

General Administrative Provision for Tax Audits – Tax Audit Code¹

Date of signature: 15 March 2000

Pursuant to Article 108 (7) of the Basic Law², the following general administrative provision is enacted with the consent of the Bundesrat:

The Bundesrat has given its consent.

I. General provisions

Section 1 – Scope of the Tax Audit Code

(1) This administrative provision applies to field audits by the revenue authorities of the *Länder* and by the Federal Central Tax Office³.

(2) For special field audits by the *Länder* revenue authorities and the Federal Central Tax Office (for example, wages tax field audits and special VAT audits), sections 5 to 12, 20 to 24, 29 and 30, with the exception of section 5 (4), second sentence, are to be applied *mutatis mutandis*.

Section 2 – Tasks of the tax audit units

(1) The purpose of field audits is to determine and evaluate facts and circumstances that are relevant for taxation in order to ensure equitable taxation (sections 85, 199 (1) of the Fiscal Code⁴). The principles of the proportionality of the means used and the minimum possible intervention must be observed as part of the exercise of discretion when ordering and conducting audit measures.

(2) Field audit units may also be assigned responsibility for field audits as referred to in section 193 (2)

¹ This working translation of the *Allgemeine Verwaltungsvorschrift für die Betriebsprüfung - Betriebsprüfungsordnung* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this provision is authentic.

² *Grundgesetz*

³ *Bundeszentralamt für Steuern*

⁴ *Abgabenordnung*

of the Fiscal Code, special audits and other activities similar to audits, for example liquidity checks; this does not apply to tax investigation audits.

(3) The revenue authority is obliged to apply due discretion in deciding if and when a field audit is to be carried out. This also applies if the taxpayer requests a field audit as soon as possible.

Section 3 – Size categories

Taxpayers subject to field audits are assigned to the following size categories:

Large companies

Medium-sized companies

Small companies and

Micro-enterprises.

The reference date, relevant tax period and the characteristics to be used for this classification are determined by the highest revenue authorities of the *Länder* in agreement with the Federal Ministry of Finance.

II. Performance of the field audit

Section 4 – Scope of the field audit

(1) The revenue authority determines the scope of the field audit, exercising due discretion.

(2) In the case of large companies and the companies referred to in sections 13 and 19 below, an audit period should immediately follow the previous audit period. It is also possible to carry out an audit immediately after the preceding audit in the cases referred to in section 18 below.

(3) In the case of other companies, the audit period should generally not cover more than three consecutive tax periods. An audit period may however exceed three tax periods, particularly in cases where significant changes in the tax bases are expected or where there is suspicion of a tax crime or a tax-related administrative offence. Consecutive audits are permissible.

(4) The decision as to whether a company is audited according to subsection (2) or subsection (3) above is generally determined by the size category to which the company is assigned at the time of the notification of the audit order.

(5) If the revenue authority considers that a comprehensive examination of the tax circumstances is not necessary in an individual case, it may carry out a limited field audit (section 203 of the Fiscal Code).

This is limited to the auditing of individual tax bases during one or more tax periods.

Section 4a – Timely tax audits

- (1) The revenue authority may select taxpayers for a timely tax audit under the conditions of subsection (2) below. An audit is considered timely when the audit period covers one or more recent tax periods.
- (2) Timely tax audits are based on the tax returns as referred to in section 150 of the Fiscal Code for the tax periods to be audited (subsection 1, second sentence). To ensure the participation rights of the Federal Central Tax Office, the name of the taxpayer selected by the revenue authority must be communicated without delay to the Federal Central Tax Office, by way of derogation from the time period specified in section 21 (1), first sentence.
- (3) An audit report or a notification of an inconclusive audit must be prepared regarding the results of the timely tax audit (section 202 of the Fiscal Code).

Section 5 – Field audit order

- (1) The revenue authority responsible for taxation issues the order for the field audit to be carried out. The power to issue the order may also be transferred to the revenue authority tasked with carrying out the audit.
- (2) The audit order must include the legal basis for the field audit, the types of taxes, tax rebates, premiums, and subsidies that are to be examined, any special circumstances that are to be examined, and the audit period. Notes on the taxpayer's main rights and obligations regarding the field audit must be enclosed with the audit order. The notification of the expected start of the field audit and the specification of the location of the field audit may be included with the audit order. If the audit is a limited field audit pursuant to section 203 of the Fiscal Code, this legal basis must be included with the audit order. If the scope of a field audit is subsequently expanded, then a supplementary audit order must be issued.
- (3) The name of the auditor, the name of an audit assistant, and other provisions relating to the management of the audit may be included in the audit order.
- (4) The audit order and the notifications pursuant to subsections (2) and (3) above must be communicated to the taxpayer an appropriate amount of time before the start of the audit, provided the purpose of the audit is not jeopardised as a result. In general, four weeks is deemed to be appropriate notice in the case of large companies and two weeks in other cases.

(5) If an application is submitted to postpone the start of the audit, important reasons that may be recognised include, for example, illness of the taxpayer, the taxpayer's tax advisor or staff members who are important for providing information, significant disruption to the business due to renovation work, or force majeure. The taxpayer's application may also be approved subject to certain conditions, for example completion of preparatory work for the audit.

(6) If the tax circumstances of shareholders and members of the supervisory bodies are included in the field audit, then an audit order must be issued for each party involved, with due regard for the conditions of section 193 of the Fiscal Code.

Section 6 – Location of the field audit

The field audit is to be conducted at the taxpayer's business premises. If suitable business premises demonstrably do not exist and if the field audit cannot take place at the taxpayer's place of residence, the audit must be carried out at the tax office (section 200 (2) of the Fiscal Code). The use of another location for the audit is only possible under exceptional circumstances.

Section 7 – Audit principles

The field audit must focus on the essential information. The duration of the audit must be limited to what is necessary. The audit must primarily cover those facts and circumstances that could lead to definitive tax revenue shortfalls, tax refunds or tax rebates, or to not insignificant profit shifting.

Section 8 – Cooperation obligations

(1) The taxpayer must be informed at the start of the audit that they may appoint individuals who can provide information. The names of these individuals must be recorded. The taxpayer's obligations to provide information and to otherwise cooperate do not cease to exist because these individuals have been appointed.

(2) The auditor may, within the scope of their investigative powers under the conditions of section 200 (1), third and fourth sentences, of the Fiscal Code, also request information from company employees who have not been appointed as individuals who can provide information.

(3) The submission of accounts, records, business documents and other documentation that do not directly concern the audit period may be requested without extending the audit period where this is considered necessary to determine facts and circumstances relating to the audit period.

Section 9 – Tax-audit tracer notes⁵

⁵ *Kontrollmitteilungen*

Findings that may be evaluated, under section 194 (3) of the Fiscal Code, for the taxation of other taxpayers should be communicated to the competent revenue authority. Audit material relating to foreign relations must also be sent to the Federal Central Tax Office for evaluation.

Section 10 – Suspicion of a tax crime or tax-related administrative offence

(1) If sufficient factual indications of a criminal offence (section 152 (2) of the Code of Criminal Procedure⁶) which the revenue authorities are responsible for investigating are detected during a field audit, then the body that is responsible for dealing with this criminal offence must be notified without delay. This also applies if there is only a possibility that criminal proceedings must be carried out. If the suspicion is directed at the taxpayer, the investigations (section 194 of the Fiscal Code) into the circumstances which the suspicion relates to may only be continued in relation to the taxpayer once the taxpayer has been informed of the initiation of criminal proceedings. The taxpayer must also be informed that they can no longer be forced to cooperate in the taxation procedure (section 393 (1) of the Fiscal Code) if the findings may also be used for the purposes of the criminal proceedings. The provision of this information must be recorded, including details of the date and time, and must be confirmed in writing upon request (section 397 (2) of the Fiscal Code).

(2) Subsection (1) above applies *mutatis mutandis* in the case of suspicion of an administrative offence.

Section 11 – Final meeting

(1) If a final meeting takes place, then the points to be discussed and the date and time of the final meeting must be communicated to the taxpayer an appropriate amount of time before the meeting. This notification does not need to be in writing.

(2) Any information that is provided pursuant to section 201 (2) of the Fiscal Code must be recorded.

Section 12 – Audit report and evaluation of the audit findings

(1) If a legal remedy or a request for a binding commitment can be expected in relation to particular facts or circumstances, these facts or circumstances should be described in detail in the audit report.

(2) If it is intended to deviate from the findings of the field audit during the evaluation of the audit report or during the legal remedy procedure, then the field audit unit must be given the opportunity to make a statement. This also applies to the discussion of the current and legal status pursuant to section 364a of the Fiscal Code. In the event of significant deviations to the detriment of the taxpayer, then the taxpayer should also be given the opportunity to comment on these matters.

⁶ *Strafprozessordnung*

(3) Within the framework prescribed by the audit order, the field audit must be concluded either by a tax assessment or by a notification of an inconclusive audit.

III. Field audits of groups of companies and other related companies

Section 13 – Group audits

(1) Companies that belong to a group as defined in section 18 of the Stock Corporation Act⁷ are to be audited in conjunction, under uniform leadership, and according to uniform aspects, if the external turnover of the group's companies as a whole totals at least €25 million per year.

(2) A company that belongs to more than one group is to be audited together with the group that owns the largest stake in the company. If the ownership structures are the same, the company is to be allocated, for the purposes of the audit, to the group that has lead responsibility for the management of the company.

Section 14 – Leadership of the group audit

(1) In the case of group audits, the revenue authority that is responsible for the field audit of the dominant company or of the company exercising uniform management should assume the leadership of the single audit.

(2) If a group is controlled by a natural or legal person who is themselves not subject to the field audit, then the revenue authority that is responsible for the field audit of the dependent company that is most important economically should assume the leadership of the single audit. Deviations from the above may be made in agreement with the participating revenue authorities.

Section 15 – Initiating the group audit

(1) The revenue authority that is responsible for leading the group audit initiates the group audit and coordinates with the participating revenue authorities.

(2) Companies in the group should only be audited after consultation with the revenue authority that is responsible for leading the group audit.

Section 16 – Guidelines for conducting group audits

(1) The revenue authority that is responsible for leading a group audit may prepare guidelines for the

⁷ *Aktiengesetz*

audit. The guidelines may include, in addition to technical details of the audit, proposals for the uniform assessment of facts and circumstances.

(2) If any differences of opinion that arise during the cooperation of various revenue authorities within the scope of the single audit cannot be resolved by the parties involved, the competent superior revenue authorities are to be informed and a decision awaited.

Section 17 – Coordination and approval of the group audit report

The reports on field audits of group companies must be coordinated with each other and are to be sent to the taxpayers only once they have been approved by the revenue authority that is responsible for leading the group audit.

Section 18 – Field audits at other related companies

A single audit may also be carried out

1. for groups of companies whose turnover is below the threshold specified in section 13 (1),
2. for companies that do not belong to a group but that are closely connected to each other, for example through economic or family ties among the parties involved, or joint business activities.

Sections 13 to 17 apply *mutatis mutandis*.

Section 19 – Field audits at internationally associated companies

(1) Sections 13 to 18 also apply to audits of multiple domestic companies that are controlled or uniformly managed by a foreign natural or legal person, a combination of persons, a foundation or another special-purpose fund, or that are economically associated with a foreign company.

(2) The leadership of the single audit should be assumed by the revenue authority that is responsible for the field audit of the domestic company that is most important economically. Deviations from the above may be made in agreement with the participating revenue authorities.

IV. Participation of the Federation in field audits carried out by *Länder* revenue authorities

Section 20 – Type of participation

(1) The Federal Central Tax Office participates in field audits of the *Länder* revenue authorities by means of auditing activities and participation in meetings.

(2) The type and scope of the participation are determined by the authorities involved by mutual agreement.

(3) The *Land* revenue authority specifies the auditors responsible for the procedural organisation of the field audit.

Section 21 – Selection of the companies and notification of the intended cooperation

(1) The *Länder* revenue authorities must make the audit schedules for large companies available to the Federal Central Tax Office no later than 10 days before the beginning of the period for which they have been created. The *Länder* revenue authorities should identify the companies for which they consider the participation of the Federal Central Tax Office in the audit to be appropriate. The Federal Central Tax Office must inform the *Länder* revenue authorities without delay of the companies in whose audits it wishes to participate.

(2) As soon as the *Länder* revenue authorities have provided notification of the start of the audit, they will be informed by the Federal Central Tax Office regarding its planned participation.

Section 22 – Participation by means of auditing activities

(1) If the Federal Central Tax Office participates by engaging in auditing activities, then the federal auditors must as a rule take on self-contained audit areas and must draft this part of the audit report. The material to be audited is distributed among the participating auditors by mutual agreement.

(2) If the Federal Central Tax Office has participated in a field audit, it must receive a copy of the audit report.

Section 24 – Procedure in the event of differences of opinion between the Federal Central Tax Office and the *Länder* revenue authorities

If any differences of opinion that arise between the Federal Central Tax Office and the *Land* revenue authority during participation in field audits cannot be resolved by the parties involved, the highest revenue authorities of the Federation and of the *Land* are to be informed and a decision awaited.

V. Auditors, section head for field audits, audit meetings

Section 25 – Use of civil servants as auditors

The use of civil servants⁸ as auditors, who should generally belong to the higher-intermediate grade of the civil service, is only permissible following training in field audits of at least six months and with the consent of the competent superior revenue authority, or a body specified by it.

Section 26 – Use of employees of the public administration as auditors

(1) Public administration employees who already work in the tax administration may be used as auditors if the following conditions are fulfilled:

1. a recent period of at least three years working in tax assessment, including at least nine months of relevant work,
2. they have passed an examination after fulfilling the condition specified in number 1 above and
3. at least six months' training in field audits.

(2) Other applicants who are public administration employees may be used in field audits if the following conditions are fulfilled:

1.
 - a) they have completed a relevant university degree (law, economics, actuarial science, agriculture and forestry) or
 - b) they have completed training in business or another relevant field with a mandatory final examination and have proof of several years' experience in business, economics or auditing activities,
2. they have passed an examination after fulfilling the condition specified in number 1 letter a or b above,
3. a recent period of time working outside the area of field audits of at least 12 months, including at least nine months of relevant work in tax assessment, and
4. at least six months' training in field audits.

(3) The competent superior revenue authority may permit exceptions to subsection (1) and subsection (2) numbers 2 to 4 in individual cases.

(4) There is no legal entitlement to be allowed to take the examination.

(5) The written examination consists of at least two tasks from the area of accounting which must be

⁸ *Beamten*

completed under supervision.

(6) The oral examination covers the fundamentals of tax law, civil law, and commercial law, in particular accounting and commercial bookkeeping.

Section 27 – Deployment as auditor and as section head for field audits

(1) Civil servants and public administration employees should not be deployed for the first time as auditors if they are above 45 years of age.

(2) Section heads for field audits may only be deployed with the consent of the competent superior revenue authority.

(3) Section heads for field audits and auditors may only be used for tasks outside the scope of the audit with the consent of the competent superior revenue authority.

Section 28 – Field audit assistant

Field audit assistants may be deployed to support the auditors. They must act according to the instructions of the auditor.

Section 29 – Auditor identification card

An identification card must be issued for section heads and auditors. The identification card must include:

1. the name of the issuing *Land* revenue administration or the issuing revenue authority
2. a photograph of the holder
3. the given and family names
4. a serial number
5. the period of validity and
6. the powers granted to the holder.

Section 30 – Audit meetings

The section heads for field audits should hold meetings with the auditors of their specialist areas, and the competent superior revenue authority should hold meetings with the section heads or with the auditors of their regional revenue district, on a regular basis to discuss open questions that arise from

the auditing activities, inform them about new case law and new provisions, and give them guidelines and suggestions for their work.

Section 31 – Specialist (industry-specific) auditor meetings

(1) With regard to specialist (industry-specific) auditors, meetings are to be held when necessary. At these meetings, sector-specific experience should be discussed and compared, useful audit methods, key figures and forms should be developed for the audit procedure, and joint guidelines should be developed.

(2) The Federal Central Tax Office must be given the opportunity to take part in specialist auditor meetings that are held by the competent superior revenue authorities (section 38).

VI. Registers, group directories

Section 32 – Company register

(1) The field audit units must keep a register (company register) on the large, medium-sized and small companies.

(2) The company register consists of the name register and the industry sector register. The name register should be kept as a searchable alphabetical register, and the industry sector register should be kept according to the classification of the industry sector (breakdown for tax statistics).

(3) Subsidiary companies in the agricultural and forestry sector must only be recorded in the entry for the main company.

(4) The size category of a company that is determined on a certain reference date – generally for a period of three years – is decisive with regard to recording the company in the company register. The companies are allocated to size categories according to the results of the tax assessment or alternatively according to the information in the tax returns. Errors made in the classification of companies may be corrected at any time.

(5) Changes to the company characteristics that determine the size category are not taken into account until the next classification into size categories is performed. In the event of other changes, the register must be updated. If companies are removed from the register as a result of relocation (place of residence or management), the data in the company register must be sent to the revenue authority that is now responsible; relocations from another revenue authority and newly founded businesses must be recorded in the company register.

Section 33 – Group directory

Each competent revenue authority must collect the data that is required for a directory of groups as referred to in sections 13, 18 and 19 and send it to the competent superior revenue authority so that it can be forwarded to the Federal Central Tax Office to be included in a central database. The same applies to subsequent changes or additions to this data. The central group directory contains overviews of the individual groups of companies. The procedure for transmitting the data pursuant to the first and second sentences above and for the use of the data by the revenue authorities of the *Länder* is determined by the Federal Ministry of Finance in agreement with the highest revenue authorities of the *Länder*.

VII. Audit schedule, annual statistics

Section 34 – Preparation of audit schedules

The cases that are intended for audit must be compiled in audit schedules at regular intervals. The interval for large companies may not be shorter than six months and no longer than 12 months. Changes to the audit schedules may be made at any time. If a company belongs to a group, this must be noted in the audit schedules.

Section 35 – Annual statistics

- (1) The field audit units must prepare annual statistics and submit these to the superior revenue authority.
- (2) The highest revenue authorities of the *Länder* must inform the Federal Ministry of Finance of the results of the field audits, using a common template, by 31 March of each year. The Federal Ministry of Finance publishes the overall results in a summarised form on an annual basis.

VIII. Field audit archive, key figures, main locations

Section 36 – Field audit archive

- (1) Know-how that has been gained relating to taxation aspects, technical audit aspects, and industry-specific aspects, as well as general economic know-how that has been gained, must be communicated to the competent superior revenue authority. This authority collects the know-how and analyses it in a field audit archive.

(2) The Federal Central Tax Office informs the competent superior revenue authorities of audit know-how of general significance.

Section 37 – Key figures

The competent revenue authorities must send sector-specific key figures, calculated on the basis of the results of field audits, to the respective competent superior revenue authority to be forwarded to the Federal Central Tax Office to be included in a central database. The same applies to changes to this data. The procedure for transmitting the data pursuant to the first and second sentences above and for the use of the data by the revenue authorities of the *Länder* is determined by the Federal Ministry of Finance in agreement with the highest revenue authorities of the *Länder*.

Section 38 – Principal locations

(1) As principal locations, the competent superior revenue authorities have the task of gathering and evaluating documentation for individual professions or industry sectors that is of relevance for taxation. Their tasks also include cooperation with regard to the preparation of official tax depreciation tables. The principal locations are determined by agreement between the superior revenue authorities of the Federation and the *Länder*.

(2) The results of the evaluation are submitted to the other competent superior revenue authorities and the Federal Central Tax Office on a regular basis.

IX. Entry into force

Section 39 – Entry into force

This general administrative provision enters into force on the day after its publication in the Federal Gazette.⁹ The general administrative provision for tax audits – Tax Audit Code – of 17 December 1987 (Federal Gazette No. 241a of 24 December 1987) expires at the same time.

⁹ Published on 23 March 2000.