisions were made on the temporary ban on 2,170 facilities (Tax Administration Act No. 037-02-00398 / 2018-K0160 of 10 August 2018).

3. If in the procedure of tax control it is established that there is a violation of regulations, or an irregularity in their application, the minutes or supplementary minutes or the addendum of the control report shall indicate that the taxpayer did not apply or has not correctly applied the regulations when determining taxes which the debtor himself performs, or if it is established that the tax debtor, in contravention of the law, did not perform the determination of the tax liability, or made it incorrect or incomplete, the tax authority shall issue a decision on the determination of the tax. This decision requires a tax obligation to eliminate the established violations of the law, or irregularities in the implementation of regulations, within the determined decision. If the taxpayer fails to comply with the decision within the time limit, then the Tax Administration shall take the following measures:

1) The prohibition on disposing of funds on the account, except for the purpose of settling tax obligations;

2) Temporary ban on performing certain tasks;

3) Temporary prohibition of alienation of things in the event of a reasonable doubt that the taxpayer will withhold or disable the settlement of the tax liability.

The mentioned measures are ordered by the Tax Administration. These measures may also be imposed by a tax inspector during the task control in case the conditions for seizing goods are fulfilled. The fact of the measure lasts until the taxpayer removes the established violations of the law, or irregularities in the application of regulations.

<sup>5</sup> The method of marking, content and appearance of a mark indicating objects in which the activity is prohibited is determined more closely by the Minister in charge of finance.



### *Procedure with things seized in the process of tax control*

When the tax inspector orders a measure of confiscation, he is obliged to store the items by types and quantity in a place specified by the act of the minister responsible for finance.<sup>6</sup> The value of these items is determined by the commission in the amount of the price at which this item can be purchased on the market at the moment of confiscation, within 5 days from the date of confiscation. If the seized thing is liable to deterioration or if its preservation requires high costs, the Tax Administration sells them with a direct contract without delay.

In the event of finality of the decision to confiscate the goods or after the completion of the procedure initiated by the Tax Officer field by the Tax Police with the public prosecutor, confiscated items, apart from things that are vulnerable to spoilage and things that require high costs, are sold through public sale, or via a commercial network. Excise products excluding oil derivatives, cigarette paper tubes, cigarette filters, paper for cigarettes, cigarette paper filling machines, as well as other machines for twisting cut tobacco which are destroying the commission. Prior to public sale, the Tax Administration re-establishes the value of the seized items in the event that more than one year has elapsed since the date of the takeover of the item. Public sale of seized items is carried out in accordance with the provision of the Law on Tax Procedure and Tax Administration regulating the public

sale of movable property in the process of forced collection of taxes.

The Government shall regulate the proceeding with confiscated goods in the event that the confiscated goods are not sold on repeated oral auction, under the mentioned condition, within three months from the validity of the decision on confiscation of goods, or upon completion of the procedure initiated on the occasion of the criminal charge filed by the Tax Police with the public prosecutor. The buyer of the seized items cannot be a taxpayer from whom things have been seized, a person employed by the Tax Administration and related persons. The funds generated by the sale of items, after deduction of expenses are paid into the budget of the Republic. Exceptionally, the Government can seize things, apart from the things that are commissioned by the Commission, to be given without compensation to state authorities, humanitarian organizations and other beneficiaries of humanitarian aid, cultural institutions, and other justified purposes. Take away items that cannot be sold or used for health, veterinary, phytosanitary, safety or other prescribed reasons or due to major damage, are destroyed in accordance with the regulations. Transport and destruction expenses are borne by taxpayer from whom the items have been seized, and if it is unknown or unavailable, the Tax Administration shall bear the costs of transport and destruction.

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<sup>6</sup> The minister in charge of finance issues brings the act for the implementation of provisions of the Tax Law procedure and Tax Administration that regulates the procedure with the items seized in the proceedings tax controls.



### *Revealing tax crimes*

Tax Administration, within its jurisdiction, discovers tax offenses and their perpetrators and in relation to it undertakes the statutory measures. The execution of tasks related to the detection and reporting of tax offences and their perpetrators is performed by the Tax Police, as a special organisational unit of the Tax Administration. The Tax Police plans, organizes and executes these tasks in accordance with the law.

Task offenses are criminal offenses established by law, which as a possible consequence have the total or partial avoidance of tax payments, the making or filling in of a forged document relevant to taxation, the threat of tax collection and tax control, the illicit traffic of excise products and other unlawful actions in connection with avoiding and helping avoid taxes.

In order to detect tax crimes and their perpetrators, the Tax Police acts in the pre-trial procedure as an internal affairs authority and is authorized, in accordance with the law, to undertake all actions sought, with the exception of restrictions on movement. In accordance with the provisions of the law regulating the criminal procedure, it may summon and interrogate the suspect, including his forcible bringing in, before commencing a criminal procedure, to search apartments, business or other premises, means of transport and persons when there are grounds for suspicion that a tax criminal offence was committed, and temporarily seize objects that may serve as evidence in criminal proceedings for tax offences. The search of an apartment and other premises can be done only on the basis of a court order and in the presence of two witnesses. The Tax Police

undertakes these powers independently or in cooperation with the Ministry of the Interior. With the Ministry of the Interior, the tax police also realize other forms of cooperation. The form and manner of achieving this cooperation shall be agreed by the act in more detail by the Minister in charge of finance and the Minister in charge of internal affairs. The Tax Police is obliged to cooperate with the court and the prosecutor's office in criminal proceedings.

When the Tax Inspector in the course of tax control finds out that the fact and circumstances indicate the existence of the basis for suspicion that a tax offence has been committed, he is obliged to compile a report on this and, together with the evidence obtained, immediately submit it to the competent Tax Administration head, which is obliged, within 24 hours of receipt of the report, to forward this report with evidence to the head of the Tax Police. In this case, the Tax Administration does not submit a request for the initiation of a misdemeanour procedure, nor issues a misdemeanour order, unless the Tax Police determines on the basis of the Tax Inspector's report that the facts and circumstances stated by the tax inspector in the report do not indicate the existence of grounds for suspicion that a tax offence has been committed and that there are no conditions for filing criminal charges.

If the tax inspector in the procedure of the tax control determines that the facts and circumstances indicate the existence of grounds for suspicion that a criminal offence has been committed in other areas or a misdemeanour for which the Tax Administration is not competent, the Tax Administration sub-



mits a criminal or misdemeanour report to the competent state authority.

2. On the basis of the information collected, the Tax Police compiles a criminal report, stating the evidence it has learned about during the collection of the notification and submitting it to the public prosecutor. In addition to criminal charges, documents, reports, statements, and other materials that are relevant for the successful conduct of the proceedings are submitted. If the Tax Police, after filling a criminal complaint, learns about new facts, evidence or traces of the criminal offense, it is obliged to collect the necessary information and report, as a supplement to the criminal report to the public prosecutor. In addition to criminal charges, documents, reports, statements and other materials that are relevant for the successful conduct of the proceedings are submitted.

When the Tax Police complied and filed a criminal report on the basis of a tax inspector's report, the Tax Police Inspector informs the responsible Tax Administration head in writing. If the Tax Police, on the basis of the tax inspector's report, finds that the facts and circumstances that the tax inspector stated in the report do not indicate the existence

of grounds for suspicion that a tax offence has been committed and that there are no conditions for filing criminal charges, the Tax Police Inspector shall inform the responsible manager of Tax Administration for filing a request for initiating misdemeanour proceedings.

If in the pre-investigation procedure the Tax Police finds that there are no elements of a tax offense in the actions of a person, but there are other punishable offences, the Tax Police Inspector will submit an appropriate application to the competent authority. The facts and evidence of significance for the amount of tax liability established in the pre-investigation procedure is submitted by the Tax Police Inspector to the Tax Administration's organisational unit where the taxpayer is registered.

3. In 2014, the Tax Police filed a total of 1,360 criminal reports, with 1,804 persons registered. In 2015, 1,739 criminal reports were filed, which included 2,362 persons. In 2016, 1,813 criminal charges were filed against 2,350 persons. In 2017, the Tax Police filed 1,583 criminal reports, to which 2,137 persons applied (Tax Administration Act No. 037-02-00398 / 2018-K0160 of 10 August 2018).

## TAX CONTROL BY THE COMPETENT AUTHORITY UNITS OF LOCAL SELF-GOVERNMENT

Local self-government units fully control their original public revenues, that is, the original revenues generated on their territory, which belong to them (Article 60 of the Law on Financing of Local Self-Government). The units of local self-government belong to the original public revenues realized on their territory, as follows: 1)

tax on property in the statistic; 2) local administrative fees; 3) local communal fees; 4) residence tax; 5) fees for the use of public goods, in accordance with the law; and 6) revenues from self-contribution (Article 6 of the Law on Financing of Local Self-Government). The competent authorities of the local self-government units in controlling



public revenues and secondary tax payments, as well as when submitting a request for initiating a misdemeanour procedure for tax misdemeanours to the competent misdemeanour court, have rights and obligations that the Tax Administration has in accordance with the Law on Tax Procedure and Tax Administration, obligations related to: 1) identification and registration of taxpayers; 2) assessment of the tax base by the method of parity and the cross-assessment method; 3) disclosure of tax crimes, and 4) other rights and obligations of the Tax Administration, which by their nature cannot belong to the units of local self-government.

The provisions of the Law on Tax Procedure and Tax Administration, which regulate the authority of the Tax Administration, the rights and obliga-

tions of taxpayers, as well as the powers of tax inspectors of the Tax Administration, apply accordingly to the powers of the local self-government units, that is, the rights and obligations of taxpayers of the original public revenue units in the local self-government, as well as the powers of tax inspectors of local self-government units, in the process of controlling the original public revenues of local self-government units to which the Law applies.

The act on the official identity of inspectors in the bodies of local self-government units in charge of controlling the original public revenues of local self-government units shall be adopted by the competent bodies of local self-government units, with the consent of the minister responsible for administrative affairs.

## CONCLUSION

The legal formulations in the positive tax legislation of the Republic of Serbia which regulate tax control provide the possibility for the protection of its fiscal interests, since they enable efficient verification of the legality and regularity of fulfilment of tax obligations, as well as the verification of accuracy, completeness and compliance with the data regulations stated in the tax return, tax balance, accounting reports and other records of taxpayers. However, certain provisions could be clarified and more precisely defined. We will point to four cases. First, in Article 124, paragraph 1 of the Law on Tax Procedure and Tax Administration, the legislator used a formulation – an “order for field control”, although, as previously done, tax control is not divided into field and office

control, and is required by amending the Act, this error is fixed. Secondly, we consider that the Law on Tax Procedure and Tax Administration does not clearly define the beginning and the execution of tax control on the basis of a call, so the Law needs to be amended and the issue should be more precisely regulated. Thirdly, by the provision of Article 124, paragraph 6 of the Law on Tax Procedure and Tax Administration, it is stipulated that the Tax Administration decides on an objection to an order for field control, with a decision against which a remedy is not allowed. This provision does not comply with the provision of Article 149, paragraph 1 of the Law on General Administrative Procedure, according to which the complaint is decided by a decision against which an appeal can be





made. It is necessary to revise the Law on Tax Procedure and Tax Administration in this regard and to harmonize it with the mentioned provision of the Law on General Administrative Procedure. Fourthly, in Article 124, paragraph 5 of the Law on Tax Procedure and Tax Administration, the legislator gave a discretionary authority to the tax inspector, when assessing that an oral objection to a tax audit order was declared to interfere with tax control, the controlling procedure is initiated, that in the record of tax control, he shall state the reasons on which he made such a "decision". Although the Law states that a "decision" is made, the decision is, in fact, not passed, which is a weakness of this provision. We believe that the Law should be amended and that the tax inspector in such cases be allowed to make a conclusion.

It is concluded that it is necessary that the tax authority has wide powers in the

procedure of tax control, all with the aim of protecting the fiscal interests of the state. The legislator sought to strike a balance between the wide powers the tax authority has and the corresponding rights and obligations of taxpayers.

Analysing certain indicators from the work of the Tax Administration, related to tax control for the period from 2014 to 2017, it is noted that this body has executed a large number of tax controls, and that during that period, in connection with these controls, brought a large number of tax assessment decisions, then brought a considerable number of decisions on confiscation of goods and on temporary ban on performing activities. In the period under review, the Tax Police filed a total of 6,495 criminal reports, to which a total of 8,653 persons were reported, indicating that the Tax Administration has shown considerable activity in this field.

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