

Procedure of Contest the Fiscal Administrative Act

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Abstract

Appealing administrative-tax acts is a taxpayer's right. It is the administrative appeal procedure provided by the Code of Fiscal Procedure against the debt claim, as well as against other tax administrative acts.

The object of the appeal may be the amounts and measures established and registered by the tax authority in the claim title or in the taxed administrative tax act.

This paper is intended to support the taxpayer who considers himself/herself to be in breach of his / her rights by means of the tax administrative act drawn up by the specialized bodies and the knowledge to him of the fiscal procedure which he / she has to go through in order to contest the respective act

Key words: appeal, taxation, title of claim, administration, decision

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1. Introduction

In order to apply the law regarding the establishment, modification or extinction of the fiscal rights and obligations, the competent fiscal body issues an administrative - fiscal act.

It is issued only in written form. The tax administrative act must be communicated to the taxpayer to whom it is intended and produces effects from that moment. The tax administrative act is not opposed to the taxpayer and produces no legal effect if there is no evidence of the communication. According to the legislation in force, the fiscal administrative act may be amended, canceled or abolished.

The fiscal body can correct the material errors in the tax administrative act, ex officio or at the request of the taxpayer.

Mistakes in writing, omissions or mistakes in tax administrative acts, except for those that nullify the fiscal administrative act, according to the law, or which concern the substance of the fiscal administrative act, are material errors.

The Code of Tax Procedure states that under certain conditions taxpayers have the right to challenge fiscal administrative acts.

The procedure for settling appeals against tax administrative acts is divided into two cumulative phases: the administrative phase and the judicial phase. In the first phase, the action is called an appeal and is governed by the Code of Fiscal Procedure, and in the second is the action in administrative litigation, being governed by the provisions of Law no. 554/2004.

2. Theoretical background. Possibility of contesting the administrative - fiscal act

Any person who believes that he or she has been harmed by a fiscal administrative act may file an appeal. The power of attorney / power of attorney in original, legalized or duplicate copy shall be presented, as the case may be, if the appeal is formulated by a proxy.

The appeal will be signed by the Special Administrator / Administrator or the liquidator, as appropriate, and will be accompanied by the instrument by which he / she has been appointed, if the plaintiff is in insolvency / reorganization / bankruptcy / liquidation and has been given the right at its own administration. (Staicu, 2014, p.115)

In case the contest does not meet the requirements regarding the original / certified copy of the power of attorney / mandate / power of attorney and the signature, the competent resolution bodies will ask the contestant, by registered letter with acknowledgment of receipt, that within 5 days after communication to meet these requirements. Otherwise, the appeal will be dismissed without further substantiation of the case. Receiving acknowledgments will be attached to the case file.

The competent resolution body can not substitute the complainant for the reasons of fact and law for which he disputed the respective tax administrative act.

3. Solution decision - Form and content

The competent resolution body, following resolution of the appeal, issues a final decision in the administrative appeal system. The competent resolution body can not revert to the decision, except in cases of material error correction, according to the law, and it is mandatory for the fiscal bodies issuing the disputed tax administrative acts.

The decision issued following the resolution of the appeal shall be signed by the Director General of the General Directorate for the Resolution of Appeals within the National Agency for Fiscal Administration, the Director General of the General Directorate for the Administration of Major Taxpayers, the heads of the Regional General Directorates of Public Finances or their substitutes, as the case may be.

In the case of appeals settled by the specialized structure for the settlement of appeals within the regional general directorates of public finances, the decision is signed by the head of the fiscal body, which is the competent fiscal body in solving these complaints.

If the replacement of the Director-General of the General Directorate for the Administration of Large Taxpayers / Head of the Regional Public Finance Regional Director is the person who signed the administrative act at issue, another person from the respective Regional Directorate-General / Directorate General for Administration the big taxpayers who sign the decision to settle, by administrative act, of the person who has the power of appointment in public office.

The decision on the settlement of the appeal shall be drawn up and communicated as follows:

a) a copy shall be communicated to the contestant, respectively to the persons entered in the procedure for settling the appeal, as the case may be, and to the body that drew up the contested act;

b) one copy remains on the appeal file;

c) a copy shall be retained in the decision file.

The tax body which issued the contested act has the obligation to send the original copy of the decision to settle the appeal of the new tax body in whose administration the taxpayer is located, in order to execute it.

If, from the date of the appeal and up to the date of the settlement of the appeal, the competence to administer the challenger has changed.

If the decision to settle the appeal concerns tax receivables, the issuing body of the contested fiscal act has the obligation to send a copy of the decision to the department with analytical records attributable to the payers.

Records of decisions will be conducted with the help of a registry by the bodies which settle the complaints in which they will be registered: the number assigned to the decision to settle, the registration number of the appeal to the competent resolution body, the identity of the contestant, and the solution adopted.

4. Settlement of appeal

In order to clarify the cases, the competent resolution body may request points of view from specialized departments within the Ministry of Public Finance and from the National Agency for Fiscal Administration or from other competent institutions to rule on the respective cases.

If, for the same cause, there are contradictory views or contrary to the point of view expressed by the competent resolution body, the matter may be analyzed by the Central Taxation Commission within the Ministry of Public Finance, according to the law.

Before proceeding to settle the merits of the appeal, the competent resolution body verifies the existence of procedural and, eventually, procedural exceptions.

In the handling of appeals, procedural and substantive exceptions may be the following:

- failure to observe the deadline for filing the appeal,
- the lack of competence of the body which has concluded the contested act,
- lack of signature or stamp on the appeal,
- lack of interest,
- lack of procedural quality,
- reverting the same period and the same type of budgetary obligation, prescription intervention, power of judgment, etc. (Şaguna, 2016, p.97)

Where the competent bodies have two or more contestations formulated by the same natural or legal person against tax debt securities or other tax administrative acts entered into by the same tax authorities or other tax authorities for the same category of tax liability different types, but which, in terms of quantum, influence each other, the files can be merged if this ensures a better administration and capitalization of the evidence in solving the case.

By linking the files, no other resolution competence can be established than that resulting from the challenge of each individual tax administrative act.

If the contestant restricts or increases his claims, the resolution body originally invested will resolve the appeal filed through administrative appeal.

Until the issue of the settlement decision, applications may be submitted to the competent resolution body of the appeal.

If the complaints are so formulated as to have a character other than the administrative appeal, for these matters the request will be forwarded to the bodies issuing the contested tax administrative acts in order to submit it to the competent bodies.

Competent bodies may conduct an on-the-spot investigation to clarify the issues that are the object of the appeal only at the request of the appeal body. The findings of the research will be recorded in an on-the-spot research report, which will be attached to the appeal file.

By solving the challenge, one can not create a worse situation for the contestant in his own way of attack.

The contestant, the interveners or their deputies may submit new evidence in support of the case. In this situation, the fiscal body that issued the taxed administrative tax act or the body that carried out the control activity, as the case may be, will be given the opportunity to pronounce on them.

The competent resolution body will first rule on procedural and substantive exceptions, and when found to be well-founded, no further substantive analysis of the case will be made.

5. Suspension of administrative dispute settlement procedure

At the request of the complainant or ex officio, the competent resolution body may suspend the administrative appeal.

If the decision suspends the settlement of the appeal until the criminal case has been resolved, the competent resolution body shall resume the administrative procedure only after the final and enforceable reason for the suspension has been terminated at the request of the opposing party or the fiscal body.

If the request for resumption of proceedings belongs to the contestant, the resolution bodies will ask the authorized tax office, through an address, to communicate that the reason for termination of the suspension of the settlement of the appeal has remained definitive. (Georoceanu, 2015, p.214)

Upon resumption of the administrative procedure, the competent resolution body may ask the tax authority that has notified the criminal investigation and prosecution bodies the point of view regarding the settlement of the appeal in relation to the solution of the criminal bodies / the court decision

If the complainant has reasoned reasons at his request, only one time, within 30 days from the date of filing the appeal, the competent resolution body may suspend the appeal procedure. Upon approval of the suspension, the competent resolution body will also set the deadline until the procedure is suspended.

The administrative procedure shall be resumed at the request of the opposing party or upon the expiry of the time limit set by the competent resolution body, regardless of whether the reason for the suspension has ceased or not.

6. Solutions to the challenge

By decision, the contestation may be wholly or partially rejected or rejected.

If the appeal is admissible, the total or partial annulment of the contested act shall be decided, as the case may be.

The decision may totally or partially suppress the contested administrative act, in which case a new fiscal administrative act is to be concluded which will strictly consider the considerations of the decision to settle.

Within 30 days from the date of the communication of the decision, the winding-up solution is enforced and the new tax administrative act issued strictly covers the same period and the same object of the appeal for which the dissolution was pronounced.

If the competent resolution body finds that a procedural condition is not met, the appeal will be dismissed without proceeding to substantive examination of the case.

The appeal may be rejected as:

- a) unfounded, where the factual and legal arguments put forward in support of the appeal are not such as to alter those set out in the contested administrative act;
- b) not motivated, if the contestant has no factual and legal arguments in support of the appeal;
- c) be devoid of purpose if the contested amounts and measures have not been determined by the contested administrative tax measure;

By decision, notice may be given to waive the appeal if the claimant requests it to be withdrawn.

By decision, the fiscal administrative act may be partially / totally annulled. The partial / total annulment may be ordered in cases such as: where the same tax obligations have two or more debt securities if the tax inspection bodies, following the dissolution, have exceeded the investment limits.

The decision may totally or partially suppress the contested tax administrative act. Prior to the issuance of the decision with a dissolution decision, the competent resolution body will take the necessary steps, if necessary, to the fiscal body issuing the contested act, namely: to clarify some disputed situations, to complete the point of view regarding the documents filed by the opposing party, on-site research, etc. In the event of a total or partial annulment of the contested act, only the reasons leading to the dissolution shall be set out in the recitals of the decision.

By the new tax administrative act, drafted according to the considerations of the decision for settlement, the taxpayer can not set higher tax obligations than those of the disbanded act, which can be challenged according to the law. Accordingly, the tax loss can not be reduced by a higher amount than the one entered in the abolished act.

The appeal may be rejected as:

- a) not filed in due time, if it has been filed over the term stipulated by the law;
- b) being filed by a person who is not in a position to challenge, if it is formulated by a natural or legal person lacking procedural quality;
- c) being filed by a person with no capacity to exercise, according to the law;
- d) without interest, in the case when the contestant does not prove that he has been injured in his legitimate interest. (Dariescu, 2004, p.217)

7. Communication of the decision and appeal

The decision on the settlement of the appeal shall be communicated to the complainant at the tax domicile on the basis of the signature of receipt of the fiscal administrative act, or by post, by registered letter with acknowledgment of receipt and to the fiscal body issuing the contested administrative act.

Decisions issued in the resolution of appeals may be appealed by the challenger or by the persons entered into the dispute settlement procedure to the competent administrative court.

8. Conclusion

If the taxpayer considers that his rights have been violated by the issuance of an administrative - fiscal act, there is the possibility of formulating a complaint addressed to the issuing body, under the conditions mentioned in this paper. Subsequently, if the decision made in the resolution of the appeal does not remove the damage to the taxpayer's rights, there is the right to appeal the respective decision to the competent administrative court, according to the law.

9. References

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