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National Fiscal Administration – and then what?

Tax Alert

Dear Readers,

On 1 March 2017, the majority of the provisions of the Act of 16 November 2016 on the National Fiscal Administration (Journal of Laws of 2016, item 1947) came into force – hereinafter "the NFA Act".

Under the aforementioned Act, the existing structures of the Tax Administration, Customs Service and Fiscal Audit have been reformed by the establishment of a completely new structure, subject to the minister competent for public finance – the National Fiscal Administration (NFA), headed by the Head of the NFA. The bodies of the NFA include also: the Director of the National Tax Information, directors of tax administration chambers, heads of tax offices and heads of customs and tax offices.

The newly created bodies of the NFA have taken over the competences of the existing bodies, i.e. heads of tax offices, directors of tax chambers, directors of fiscal audit offices and general inspectors of fiscal audit, heads of customs offices and directors of customs chambers. And tax chambers have been transformed into fiscal administration chambers.

Changes, changes, changes...

Apart from changes in the structure of tax, customs and fiscal administration, the new NFA Act introduces also a number of procedural changes, concerning, inter alia, a new type of audit, i.e. customs and fiscal audit, which will replace the audit procedures conducted so far under the provisions of the Act of 28 September 1991 on fiscal audit.

The provisions of the NFA Act give rise to many controversies and concerns, including those resulting from the fact that they grant to selected officers of the NFA the powers of audit as well as those of an operational and examination nature, such as, e.g. the right to search a premises without prior consent of a prosecutor. The customs and fiscal audit itself – the method of instituting, conducting and completing it – also differs from the principles of conducting fiscal audit and tax proceedings provided for in the Act of 29 August 1997 – Tax Ordinance. For instance: the standard procedure for the customs and fiscal audit is to institute it "by surprise", that is without prior notification to the entrepreneur of the intention to initiate it. The document completing the customs and fiscal audit – the so-called audit result – will also be delivered to the taxable person "by surprise". Whereas in the "traditional" tax proceedings, authorities are obliged to set a seven-day time limit to the party to comment on the collected evidence, thus, allowing the party to become familiar with the evidence. In addition, as part of the customs and fiscal audit, the taxable person will not be informed seven days in advance regarding the place and date of taking evidence from witnesses, expert opinions or visual inspections. There is also no right provided for the taxable person to file any objections to the audit results (as is the case for delivery of audit report that the party disagrees with). Therefore, the position of the entity

subject to the customs and fiscal audit is much weaker than the position of the taxable person with respect to whom the tax audit or tax proceedings are conducted under the Tax Ordinance regulations. The element of surprise and ruthlessness of the procedure would not be controversial if the customs and fiscal audit were reserved for cases of credible suspicion of serious crimes with respect to the settlement of public law liabilities. Nevertheless, it was decided otherwise, and the new type of audit may in practice painfully affect an ordinary, honest taxable person. Therefore, it is so important for each entrepreneur to read carefully and in advance the provisions of the Act on the National Fiscal Administration and the instruments that may be useful in case of a dispute with the NFA bodies.

And what about current proceedings?

The second issue that is particularly controversial at present concerns the future of audit procedures and tax audits conducted so far under the Act on fiscal audit, which were initiated and not completed before 1 March 2017.

The same concerns also relate to tax proceedings initiated and not completed before 1 March 2017, conducted by the head of the customs office, the director of the tax chamber or the director of the customs chamber.

The answers to these questions result from the Act of 16 November 2016 – Regulations implementing the Act on the National Fiscal Administration (hereinafter: Regulations Implementing the NFA).

Audit procedures

Pursuant to Art. 202(1)(1) of the Regulations Implementing the NFA, audit procedures and tax audits in the course of the audit procedure, conducted so far by the director of the tax audit office shall be taken over by the head of the customs and fiscal office established in the same province where the director of the tax audit office was established. And the continuation of the audit procedures or the tax audit in the course of the audit procedure will be performed based on the existing regulations, i.e. under the provisions of the Fiscal Audit Act.

In cases regarding the annulment of final decisions, resumption of the procedure, expiration, revocation or amendment of the decision issued by the director of the fiscal audit office after 1 March 2017, the competent body shall be the head of the customs and fiscal office established in the same province where the director of the fiscal audit office was established.

And the appeal against the decision of the director of the fiscal audit office (if the time limit for lodging the appeal expires after 28 February 2017) shall be lodged through the head of the customs and fiscal office established in the same province where the director of the fiscal audit office was established, with the director of the fiscal administration chamber competent for the audited entity (Art. 205(1) of the Regulations Implementing the NFA).

Tax proceedings

Tax proceedings initiated and not completed before 1 March 2017, conducted by the head of the customs office as the tax authority of the first instance – shall be taken over by the head of the tax office competent for the place of residence or registered office of the taxable person and shall be continued pursuant to the existing regulations (Art. 208(1)(1) of the Regulations Implementing the NFA).

The majority of tax proceedings conducted so far by heads of the fiscal chamber or directors of the customs chamber, shall be taken over by the director of the fiscal administration chamber and shall be continued also pursuant to the existing regulations (Art. 208(1)(2) of the Regulations Implementing the NFA).

The Director of the fiscal administration chamber will be also competent to settle an appeal against the decisions issued in the first instance by the head of the tax office or the head of the customs office (Art. 213(1) of the Regulations Implementing the NFA).

Customs procedures

Customs procedures initiated and not completed before 1 March 2017, conducted by the head of the customs office as the authority of the first instance, shall be taken over, pursuant to the customs law regulations, by the head of the customs and fiscal office and shall be continued pursuant to the existing regulations (Art. 211(1) of the Regulations Implementing the NFA).

And customs procedures conducted so far by the director of the customs chamber shall be continued pursuant to the existing regulations by the director of the fiscal administration chamber (Art. 211(2) of the Regulations Implementing the NFA).

Individual interpretations

Changes also apply to the issuance of individual interpretations of the tax law regulations. Starting from 1 March 2017, individual interpretations of the tax law regulations shall be issued by the Director of the National Tax Information. The centralisation of tasks related to the issuance of individual interpretations results from the desire to their harmonisation and improvement of their quality.

The Director of the National Tax Information shall also take over the procedures concerning the issuance of individual interpretations that were initiated and not completed before 1 March 2017 (Art. 223(1) of the Regulations Implementing the NFA).

The Director of the National Tax Information shall be also the competent authority in matters concerning the amendment of individual interpretations (at the stage of examining the request to rectify the infringement), revocation of individual interpretations or repeal of individual interpretations that were issued under the previous law (Art. 223(3) of the Regulations Implementing the NFA).

Whereas, pursuant to Art. 223(2) of the Regulations Implementing the NFA, in cases of amendments to individual interpretations or the repeal of individual interpretations and the discontinuation of the proceedings concerning the issuance of individual interpretations, if on the day of its issuances there were grounds for refusal to initiate the procedure for the issuance of individual interpretations, the competent body shall become the head of the National Fiscal Administration.

Thus, it is clear that the amendments introduced by the NFA Act and the Regulations Implementing the NFA refer not only to a wide range of cases, but they are also important for the daily operations of entrepreneurs, especially those that may be subject to a customs and fiscal audit. Therefore, we encourage you to become familiar with the new regulations in order to adequately prepare the company's staff in case of a possible audit. In this regard, specialists of RSM Poland offer support, e.g. in the form of appropriate training and workshops, whose scope is always tailored to your needs and the type of your business.

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Years of experience show that our approach is the key to mutual success.



Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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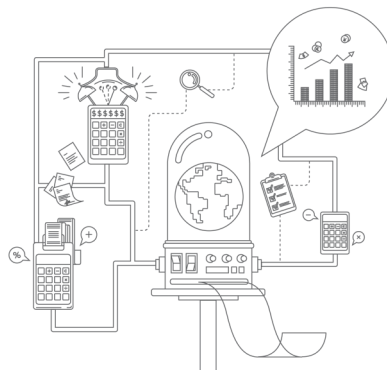
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13.03.2017



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