

TO: Clients and Friends of the Firm

FR: Frishberg & Partners

RE: Ukrainian Tax Inspection: Know Your Rights!

From a purely legal perspective, there is no such term as “raid” in the Tax Code. All the necessary forms, legal grounds and procedure for carrying out inspections of the subjects of entrepreneurial activity, as well as the procedure for execution of documents per results of such inspections, are regulated by the Tax Code of Ukraine. From a practical perspective, however, tax inspection visit can quickly escalate into a battle for your company’s survival. For that reason, it is vital to know your legal rights as well as “plan of action” when trouble comes to your doorstep.

First of all, whenever you are confronted by a tax inspection “visit”, you should verify his/her identity and the legal grounds for the visit to the taxpayer. Note that a tax inspection can be either (a) scheduled or (b) off-schedule on-site inspection of documents, which is carried out at the location of taxpayer or location of the object of property right with regard to which such inspection is carried.

The limitation of grounds for inspections is defined in Article 78.1 of the Tax Code of Ukraine. For instance, the tax police officers are forbidden to take part in scheduled or off-schedule on-site inspection of taxpayers’ documents, carried out by officers of the tax inspection, if such inspections are not connected with carrying out investigative activity or investigation of criminal cases initiated against such taxpayers (or taxpayers’ officials), which they have at their handling.

Also, “surprise visits” by tax inspection are unusual. Instead, there must be adequate notification given to prior to any tax inspection. Procedurally, the head of the local tax body takes the decision on carrying out of scheduled inspection of documents supported by the order. The right for scheduled inspection of taxpayer’s documents is given only if the above tax payer was informed about the upcoming inspection not later than 10 calendar days prior to such inspection by means of personal delivery against countersignature or by registered mail with confirmation of receipt of the copy of order on carrying out such inspection and written notice with indication

of the date of the scheduled inspection.

Moreover, while tax inspection officials have the right to initiate the on-site inspection of documents, the actual inspection of all grounds, provided for by the Tax Code, may take place only after presentation or prior dispatch (in cases defined by the Code) of the following documents:

- instruction for carrying out such inspection, with the date of issuance, the name of the local tax body, administrative details of the order on carrying out the inspection, name and details of the subject (object) under inspection, purpose, type (scheduled or off-schedule), grounds, commencement date and duration of inspection, position and last name of the official who will carry out the inspection. Significantly, such instruction is valid only if it bears the signature of the head of the tax body or their deputy and is affixed by the tax body's seal;
- copy of the order on carrying out the inspection;
- staff certificate of the persons indicated in the instruction for carrying out the inspection.

Failure to present or dispatch to the tax payer of the above documents, or presentation of documents executed with violations of the above requirements, is sufficient legal grounds for not allowing the tax officials to carry out the inspection.

If the tax inspection has complied with the above requirements, the taxpayer is obliged to provide to the tax officials to the fullest extent all documents that belong or are related to the subject of inspection. Such obligation arises for the taxpayer after the commencement of inspection. During inspection the taxpayer has certain rights, including the right to be present, to familiarize oneself with and to receive the acts of inspections, prior to signing such acts. In case the tax payer has comments to the contents (text) of the prepared acts, it has the right to sign them with such reservations and to submit to the tax body written objections in accordance with the procedure, set forth by the Tax Code. In case of disagreement with the act prepared per results of the inspection the tax payer has the right to provide their objections within 5 working days from receipt of such act. And, of course, there is the right to appeal the decisions, acts (or inactivity) of the officials and the clarifications provided by the tax body.

As a rule, during the inspections all documents available on-site are requested. Indeed, the authorities (powers) of tax inspectors are defined in the Article 20 of the Tax Code. As can

be expected, they are quite broad, but during the inspections the authorities must act exclusively within the limits of their authorities and in accordance with the order on carrying out the inspection, namely, to request from the manager only those documents, which are related to the scope of inspection.

This information should be indicated in the copy of order and in the instruction (i.e., currency regulations, budget settlements, patent law, labor law, accounting of income, expenditures and other figures related to defining the taxable objects, primary documents, accounting registers, financial reports, other documents related to calculation and payment of taxes). In case of request to provide written explanations, one can always make use of the Article 63 of the Constitution of Ukraine (right for legal protection and for refusal to witness against oneself), to refuse from communication with inspectors and seek for legal help.

In many cases the tax inspection tries to shut down the tax payer's office during inspection, and to confiscate various documents and, importantly, computers. We stress that except for measures within the investigation of a criminal case, supported by the respective order of the investigation authority, tax inspectors have no right to neither block entrance/exit nor withdraw original documents or any material objects, including computers or any parts thereof. The grounds and the procedure for arrest of the taxpayer's possessions are defined in the Article 94 of the Tax Code.

Since it can be difficult to communicate with tax inspection officials during the heat of the moment, we suggest that you contact qualified professional lawyers to handle these issues before they escalate unnecessarily.