

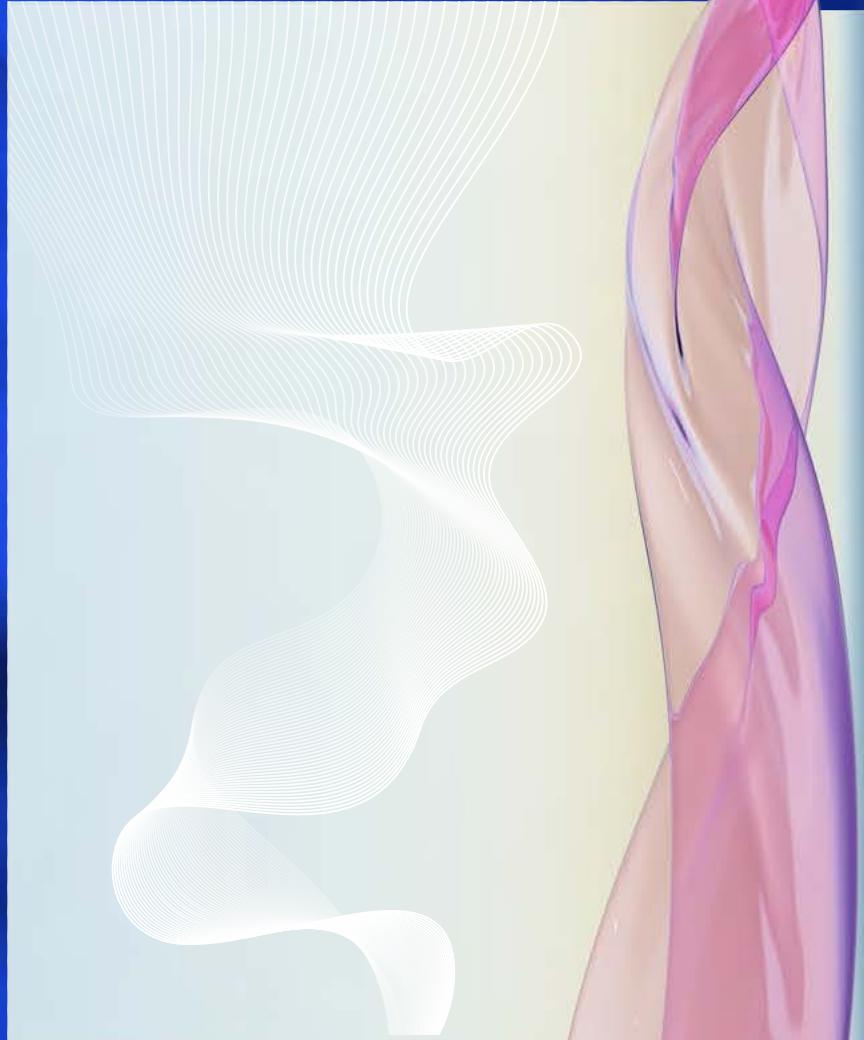


The stages of a tax audit

**Quick
guide for
taxpayers**

KPMG in Romania

kpmg.ro



What is a tax audit?

A tax audit is a verification carried out by the Romanian tax authorities to analyze whether a taxpayer has correctly declared and legally paid its tax liabilities.

It aims to review the manner in which taxes, fees, and contributions are established, for certain periods and types of obligations, based on the documents and information provided by the taxpayer.

Time axis



1 Selecting the taxpayers

- The tax authorities select the taxpayers to be audited, based on risk level;
- The selection procedure is standardized and cannot be challenged;
- However, we may support by identifying the taxpayer's risk level and challenge the classification assigned by the tax authorities.

1 Communicating the compliance notice

- We can assist the taxpayer in analyzing the compliance notice and identifying the flagged risks for handling a possible tax audit;
- The taxpayer has 30 days from receiving the notice to i) submit its tax returns or to ii) correct returns already submitted;
- We can assist the taxpayer in requesting an extension of the 30 day deadline, if necessary;
- We can evaluate the tax risks identified and recommend possible corrections before the commencement of the tax audit;
- We can prepare/correct tax returns.

2 Communicating the tax audit notice

- We can analyze the tax audit notice and the indicated taxable periods;
- We can prepare a request to postpone the start date of the tax audit, if necessary;
- We can hold a preliminary discussion with the taxpayer on ways to handle the tax audit, and on the taxpayer's rights and obligations, as well as assisting with preparation of documents and relevant tax information, to help facilitate a smooth and comprehensive tax audit.

3 Commencing and carrying out of the tax audit

- The place where the tax audit is carried out is usually the headquarters of the tax authority. The taxpayer may request that the tax audit should take place at its headquarters;
- At the start of the tax audit, the taxpayer is informed of its right to nominate certain persons to provide information to the tax auditors. These persons are required to cooperate with the tax auditors and to provide relevant documents;
- We can assist with analyzing and organizing the necessary documents requested by the tax auditors, to help the taxpayer clarify its status;
- We can represent the taxpayer, and communicate with the tax auditors, including sending information on behalf of the taxpayer;
- We can prepare statements and explanations, and review the taxpayer's answers to requests from the tax auditors for documents, information or explanations;
- We can offer technical and legal assistance during the entire tax audit, including during the discussions with the tax auditors;
- We can prepare addresses/requests to the tax authorities or challenge potentially unlawful suspensions of a tax audit, or the belated resumption of a tax audit after it has been suspended.

4 Communicating the draft of the tax audit report

- We can help ensure the observance of the taxpayer's right to a defense and verify that the tax authorities have respected the minimum legal time period for analysis of the draft of the tax audit report;
- We can analyze the draft of the tax audit report together with the taxpayer, identifying the key aspects and points to be discussed and presented during the final discussion.

5 Final discussion

We can assist the taxpayer during the final discussion with the tax auditors.

6 Presentation of the taxpayer's point of view

- We can analyze the conclusions of the tax auditors to identify errors, incorrect interpretations or legal inaccuracies included in the draft of the tax audit report, which may potentially lead to unlawful tax treatment;
- We can draft the taxpayer's point of view on the draft of the tax audit report.

7 Issuing of the tax audit report

- The tax audit report includes the tax auditors' conclusions on the facts and the applicable legal provisions, as well as their impact on the taxpayer's tax status, and is the basis for issuance of a tax assessment decision;
- If the taxpayer has submitted its written point of view after the final discussion, the tax report should also include the tax authorities' response to this.

8 Issuing of a tax assessment decision

- Based on the tax report, the tax authorities issue i) a tax assessment decision, ii) a decision not to modify the taxable base or iii) a decision to modify the taxable base (depending on the situation);
- When issuing a tax assessment decision, the tax auditors establish additional tax liabilities for the taxpayer.

9 Commencement of the enforcement, suspension or challenge of the enforcement

- If the taxpayer fails to pay the liabilities established under the tax assessment decision by the deadline, the tax authority may immediately proceed to its enforcement;
- We can assist and represent the taxpayer during the enforcement procedure (i.e. challenge of enforcement).

10 Challenging the result of the tax audit

- We can help with drafting, signing and submitting to the appropriate tax authority a tax appeal against the documents issued by the tax auditors, within 45 days of the taxpayer receiving them.

- We can submit to the tax authorities any documents received from the taxpayer that might be relevant to consolidating its position;
- We can assist and represent the taxpayer at the oral hearing to support a tax appeal before the relevant authority.

11 Court claim - first tier court phase

- We can help with the drafting, signing and submitting to the court of a claim aimed at cancelling documents issued by the tax auditors and of the decision made by the tax authorities following the tax appeal, within 6 months of receipt of the decision on the appeal by the taxpayer or, if no answer has been received from the tax authorities, within 6 months after the end of a 6 month period since the tax appeal was lodged;
- We can represent the taxpayer at all court hearings;
- We can submit to the court all documents received from the taxpayer which might be relevant for consolidating its position, as well as preparing any arguments necessary to counter the claims of the tax authorities;
- We can prepare the response to a statement of defense submitted by the tax authorities, prepare evidence statements, establish objectives for an expert report, prepare objections to an expert report as well as preparing any request, claim or note that might support the taxpayer's position;
- We can provide periodic information to the taxpayer on the status of the litigation.

12 Court claim - appeal phase

- We can support with drafting, signing and submitting an appeal or, as appropriate, of a statement of defense against an appeal by the tax authorities against the first tier court's decision;
- We can represent the taxpayer at all court hearings;
- We can prepare a response to a statement of defense submitted by the tax authorities, as well as any request, claim or note that might support the taxpayer's position.

13 Submission of preliminary requests for interpretation of EU law to the Court of Justice of the European Union or of a plea of unconstitutionality

- We can assist and represent the taxpayer with the preparation of preliminary requests for interpretation of EU law to the Court of Justice of the European Union, when the dispute poses issues in relation to the interpretation or the validity of European Law;
- We can assist and represent the taxpayer with preparing a plea of unconstitutionality, when the tax authorities' position may potentially be in breach of the Constitution.

14 Other actions after the end of the tax audit

- We can assist and represent the taxpayer in starting a mutual agreement procedure (MAP) with the Romanian authorities and authorities from abroad, if the dispute contains aspects that might lead to double-taxation;
- We can assist the taxpayer with preparing a notice expressing its intention to provide a bank letter of guarantee and with obtaining a bank letter of guarantee in order to avoid/to suspend the enforcement of the tax liabilities established by the tax auditors;
- We can assist the taxpayer with the rescheduling of payment of the liabilities established by the tax auditors;
- We can assist and represent the taxpayer with requesting legal interest or damages for amounts collected by the tax authorities which were not payable, or which were not refunded to the taxpayer by the legal deadline.



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