



Tax Litigation

**Where the right blend of
expertise and experience
can make a real difference**

KPMG in Bulgaria
Mateeva and Partners Law Firm

kpmg.com/bg

Tax investigations and disputes are on the rise. How do you handle them?

The world of tax is changing at an unprecedented pace. With national budgets strained and topics as tax morality and tax fairness high on the agenda, tax authorities are under constantly growing pressure to generate tax revenue. The result is a more focused approach to identifying tax issues and a more resourceful argumentation of the tax authorities in supporting the tax assessments they make.

In this ever more challenging tax environment, companies often find themselves in a position where they have to manage complex and demanding enquiries from the tax authorities.

Dealing with tax enquiries, audits and disputes by the tax authorities can mean uncertainty and complexity.

Thus, being able to rely on additional support and experience in the course of tax control proceedings is becoming more and more important for businesses.

Even if properly handled, the tax control proceedings may lead to disputes between businesses and the tax authorities resulting in potential assessment of additional tax liabilities, penalty interest or sanctions. With an often lengthy appeal process and wide ranging issues calling for a combined tax, accounting and legal expertise, it is crucial for companies to have an experienced and knowledgeable advisor at their side.

The KPMG Tax Team in collaboration with Mateeva and Partners Law Firm has the experience to help you take control of the tax audit and litigation process.

Landscape of the tax control proceedings

Based on our experience in assisting clients in various tax control proceedings, the following key trends emerge:

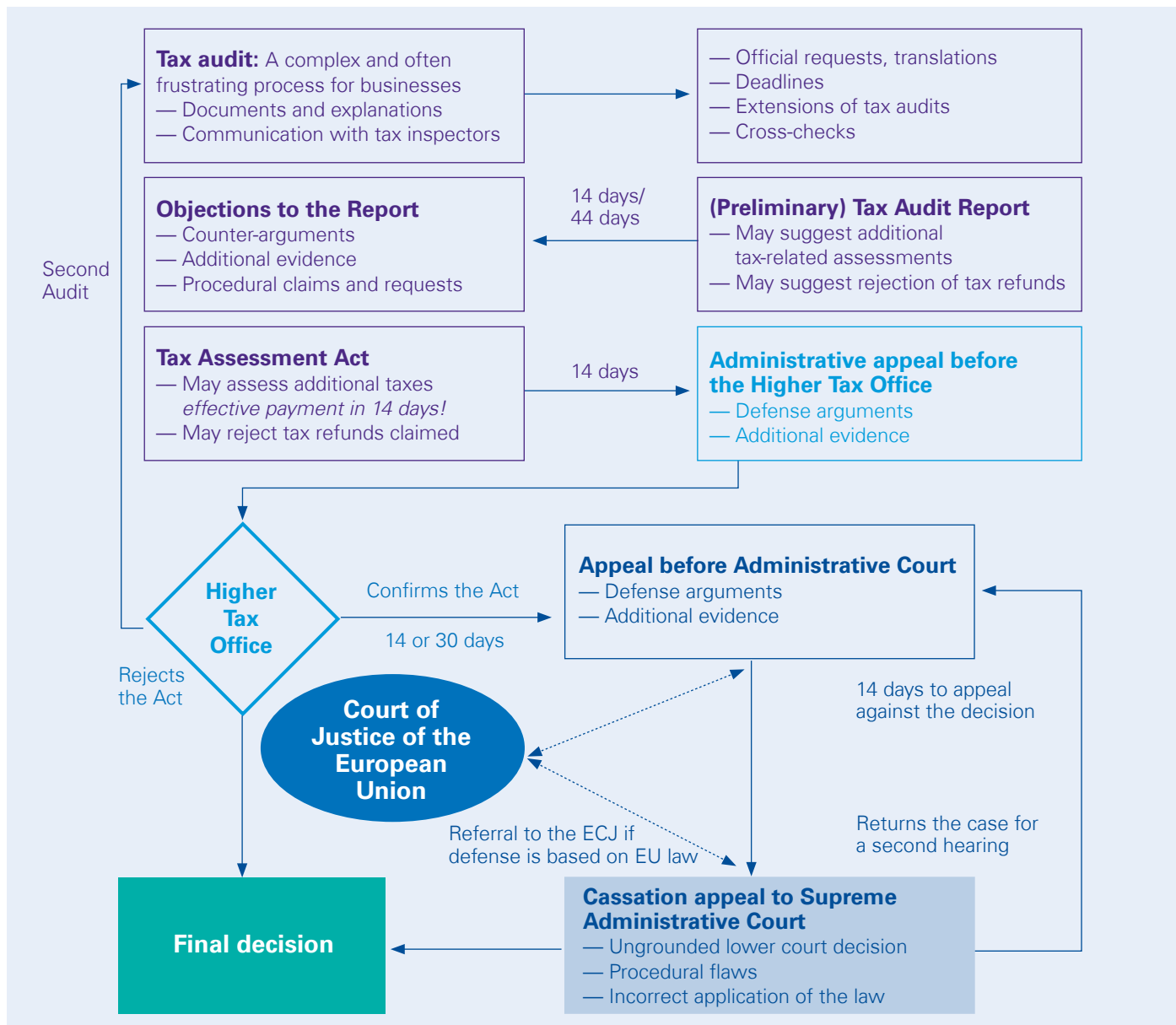
- Rise in the tax control proceedings focused on related party transactions, calling for a rigorous economic, business and functional supporting analysis together with a sound tax and legal argumentation
- Increase in tax control proceedings where the correct accounting treatment of one or

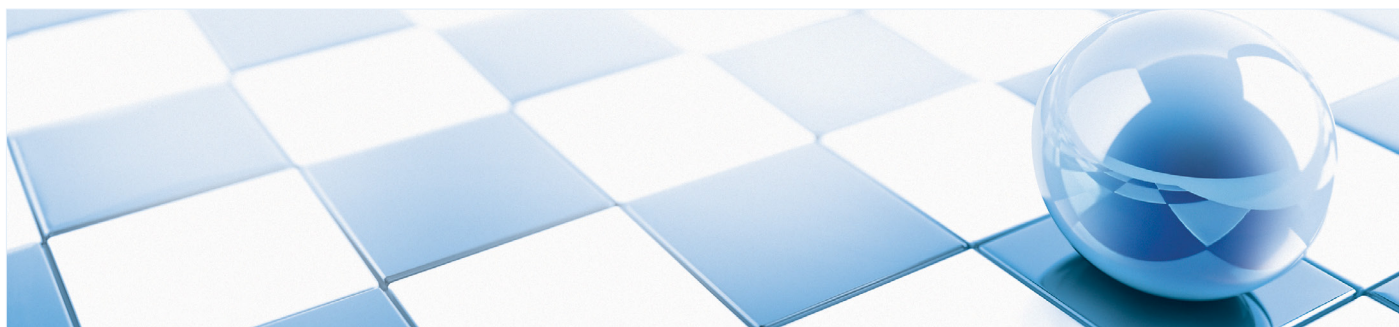
more transactions lies at the root of the dispute, requiring an in-depth understanding of the applicable financial reporting standards

- Surge in fiscal control proceedings related to movements of certain goods.

Against this background, we work with you to help lessen the likelihood of a challenge by the tax authorities before a dispute arises and to assist in resolving the matters that ultimately become subject to a dispute.

The tax audit and litigation continuum





KPMG's approach to tax audits and tax litigation

KPMG's tax advisors support you throughout the entire tax audit process

The way a taxpayer prepares for and responds to a tax control proceeding may have a key impact on whether or not an enquiry by the tax authorities leads to a challenge and a subsequent tax dispute.

Our team could be your trusted partner in this endeavour and help you take control of the tax proceeding process by:

- Performing an initial review of the tax treatment applied and the supporting documentation available with your business
- Assisting you in responding to queries, drafting explanations, organizing and presenting information and documentation to the tax inspectors, etc.
- Helping you with the procedural aspects of the tax control proceedings, e.g. extension of deadlines, temporary suspension of proceedings, filing claims, and others.

Lawyers from Mateeva and Partners Law Firm are involved early on in the tax litigation process and lead the court appeal assistance

Even if a tax control proceeding is properly handled, tax assessments may still be regarded as unfair and appeal may need to be considered.

The tax litigation lawyers from Mateeva and Partners Law Firm teamed up with KPMG's tax and accounting specialists can provide you with full assistance in tax litigation matters, including:

- Analysis of and advice on how strong your case is, before you start appealing
- Drafting of objections and appeals on an administrative level
- Drafting of appeals at court level
- Court representation, where permissible by applicable independence rules
- Post-litigation assistance: support in seeking refund of unduly assessed and paid taxes and penalty interest; refund of court expenses

Case studies

Transfer pricing-driven tax audit of a Bulgarian subsidiary of a multinational group

The challenge With the tax effects of related party transactions ever higher on the radar of the tax authorities in recent years, transfer pricing (TP)-driven tax assessments are becoming more and more common. A TP adjustment by the tax authorities may have a significant impact on the taxpayer's position, potentially resulting in additional corporate income tax (CIT), withholding tax (WHT) and, under certain circumstances, value added tax (VAT) liabilities, together with penalty interest and sanctions. Thus, when a Bulgarian production company, part of a multinational group, received an extensive TP focused enquiry by the tax office, it immediately turned to our team for support and assistance.

How we helped Our priority was to substantiate the arm's length nature of the client's related party transactions and convince the tax authorities that the loss-making position of the company in the years under review was the result of objective market

factors. We provided the tax inspectors with an in-depth analysis of the market dynamics and the sector-specific reasons for the company's overall performance, together with a functional analysis and benchmarking study of the client's related party transactions. Our team performed a comprehensive accounting analysis to adjust for material items that affected the financial result of the company without being related to its controlled transactions. We were in constant contact with both the client and the tax inspectors.

The result Following a months-long discussion with the tax authorities, our expertise enabled us to persuade them that the related party transactions of the client were at arm's length and, thus, that the company was compliant with the applicable tax rules. As a result, no formal tax dispute arose, saving the client time and money.

Marketing-related arrangements in the Consumer Goods sector

The challenge In the course of a tax audit, the tax authorities questioned the tax treatment of certain marketing-related arrangements applied by our client, a company in the Consumer Goods sector. This resulted in the assessment of additional tax liabilities. If the tax assessment had not been appealed against, this would have led not only to a substantial tax cost for the client, but would have undermined the operation of several of the client's marketing channels.

How we helped We assisted the client in the administrative appeal stage before the Higher Tax Office (HTO). We managed to convince the

HTO that the tax treatment applied by the company was correct, by providing a comprehensive and clear overview of the business rationale of the arrangements, backed up by economic and financial analysis and presenting solid tax and legal arguments supporting the tax treatment applied.

The result We were successful in persuading the HTO to repeal the tax audit act. Our understanding of the business rationale of the arrangements applied by the client, coupled with our multidisciplinary approach, ensured that the initial tax assessment was cancelled.



VAT refund to a non-resident company

The challenge A Belgian company providing a treasury equipment to be installed in a Bulgarian bank faced a rejection of a VAT refund claim by the Bulgarian tax office due to assumed permanent establishment by the tax authorities. The foreign company in fact imported part of the equipment from abroad and procured locally the installation services from a Bulgarian subcontractor, while two supervisors of the Belgian supplier were present onsite on several occasions for calibration, testing and accepting the installation.

How we helped We were engaged in the appeal of the VAT refund claim at the administrative level and subsequently in court. Our team of lawyers and tax litigation advisors managed to support the position of the client: we collected and presented evidence

of the stay of the two employees of the Belgian company in Bulgaria and substantiated their limited involvement in the performance of the supply and installation by demonstrating the ancillary nature of the tasks they performed.

The result The Supreme Administrative Court accepted our arguments that the supply and installation, when the installation activities are performed through a local subcontractor, do not lead to a fixed establishment of the foreign taxpayer in Bulgaria. The conclusion of the Court to allow the VAT refund claim was supported by the evidence for the sporadic availability and limited functions performed by the human resources of the foreign company in Bulgaria.

Going before the ECJ

The challenge Our client, one of the major companies in the energy sector, was having a tax dispute where the authorities disallowed a VAT credit for expenses incurred in relation to safe working conditions and transportation services provided to workers, not being directly employed by the client, but hired through a third party, acting as a nominal employer. Following an unsuccessful challenge of the tax audit act before the HTO, our client appealed before the court.

How we helped Providing tax assistance and legal representation to the client, we advised for a referral to the Court of Justice of the European Union (ECJ) seeking protection under the EU VAT rules. After the national court agreed to stay the proceedings

and refer the matter to the ECJ, we undertook the representation of the client before the Court in Luxembourg. Our experienced team of tax and legal professionals helped the client with the written submissions before the ECJ and represented the company in the oral hearing before the Court.

The result The ECJ confirmed the company's position that the expenses for safety at work and transportation, even for hired external workers, give rise to an input VAT deduction. Following the judgment of the ECJ, the national court repealed the tax audit act as being contrary to the VAT rules. Our knowledge and understanding of the substantive EU law and procedural rules was instrumental in achieving the positive result for the client.

Why choose KPMG?

Multidisciplinary approach

Meeting the challenges of today's tax control environment (and ever more so that of tomorrow) requires not only tax and legal expertise, but in-depth knowledge of the applicable financial reporting standards, transfer pricing techniques and perhaps, most importantly, a keen understanding of the business drivers of the companies' arrangements and financial position. Combining the expertise and experience of qualified lawyers, accountants and economists, our team is well placed to prepare you for and assist you with resolving any potential tax disputes.

Trusted advisor

We are open in our communication and will discuss with you, at each step of the process, the chances and risks of a potential appeal or of continuing the litigation. Based on the specifics of the case, we will recommend a strategy on how to proceed for your consideration.

Experienced team

Our team is specialized in supporting clients in various tax control proceedings and assisting them in numerous tax disputes. We have a thorough understanding of both the substantive tax rules as well as the procedural details. Besides our years-long practice litigating before the national courts, we have also gained experience in proceedings before the ECJ and in the application of the EU Arbitration Convention (Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises).

Abreast of the latest developments

Constant monitoring of the national administrative and court practice and the case-law of the ECJ allows us to spot potential tax risk areas for your business and advise you on mitigating steps. In addition, it enables us to support your position with national and/or EU jurisprudence.

Contact us

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