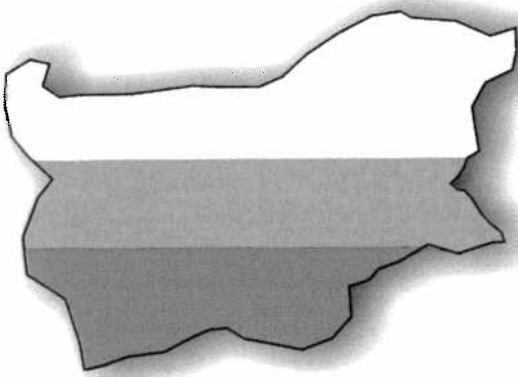


BULGARIA**TAX LIABILITIES ADJUSTMENT –
LEGAL AND ECONOMIC
ASPECTS**

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I. According to the Bulgarian tax legislation in force (Tax Procedure Code /TPC/ with effect from 1 January, 2000) the institute of tax liabilities adjustment is regulated in Chapter 10, Section VII of the same statutory act – TPC.

The core principle is that a tax liability determined with an effective tax act, can be adjusted upon the initiative of the tax body who has established reasons for adjustment.

Just to cast a light on this issue it is necessary to explain the meaning of some of the legal institutes in the Bulgarian tax legislation.

First, TPC itself gives a legal definition of a tax liability in the following way: “Tax liability” is the liability to pay already established by amount and type tax receivable which arises on the strength of the law or on the grounds of an act of a tax body.

For the purpose of clarification of the above-mentioned definition it is

necessary to study another definition like that – tax receivable. The definition reads: “Tax receivable” is a receivable for the Republican budget from taxes, fees and fines, collected or charged by the tax authorities, and a receivable for the local budgets from local taxes and fees and “Garbage” fee.

It is obvious that the tax liabilities are all the above-enumerated tax receivables. It should be noted that these are not only receivables in sense of taxes but also tax-similar receivables, for instance – fees. Moreover, the Bulgarian Legislator has decided that the fees imposed by the tax authorities should be included in the range of tax receivables, and respectively in the range of tax liabilities.

II. The tax liability established by size and type arises both on the basis of a substantive tax provision and on an individual act of the tax administration. According to the first hypoth-

esis the so-called “self-assessment” is concerned – it is a tool permitting individual assessment of the liabilities of the taxable persons on the basis of specific legal provisions. Under the second hypothesis the size and the type of the tax liability is determined on the basis of a specific act of a tax body summarizing a completed inspection or audit performed by the tax administration.

Second, under a tax act the Bulgarian legislation understands acts, issued by the bodies of the tax administration, which establish rights or obligations or which affect rights or legal interests of the taxable persons. Decisions on issuance of documents important for acknowledging, exercising or lapsing of rights and obligations of the taxable persons as well as rejections to issue such documents are considered by the Bulgarian legislation tax acts too. It is clear that the tax acts in the meaning of the Bulgarian legislation fall into the category of the individual administrative acts, i.e. they pertain to a certain person or persons and are not related to a specific class of taxable persons.

Third, “a tax act which has entered into force” means an act of the tax administration which has not been appealed within the legally established terms or the term prescribed by the tax administration; which is not subject to appeals; or an act with no positively considered complaint against it.

Fourth, without going into details it should be made clear that according to the Bulgarian tax legislation tax bodies are some specifically defined officials of the tax administration and not all tax administration employees.

III. Following the above short explanations we are going to scrutinize the reasons on which tax liabilities can be adjusted:

1. When there is found out a new evidence or new circumstances in a

written form and of essential importance for the assessment of the tax, which could not have been known by the tax body until the entry into force of the tax act;

The expression "New circumstances" according to the law refers to such facts from the reality, which are of legal importance for the taxation. These can be facts of different nature, for example: misstatement of specific transactions in the financial books of a taxable person which is established on a subsequent inspection on the contractor of the before-mentioned person; missing fixed tangible asset from the capital of the tax subject at the time of assessment and its availability (finding of a lost object, returning of a stolen object) after the tax act enters into force which could lead to reassessment when tax concessions are in place.

It should be explicitly noted that the new circumstance is new only for the factual findings related to taxation. In other words the tax subject and/or tax body are seen having not been familiar with these facts which are of legal importance for the taxation as of the moment of taxation process. However, this doesn't mean that the new circumstances can occur after the issuance of the tax act. In this case these are new circumstances not in the meaning of the herein-mentioned taxation but in relation to another taxation (referring to a different type of tax liability or to a different period for similar taxation). It should be taken into account the special "conditio sine qua non" (necessary condition) – the new circumstances should be of essential importance for taxation. This means that their taking into consideration should lead to a serious adjustment to the tax liability – as amount and/or type of liability.

2. New evidence in a written form which could not have been known to the tax body until the entry into force of the tax act. The range of the evidence in writing is not defined.

Therefore it can be official document issued within the competence of a certain official (court certificates; reports of other tax bodies; police letters; municipal authorities documents and other). The new evidence can refer to private documents too (different types of contracts, letters of attorney, testaments, promissory notes or bills of exchange). The law stipulates only the legal form of proving these documents – and it is a written form. Here again the necessary condition is that the new written document be of vital importance for determining the tax liability of the person.

3. One of the following reasons should be established through the proper channels:

3.1. Untruthfulness of witnesses' testimony. Under "witnesses" the law understands the persons who have given explanations before the court in charge of trying the tax case. These are not persons who have given written explanations in the administrative phase of the tax proceedings, what exists as a legal possibility in terms of procedures. The Bulgarian adjective legislation considers witnesses as participants in legal proceedings who give only oral explanations. In the present hypothesis there should be a discrepancy between the existing actual situation perceived by the witness and his interpretation of this situation in the court.

3.2. Untruthfulness of written explanations from third parties. In this case persons who do not participate in the tax proceedings render the perceived circumstances in a written form. In contrast to the previous reason an evidence like this is used as early as on the administrative phase of the tax proceedings – for taxation and appeal through administrative channels. Since it is acceptable by law the eventual jury can base its decisions on these written explanations produced by third parties.

3.3. Untruthfulness of the conclusions drawn by the experts. Under this hypothesis the experts employed by the tax body in the process of taxation or at the administrative phase of the process of appeal, or by the jury should have given professional conclusions in a way that they do not correspond to the facts related to the proceedings or to the rules of the respective sphere of science, art or handicrafts that their help is required for.

3.4. Written statements on the basis of which a tax liability is determined – reporting of facts and circumstances by the taxpayer or other person when this information is related to the taxation.

3.5. Criminal action by a tax subject, by his representative, or a tax body who has taken part in the determining of the tax liabilities. In these cases the above-mentioned primary or secondary participants in all the phases of the tax proceedings determine incorrectly the tax liabilities through a public-abusing illegal action.

3.6. Criminal action by a member of the jury who has revised an appeal against a tax act. It is quite unlikely for this hypothesis to come true but the Legislator has decided that the same be explicitly put down. A criminal action by a member of the jury not only does it determine the final amount of the tax liabilities but disrupts the confidence in the law enforcement as well.

4. When a decision is based on:

4.1. Document which through the proper channels is acknowledged to be forged. It refers to a forged document which is acknowledged to be falsified with an effective sentence by a penal court.

4.2. Act of a court or other state institution, which has been subsequently repealed. This hypothesis concerns the invalidation of a court act or

repeal of the same through the process of court appeal and for the other state institutions – repeal by a higher-instance administrative body or by order of the court.

5. When tax liabilities or refunded sums are established in contradiction with the law. It concerns not only the substantive and adjective tax laws but also violation in principle of the existing general legislation including the by-laws. This violation must be simply established – by a tax body or by any external source that has notified the tax body. The latter must have been satisfied that the finding herein mentioned is correct.

IV. Procedure for tax liabilities adjustment:

The above-mentioned reasons for tax liabilities adjustment are provided by internal or external sources of information. The external sources exist outside the system of the tax administration and can be signals, publications, official documents of other state or public bodies, letters, etc. The internal sources are all paper or electronic sources of information within the tax administration.

The initiative for tax liabilities adjustment comes from the type of the source of information and can be studied in the following sequence:

1) when the information is obtained from external sources it is provided to the territorial tax director who sends the report together with a notification to the regional tax director by the end of the working day – in the meaning of Art. 116, para. 1 of the Tax Procedure Code;

2) when other tax body has established reasons for tax liabilities adjustment the letter immediately notifies in writing the regional tax director – Art. 116, para. 1 of TPC;

3) when in the course of an audit a tax body finds out that there are

grounds for adjustment on the basis of a completed tax audit, the latter notifies the head of “Audits” Sector who informs the territorial tax director by the end of the working day within which he has received the notification. The territorial tax director notifies in writing the regional tax director for the circumstances established by the end of the working day within which he has received the notification. There is one exception – when the tax audit act drawn on the basis of the previous audit is completely repealed after being appealed, the conduct of new audit for the same period and for the same tax liabilities is assigned under the general routine and not by the regional tax director.

Second tax audit is assigned by:

- The regional director who has been notified of the new circumstances and within whose jurisdiction the audited tax subject has established his business activity. The second audit is assigned to an audit team from the same or other territorial tax directorate in the region with an assignment act, as enacted by Art. 116, para. 1 of TPC. In the line: other circumstances of the assignment act is put down the fact that the audit is carried out to adjust tax liabilities for which tax audit act has been previously issued.

- The assignment act is obtained by the appointed with it audit team by the Head of “Audits” Sector of the territorial tax directorate.

When the second tax audit establishes that the tax liability has been determined incorrectly, for the difference between the two amounts a tax audit act is drawn up. “Incorrectly” means that the initial tax audit has determined a liability lower in amount /argument Art. 116, para. 3 of TPC/. If the liability has been determined at a larger amount, a new tax audit act is not drawn up and the tax liability adjustment is made by means of offsetting, as provided for by TPC.

V. Legal aspects of tax liabilities adjustment

1. For the legal safety:

Amendment to any administrative act, which has entered into force and has the property “stability” is undesired legal phenomenon. The legal state deems the stability of its acts /the majority of them – individual administrative acts as in the case of tax audit acts/ be the foundations of its safety. Only in exceptional cases explicitly stipulated by law the state permits amendment to such administrative acts. The goal is to preserve the public and state interest including the fiscal interest observing the principle of impartiality /everyone gets what he deserves/ and lawfulness /what is stipulated by law must be observed/. For this objective particularly the provisions of Art. 115 and 116 of TPC have been designed.

2. For the budget itself:

A complete and final state budget satisfaction by the audited tax subject can be achieved by adjusting the tax liability at a higher level. By means of offsetting tax liabilities (when the results of a second audit conclude this) an economy in terms of procedures is achievable – a new tax act is not to be drawn and a method of discharging two counter legal obligations /for paying a tax and for refunding a tax / of one and the same nature (pecuniary) between one and the same parties (the state and a taxpayer) /is used by the level of the obligation smaller in amount.

3. For the tax administration:

The tax administration when there is an adjustment of tax liabilities follows the principle of objectivity – to establish correctly all the facts and circumstances related to the rights, obligations and responsibilities of the taxable person subject to a second audit – Art. 6, para. 1 of TPC. Indirectly it comes to the situation to use the principle of accurate and even-handed application of law with respect to every tax subject

– Art. 9, para 1 of TPC. If the new circumstances for adjustment of tax liabilities were not known the tax subject would be in a privileged position compared to other tax subjects whose fiscal liabilities are accurately determined. Naturally when observing the above principles the tax administration complies in this case with the principle of lawfulness – Art. 5 of TPC.

4. For the tax subject:

The tax subject has a new audit act, which can be appealed as it is possible for the initial one too. When the second act enters into force, the tax subject has the liability to pay additionally for his tax liabilities from the previous period. When a lower level of liabilities is concerned and the method of offsetting is applied the taxable person can appeal the denial of partial or full refund or offsetting – Art. 12, para. 7 of TPC.

VI. Economic implications as a result from tax liabilities adjustment:

1. For the microeconomic stability

As far the tax liabilities adjustments for a specific person are fixed in time, by place and with respect to the person it can not be assumed that a specific economic region or economic sector can be affected by these adjustments. Definitely the partners of this tax subject can be affected – the persons with whom the latter strikes legal deals in the capacity of trader or manufacturer. On unexpected adjustment of tax liabilities /for a previous period/ the tax subject can fall in the position of not being able to pay his liabilities to his business partners. In this case he has two options – to be disloyal towards them /which violates the contractual safety/ or to sell some production equipment or trade offices in order to pay off his liabilities to his partners which limits his economic capacity. The only case when the microeconomic environment would not “feel” the adjustment of tax liabilities is that a physical person (a consumer) is taxed for his personal income and property /

for example real estate tax/. However, this case should be carefully examined – the consumer power of that person may be reduced which can affect the trade at least in a small limited in size region. On the other hand the tax subject (if he supplies the free market with goods and services) accounting for an unbudgeted expenditure (tax liabilities adjustment) inevitably comes at raising the prices of the goods and services supplied by him. This is the only way for him to make up with this “negative” effect on the expenditure side of his budget.

2. For the macroeconomic stability:

If it refers to an economic agent – a monopolist, the respective industry would be definitely affected by the adjustment of the tax liabilities of this person. Two factors can be presented in that respect – most often the monopolistic formations have enormous turnover, profits and tax liabilities / which suggests most probably that the adjustments of the above mentioned items are a considerable amount / as well as any change in the status of the latter influences directly or indirectly the economic agents dependable on it. In this case the most unpleasant developments have to be expected – a downturn in a particular sector of the economic environment together with winding up of certain economic agents.

On the other hand when there is an unexpected expenditure connected with tax liabilities adjustments it results in reduction of production attributable to the shortage of necessary financial resources to support the production planned in line with the market. This finds reflection (together with the above effect – increase in the prices of the goods and services) in the change of demand of and supply with the same goods and services. The reduction of demand and supply values leads to a drop in GDP (unless the state uses these funds particularly to enhance the consumer power, for

instance through an increase in the salaries of the civil servants).

3. For the budget:

It is more than clear that on the revenue side of the budget a cash income is received which in the abstract is not planned for the fiscal year of its accumulation. Although the tax liabilities adjustments are not a substantial part of the audit cases when it refers to large economic agents (consortiums, holdings, joint-stock companies) a very serious and unplanned “financial injection” could be expected for the budget. Because of the unplanned and unexpected character of the revenue coming from a source like this, the Minister of Finance has the possibility to dispose of some “fresh money” which he can use to fill similar unexpected gaps on the expenditure side of the budget. On the other hand the statistics will report, on information supplied by the Finance Minister, an overperformance on the revenue side which the federal government can decide to use on large-scale projects.

4. For the tax administration:

The economic applications for the tax administration can be viewed only in the light of so called “additional financing”, as provided for by Art. 249 of TPC. According to this provision 25% of the additional assessments established by the tax administration goes to the tax administration as its own revenue. In this case the audit team established the grounds for tax liabilities adjustment together with all the tax officials who have participated in that process will receive bonuses in the form of fringe benefits in cash under a procedure stipulated by the Minister of Finance.

5. For the tax subject:

Tax liabilities adjustments for already audited period of course put the tax subject in a difficult position. It is quite natural that he has not planned such an expenditure item -

payment of additional tax liability. Therefore a number of unfavourable financial consequences may occur for him – being not able to fulfil his obligation; he can fulfil this obligation but may not be able to pay off his liabilities to his trade partners; being unable to pay off his liabilities either to the state or to his trade partners which will lead to liquidation or insolvency; or if he despite

everything copes with this situation playing fairly, he would be forced to contract his economic or trade activity.

VII. Conclusions: The only correct conclusions are following from the above-mentioned consequences:

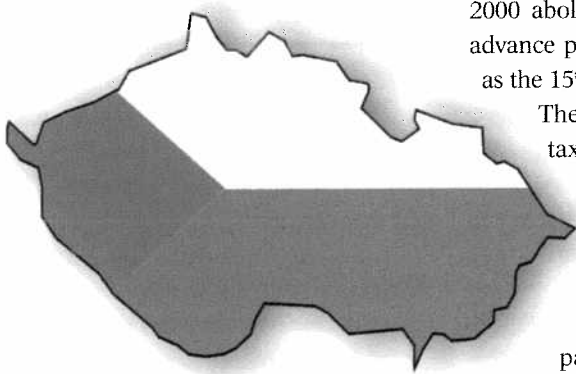
1. Any tax subject should be accurate towards the budget and should pay for his tax liabilities in full.

2. He with a view to his future safety should assist the tax body when carrying out an audit for the purposes of complete and full tax liabilities assessment.

3. Being reasonable and circumspect he has to form a “Reserve” Fund for his own use to cover unexpected tax (or other) pecuniary liabilities.

JUNE, 2000 SOFIA, BULGARIA

CZECH REPUBLIC



2000 abolished. The due date of other advance payments has been determined as the 15th of relevant month.

The rate of legal entity income tax amounts to 31%. As regards natural person income tax, the rate of taxation was reduced to 32% in the top tax zone and amounts that belong to the non-taxable part of basis of assessment were revaluated.

As regards intangibles (know-how, patents,...) bought after the 1st of January 2001, tax reductions were abolished, and for tax purposes accounting depreciation principles are applied.

sion, a Twinning Project was implemented in November 2000 by the Czech Tax Administration together with the Czech Customs Administration in collaboration with the partner authorities of the United Kingdom and Germany. The main aim of the project is to strengthen legislation and administrative ability of tax and customs authorities in the Czech Republic to realise fiscal targets that are set in the legislation. At the same time, the project aims to solve issues that ensue from harmonization of the Czech law with the *acquis communautaire*. The main areas of the project are risk management and administrative cooperation including C.L.O and VIES, as well as consumption taxes. The project plays an important role in the coordination of tax administrations and also in the creation of the stable link between administrations of Candidate and Member Countries of the EU.

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Consumption tax

In line with the progress of EU harmonization in the area of consumption taxes the termination of activities of DUTY TAX FREE SHOPS situated at road borders is underway.

As regards tobacco products a composite rate of consumption tax is being introduced that is a combination of a fixed and a percentage rate of taxation. The basis of assessment for a fixed rate is a quantity of cigarettes expressed in pieces, and the basis of assessment for a percentage rate is the price for a final consumer. The total tax is a sum of both components.

Income tax

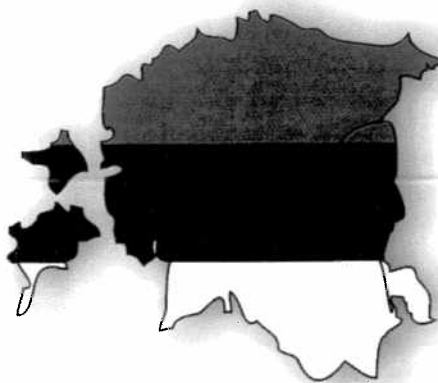
As regards income tax there have been determined tax period since the 1st January 2001. In addition the possibility of applying tax periods by calendar as well as fiscal year have been introduced.

There is also a new system for advance payment of income tax, with the monthly advance payments for income tax in force after filing tax return for the year

Twinning

In connection with the preparation of the Czech Republic for EU acces-

ESTONIA



Tax Fraud Investigation Centre (TAFIC)

With the entering into force of the Code of Criminal Procedure and Surveillance Act Amendment Act on 1 April 2001, the Estonian Tax Board was granted the powers of surveillance and preliminary investigation, and the Tax Fraud Investigation Centre started its work.

This was an important milestone for the Tax Board in the area of combating tax fraud.