



WWW.TRINITYCS.COM

WARSAW | KRAKOW | WROCLAW | BUCHAREST | SOFIA

| Tax control procedure in Poland

Description

In Poland – as in all other EU countries – one of the tax authorities’ most important duties is to verify whether or not taxpayers have fulfilled their statutory obligations towards the State Treasury. But what may be confusing is that under statutory terms there are two main methods of verification:

- tax control (“kontrola podatkowa”) governed by the laws on Polish Tax Ordinance.
- tax inspection (“kontrola skarbową”) governed by the Polish Act on Fiscal control.

Both these procedures have very tight timescales for taxpayers to respond to tax authorities’ queries. Failure to respond on time, inadequate or incomplete documentation, or improper accounting records may result in further steps such as launching formal tax proceedings.

Fortunately, Polish enterprises cannot be subject to more than one control at the same time. All controls can take up from 12 to 48 working days per year (depending on the size of the controlled entity). However, Polish regulations do provide for a number of exceptions to this limitation.

Tax control

Generally, tax office representatives carry out a control in the registered office of the taxpayer. Sometimes it can be also at another site where documentation is kept or the business is run.

The tax control is used to check whether the taxpayer acts in line with tax regulations. The tax authority’s representatives check timeliness of tax return submissions, correctness of declared and paid tax amounts. They also confirm the formal correctness of tax returns.

As a principle, the tax office is allowed to verify tax returns for periods of the last 5-6 years. A control is launched not sooner than 7 days and not later than 30 days from the notification (unless the controlled entity agrees otherwise). Nevertheless, in some cases there is no need to notify the taxpayer about the control (e.g. in cases of the inspection resulting from the submission of application for VAT refund). That is why taxpayers should, on a daily basis and with no delay, ensure that proper care is taken to keep an entity fully compliant with Polish tax regulations.

The tax control is concluded with a control protocol prepared by the tax office's representatives and also signed by the controlled entity. If any mistakes are found, the tax authority may begin formal tax proceeding no later than within 6 months from the end of the inspection. If the controlled entity does not agree with conclusions of the protocol, it can present reservations and explanations within 14 days from receipt of the protocol.

Tax inspection

The scope of tax inspection is broader than tax control. This is because a tax inspection is geared more to the protection of rights and interests of the Polish State Treasury. The relevant authority (called colloquially the "tax police") is allowed not only to verify the proper settlement of tax liabilities but also other budget receivables (customs, special purpose funds, etc.). That is why in small/medium companies, with limited activities, a tax inspection is rare.

It is also worth noting that while there were significant differences in the past between tax control and tax inspections, these procedures are starting to converge. There are views that in the future one united procedure for all control/inspection purposes will be enacted.

VAT control

Foreign investors registered for VAT in Poland often bear significant costs when setting up a business. In order to improve cash flow, they may need to recover the VAT resulting from purchases. From our perspective an application for a VAT refund, especially for significant amounts, is the most common event that triggers a tax inspection in Poland. If the VAT claimed is lower, or the refunds made on a continual basis, the tax authorities may instead of undertaking a detailed investigation, conduct a limited review, namely by requesting selected documents.

In addition, the tax authorities may want to verify whether a company's VAT records/accounts tie in with what has been reported on the tax return of its business partner. These cross-checking procedures are usually aimed at confirming if the two cooperating entities submit the same documents on which they based their tax calculations. These checks are usually quick, easy, and not very time consuming.

Conclusions

Sooner or later foreign entrepreneurs (particularly from the "older" EU countries) running their business in Poland find out that tax procedures here can be long, with demanding tax authorities making very detailed analyses focused on verification that a given entity acts in line with Polish tax regulations. In many cases the tax office may just walk into the office quite unexpectedly wanting to review the company's documentation and ask questions to the staff or other people authorized to act on behalf of the company.

Therefore, it is worth noting that the Polish Ministry of Finance publishes a document pointing the main business areas to be subject to inspection and types of entities selected to be controlled in 2011. This is regarded as the guidelines for Polish tax authorities. According to the document, we can anticipate specific focus and

examination of following areas:

1. Reliability and correctness of the settlement with tax authorities,
2. Products subject to exercise duty and VAT, especially fuel transactions,
3. Black economy problem,
4. Tax fraud, unreliable bookkeeping, registers and invoices,
5. Irregularities in the managing of cash accounts,
6. Income from undisclosed sources,
7. Internet trade,
8. Economic activity not reported to the tax,

Polish tax law is to some extent compliant with the EU system but it includes a number of specific provisions and requirements uncommon to other tax systems. Therefore, taking into account the wide range of what the tax authorities are going to focus on in 2011, it is strongly recommended that foreign entrepreneurs co-operate with an experienced tax advisor so that potential risks are mitigated and a tax control or inspection is less stressful.