

# 2021

## Targeted inspections of NAFA and the most frequent findings in tax inspections



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# The targeted inspection acts of NAFA and the most often seen findings in the recent tax inspections

## Warnings presented in brief:

This is a reminder that NAFA recently announced that in the next period will carry out control actions to check the fulfilment of the obligation to remotely connect the fiscal electronic cash registers.

At the same time, NAFA is currently conducting a campaign to notify / verify the taxpayers who have their VAT code cancelled and failed to comply with their obligations to pay and declare VAT.

Separately, we draw attention to the most frequently addressed issues by the authorities in recent tax inspections.



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### Warnings explained in more detail:

<p><b>Key words:</b></p> <ul style="list-style-type: none"><li>• Deadline for connecting the fiscal electronic cash registers</li><li>• NAFA's control actions</li><li>• Sanctions for non-compliance with the obligation to connect electronic fiscal cash registers</li></ul>	<p><b>Future controls to verify compliance with the obligation to remotely connect fiscal electronic cash registers</b></p> <ul style="list-style-type: none"><li>❖ NAFA announced that it will carry out control actions to check the fulfilment of the obligation to remotely connect the fiscal electronic cash registers for transmission of fiscal data, for the economic operators whose connection deadline has expired.</li><li>❖ Please be reminded that the deadlines for connecting the fiscal electronic cash registers for transmission of fiscal data are as follows:<ul style="list-style-type: none"><li>✓ until <b>30.06.2021</b> was the deadline for <b>large taxpayers</b>;</li><li>✓ until <b>30.11.2021</b>, for <b>medium and small taxpayers</b>;</li><li>✓ the economic operators that purchase fiscal electronic cash registers after 01.12.2021, at the date of installing the fiscal electronic cash register.</li></ul></li><li>❖ We remind you that the non-observance of the obligation to ensure the remote connection of the fiscal electronic cash registers is sanctioned with a fine between <b>8,000</b> and <b>10,000 lei</b>.</li></ul>
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<p><b>Key words:</b></p> <ul style="list-style-type: none"><li>• Obligations to pay and declare VAT collected during the period in which the VAT code was cancelled</li><li>• Submission of form D311</li><li>• Sanctions in case of non-reporting</li></ul>	<p><b>Obligation to declare and pay VAT when the VAT code is cancelled</b></p> <ul style="list-style-type: none"><li>❖ The tax authorities started a series of controls on taxpayers who have/ had their VAT code cancelled, to verify if they have complied with their obligations to submit VAT returns during the period in which their VAT code appeared to be cancelled. In some cases, companies with their VAT code cancelled received notifications regarding the non-fulfilment of the obligation to declare and pay VAT during the period in which they had their code cancelled.</li><li>❖ We draw attention to the fact that, although the VAT code is cancelled, taxpayers have the obligation to pay the VAT collected for the taxable operations carried out during the period when the VAT code is being cancelled.</li><li>❖ Also, for each month in which supplies of goods / services or acquisitions for which there was an obligation to pay VAT, have been carried out during the period in which the VAT code was cancelled, taxpayers have the obligation to submit form D311</li></ul>
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- Ancillary obligations for late payment of VAT

*“Statement regarding the value added tax collected, due by the taxable persons whose registration code for value added tax purposes was cancelled according to art. 316 para. (11) lit. a) - e), lit. g) or letter h) of Law no. 227/2015 regarding the Fiscal Code”.*

- ❖ Failure to comply with the reporting obligation constitutes a contravention and is sanctioned with a fine **between 1,000 lei to 5,000 lei** for legal entities included in the category of medium and large taxpayers and with a fine **from 500 lei to 1,000 lei**, for other legal entities.
- ❖ Ancillary tax obligations for late payment of VAT could be added to the above, for the period in which the VAT code was cancelled. Some of the accessories assessed may be cancelled under certain conditions.

#### Key words:

- Verifications regarding the transfer pricing file
- Deadlines for submitting the transfer pricing file
- Sanctions in case of non-preparation of the file

## Findings frequently found in tax inspections

### Checks of the transfer pricing file

- ❖ More and more fiscal inspections are oriented towards verifying the fulfilment of the obligation to prepare the transfer pricing file as well as the observance of the arm's length principle for the transactions carried out with related parties.
- ❖ We draw your attention to the fact that the preparation of the transfer pricing file involves the allocation of considerable human time resources and the deadline given by the inspectors for the presentation of the file is often insufficient:
  - ✓ **maximum 10 days**, for large taxpayers who are required to prepare the file until the deadline for submission of annual corporate income tax returns,
  - ✓ **between 30 and 60 calendar days**, for other taxpayers who have the obligation to prepare the file, with the possibility of extending it once, by another 30 days.
- ❖ Failure to comply with the obligation to prepare the transfer pricing file constitutes a contravention and is sanctioned with a fine **from 12,000 lei to 14,000 lei** for legal entities included in the category of medium and large taxpayers and a fine **from 2,000 lei to 3,500 lei** for other persons.

### Checks of the supporting documentation for the services received and other registered expenses

- Supporting documents in

- ❖ Although in the updated version of the Fiscal Code the express requirement to justify the effective provision of services based on the evidentiary documents has been eliminated, the fiscal



<p>case of service expenses</p> <ul style="list-style-type: none"><li>• Expenditures purchased for the purpose of carrying out the economic activity</li><li>• Justification of the deductibility of protocol and travel expenses</li><li>• Reclassification of expenses as non-deductible</li></ul> <ul style="list-style-type: none"><li>• Art. 11 of the Fiscal Code</li><li>• Non-economic transactions</li><li>• Sales below cost</li><li>• Duplicate services</li></ul>	<p>inspection teams still request supporting documents for the services received.</p> <ul style="list-style-type: none"><li>❖ Thus, reports, presentations, work statements and other documents meant to justify that the services were purchased for the purpose of carrying out the economic activity are still requested during tax inspections for expenses with management services, consultancy, assistance, or other provision of services.</li><li>❖ We have also noticed more and more in practice that the tax inspection bodies request for:<ul style="list-style-type: none"><li>• protocol expenses, in addition to invoices / tax receipts, documents proving that these expenses are related to protocol actions (for business partners);</li><li>• travel expenses, in addition to invoices / tax receipts and travel orders / statements of expenses, documents proving that the trip took place for business purposes.</li></ul></li><li>❖ If the documents provided are not considered sufficient, the tax inspectors most often resort to their reclassification as non-deductible.</li></ul> <p><b>Reclassification of transactions considered to lack economic content or to have another economic substance</b></p> <ul style="list-style-type: none"><li>❖ The tax inspectors rely more and more on art. 11 of the Fiscal Code to reclassify a series of transactions carried out by taxpayers on the grounds that they have no economic purpose or that they have an economic substance different than that resulting from the legal form of those transactions.</li><li>❖ Tax inspectors consider certain transactions as being without economic purpose in certain situations out of which we list:<ul style="list-style-type: none"><li>✓ goods or services sold below cost, even with independent partners;</li><li>✓ trading under special conditions (for example, granting preferential discounts or purchasing the same services from different providers) to certain companies that although not affiliated to the Company, as defined by tax law, there is a controlling link or financial interest between them.</li></ul></li></ul> <p><b>Checks carried out on the documents required for the VAT exemption of intra-community supplies of goods</b></p> <ul style="list-style-type: none"><li>❖ During fiscal controls, there is clear focus on verifying the supporting documents for the application of the VAT exemption</li></ul>
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<ul style="list-style-type: none"><li>• VAT exemption for intra-community supplies</li><li>• VAT code of the beneficiary</li><li>• VIES statement</li><li>• Supporting documents for the application of the VAT exemption</li></ul>	<p>in case of intra-community supplies of goods, provided by the EU Regulations.</p> <ul style="list-style-type: none"><li>❖ Please be reminded that, starting with January 1<sup>st</sup>, 2020, the VAT exemption in case of intra-community deliveries shall be justified as follows:<ul style="list-style-type: none"><li>✓ with the validity of the VAT code of the beneficiary;</li><li>✓ with the VIES Statement (390) correctly completed and submitted;</li><li>✓ with the mandatory documents proving the dispatch/transport of the goods in another Member State.</li></ul></li><li>❖ We remind you also that the transport document (CMR) is not sufficient to justify the VAT exemption for intra-community supplies, <b>at least 2 transport-specific documents or 1 transport-specific document and 1 other type</b> of document being required.</li><li>❖ More details on the mandatory documents to justify the VAT exemption can be found in the informative material prepared by us, which can be accessed at <a href="https://noagroup.ro/tranzactii-transfrontaliere-obligatii-fiscale-si-de-raportare/">https://noagroup.ro/tranzactii-transfrontaliere-obligatii-fiscale-si-de-raportare/</a>.</li></ul>
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## How we may help you:

NOA Tax Advisors team supports companies by providing advice and guidance in various cases on the new legislative changes as mentioned above, as well as in all situations encountered from a tax point of view.

NOA Tax Advisors team is at your disposal for more details regarding those presented in this summary of legislative news.

Best regards,  
NOA Team



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