

Tax risk assessments - some basics

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It is well known that the tax authorities carry out their audits according to an audit plan. The selection of audited companies is based on internal risk analyses by the authorities, taking certain criteria into account. However, these criteria are only defined in the tax authorities' internal working guidelines and are not generally accessible.

However, some criteria can be taken from the tax and procedural tax regulations, while others can be logically derived based on the economic assessment of an investment.

General risk characteristics

A person who establishes a company contributes capital with the expectation of generating a profit, typically in the form of dividends, within a foreseeable period of time. A company therefore has the fundamental purpose of carrying out business activities that generate a profit.

Based on this general understanding, the following aspects could raise tax-related questions in the context of a risk analysis:

- the share capital of the company is insufficient to carry out the object of activity
- the company has only one mailbox address (i.e. has no real business premises)
- the company has no employees
- the company has no bank accounts or no significant transactions in its accounts
- the company's legal representatives have entries in the tax clearance certificate

The tax authorities may also declare a company inactive as a sanction for tax-related misconduct. When this occurs, the company is placed on a "blacklist", with negative consequences for it, its legal representatives and its clients. Inactive companies may indicate tax risks, as the reasons for inactivation may include, for example, failure to submit tax returns, problems with the company's registered address or with its legal representatives.

Risk criteria for VAT refunds

If a company subject to VAT applies for a VAT credit refund, the refund application is first subjected to a risk analysis. Based on the analysis, the tax authority decides whether the VAT refund will be granted with a prior or subsequent audit. The following aspects are relevant in this analysis:

- the refund period
- the amount requested for refund
- the number of refund applications to date
- the difference between the requested and approved for refund amounts

If a high tax risk is identified as a result of the risk analysis, VAT is only refunded after an audit of all VAT-relevant business transactions.

Situation of international platform operators

A platform operator subject to the reporting obligation must generally comply with the reporting obligation in a single EU member state. Platform operators based in Romania are generally required to submit reports in Romania.

Platform operators based in the EU that meet reporting criteria in multiple EU states must submit the report in one of these EU states and inform the other states accordingly. This also applies to platform operators based outside the EU; they must register for tax purposes in an EU member state in order to be able to submit reports.

Risk assessment related to corporate income tax

Recently, it has become apparent that the tax authorities are increasingly applying their own analyses when assessing tax risks. The following factors, among others, are considered risk indicators:

- persistent losses
- reduction of a company's equity by more than half of the paid-in share capital
- low profit margins

For groups of companies, such analyses may also serve as the basis for transfer pricing audits.

Conclusion

The risk indicators described above are not exhaustive. They have been mentioned as examples to illustrate that the tax authorities' risk assessment criteria for companies are based on sound economic principles and profitable corporate management. The logic behind these criteria aims to identify situations in which there is a risk of tax revenue loss and/or tax evasion.

If a company adheres to economic principles and proper accounting principles, it should not face significant problems during risk analysis or audits.

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