

*Milana Pisarić, Ph.D.**
Faculty of Law, University of Novi Sad
ORCID: 0000-0001-8344-3349

DETECTION OF TAX CRIMES IN THE REPUBLIC OF SERBIA**

ABSTRACT: The detection of tax crimes in Serbia falls within the jurisdiction of the Tax Administration, and these tasks are carried out by the Tax Police. Its activities are functionally linked to tax audits conducted by tax inspectors, since, in the course of establishing facts in an audit, information may emerge indicating grounds for suspicion that a tax crime has been committed. At that point, the role of the Tax Police is “activated,” and it acts in pre-investigation proceedings as a law enforcement authority. Tax inspectors and Tax Police inspectors are authorized to take certain measures and actions to collect information and evidence that may be relevant to criminal proceedings for tax crimes. This raises the question of whether their powers are adequate for the effective detection of tax crimes and their perpetrators. To answer that question, this paper analyzes the legal framework governing the actions of the Tax Administration, which is crucial for combating this form of financial crime.

* e-mail: mpisaric@pf.uns.ac.rs, Assistant Professor.

** The paper was received on July 31, 2025, and it was accepted for publication on October 12, 2025.

*** The paper was created as a result of research conducted under the broad theme “Detection and Proof of Economic Crime,” within the project “Combating Economic Crime in the Republic of Serbia – Current State and Perspectives,” funded by the Provincial Secretariat for Higher Education and Scientific Research.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina*.

The results of a comprehensive analysis clearly indicate the need to improve the domestic legal framework, and the paper sets out certain *de lege ferenda* proposals for legislative intervention.

Keywords: tax crimes, Tax Administration, tax audit, Tax Police

INTRODUCTORY REMARKS

In Serbia, the detection of tax crimes falls within the jurisdiction of the Tax Administration, an administrative body within the Ministry of Finance (hereinafter: MoF),¹ which was established under the *Law on Tax Procedure and Tax Administration* (hereinafter: LTPA) (Art. 1). Within the MoF's scope of public-administration functions, the Tax Administration (hereinafter: TA) not only conducts procedures for tax assessment, collection, and audit, but also detects tax crimes² and tax misdemeanors, as well as their perpetrators (Art.

¹ The Tax Administration, as an administrative body within the Ministry of Finance, performs professional and public-administration functions which, *inter alia*, relate to the detection of tax crimes and their perpetrators (Art. 3, para. 2 of the Law on Ministries). This solution does not deviate from the approach in EU Member States (Thirion, E., Scherrer, A. (2017). *Member States' capacity to fight tax crimes: Ex-post impact assessment*. European Parliament, 31).

² **Tax crimes**, within the meaning of this Law, are criminal offenses that "as a possible consequence have the complete or partial evasion of tax payment, the preparation or submission of a forged document relevant to taxation, hindering the collection of taxes and tax audits, the unlawful trade in excise goods, and other unlawful acts related to tax evasion and aiding and abetting tax evasion," and are established in the LTPA and in other laws (Art. 135, para. 2 of the LTPA).

The LTPA initially prescribed five tax crimes: tax evasion, failure to pay withholding tax, preparation or submission of a forged document relevant to taxation, hindering the collection of taxes and tax audits, and unlawful trade in excise goods (Arts. 172–176). Over the years, the first two offenses were transferred from secondary criminal legislation into primary criminal legislation, that is, their acts were defined as criminal offenses in the Criminal Code within the group of offenses against the economy, while new criminal offenses were added to the LTPA (Ilić-Popov, G. (2016). *Poreska krivična dela u srpskom poreskom zakonodavstvu. Nauka, bezbednost, policija*, 21(1), 42). In Part Seven of the current LTPA – "Penal Provisions," Chapter One prescribes the following tax crimes: VAT tax fraud (Art. 173a), hindering the collection of taxes and tax audits (Art. 175), unlawful trade in fiscalization equipment (Art. 175a), unlawful trade in accounting and other software (Art. 175b), unlawful trade in excise goods (Art. 176), and unlawful storage of goods (Art. 176a).

Of the criminal offenses prescribed in the Criminal Code (hereinafter: CC), tax crimes within the meaning of these criteria unquestionably include tax evasion (Art. 225), failure to pay withholding tax (Art. 226), and obstruction of supervision (Art. 237); and, given the "possible consequence," other criminal offenses against the economy (for

11, para. 1 of the LTPA).³ The TA performs tasks within its jurisdiction independently throughout the entire territory of the Republic of Serbia (Art. 11, para. 2 of the LTPA), through its organizational units (Art. 168, para. 1 of the LTPA). For the purpose of detecting and reporting⁴ tax crimes and their perpetrators, the law provides for the establishment of a *special organizational unit* within the TA, **the Tax Police** (Art. 161, para. 1 of the LTPA).⁵ Its tasks are performed by *Tax Police inspectors*, authorized MoF officials, who take certain measures and actions to detect tax crimes and their perpetrators.⁶

The activities of the Tax Police are **functionally linked to tax audits**,⁷ since indications of unlawful conduct with elements of a criminal offense may arise during a tax audit, and the tax inspector's report, together with the evidence collected, by its very nature constitutes the most common source of information for the Tax Police.

In the following subheadings, this paper analyzes the statutory provisions governing the powers of tax inspectors and Tax Police inspectors, viewed in a broader national context, as well as in light of Principle 3: Adequate Investigative Powers, as set out in the OECD guides on combating tax crime.⁸ The

example, unlawful trade) as well as certain other offenses (for example, forgery of a document and special cases of forgery of a document) could also be considered.

³ It is under the jurisdiction of the Tax Administration to: (1) detect tax crimes; (2) detect perpetrators of tax crimes; and (3) take measures prescribed by law in connection with the detection of tax crimes and their perpetrators (Art. 160, para. 5 of the LTPA).

⁴ Although the "reporting" of tax crimes and their perpetrators is not expressly listed in Article 160 of the LTPA, which establishes the Tax Administration's jurisdiction, reporting should be understood as one of the functions within the Tax Administration's jurisdiction, that is, as *taking measures prescribed by law* in connection with the detection of tax crimes and their perpetrators, within the meaning of that provision.

⁵ The Tax Police Sector was established within the Headquarters of the Tax Administration. The competent authority of a local self-government unit *does not have the rights and obligations* of the Tax Administration relating to *the detection of tax crimes*, nor to *the establishment of the Tax Police* (Art. 2a, paras. 2, 3 and 6 of the LTPA).

⁶ Since, with respect to the Tax Police's powers to detect tax crimes and their perpetrators, the LTPA refers to "the law," that is, to "the law governing criminal procedure," certain provisions of the LTPA are, in this paper, correlated with the Law on Police (hereinafter: LoP) and the Criminal Procedure Code (hereinafter: CPC).

⁷ Previously, the LTPA treated *actions aimed at detecting tax crimes as a form of tax audit*; in 2018, those actions were separated from the tax-audit framework.

⁸ The OECD guides set out **ten principles for combating tax crime**: Criminalization of violations of tax law (Principle 1); An effective strategy to combat tax crime (Principle 2); Adequate investigative powers (Principle 3); Effective powers for temporary and permanent confiscation of assets (Principle 4); An organizational structure with clearly defined responsibilities (Principle 5); Adequate resources for investigating tax crime (Principle 6); Treating tax crimes as predicate offenses for money laundering (Principle 7); An appropriate framework for domestic inter-agency cooperation (Principle 8); Availability of

results of the analysis indicate that, within a strategic approach to combating tax crime in Serbia, the existing legal framework governing the powers of the Tax Police should be improved.⁹

FROM TAX AUDITS TO THE TAX POLICE

In the course of a tax audit, the tax inspector: a) verifies and determines the legality and proper discharging of tax obligations, and b) verifies the accuracy and integrity of the data contained in the tax return, tax balance sheet, accounting statements, and other records of the taxpayer, and the compliance of these data with the law and other regulations (Art. 123, para. 1 of the LTPA).¹⁰ In order to issue a lawful and correct decision, the tax inspector establishes the relevant facts, and if the facts and circumstances indicate grounds for suspicion that a tax crime has been committed, those findings are forwarded to the Tax Police.

Establishing Facts in a Tax Audit

Pursuant to the principle of legality, the tax inspector is required, in each individual case, to establish the facts fully and completely (Art. 4, para. 3 of the LTPA). This is done by collecting and taking evidence,¹¹ obtained through

mechanisms for international cooperation (Principle 9); Protection of the suspect's rights (Principle 10). For more, see: Turksen, U., Abukari, A. (2021). OECD's global principles and EU's tax crime measures. *Journal of Financial Crime*, 28(2), 407.

⁹ On the need for institutional adaptation, see: Kamm, A., Koch, C., & Nikiforakis, N. (2021). The ghost of institutions past: History as an obstacle to fighting tax evasion?. *European Economic Review*, 6; Tsingou, E. (2020). Fighting Financial Crime: Who Designs Global Governance and Who Does The Work? *Fudan Journal of the Humanities and Social Sciences*, 172–173.

¹⁰ Until 2018, the LTPA explicitly treated “tax audit” merely as the procedure for verifying and determining the legality and correctness of fulfilling tax obligations. However, the Law also recognized “desk audit,” which it understood as the verification of the accuracy, completeness, and compliance of data by comparing it with data from official records maintained by, or available to, the Tax Administration.

¹¹ As **evidence**, the tax inspector may use a tax return, tax balance sheet, books of accounts and accounting records, accounting statements, business documentation, and other documents and information in the Tax Administration's possession, collected from the taxpayer or third parties, witness testimony, expert findings, on-site inspection, as well as *any other means by which facts can be established* (Art. 43, para. 2 of the LTPA). See: Ministry of Finance. (2022b). Opinion no. 011-00-00179/2022-04 dated August 15, 2022, Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LXII (7 - 8), 83.

the application of **the general rules**, which are applicable to establishing facts in the tax procedure,¹² and **the special rules** prescribed for tax audits.¹³ For establishing facts, *the rules on where a tax audit is carried out* are particularly important, especially those governing on-site inspection, which will be discussed below. On the basis of Article 3 of the LTPA, in addition to the powers set forth in the LTPA, the tax inspector also has the powers prescribed in the Law on Inspection Supervision (hereinafter: LIS).

The LTPA not only prescribes the powers of the tax inspector, but also establishes **obligations** of the taxpayer and third parties,¹⁴ under the threat of liability for specific tax misdemeanors.¹⁵ In addition, obstructing the performance of an audit constitutes *a criminal offense* (Art. 237 of the CC).

Submission of Documents and Evidence for Review and Verification

For the purpose of establishing the facts, the tax inspector may require both the taxpayer and third parties to submit, within a deadline set by the inspector, books of accounts and accounting records, accounting statements, business documentation, *and other documents and evidence* for review and

For example, “the market price of a shareholding for the purposes of determining capital gains need not be established exclusively on the basis of the book value of the shareholding, but is determined in each individual case on the basis of all means of proof relevant to establishing the facts pertinent to the specific tax-law relationship” (Ministry of Finance. (2020). Opinion no. 413-00-76/2019-04 dated May 29, 2020, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LX (3-5)*, 118).

¹² The general rules are contained in Part Two, Chapter Three: General rules on tax procedure and first-instance assessment and collection procedure (Arts. 43–53 of the LTPA).

¹³ Specifically, Art. 43, para. 3 of the LTPA expressly provides that establishing facts in a tax audit is also carried out pursuant to Articles 117–139 (Art. 43, para. 3 of the LTPA). These provisions are contained in Part Three: Provision of tax services, tax audit, and the Tax Police, within Chapter One: Tax services (Arts. 117–117g), Chapter Two: Tax audit (Arts. 118–129v), Chapter Four: Measures to remedy established violations of law and irregularities in the application of regulations (Arts. 130–134a), and Chapter Five: Detection of tax crimes (Arts. 135–139).

¹⁴ The taxpayer has the right and duty to be present during the tax audit, and also to fulfill obligations established under the LTPA and other tax laws (Art. 24, para. 1, point 10; Art. 25, para. 1, points 9 and 10 of the LTPA). The taxpayer’s obligation to **participate in the tax audit** is regulated in Art. 127 of the LTPA.

¹⁵ *Special tax misdemeanors* are misdemeanors of provisions contained exclusively in this Law (Art. 176b, para. 1 of the LTPA), and are prescribed in Arts. 179 and 180 of the LTPA, which provide for fines for legal entities, responsible persons within such legal entities, entrepreneurs, and natural persons who are not entrepreneurs (Milić, I. (2022). *Specifičnosti prekršajnog gonjenja prema Zakonu o poreskom postupku i poreskoj administraciji. Collected Papers of the Faculty of Law in Novi Sad*, 56(2), 1082).

verification¹⁶ (Art. 44, para. 1 of the LTPA).¹⁷ It is at the tax inspector's discretion whether the required documents are to be submitted for review and verification at the Tax Administration's premises, electronically, or whether the review and verification will be carried out at the premises of the person required to provide them (the taxpayer or a third party) (Art. 44, para. 2 of the LTPA).

The taxpayer is required, upon the tax inspector's request, to allow access to books of accounts, accounting records, and other documentation (Art. 127, para. 2 of the LTPA).¹⁸ The tax inspector may also request access to documentation *from the taxpayer's employees, as well as from other persons* (Art. 127, para. 5 of the LTPA), and the person to whom such a request is addressed is required to make available the documentation in their possession (Art. 127, para. 7 of the LTPA).

The law also provides for the possibility of refusing to produce documents with respect to exhaustively enumerated categories of persons,¹⁹ by prescribing the corresponding application of the rules on the cases and conditions under which information may be withheld (Art. 47, para. 1 of the LTPA).²⁰ However, given that suspicion arising from a taxpayer's failure to act may be interpreted to the taxpayer's detriment (Art. 51, para. 3 of the LTPA), failing to submit documents for review could also constitute an indication of a tax crime and a trigger for the report that the tax inspector submits to the Tax Police. This rule clearly differs from the position of a suspect in criminal proceedings and must not be applied in the actions of the Tax Police.

The tax inspector is also authorized, for the purpose of securing evidence, to temporarily seize documentation and other items, or an appropriate part thereof, pursuant to Article 24 of the LIS, and the seized items may be used as evidence in criminal proceedings for tax crimes.

¹⁶ "Evidence" should be understood within the meaning of Art. 43, para. 2 of the LTPA.

¹⁷ See: Ministry of Finance. (2024). Opinion no. 380875 2023 10520 004 000 011 004 dated June 13, 2024, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LXIV (6)*, 55.

¹⁸ In addition, the taxpayer is required to maintain prescribed books of accounts and accounting records for taxation purposes, and to submit documentation requested by the tax inspector (Art. 25, para. 1, points 3 and 4 of the LTPA) in accordance with tax regulations.

¹⁹ These are: members of the taxpayer's family within the meaning of the law governing personal income tax; a priest, attorney, tax advisor, auditor, and physician, with respect to what the taxpayer entrusted to them or what they learned in that capacity relating to the taxpayer's tax obligation, as well as their assistants and persons participating in professional practice for qualification purposes (see: Article 46, paras. 1 and 2 of the LTPA).

²⁰ Nevertheless, one limitation is prescribed: a person who, on behalf of the taxpayer, keeps documents, books of accounts, accounting records, and other items may not refuse to produce them if the taxpayer would also be required to produce them had the taxpayer kept them personally (Art. 47, para. 2 of the LTPA).

Provision of Information

If the necessary information and data are not available through official records and registers (Art. 45, para. 9 of the LTPA), the tax inspector may request them from certain persons, pursuant to Article 43, paragraph 3 of the LTPA.²¹ As a rule, information is provided in writing, and only exceptionally orally, if so ordered by the tax inspector, where the information was not provided when requested, or where it was provided in writing but did not clarify the relevant facts (Art. 45, paras. 4 and 5 of the LTPA).

The taxpayer's obligation to participate in the tax audit also includes the duty to provide information and statements at the tax inspector's request (Art. 127, para. 1 of the LTPA). In addition, the taxpayer is required to provide the information requested by the tax inspector in accordance with tax regulations (Art. 25, para. 1, point 3 of the LTPA), that is, to provide, upon request and within a reasonable time limit set by the tax inspector, all available information necessary to establish facts relevant to taxation.²²

The tax inspector may request data *from the taxpayer's employees as well as from other persons* (Art. 127, para. 5 of the LTPA), and the person to whom such a request is addressed is required to make available the data and documentation in their possession (Art. 127, para. 7 of the LTPA). The request for information *may also be addressed to other persons*, business entities, banks, state bodies and organizations, as well as bodies of territorial autonomy and local self-government (Art. 45, para. 1, in conjunction with Art. 127 of the LTPA). However, a request addressed to them is not limited to information in their possession that is necessary to establish facts relevant to taxation; rather, it extends to all available information that the tax inspector deems necessary in the tax audit.

Taxpayers and other persons to whom a request for information is addressed are warned in the request about the consequences of withholding information or providing false information (Art. 45, para. 2 of the LTPA). The law also provides for the possibility of withholding information, but only for certain categories of persons (family members and professionals bound by confidentiality), and only with respect to information on facts relevant to taxation (Art. 46 of the LTPA). As regards the taxpayer, it is prescribed that, if the taxpayer fails to comply with this duty and withholds the requested information from the tax inspector, any suspicion arising from such failure may be interpreted to the taxpayer's detriment (Art. 51, para. 3 of the LTPA).

²¹ In a tax audit, the tax inspector is required to deliver the request in written form at the request of the taxpayer or a third party (Art. 45, para. 3 of the LTPA).

²² See: Ministry of Finance. (2022a). Opinion no. 011-00-00789/2020-04 dated May 4, 2022, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa*, LXII (5), 18.

Information obtained through the exercise of these powers during a tax audit may, through the tax inspector's report, be used as evidence in criminal proceedings for a tax crime; the same applies to information delivered to the tax inspector in written form.

Expertise

Where, in a particular case, the tax inspector considers it necessary for the purpose of establishing facts in a tax audit, the inspector may appoint an expert,²³ who submits their written opinion and may also be called upon to provide an oral explanation of that opinion; in any event, the expert opinion is added to the case file (Art. 48, para. 1 and paras. 8-10 of the LTPA).

In the event of suspicion of a tax crime, the tax inspector submits the expert opinion to the Tax Police together with the inspector's report, and the opinion could be used as evidence in any subsequent criminal proceedings.

On-Site Inspection and Entry onto Land and into Premises

If direct observation by the tax inspector is necessary in a tax audit in order to establish or clarify facts relevant to taxation, an on-site inspection is carried out (Art. 49, para. 1 of the LTPA). The subject of the on-site inspection may be an item, premises, or land. As a rule, the taxpayer is present during the on-site inspection (Art. 49, para. 2 of the LTPA),²⁴ and the expert may also participate (Art. 49, para. 4 of the LTPA). The record of the on-site inspection, which is added to the case file, contains the findings, any objections of the taxpayer or another tax debtor, as well as the reasons for refusing to sign the record (Art. 49, paras. 3 and 5-7 of the LTPA). The record of the on-site inspection could be used as evidence in criminal proceedings for a tax crime.

The LTPA establishes the duty of certain persons, without limiting it to the taxpayer, to allow entry onto land and into premises for the purposes of

²³ Where necessary, the Tax Administration appoints an expert among licensed tax advisors or court-appointed experts of the appropriate field (Art. 48, para. 3 of the LTPA). A person who is affiliated with the taxpayer within the meaning of the law governing personal income tax and/or the law governing corporate income tax may not be appointed as an expert (Art. 48, para. 4 of the LTPA). As a rule, before appointing a particular person as an expert, the tax inspector notifies the taxpayer, provided that, in the specific case, there is no risk of delay (Art. 48, para. 2 of the LTPA). If such a risk exists, there is no duty of prior notification, within the meaning of the rules governing general administrative procedure and administrative supervision proceedings.

²⁴ As an exception, an on-site inspection is carried out without the taxpayer's presence, provided that postponing the on-site inspection could: (a) jeopardize the establishment of the facts; or (b) result in the destruction of evidence relevant to taxation (Art. 49, para. 3 of the LTPA).

conducting an on-site inspection, as well as other actions in a tax procedure, including a tax-audit procedure (Art. 50). In this respect, the law does not provide for the possibility of exclusion/exemption from this duty. Specifically, the holder/owner is required to allow entry onto land and into premises for the purpose of conducting an on-site inspection in accordance with Article 125 of the LTPA, which governs where a tax audit is carried out.

When Articles 49 and 50 are read together with Article 125 of the LTPA, it follows that an on-site inspection within a tax audit may be conducted not only at **the taxpayer's business premises and at the TA's official premises**, but also at other places, depending on the subject of the audit (Art. 125, para. 1 of the LTPA), which could include **the business premises of third parties**.

That “other place” may also be **the taxpayer's home**, which the tax inspector may enter and inspect if they are granted court approval (Art. 125, para. 5 of the LTPA). It is questionable whether such a provision is in line with with Article 40 of the Constitution of the Republic of Serbia, under which any derogation from the inviolability of the home against the will of the owner is possible only on the basis of a written court decision, bearing in mind that “approval” is not the same as a court decision issued in writing. It is unclear which court grants such “approval” to the tax inspector and in what procedure. Starting from Article 3, paragraph 1 of the LTPA, the provisions of Article 22 of the LIS, which regulate on-site inspection in residential premises, would not apply to an on-site inspection in the taxpayer's home, nor can the “court approval,” within the meaning of the LTPA, be understood as a written decision of a basic court rendered in non-contentious proceedings on the basis of the tax inspector's written motion. As a result, the concern referred to remains, and action taken under such a provision may, through the application of the rule on the inadmissibility of unlawfully obtained evidence (Art. 16, para. 1 of the CPC), entail that a court decision cannot be based on evidence obtained in such an on-site inspection.

When Article 125, paragraph 5 of the LTPA is read together with paragraph 1, the part of the provision stating “at other places, depending on the subject of the audit” could not be interpreted as a basis for entering **the home of a third party** for the purpose of conducting a tax audit, because the law expressly permits entry only into the taxpayer's home. However, given that Article 3, paragraph 2 of the LTPA refers to the application of the law governing inspection supervision where the LTPA does not provide otherwise, the provisions of Article 22 of the LIS would apply to on-site inspections in the residential premises of third parties.²⁵

²⁵ The LIS regulates in detail the conduct of an on-site inspection in residential premises, creating a basis even for a search of residential premises and the items therein.

Reporting to the Tax Police

If, in this procedure, it is established that the taxpayer has improperly performed their tax obligations or has failed to perform them, the taxpayer is ordered to remedy such irregularities or omissions (Art. 123, para. 2 of the LTPA). If, however, in the course of a tax audit the tax inspector obtains *information indicating that facts and circumstances point to grounds for suspicion* that a tax crime has been committed,²⁶ the inspector draws up a **report** and, together with **the obtained evidence**, submits it to the competent manager within the TA, who forwards the report with the evidence to the head of the Tax Police (Art. 136, paras. 1 and 3 of the LTPA). The TA's further action depends on the outcome of the Tax Police's activities: if the Tax Police were to determine that the facts and circumstances set out in the report do not indicate grounds for suspicion that a tax crime has been committed, it would inform the competent manager within the TA, who could then file a request to initiate misdemeanor proceedings (Art. 137, para. 3 of the LTPA).

Although it is not designated as such, the tax inspector's report serves as a criminal complaint, given that it contains information about a criminal offense and constitutes an act of notifying the authority competent for detecting the offense and the perpetrator, to which evidence is attached. One of the pieces of evidence attached to the report would be *the record of the tax audit*,²⁷

Specifically, if a tax inspector intends, for the purpose of establishing the facts, to carry out an on-site inspection in residential premises or other premises intended for such use, the inspector "must obtain a written decision of the competent court" (Art. 22, para. 1 of the LIS) by submitting a written motion with the prescribed content (Art. 22, para. 4 of the LIS). That motion may also request authorization to conduct a search of residential premises and the items therein (Art. 22, para. 4 of the LIS). The court decides on the motion in expedited non-contentious proceedings, applying civil-procedure rules on securing evidence (Art. 22, paras. 6 and 7 of the LIS), and authorizes an on-site inspection in residential premises (Art. 22, para. 13 of the LIS) if the prescribed conditions are met (Art. 22, para. 8 of the LIS), and authorizes a search of residential premises and the items therein where there is reasonable suspicion that the search will yield an item or traces that may be significant for the proceedings (Art. 22, para. 9 of the LIS).

²⁶ Originally, this duty arose where, during a tax audit, the tax inspector established that the facts and circumstances indicated grounds for suspicion; in 2018, the word "establishes" was replaced with the words "obtains information." In other words, previously it was necessary, during tax-audit proceedings, for the tax inspector to establish such facts and circumstances, on the basis of evidence, i.e., by undertaking evidentiary actions, whereas after the amendments it is sufficient for the inspector to learn of such facts, record them in the report, and submit them to the Tax Police for verification.

²⁷ The Ministry of Finance confirmed that the record drawn up by the tax inspector regarding a tax audit, which contains "a description of the course and content of the action undertaken and statements given, as well as information on the documents used," constitutes a **public document** and evidence of the course and content of the actions undertaken and statements given, except in the parts to which an objection has been raised (Ministry

which includes the relevant facts and circumstances established through the exercise of the tax inspector's investigative powers during the audit, including those indicating grounds for suspicion that a tax crime has been committed. This report, in practice, constitutes the starting point and a roadmap for the Tax Police for detecting the tax crime; **it is attached, together with all evidence obtained by the tax inspector, to the criminal complaint** and could be used as evidence in criminal proceedings.

The preparation, submission, and forwarding of the report to the Tax Police, together with the evidence, is **the duty** of the tax inspector and the competent manager of the Tax Administration. However, the duty to notify the competent authorities does not exist only with respect to tax crimes: if the tax inspector were to establish that the facts and circumstances indicate grounds for suspicion that some other criminal offense has been committed, one that is not within the jurisdiction of the Tax Administration, the tax inspector files a criminal complaint with the competent public prosecutor (Art. 136, para. 4 of the LTPA), in accordance with the general rule on reporting criminal offenses (Art. 280 of the CPC).²⁸

ACTIONS OF THE TAX POLICE

Tax Police inspectors have certain powers that they exercise upon learning that a tax crime has been committed, whether that information is obtained from the tax inspector's tax-audit report or in some other manner. The measures and actions that an inspector is authorized to take for the purpose of detecting tax crimes and their perpetrators are prescribed in Article 135 of the LTPA.

“Requested” Actions

For the purpose of detecting tax crimes and their perpetrators, the Tax Police *could initially act* as a law-enforcement authority in pre-criminal proceedings (Art. 135, para. 3 of the 2002 LTPA), whereas under the current

of Finance. (2019). Opinion no. 011-00-117/2019-04 dated February 28, 2019, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa*, LIX (3), 180).

²⁸ This provision requires state and other authorities to report criminal offenses subject to *ex officio* prosecution which they have been notified of or otherwise learn about (including during a tax audit), under the conditions prescribed by law or other regulation (here, that law is the LTPA). It also requires that, in the report, they state the evidence known to them and take measures to preserve traces of the criminal offense, items on or by means of which the offense was committed, and other evidence.

LTPA *it acts* as police in pre-investigation proceedings, as a rule and without exception, either independently or in cooperation with the Ministry of Internal Affairs (Art. 135, para. 5 of the LTPA).

The Tax Police is authorized, in accordance with the law, to undertake all “requested” actions, except for restrictions on movement (Art. 135, para. 3 of the LTPA). However, the Law does not specify what these “requested” actions are, nor does it specify which law is being referred to (unlike the following paragraph of Article 135, which, with respect to evidentiary actions, refers to the Criminal Procedure Code). This **drafting is imprecise** because it makes it unclear what “in accordance with the law” means, and therefore which measures and actions the Tax Police may undertake in pre-investigation proceedings.

If the phrase “in accordance with the law” refers to the LoP, the question arises whether “requested” actions are intended to mean: (a) **certain police measures and actions**, in the sense of Article 47, such as police observation/surveillance; searching for persons and objects; targeted search measures; public offers of a reward; or some other measures and actions; or (b) **certain police powers**, in the sense of Article 64, and which ones, i.e., whether “requested actions” refer only to the collection of information, temporary seizure of items, inspection of premises, facilities, or documentation, or also to securing and examining the scene and other powers. Proceeding from the wording “except for restrictions on movement” (Art. 135, para. 3 of the LTPA), the Tax Police, under the LoP, would in any event not be able to detain persons and temporarily restrict freedom of movement, to stop and search persons, items, and vehicles (Art. 64, paras. 2, 5, and 9), nor to undertake any police powers under Article 47 that restrict movement in any way.

The mere statement in the LTPA that the Tax Police acts as a law-enforcement authority “in accordance with the law” appears incomplete; without an unambiguous cross-reference, it remains unclear whether the Tax Police acts under the LoP at all, and, if so, which “requested” actions it is authorized to undertake under that law, which regulates, in detail and with precision, police measures and actions on the one hand, and police powers on the other. It is possible that the legislator, by “requested” actions, meant only those measures and actions that the police is authorized and required to undertake under the Criminal Procedure Code. If that was the intent, it should have been stated expressly, i.e., by referring to the Criminal Procedure Code, as is done with respect to evidentiary actions in Article 135, paragraph 4 of the LTPA. Due to this omission, the existing norm is insufficiently clear.

If the phrase “in accordance with the law” refers to the Criminal Procedure Code, then “requested” actions would mean **the measures and actions** that the police is authorized to undertake in pre-investigation proceedings in

order to fulfill its duty to detect a criminal offense and the perpetrator (Art. 286 of the CPC). Accordingly, *for the purpose of detecting tax crimes and their perpetrators*, i.e., to find the perpetrator, prevent the hiding or escape of the perpetrator or accomplice, detect and secure traces of the tax crime and objects that may serve as evidence, and collect information useful for criminal proceedings (Art. 286, para. 1 of the CPC), the Tax Police would be authorized to:

1. requests necessary information from citizens; conduct the necessary inspection of vehicles, passengers, and luggage (but not to stop a vehicle, since it is not authorized to restrict freedom of movement); take necessary measures in connection with establishing the identity of persons and objects; issue a warrant; in the presence of the responsible person, inspect certain facilities and premises of state bodies, companies, shops, and other legal entities, review their documentation and seize it, where necessary (Art. 286, para. 2 of the CPC);

2. on the basis of a court order issued at the proposal of the public prosecutor, obtain records of telephone communications, used base stations, or perform location tracking of the place from which communications are conducted (Art. 286, para. 3 of the CPC).

However, this provision also states that the police is authorized to undertake “other necessary measures and actions” to fulfill the duty referred to in paragraph 1 (Art. 286, para. 2 of the CPC). Such wording is not, in itself, precise and leaves room for the factual undertaking of actions and measures not expressly prescribed by law. As a result, it is not entirely clear which “other necessary measures and actions” the Tax Police could undertake *for the purpose of detecting* tax crimes and their perpetrators. Those certainly could not include measures and actions that restrict movement.²⁹

Acting as police in pre-investigation proceedings, i.e., as an authority of proceedings within the meaning of the Criminal Procedure Code (Art. 2, para. 1, points 14 and 15 of the CPC), the Tax Police undertakes “requested” actions related to tax crimes from the moment it learns that a criminal offense has been committed until the initiation of criminal proceedings. The undertaking of measures and actions under Article 286 of the CPC requires that there be grounds for suspicion that an offense subject to *ex officio* prosecution has been

²⁹ Given that the LTPA excludes “restrictions on movement” from the Tax Police’s authority to undertake “requested” actions (Art. 135, para. 3 of the LTPA), the Tax Police could not, within the meaning of the CPC, (a) restrict movement within a certain area for the necessary period, but no longer than eight hours, nor stop vehicles (Art. 286, para. 2 of the CPC); (b) undertake “other necessary measures and actions” that would amount to restricting movement (Art. 286, para. 2 of the CPC); (c) compel the appearance of a person summoned for an informal interview who failed to respond (Art. 288 of the CPC); (d) order detention at the scene of the crime (Art. 290 of the CPC); (e) arrest (Art. 291 of the CPC); or (f) order the detention of a suspect (Art. 294 of the CPC).

committed (Art. 286, para. 1) – a requirement that Article 135, paragraph 3 omits to state with respect to “requested” actions (while it expressly states it in the following paragraph regarding evidentiary actions). This might lead to the conclusion that the Tax Police is authorized to undertake “requested” actions for the purpose of detecting tax crimes and their perpetrators even before there are grounds for suspicion; however, the question is whether that was the legislator’s intention or simply a drafting omission. In addition, under the CPC, the police is authorized to undertake these measures and actions in order to fulfill a duty (Art. 286, para. 1 of the CPC), whereas the LTPA provides only that the Tax Police is authorized (but not obliged) to undertake actions.

In view of all of the above, due to insufficiently precise legislative drafting, **it remains unclear** what the legislator’s intent was on these highly important issues, namely, which “requested” actions, and under which law, the Tax Police is authorized to undertake for the purpose of detecting tax crimes and their perpetrators within the meaning of Article 135, paragraph 3 of the LTPA.

In addition to the fact that such vagueness grants the Tax Police indeterminate powers, it is important to note that the LTPA classifies noncompliance with a Tax Police request, during the procedure under Article 135, paragraph 3 of the LTPA, as a specific tax misdemeanor. In light of the foregoing, and in particular the fact that it is not entirely clear and precisely prescribed what the Tax Police may do and, in addition, what it may demand, there is an unmistakable situation of **legal uncertainty** in undertaking “requested” actions, which should be remedied by amending the law.

Evidentiary Actions

Initially, the Tax Police was authorized only to undertake the evidentiary action of questioning the defendant, i.e., it could summon and question a suspect. The 2005 amendments to the LTPA expanded the Tax Police’s powers by providing that, in accordance with the provisions of the law governing criminal procedure (whereas previously the text merely stated “in accordance with the law”), it may not only summon and question a suspect, but may also, *before the initiation of criminal proceedings*, conduct searches of a home, business or other premises, vehicles, and persons where there are grounds for suspicion that a tax crime has been committed, and may forcibly seize items that may serve as evidence in criminal proceedings for tax crimes. Initially, it could not exercise these powers independently, but only in cooperation with the police; since the 2015 amendments, it undertakes them either independently or in cooperation with the Ministry of Internal Affairs.

The current law authorizes the Tax Police to undertake these few evidentiary actions in pre-investigation proceedings, expressly referring to the law governing criminal procedure (Article 135, paragraph 4 of the LTPA). Given that it **exhaustively enumerates the evidentiary actions** that the Tax Police may undertake, the Tax Police is not authorized to undertake other evidentiary actions that the police otherwise carries out in pre-investigation proceedings. The reference in the LTPA to the provisions of the law on criminal procedure cannot be regarded as a (sufficient and valid) legal basis for the Tax Police to conduct an on-site investigation, undertake covert surveillance of communications, etc.; the reference means only that, when carrying out the expressly permitted evidentiary actions, the Tax Police must act in accordance with the relevant provisions of the CPC.

In addition, it is important to emphasize that Article 287 of the CPC also applies to the Tax Police when it acts as a law-enforcement authority in pre-investigation proceedings for tax crimes. Accordingly, evidence obtained by the Tax Police through the evidentiary actions it is authorized to undertake may be used as evidence in criminal proceedings, provided that those actions were carried out in compliance with the CPC. Otherwise, the rule on the inadmissibility of unlawfully obtained evidence under **Article 16, paragraph 1 of the CPC** would apply, meaning that evidence obtained by the Tax Police contrary to the CPC would be unlawful evidence. Evidence would likewise be unlawful if the Tax Police obtained it contrary to the rules prescribed in the LTPA, including by undertaking evidentiary actions that it is not authorized to undertake under that law. Such evidence could not be used in criminal proceedings, and court decisions could not be based on it (Art. 84 of the CPC). For that reason, a carefully designed legislative intervention should clarify the Tax Police's powers to undertake evidentiary actions.

Questioning a Suspect

In pre-investigation proceedings, the police may summon citizens to collect information; in doing so, it does not question them in the capacity of a defendant, nor examine them as a witness or expert, except in the case referred to in Article 289 of the CPC (Art. 288, paras. 1 and 2 of the CPC). On the basis of Article 135, paragraph 3 of the LTPA, as a form of “requested” actions, the Tax Police could summon citizens for an informal interview, including a suspect, i.e., a person with respect to whom there are grounds for suspicion that they committed a tax crime. In addition, the legislator expressly granted the Tax Police the power to summon and question a suspect (Art. 135, para. 4 of the LTPA), which it does precisely in accordance with Article 289 of the CPC. Specifically, a person with respect to whom there are grounds for suspicion

that they committed a tax crime, or against whom the Tax Police is taking actions in pre-investigation proceedings, may be summoned only in the capacity of a suspect, and the summons must warn them that they have the right to retain counsel (Art. 289, para. 1 of the CPC). If, in the course of collecting information from a citizen who was not summoned in the capacity of a suspect, the Tax Police assesses that the person should be regarded as a suspect for a tax crime, it is required immediately to advise the person of their rights under Article 68, para. 1, points 1 and 2 of the CPC, as well as of the right to retain counsel who will be present during questioning (Art. 289, para. 2 of the CPC). In both situations, the Tax Police is required to immediately notify the competent public prosecutor; the prosecutor may question the suspect personally, attend the questioning, or assign the questioning to the Tax Police (Art. 289, para. 3 of the CPC).

While, under the original statutory text, the Tax Police was not authorized to **compel a suspect to appear**, the 2005 amendments granted that possibility as well. Due to the word “including” in Article 135, paragraph 4 of the LTPA, and also when interpreted teleologically, the power of **compulsory appearance** should be understood exclusively in connection with summoning the suspect in that capacity within the meaning of Articles 288 and 289 of the CPC, and not within the meaning of Article 196, paragraph 2 of the CPC. Thus, if the suspect is duly summoned but fails to appear, the Tax Police could compel the suspect’s appearance, but only if the suspect was warned of that consequence in the summons. As shown in the previous subsection, outside this situation the Tax Police is not authorized to restrict freedom of movement. The Tax Police may not detain a suspect summoned in that capacity, nor a citizen who, during an informal interview, is assessed as a suspect, for the purpose of questioning; only the public prosecutor may do so, in accordance with Article 294 of the CPC.

If the suspect agrees to give a statement, the Tax Police may question them in accordance with the provisions governing questioning the defendant (Arts. 85–90 of the CPC), and the record of the questioning could be used as evidence in criminal proceedings. However, the CPC sets a clear condition for questioning a suspect at the police, which applies equally to the Tax Police, namely that the suspect must have both consented to be questioned and given the statement during questioning *in the presence of defense counsel* (Art. 289, para. 4 of the CPC). Otherwise, the record must be excluded from the case file (Art. 237 of the CPC).

With respect to questioning, a suspect in a tax-crime case must have **counsel** in situations of mandatory defense: from the first questioning if the proceedings are conducted for an offense punishable by eight years’ imprisonment or a more severe sentence, or from the moment they are deprived of

liberty if the suspect has been detained (Art. 74, paras. 2 and 3 of the CPC). If the suspect does not have counsel, counsel will be appointed *ex officio* (Art. 76, para. 1 of the CPC). The 2022 LTPA provides that, where a suspect has not retained counsel, the Tax Administration – Tax Police shall appoint counsel *ex officio* if the tax crime in question is punishable by eight years’ imprisonment or a more severe sentence (Art. 16a, para. 1).³⁰ This corresponds to the provisions on mandatory defense under Article 74, paragraph 2 of the CPC, with the caveat that, in light of Article 3, paragraph 1 of the LTPA, the rule in the LTPA applies rather than the rule in the CPC that counsel is appointed by the public prosecutor (Art. 76, para. 1 of the CPC). If pre-investigation proceedings concern less serious offenses (punishable by a fine or up to eight years’ imprisonment, which is the case for most tax crimes), Article 16a of the LTPA does not apply: *ex officio* counsel could be appointed only by the public prosecutor, and only if the prosecutor ordered detention for the purpose of questioning (Art. 294 of the CPC).

The part of Article 16a, paragraph 1 of the LTPA under which the Tax Police appoints counsel “during questioning” is **problematic**. A purely linguistic interpretation of that provision suggests that the questioning has already begun and is ongoing, and that counsel is then appointed during the questioning if the suspect has not retained counsel themselves, which would be inconsistent with the cited CPC rules and the suspect’s rights, as well as counsel’s rights (for example, the right to review, immediately before the first questioning of the suspect, the criminal complaint, the record of the on-site investigation, and the expert report and opinion). In addition, it is unclear how the condition for admissibility of the record of questioning could be regarded as satisfied, namely, that the suspect’s consent (which precedes questioning) and statement were given in the presence of counsel, if, under the LTPA, counsel is appointed “during,” rather than before, questioning. That part of the statutory provision requires clarification in order to align it with the CPC, all the more so because it is also prescribed that counsel is appointed “in accordance with the code governing criminal procedure.”

³⁰ Of all tax crimes under the LTPA, this provision would apply only to the criminal offense of VAT tax fraud, and only where the amount of the refund or tax credit, or the amount of tax whose payment is avoided, exceeds RSD 15 million (Art. 173a, paras. 1 and 2 in conjunction with Art. 173a, para 4 of the LTPA). Regarding other tax crimes, the provision would also be relevant in proceedings for: tax evasion for amounts exceeding RSD 15 million (Art. 225, para 1 in conjunction with Art. 225, para. 3 of the CC); and failure to pay withholding tax for amounts exceeding RSD 7.5 million (Art. 226, para. 1 in conjunction with Art. 226, para. 3 of the CC).

Searches

If the phrase “in accordance with the law” in Article 135, paragraph 3 of the LTPA refers to the CPC, the Tax Police may undertake the measures and actions that the police is authorized to undertake in pre-investigation proceedings (Art. 286 of the CPC). In that case, the Tax Police would not only be able to conduct the necessary inspection of vehicles, passengers, and luggage, and, in the presence of the responsible person, inspect certain facilities and premises of state bodies, companies, shops, and other legal entities, review their documentation, and, where necessary, seize it; it would also be authorized to conduct searches. Specifically, where there are grounds for suspicion that a tax crime has been committed, the Tax Police may, **before criminal proceedings are initiated** (and thus not after that point), conduct searches of a home, business or other premises, vehicles, and persons, acting in accordance with the provisions of the law governing criminal procedure (Art. 135, para. 4 of the LTPA). This provision implies that the Tax Police may search only premises, vehicles, and persons, but not devices for automatic data processing or equipment on which electronic records are stored or may be stored within the meaning of Article 152, paragraph 3 of the CPC.

Because the LTPA expressly refers to the CPC, a substantive condition must be met in order to conduct a search; namely, a likelihood that the search will result in locating the defendant, traces of the criminal offense, or objects important for proceedings concerning the tax crime (Art. 152, para. 1 of the CPC). As for the formal condition, the requirement of a court order is regulated differently in the LTPA depending on what is being searched.

Article 135, paragraph 4 of the LTPA expressly provides that searches of a home and other premises may be **carried out only on the basis of a court order and in the presence of two witnesses**. This leads to the following: (a) a home and other premises (including business premises) may be searched only where a court order exists, under the conditions and in the manner set out in Articles 155–157 of the CPC, and **not without witnesses present** within the meaning of Article 156, paragraph 7 in conjunction with paragraph 3 of the CPC; and (b) **Article 158 of the CPC does not apply** to the Tax Police, as it prescribes cases in which the police may, exceptionally, enter a home or other premises without a court order and, without witnesses, conduct a search of a home and other premises or persons found there (for example, with the consent of the possessor).

As for vehicles and persons, since the LTPA does not expressly prescribe that searches may be conducted only on the basis of a court order and in the presence of two witnesses, the CPC rules apply; accordingly, the Tax Police could conduct a search on the basis of a court order even **without**

witnesses present within the meaning of Article 156, paragraph 7 in conjunction with paragraph 3. However, the Tax Police **could not conduct a search of a person without a court order** and without witnesses present within the meaning of Article 159 of the CPC, given that the Tax Police has neither the power to deprive the defendant of liberty nor the power to execute an order for compulsory appearance.

Temporary Seizure of Items

Where there are grounds for suspicion that a tax crime has been committed, the Tax Police is authorized, **before the initiation of criminal proceedings**, to temporarily seize items that may serve as evidence in criminal proceedings for that offense (Art 135, para. 4 of the LTPA), acting in accordance with the CPC. After the initiation of proceedings, the Tax Police no longer has these powers. Although the LTPA refers to the CPC, in light of Article 3, paragraph 1 of the LTPA, the Tax Police could not temporarily seize items that must be confiscated under the CC within the meaning of Article 147, paragraph 1 of the CPC, but **only items that may serve as evidence in criminal proceedings**, and only items with evidentiary potential in proceedings concerning tax crimes. Items that the Tax Police may seize include *devices for automatic data processing and equipment* on which electronic records are stored or may be stored, within the meaning of Article 147, paragraph 3 of the CPC. Article 147, paragraph 2 of the CPC, under which *assets that are the subject of a suspicious transaction* may be temporarily seized, could not apply, given that the verification of accounts and suspicious transactions (Arts. 143–146 of the CPC) is not among the evidentiary actions that the Tax Police is authorized to undertake.

In addition, since Article 153 of the CPC also applies to searches conducted by the Tax Police, it is also authorized to temporarily seize items and documents found during the search that relate to the purpose of the search. If, during the search, items were found that do not relate to the tax crime for which the search was conducted, but indicate another criminal offense prosecuted *ex officio*, the Tax Police could temporarily seize only those items indicating another tax crime, not items indicating an offense that is not a tax crime.

Reporting a Tax Crime

Article 137 of the LTPA provides that the Tax Police draws up a criminal complaint “on the basis of collected information” and states in it “evidence it obtained while collecting information in accordance with the powers under Article 135, paragraphs 3 and 4 of this Law, including the facts and evidence

from the tax inspector's report under Article 136, paragraph 1 of this Law" (Art. 137, para. 1).³¹

The Tax Police files the criminal complaint with the public prosecutor, in accordance with the general rules governing subject-matter and territorial jurisdiction.³²

In connection with the detection of tax crimes, it is also important to address the question of the jurisdiction of the **public prosecutor's office**. In the 2015 Financial Crime Investigation Strategy, tax crimes were not classified in the register of criminal offenses against the economy and against official duty that would be considered financial crimes and thus fall within the jurisdiction of specialized departments in higher public prosecutor's offices and courts, because it was considered that, as less serious criminal offenses against the economy, they should remain within the jurisdiction of basic public prosecutor's offices and courts; for that reason, they were omitted from the catalog of criminal offenses to which the Law on the Organization and Competence of State Authorities in Suppression of Organized Crime, Terrorism and Corruption applies. In other words, tax crimes are not treated as corruption offenses or organized-crime offenses, regardless of the potentially very harmful consequences for the Republic of Serbia in specific cases. Of particular importance for the detection of tax crimes and their perpetrators would be an intervention in that law as well, by including, at a minimum, the criminal offense of tax evasion (Art. 225, paras. 2 and 3 of the CC) among the criminal offenses against the economy to which that law applies (Art. 2, para. 4), thereby placing it within the jurisdiction of specialized anti-corruption departments of higher public prosecutor's offices and higher courts, i.e., the Prosecutor's Office for Organized Crime and the higher court that acts pursuant to Article 3 of that law.

³¹ In the original text of Art. 135, para. 1 from 2002, it was provided that the Tax Police collects information, not evidence, and that, if during that process it "obtains" certain evidence, it states that evidence in the criminal complaint. This phrasing was modeled on the then-applicable CPC provisions regarding information collected from citizens during an informal interview. By the 2018 amendment, after the words "during the collection of information," the words "in accordance with the powers under Art. 135, paras. 3 and 4 of this Law" were added. These refer to the powers to undertake "requested" actions and certain evidentiary actions, which were granted to the Tax Police as early as 2005. The outcome is that this paragraph of the still-applicable LTPA contains an inconsistency: it suggests that the Tax Police only collects information, not evidence, and that if it "obtains" evidence during that process it includes it in the complaint, yet it not only collects information through "requested" actions, but also undertakes certain evidentiary actions, the result of which is evidence. For that reason, this LTPA provision should be clarified to state that the Tax Police prepares the criminal complaint on the basis of information and evidence collected.

³² This is the case in most EU Member States; see: Thirion, E., Scherrer, A. (2017). *Member States' capacity to fight tax crimes: Ex-post impact assessment*. European Parliament, 49–50.

Together with the criminal complaint, the Tax Police submits to the public prosecutor documentation, obtained reports, statements, and other materials relevant to the successful conduct of criminal proceedings (Art. 137, paras. 1 and 4 of the LTPA). Given that it acts as police in pre-investigation proceedings for tax crimes, the Tax Police should also submit, together with the criminal complaint, the items it temporarily seized, records of undertaken measures and actions, and official notes, within the meaning of Article 288, paragraph 9 of the CPC. Also, the Tax Police should not include in the criminal complaint the content of statements given by citizens during the collection of information, except for the statement given by the suspect during questioning (Art. 288, para. 8 of the CPC). These issues, too, should be appropriately regulated in the LTPA.

The public prosecutor, who manages pre-investigation proceedings, acts on the criminal complaint, including one filed by the Tax Police regarding a tax crime, in accordance with the rules established in the CPC.³³ If the prosecutor dismisses a criminal complaint filed by the Tax Police, the prosecutor informs it of the decision and the reasons for it, whether the matter concerns tax crimes or other crimes (see: Art. 284, para. 2 of the CPC).

Where, after filing a criminal complaint, the Tax Police “learns of new facts, evidence, or traces of the criminal offense,” it has a duty “to collect the necessary information” and submit a report to the public prosecutor as a supplement to the criminal complaint (Art. 137, para. 5 of the LTPA, corresponding to Art. 288, para. 10 of the CPC). This duty would exist only if it subsequently learned of new facts, evidence, or traces of a tax crime, and not of some other criminal offense. In the latter case, it would file a criminal complaint in accordance with Article 280 of the CPC.

If, while undertaking “requested” actions, the Tax Police determines that “the actions of the person do not constitute a tax crime, but instead constitute other punishable acts,” it files an appropriate report with the competent authority (Art. 139, para. 1 of the LTPA).³⁴ If the Tax Police acted on the basis of the tax inspector’s report and determines that the facts and circumstances established during the tax audit nevertheless do not indicate grounds for suspicion that a tax crime has been committed (and thus there are no grounds for filing a criminal complaint), the law provides that the Tax Police inspector informs

³³ Originally, the LTPA also regulated the procedure following a criminal complaint, providing that the public prosecutor was required to consider it within three days of receipt and to notify the head of the Tax Police of the decision within eight days of issuing it. However, this article was deleted in 2014.

³⁴ Originally, the LTPA provided that the competent authority to which the appropriate report had been submitted was required to consider it within three days of receipt and to notify the head of the Tax Police of the outcome within eight days of issuing a decision on the report; however, these provisions were deleted in 2014.

the competent manager of the Tax Administration so that a request to initiate misdemeanor proceedings may be filed (Art. 137, para. 3 of the LTPA). However, if the Tax Police determines that the conduct constitutes another criminal offense that is not a tax crime, the duty to file a criminal complaint with the competent public prosecutor exists under the general procedural rules (Art. 280 of the CPC). Finally, if, while undertaking “requested” actions, the Tax Police establishes facts and evidence relevant to the amount of the tax liability, it submits them to the organizational unit of the Tax Administration competent for audits (Art. 139, para. 2 of the LTPA).³⁵

A STEP FORWARD?

Since 2015, Serbia has been implementing **a reform of its administrative tax system** with the aim of creating a modern, efficient, and cost-effective system. This process began with the adoption of the Tax Administration Transformation Program for 2015–2020, which was supplemented by an Action Plan for 2018–2023. One of the reform areas envisaged in that Program was the improvement of the tax-investigations function, through proposed necessary amendments to the LTPA and the CPC, in order to expand the powers and jurisdiction for tax investigations. Among the activities for implementing the Tax Administration Transformation Program for 2021–2025 are also those related to the detection of tax crimes, i.e., to the Tax Police. The transformation of the Tax Administration system was conceived through the achievement of **three goals by 2025**:

1) *Efficient performance of the Tax Police’s core functions*, through improved business processes related to operational work and the development of a new work process based on operational analytics (identifying, determining, and ranking risks) and intelligence-led investigation (a system of interrelated actions by Tax Police inspectors aimed at the systematic collection of data, information, and findings regarding specific tax crimes, perpetrators, organized criminal groups, security-relevant taxpayers, or security-relevant tax phenomena, etc.).

However, for this goal to be achieved, it was not sufficient merely to develop new working methodologies, as stated in the Program; it was necessary *to create, within the LTPA, an appropriate legal basis* containing precisely formulated authority for undertaking such operational-analytics and intelligence-led investigative activities by the Tax Police, i.e., prescribing the

³⁵ Until 2024, the Tax Police submitted facts and evidence to the organizational unit of the Tax Administration where the taxpayer was registered.

conditions, manner, and any limitations for such measures and actions, and then to *further regulate* these issues via a bylaw, which has not occurred.

2) *Effective suppression of complex tax-evasion schemes and organized financial crime within the Tax Police's jurisdiction*, through legislative amendments, primarily to the CPC, to enable certain special evidentiary actions to be ordered also in relation to the criminal offense of tax evasion (namely, covert surveillance of communications, covert tracking and recording, computer data searches, and simulated business transactions).

The planned legislative interventions have not taken place. In addition to amendments to the CPC, it would also have been necessary to *plan amendments to the LTPA* so that Article 135, paragraph 4, would explicitly grant the Tax Police authority to undertake special evidentiary actions.³⁶ Likewise, amendments would be highly warranted with respect to general evidentiary actions that were omitted from the Tax Police's powers, for example, searches of devices for automatic data processing and devices and equipment on which electronic records are stored or may be stored.³⁷

3) *A developed information system for the Tax Police*, as part of an integrated information system of the Tax Administration, through the development of software for creating a comprehensive profile and automated calculation of an overall risk indicator for taxpayers, as well as integrating the Tax Police with all functionalities of the Tax Administration.

However, the development of such an information system necessarily requires appropriate amendments to the LTPA that would create a *legal basis for such data processing*, taking into account all relevant provisions of the Law on Personal Data Protection, both the general regime and the regime applicable to data processing performed by competent authorities for specific purposes (which includes the Tax Police), in particular with respect to the principles of data processing, the rights of data subjects, rules on profiling, prior data protection impact assessments, etc.

Although reports on the implementation of the transformation programs for previous periods are not available to the public, a simple analysis of the

³⁶ Authority for covert surveillance of communications and covert tracking and recording exists in a significant number of jurisdictions (OECD. (2021). *Fighting Tax Crime – The Ten Global Principles, Second Edition*, Available at: https://www.oecd.org/en/publications/fighting-tax-crime-the-ten-global-principles-second-edition_006a6512-en.html (Accessed on July 7, 2025), 33, 37). In addition, it would be useful to consider the use of an undercover investigator (OECD. (2017). *Fighting Tax Crime – The Ten Global Principles*. Dostupno na: https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/11/fighting-tax-crime_c9374f32/63530cd2-en.pdf (Accessed on July 7, 2025), 36; OECD, 2021, 38).

³⁷ OECD. (2021). *Fighting Tax Crime – The Ten Global Principles, Second Edition*. Available at: https://www.oecd.org/en/publications/fighting-tax-crime-the-ten-global-principles-second-edition_006a6512-en.html (Accessed on July 7, 2025), 33–35.

legislation shows that **genuine reform has not occurred**,³⁸ because no new powers have been granted to the Tax Police since 2005. In anticipation of a **future, comprehensive reform**, and for the purpose of creating the legal, strategic, administrative, and operational conditions to combat tax crimes, it would be more than necessary to carefully **consider examples of good practice** contained in OECD documents. The first step would be a comprehensive assessment of risks, threats, and vulnerabilities, on the basis of which a strategy would be developed as a planning document.³⁹ *Inter alia*, the strategy would envisage legislative steps toward adequate regulation of the Tax Police's powers, since, in addition to "tax morale,"⁴⁰ failure to respond, or an inadequate response, by the state in combating tax crime has consequential and long-term effects on the stability and development of its financial and economic system.⁴¹

CONCLUDING REMARKS

For the detection of tax crimes, the activities of the tax inspector during a tax audit aimed at establishing facts are highly significant because it is precisely at that stage that suspicion may arise that an offense has been committed; and the inspector's findings and the evidence collected are not only forwarded to the Tax Police through the report, but also have evidentiary potential and relevance for any subsequent criminal proceedings.

In a tax audit, tax inspectors have a broad range of powers, both under the LTPA and under the LIS. The LTPA itself regulates their conduct in detail, granting them a substantial portion of the powers recognized by the OECD in its guides. Nevertheless, the law does not comply with Principle 10: Protection of the Suspect's Rights, which is of particular importance for a model in which administrative proceedings and pre-investigation proceedings are conducted within a single organization, as is the case in Serbia. Such an omission can

³⁸ On the need to reform competent authorities, see: Gottschalk, P. (2024). Investigating and prosecuting white-collar and corporate crime: Challenges and barriers for national police agencies. *Journal of Economic Criminology*, 3, 3–4.

³⁹ Chiarini, B., Marzano, E. (2019). A strategic approach for the crime of tax evasion. *Journal of Financial Crime*, 26(2), 473.

⁴⁰ Allam, A., Moussa, T., Abdelhady, M., Yamen, A. (2023). National culture and tax evasion: The role of the institutional environment quality. *Journal of International Accounting, Auditing and Taxation*, 52, 6.

⁴¹ Allam, A., Abou-El-Sood, H., Elmarzouky, M., Yamen, A. (2024). Financial development and tax evasion: International evidence from OECD and non-OECD countries. *Journal of International Accounting, Auditing and Taxation*, 57, 57.

have a negative impact on the suspect's rights, as well as on any subsequent criminal proceedings. Specifically, the tax inspector's report and the attached evidence may be used in criminal proceedings only if they were obtained fully in accordance with the law and the Constitution, as well as generally accepted rules of international law and ratified international treaties.

As for the Tax Police, over the years the legislature has substantially changed its initial position through several interventions (2005, 2014, 2015, 2018, 2024), strengthening its role in detecting tax crimes and their perpetrators through two types of intervention: prescribing additional powers, on the one hand, and increasing its institutional autonomy vis-à-vis the police, on the other. However, neither the powers nor the delineation vis-à-vis the police have been adequately regulated.

The legislator regulates the Tax Police's powers in a fairly imprecise manner, so it is not entirely clear which "*requested*" actions it may undertake for the purpose of detecting tax crimes and their perpetrators while acting as a law-enforcement authority in pre-investigation proceedings. As regards *evidentiary actions*, the Tax Police has fewer powers than the police acting with regard to other, non-tax criminal offenses; moreover, it lacks the full set of powers recognized in OECD guides that are necessary for effectively combating this form of financial crime.

Given that the Tax Police's powers are tied exclusively to tax crimes, and that, under the LTPA, "tax crimes" encompass, in addition to those exhaustively listed, certain other criminal offenses that entail a particular consequence (a "possible" consequence) and are prescribed in another law, such an insufficiently precise and open-ended provision may, in practice, generate a type of conflict of jurisdiction, i.e., a problem in delineating the Tax Police's actions from those of the police, something that should be prevented through clearer statutory language.

In view of all of the above, it would be highly advisable to seriously address the position of the Tax Police, following international standards. Certain legislative interventions are necessary, primarily in the LTPA, but also in other regulations. Throughout the paper, attention has been drawn to the illogicalities and inconsistencies of the current normative framework governing the Tax Police's actions in detecting tax crimes and their perpetrators, and the considerations set out may serve as a solid basis for amending the relevant statutory provisions.

BIBLIOGRAPHY

- Allam, A., Abou-El-Sood, H., Elmarzouky, M., Yamen, A. (2024). Financial development and tax evasion: International evidence from OECD and non-OECD countries. *Journal of International Accounting, Auditing and Taxation*, 57, 1–13.
- Allam, A., Moussa, T., Abdelhady, M., Yamen, A. (2023). National culture and tax evasion: The role of the institutional environment quality. *Journal of International Accounting, Auditing and Taxation*, 52, 1–38.
- Chiarini, B., Marzano, E. (2019). A strategic approach for the crime of tax evasion. *Journal of Financial Crime*, 26(2), 477–487.
- Gottschalk, P. (2024). Investigating and prosecuting white-collar and corporate crime: Challenges and barriers for national police agencies. *Journal of Economic Criminology*, 3, 1–7.
- Ilić-Popov, G. (2016). Poreska krivična dela u srpskom poreskom zakonodavstvu. *Nauka, bezbednost, policija*, 21(1), 40–56.
- Kamm, A., Koch, C., & Nikiforakis, N. (2021). The ghost of institutions past: History as an obstacle to fighting tax evasion?. *European Economic Review*, 132, 1–32.
- Milić, I. (2022). Specifičnosti prekršajnog gonjenja prema Zakonu o poreskom postupku i poreskoj administraciji. *Collected Papers of the Faculty of Law in Novi Sad*, 56(2), 1081–1096.
- Thirion, E., Scherrer, A. (2017). *Member States' capacity to fight tax crimes: Ex-post impact assessment*. European Parliament.
- Tsingou, E. (2020). Fighting Financial Crime: Who Designs Global Governance and Who Does The Work? *Fudan Journal of the Humanities and Social Sciences*, 13, 169–179.
- Turksen, U., Abukari, A. (2021). OECD's global principles and EU's tax crime measures. *Journal of Financial Crime*, 28(2), 406–419.

Legal Regulations

- Law on Ministries, Official Gazette of the RS*, no. 128/20, 116/22, 92/23. – other law.
- Law on Tax Procedure and Tax Administration, Official Gazette of the RS*, no. 80/02, 84/02. – corr., 23/03. – corr., 70/03, 55/04, 61/05, 85/05. – other law, 62/06. – other law, 63/06. – corr. other law, 61/07, 20/09, 72/09. – other law, 53/10, 101/11, 2/12. – corr., 93/2012, 47/13, 108/13, 68/14, 105/14, 91/15. – authentic interpretation, 112/15, 15/16, 108/16, 30/18, 95/18, 86/19, 144/20, 96/21, 138/22, 94/24.
- Criminal Code, Official Gazette of the RS*, no. 85/05, 88/05. – corr., 107/05. – corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19, 94/24.
- Criminal Procedure Code, Official Gazette of the RS*, no. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21. – decision of the Constitutional Court, 62/21. – decision of the Constitutional Court.
- Law on the Organization and Competence of State Authorities in Suppression of Organized Crime, Terrorism and Corruption, Official Gazette of the RS*, no. 94/16, 87/18. – other law, 10/23.

- Law on Police, Official Gazette of the RS*, no. 6/16, 24/18, 87/18.
- Law on Inspection Supervision, Official Gazette of the RS*, no. 6/15, 44/18. - other law, 95/18.
- Law on Personal Data Protection, Official Gazette of the RS*, no. 87/18.
- Financial Crime Investigation Strategy for the period from 2015 to 2016, Official Gazette of the RS*, no. 43/15.
- Action Plan for the Tax Administration Transformation Program for 2018–2023.*
- Ministry of Finance, Tax Administration. (2015). *Tax Administration Transformation Program for 2015–2020.*
- Ministry of Finance, Tax Administration. (2021). *Tax Administration Transformation Program for 2021–2025.*
- Ministry of Finance. (2019). Opinion no. 011-00-117/2019-04 dated February 28, 2019, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LIX (3)*, 177–180.
- Ministry of Finance. (2020). Opinion no. 413-00-76/2019-04 dated May 29, 2020, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LX (3-5)*, 117–118.
- Ministry of Finance. (2022a). Opinion no. 011-00-00789/2020-04 dated May 4, 2022, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LXII (5)*, 16–20.
- Ministry of Finance. (2022b). Opinion no. 011-00-00179/2022-04 dated August 15, 2022, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LXII (7-8)*, 81–83.
- Ministry of Finance. (2024). Opinion no. 380875 2023 10520 004 000 011 004 dated June 13, 2024, *Bilten – službena objašnjenja i stručna mišljenja za primenu finansijskih propisa, LXIV (6)*, 51–55.
- OECD. (2017). *Fighting Tax Crime – The Ten Global Principles*. Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/11/fighting-tax-crime_c9374f32/63530cd2-en.pdf; (Accessed on July 7, 2025).
- OECD. (2021). *Fighting Tax Crime – The Ten Global Principles*, Second Edition. Available at: https://www.oecd.org/en/publications/fighting-tax-crime-the-ten-global-principles-second-edition_006a6512-en.html (Accessed on July 7, 2025).
- OECD. (2024). *Designing a National Strategy against Tax Crime*. Available at: https://www.oecd.org/en/publications/designing-a-national-strategy-against-tax-crime_0e451c90-en.html; (Accessed on July 7, 2025).
- OECD. (2025). *Designing a tax crime investigation manual*. Available at: https://www.oecd.org/en/publications/2025/06/designing-a-tax-crime-investigation-manual_93b9a14d.html; (Accessed on July 7, 2025).