

New Tax Practice regarding collection of tax

Tax Alert

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The Tax Administration has published how its organizational units shall act in the procedure of collection of outstanding tax debts in accordance with the Law on Amendments to the Law on Tax Procedure and Tax Administration (Off. Gazette of RS no. 138/2022, hereinafter: **Law on Amendments to the LTPTA**), which went into effect on 20 December 2023.

The Tax Administration's notification informs taxpayers that starting as of 20 December 2022 a request for deferral of tax payment, as well as a request for transfer between tax accounts after delivery of a warning within a period of five days indicated in the warning, shall not interrupt the collection procedure as per the warning until a decision is made on the request. The Tax Administration issues a decision on enforced collection after five days from the day of receipt of a warning.

Request for Deferral of Tax Collection – Implications and Risks of the New Practice

As we informed you previously, the Law on Amendments to the LTPTA prescribes that paragraph 6 of article 77 of the LTPTA shall be deleted, from which it follows that a request by taxpayer for deferral of tax payment submitted within the period indicated in a warning does not postpone the initiation of enforced collection procedure.

The implications of initiating the enforced collection procedure when a decision has not been made on a request for deferral of tax payment within the prescribed are as follows:

- assessment of increase of tax debt in enforced collection procedure,
- assessment of potential costs of enforced collection procedure, and
- establishment of a measure for securing tax collection in enforced collection procedure, irrespective of the invoked facts and potential outcome in processing the request filed by a taxpayer.

Only approval of a taxpayer's request for deferral of tax payment results in interruption of the initiated enforced collection procedure in respect of the tax amount owed, whose deferral of payment is approved.

Hence, the status of a taxpayer's obligations in respect of collection measures depends on the speed with which the Tax Administration's decision is made on the submitted request for deferral of tax payment.

Furthermore, the procedure for deferral of tax payment becomes increasingly more complex after initiation of enforced collection procedure, due to the likely constant changes in the balance of tax debt that is subject to enforced collection, which prevents reconciliation of the balance of debt that is being rescheduled.

Request for Transfer Between Tax Accounts – Implications and Risks of the New Practice

It further follows from the Tax Administration's notification that **the new tax practice, resulting from extensive interpretation of regulations, is based on the position that a request for transfer between tax accounts that has been submitted after a warning has been delivered, but before the expiry of the 5 day warning period, also does not interrupt the initiated collection procedure based on the issued warning.**

In practical terms, the Tax Administration's position implies the following:

- equating the institution of transfer between tax accounts with deferral of payment of tax liabilities, from a process perspective,
- an unresolved request for tax payment through transfer between tax accounts does not constitute an impediment to initiating enforced collection procedure.

The taxpayer's position is dependent on the speed with which the Tax Administration reaches a decision on the taxpayer's request for tax payment through transfer between tax accounts.

Namely, in the event that the Tax Administration accepts the taxpayer's request for transfer between tax accounts within the period indicated in a warning, enforced collection procedure shall not be initiated against the taxpayer. Otherwise, if the Tax Administration fails to reach a decision on the request for transfer between tax accounts within the period indicated in the warning, the taxpayer's liability which s/he wishes to settle through transfer between tax accounts shall be subject to enforced collection, irrespective of the taxpayer's intentions regarding how to settle outstanding tax due.

As a consequence, the taxpayer shall at the same time have an overpayment on one tax account, with enforced collection under another tax account, irrespective of her/his intention to pay tax through transfer between tax accounts, which raises the question of the choice of how tax will be settled (paid).

Conclusion

This interpretation by the Tax Administration limits the taxpayer's rights, as the initiation of enforced collection procedure depends on the speed with which the Tax Administration responds to a request for deferral of owed taxes and a request for transfer between tax accounts.

If you have any questions or need the support of our experts, feel free to contact us at tax@kpmg.rs

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