



Tax audits in Luxembourg – Key takeaways from research and case-law

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Dr. Fatima CHAUCHE
Georges SIMON

TAX AUDITS – INTRODUCTION ◦

- Vast majority of tax audits rules are based on procedural laws introduced in Luxembourg during the German occupation (ex. *Abgabenordnung* – 1931)
- Very little doctrinal work has been made on the subject of tax audits in Luxembourg
- The tax administration in Luxembourg (ACD) provides only statistical data on audits it performs each year (annual report)
- Over the past 10 years, modest number of cases brought before courts on tax audit issues

TAX AUDITS – INTRODUCTION ◦

- **Most common forms of tax audits**
 - **Tax return audits** (*contrôle de la déclaration*) : §205 AO
 - Often questions sent to the taxpayer
 - **Accounting audits** (*contrôle de comptabilité*) : §162, para. (9), AO
 - On-site verifications or recently more OTX* audits
 - « **Targeted** » groups: businesses from certain sectors (catering, pharmaceutical, lawyers, real estate, etc.)
- **Commonality between these audits : timing is unspecified** by the law (sole limitation is thus the applicable statute of limitation)

One-time-Exchange*

TAX AUDITS – RESEARCH ◦

UNKNOWN PHENOMENON

Study on (direct) tax audits run in 2023

- 5 part-time researchers (1 year)
- +130 anonymous participants
- Final results and legislative recommendations published in *Cahiers de fiscalité luxembourgeoise et européenne, 2023/2*
- *Ongoing study on VAT audits (O. COULON and al.)*

Topics covered

Audit types

Notification

Audit motives

Taxpayers' rights/obligations

Tax offices' powers

Administrative practices

TAX AUDITS – RESEARCH ◦

TAKEAWAYS FROM RESEARCH

Year	Tax audits closed (contrôles approfondis)*
2023	48
2022	49
2021	16
2020	19

*Source: Annual reports of the Administration des Contributions directes, 2020-2023

Professionals' perspective

- **Professionals** have **little to no experience** with tax audits in Luxembourg
- **Recent increase in tax audits** viewed as a « new trend »
- Recurring feedbacks: **rules governing tax audits** are widely **unknown** by professionals
- Main actors during tax audits : accountants / *fiduciaries*

TAX AUDITS – RESEARCH ◦

TAKEAWAYS FROM RESEARCH

Taxpayers' perspective

- **No systematic notification** that an audit is ongoing
- Taxpayers are not **informed of their procedural rights** during the audit
- **No specific timeline** for the duration of the audits (few days/months to years)
- Taxpayers are often **pressured to waive their statute of limitation rights**
- **Issues of transparency** (audit report documenting the findings/letter post-audit)

TAX AUDITS - CASE-LAW ◦

TAKEAWAYS FROM CASE-LAW

- During an audit, the tax administration (ACD) may, under certain conditions, obtain information via taxpayers' lawyers

Administrative Court, 13 July 2021, n° 45185C and *al.* (*Panama papers*)

This remains true even if **under EU law**, lawyers may enjoy a higher protection of professional secrecy

(Opinion of Advocate General Kokott, 30 May 2024, Case C-432/23 F, *Ordre des Avocats du Barreau de Luxembourg v Administration des contributions directes*)

TAX AUDITS - CASE-LAW ◦

TAKEAWAYS FROM CASE-LAW

- The tax administration (ACD) enjoys discretionary powers in the taxpayers it chooses to audit and it is not required to inform the taxpayer the reasons leading to his selection

Administrative Court, 14 November 2023, n° 47754C

Taxpayer suspected that he was audited as « someone jealous » denounced him to the authorities

- Despite secrecy of the audit sources, the authorities i) have an obligation to verify the accuracy of the information and if such information is relied upon, ii) it must be fully disclosed to the taxpayer (right to be heard)

TAX AUDITS - CASE-LAW ◦

TAKEAWAYS FROM CASE-LAW

- **The tax administration (ACD) must provide taxpayers with margins it relied upon to adjust their taxable profits**

Administrative Court, 15 June 2023, n° 48144C

The margin used by the authorities was allegedly based on profits generated by comparable businesses but they failed to provide the concerned taxpayer details on how such margin was calculated

- **The Court found that the tax administration violated the taxpayer's right to be heard (= annulled the tax assessment)**

TAX AUDITS - CASE-LAW ◦

TAKEAWAYS FROM CASE-LAW

- **The tax administration (ACD) did not violate the taxpayer's right after it failed to invite him to submit observations following his audit**

Administrative Tribunal, 6 June 2023, n° 45790 (First instance tribunal)*

The administration audited several years of a business and significantly increased the taxable profits of the business owner but failed to inform him that he was allowed to submit observations after he was given the final amounts of his readjustment

- **The tribunal considered that the taxpayer wrote spontaneously to the tax administration after his audit and that proved that his right to be heard was thus satisfied**

**Case under review (Administrative Court)*

TAX AUDITS - CASE-LAW ◦

TAKEAWAYS FROM CASE-LAW

- **The tax administration (ACD) did not violate the taxpayer's right after it failed to provide him access to his audit report**

Administrative Tribunal, 28 September 2023, n° 46507 (First instance tribunal)*

An audit was performed on various taxable years and a meeting between the taxpayer and the authorities took place. The detailed findings of the audit and the meeting notes were never disclosed to the taxpayer until the final stages of the procedure before the Tribunal.

- **The tribunal considered that the (undisclosed) report contained elements that showed that the taxpayer was given sufficient explanations by the authorities on his audit findings**

**Case under review (Administrative Court)*



THANK YOU.