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By PwC Deutschland | 21 February 2025

Information on the taxpayer's main rights and obligations to cooperate during the external audit

The Federal Ministry of Finance (MoF) has updated its information on the taxpayer's main rights and obligations to cooperate during the external tax audit.

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The German Tax Audit Regulations (BPO) outline the procedures and responsibilities for conducting audits by tax authorities in Germany. It includes general provisions, tasks of audit offices, and guidelines for external audits.

After discussion with the supreme tax authorities of the federal states the following instructions must be attached to the audit order (according to Section 196 Fiscal Code, which provides that tax authorities shall specify the scope of an external audit in an audit order that is issued in written or electronic form and that contains instructions on applicable legal remedies in accordance with Section 356).

In its circular, the BMF comments on the following points (a summary):

Start of the external audit

The external audit generally begins at the time the person conducting the audit carries out specific investigative activities after the audit order has been issued. In the case of a data transfer, the external audit starts at the latest when the data is being evaluated (analysed).

Procedure of the external audit

The taxpayers are obliged to cooperate to ensure that the audit proceeds smoothly. For this purpose, they should comply with the following obligations and cooperate without delay. In addition, competent contact persons can also be appointed. If taxpayers do not comply with their obligations to cooperate a qualified request for cooperation may be issued and, if necessary, a penalty for delay in cooperation and a surcharge to the penalty for delay in cooperation may be imposed (Section 200a Fiscal Code). The person conducting the audit should be provided with a suitable room or workplace and the necessary resources free of charge to carry out the external audit.

If data and documents are stored electronically, the person conducting the audit has the right to inspect the stored data and use the DP system to audit these records.

Findings and summary of the external audit

If the tax assessment basis changes as a result of the audit, the taxpayer has the right to a closing meeting. This gives the taxpayer the opportunity to discuss individual audit findings again in summary form (Section 201 Fiscal Code).

A written or electronic report is issued on the results of the external audit in the event of a change in the tax assessment basis, which is sent upon request before it is finally assessed. Comments can be made on the respective report (Section 202Fiscal Code). However, legal action cannot be taken against an audit report, but instead against the tax assessment notices issued as a result of the external audit.

No final meeting is held if an abridged external audit (Section 203Fiscal Code) is carried out.

Procedure of the external audit in the event of a suspected tax offense or tax infringement (misdemeanor)

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If the external audit reveals suspicions that the taxpayer committed a criminal tax offense or other tax violations, the investigation of the suspected facts may only be continued once the taxpayer has been notified of the initiation of criminal tax or fine proceedings (Section 397 Fiscal Code). If and insofar as the audit findings can also be used for the purposes of criminal tax or fine proceedings cooperation of the taxpayer to clarify the facts may not be enforced (Section 393 para. 1 sentence 2 Fiscal Code). However, it would have adverse consequence should the taxpayer not cooperate in clarifying the facts; if necessary, the tax basis must be estimated if – for that reason - a precise identification of the facts is not possible (Section 162 Fiscal Code).

Electronic communication as part of the external audit

When communicating with the tax authorities care must be taken by the taxpayers to protect their own data. When transferring electronic data password protection is of the essence. Protected archive file formats (such as zip, rar or 7Zip), BitLocker-encrypted, or hardware-encrypted data carriers are suitable to avoid complications when the tax authorities further process the data. If data is transferred unencrypted, the tax authority does not necessarily encrypt the data carriers later.

If the tax authority transmits data which is subject to tax secrecy electronically, it must always be encrypted using a suitable procedure in order to safeguard tax secrecy and the protection of personal data. The tax authorities often offer secure data exchange platforms as an alternative to conventional communication channels or storage media.

Application

The current circular replaces the MoF circular from 24 October 2013 and applies from 1 January 2025.

Source:

Federal Ministry of Finance, circular of 17 February 2025 (IV D 3 - S 0403/00009/001/009).

Keywords

cooperation, tax audit