

LAW No. 64 of 15 April 1999
for the approval of Government Ordinance No. 70/1997 on the fiscal control
(L64/1999)

ISSUED BY: THE PARLIAMENT
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The Parliament of Romania passes the present law.

Single Article

The Government Ordinance No. 70 of 28 August 1997 on the fiscal control issued by virtue of Article 1 a) of Law No. 134/1997 on the empowering of the Government of Romania to issue ordinances, published in the Romanian Official Journal, Part I, No. 227 of August 30 1997, is approved with the following amendments and supplementary provisions:

1. Article 1 shall read as follows:

“Article 1

The fiscal control comprises all the activities aiming at checking the truthfulness of the statements, as well as the checking of the correctness and exactness of the meeting of the fiscal obligations by the taxpayers.”

2. Article 2 shall read as follows:

“Article 2

According to the present ordinance, the Romanian and foreign legal and natural persons, as well as the associations without legal personality, which according to law have fiscal obligations, hereinafter called taxpayers, are subject to fiscal control.”

3. Article 3 shall read as follows:

“Article 3

The fiscal obligations include:

- a) the obligation to declare the goods and taxable incomes, or as the case might be, the taxes due;
- b) the obligation to calculate and enter into the accounting and payment records, on the legal terms, the taxes;
- c) the obligation to calculate and record in the accounting and payment records, on the legal terms, the taxes arising from retaining at the source;
- d) any other legal obligations devolving on the taxpayers, legal or natural persons, in the implementation of the fiscal laws.”

4. Article 5 shall read as follows:

“Article 5

The Ministry of Finance and its territorial units exert the fiscal control, by means of the fiscal apparatus and the financial control bodies empowered by law, hereinafter called fiscal control bodies.

The personnel of the fiscal control bodies carry out a function that implies the exertion of the state authority.

The organisation, the territorial competence and the competence of the fiscal control bodies shall be approved by the Minister of Finance.”

5. The title of Chapter II shall read as follows:

“The rights and obligations of the fiscal control bodies”

6. In Article 6 the introductory part and b), c), d), e), f) and g) shall read as follows:

“Article 6

In exerting their competence, the fiscal control bodies are entitled:

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- b) to request from the taxpayers information, evidence, explanations, with reference to the statements of the documents subject to control. Should there be request for a written reply, the taxpayers are obliged to supply the required information within 10 days from receipt of the request;
 - c) to call the taxpayers or their legal representatives to the offices of the fiscal control body. The request is made in writing and compulsorily includes the date, time, place of the requested presence and the purpose for this. The request is made to the taxpayers at least 15 days before the date set;
 - d) to find facts recording the nature of the activity producing taxable incomes or to identify taxable goods or sources;
 - e) to receive copies from any document or accounting record;
 - f) to keep for maximum 30 days, in order to protect against alienation or destruction in return for a written receipt signed by the fiscal authority, any document or material element that could be evidence or proof referring to the calculation of taxes-payers. In exceptional instances, with the approval of the management of the General Directorate of Public Finance and of the state financial control at the level of the counties or of Bucharest city, the period to keep these documents may be extended to 90 days;
 - g) to get, when the taxpayer or his general representative or any other person designated by taxpayers is present, into any premises where the taxpayer performs his activity or in places where there are taxable goods or where income producing activities are performed. The access to such places is allowed in the normal working hours of the taxpayer, and outside these only with the written authorisation of the management of the fiscal control body and with the taxpayers consent.”

7. Article 6 h) is repealed.

8. At Article 8, the introductory part of paragraph 1 shall read as follows:

“Article 8

In view of determining the manner in which the taxpayers’ fiscal obligations are observed, of accurately establishing the taxes due, the fiscal control bodies are entitled to require information from:”

9. Article 8 (2) shall read as follows:

“The people, the bodies and institutions mentioned in paragraph 1 are obliged, within the time limit specified in the request, to supply the information and to make available to the fiscal control bodies the documents, records and data concerned.”

10. Article 8 (3) shall read as follows:

“All documents, data and information obtained by the fiscal control bodies in the manner stipulated in the present article will be part of the taxpayer’s fiscal file and shall be taken into account when recalculating the taxes due by them.”

11. Article 9 shall read as follows:

“Article 9

In well-founded instances, the fiscal control bodies may require taking account their territorial competence, that people should make declarations or hand in documents required to establish whether the person concerned is or is not to be considered as a taxpayer.”

12. Article 10 shall read as follows:

“Article 10

The fiscal control bodies are obliged to exert the financial control so as to impair as little as possible the current performance of taxpayers.

All along the period of the fiscal control, the fiscal control bodies must act in a professional manner, in a fair and objective way in their relationship with the taxpayers who are the object of the control and with the other people with whom they get into touch while performing their professional activity.”

13. In Article 11, b) shall read as follows:

“b) to ascertain the contraventions and to impose the fines and penalties provided by the fiscal laws.”

14. After Article 11, Article 11¹ shall be inserted which shall read as follows:

“Article 11¹

Before a fiscal control is carried out at the premises, the establishment or headquarters of the taxpayer, the latter is entitled:

- a) to be informed about the activity that is going to be performed, by a notification of checking;
- b) to be notified about his rights and obligations arising from the present ordinance. The notification of checking shall include:
 - the legal grounds of its issuing and of the performance of the fiscal control;
 - the period in which the fiscal control activity is scheduled to take place;
 - the taxes and tax periods to be included in the control.

The notification of checking is sent to the taxpayer at least 15 days before the date of the effective performance of the fiscal control activity.

In the case of the fiscal control bodies that, in keeping with the legal provisions, can perform unannounced control activities, as well as when the control activity is carried out in view of settling something at the request of the taxpayer, sending the notification is not compulsory.

The taxpayer shall confirm having being informed about his rights and obligations by signing for receipt of the notification of control.

For well-grounded reasons, taxpayers can request the changing of the date of beginning the fiscal control with a maximum of 30 working days, a request that must be made in writing to the management of the fiscal control body, within 5 days of the receipt of the notification of control and of the signing for its receipt.

A new request for the postponement of the fiscal control is not permitted.

15. Article 12¹ shall be inserted after Article 12 and shall read as follows:

“Article 12¹

The taxpayers are entitled to request, on their own initiative, that a control should be performed.”

16. Article 13 shall read as follows:

“Article 13

The taxpayers are obliged to make available to the fiscal control body all the technical operative accounting and any other type of documents which are legally used to serve as a basis for the correct calculation, in the legal amount, of the taxes due. The documents which have not been made available, in bad faith, as proved during the fiscal control performed at the premises, establishment or headquarters or at the premises of the fiscal control body, shall not be taken into consideration subsequently when possible objections or complaints against the control documents are made.”

17. In Article 17, paragraph 1 shall read as follows:

“The fiscal control is performed at the establishment, residence or headquarters of the taxpayer or at the establishment of the fiscal bodies, as the case might be.”

18. Article 18 shall read as follows:

“Article 18

The period dedicated to the performance of the fiscal control stipulated in Article 17 is established by the fiscal control bodies taking into account the objectives of the control and cannot exceed 3 months.”

19. Article 19 shall read as follows:

“Article 19

The fiscal control at the seat or residence of the taxpayer or at the seat of the fiscal control body, as the case might be, is performed once a year for each tax and for each period of taxation.

As an exception to the provisions of paragraph 1, the leader of the competent fiscal control body may decide to recheck a certain period, if from the date when the fiscal control was ended to the prescription term provided in the present ordinance further data emerge, that were unknown to the fiscal control body at the data when the control was performed, which influence or change its results.”

20. Article 20 shall read as follows:

“Article 20

The results of the fiscal control are compulsorily mentioned in the control minutes, in the findings notes or in the minutes for establishing of contraventions, as the case might be.”

21. The title of chapter V shall read as follows:

“The prescription of the right of the fiscal control body to establish differences in taxation.”

22. In Article 21, the introductory part shall read as follows:

“Article 21

The right of the fiscal control bodies to establish differences in taxation and penalties for failure to pay in due time, as well as to establish contraventions and impose fines and penalties for facts whose fining and punishment fall, according to law, under the competence of the fiscal control bodies, for a taxable period, is written off as follows:”

23. Article 25 shall read as follows:

“Article 25

The writing off period for the setting of taxes or tax differences is of 10 years for cases of fiscal evasion established by a definitive sentence.”

24. In Article 26 (1), the introductory part and a)-d) shall read as follows:

“The following are to be considered contraventions unless they occur in such circumstances so as, according to the criminal law, to be considered as criminal offences:

- a) failure of the taxpayers or of their legal representative to make available the relevant documents or give the required explanations to the fiscal control body;
- b) failure of the taxpayers or of their legal representatives to turn up at the headquarters of the fiscal control body on the day, at the hour and place established in the written request;
- c) refusal of the taxpayer to allow access of the fiscal control body to his business seat or to any other place where there are taxable goods where taxable incomes are created, in view of exerting the fiscal control;
- d) failure of the people, bodies or institutions referred to in Article 8 to make available within the period set by the fiscal control body the required documents, records and data.”

25. Article 26 (2) shall read as follows:

“The contraventions mentioned in paragraph 1 are punished as follows:

- 1) those in a) and b) with a fine from 500,000 lei to 2,000,000 lei to be borne by the guilty natural person.
- 2) those in c) and d) with a fine from 1,000,000 lei to 10,000,000 lei.

26. Article 28 is repealed.

27. Article 29 shall read as follows:

“Article 29

For the implementation of the present ordinance, the Ministry of Finance shall issue implementation instructions, approved through a Government decision, within 60 days from the date of publication of the law approving the present ordinance in the Romanian Official Journal, Part I.

The Senate has passed this law in its session of 15 March 1999 with the observance of the provisions of Article 74 (2) from the Romanian Constitution.

p.p. THE CHAIRMAN OF THE SENATE
DORU IOAN TĂRĂCILĂ

The Chamber of Deputies has passed this law in its session of 15 March 1999 with the observance of the provisions of Article 74 (2) from the Romanian Constitution.

p.p. THE CHAIRMAN OF THE CHAMBER OF DEPUTIES
ADRIAN NĂSTASE