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RÉPUBLIQUE FRANÇAISE

A tax audit with the professionals

The objective of the action plan

The vast majority of businesses have a citizen approach in regards to their taxes and ensure to properly pay their taxes.

The tax audit of these companies is however necessary. It ensures the proper application of tax laws and in some cases corrects errors.

But this control should not lead to constraints that are disproportionate to the issues in the interest of the audited company and of the administration.

Also, and in a shared interest, the Government announced as part of the National Committee to Fight against fraud of May 22nd 2014 measures to establish a citizens' audit of companies. These cover five areas:

1. Establish a tax prevention policy ;
2. Improve the legal security of audited companies ;
3. Ensure an open and effective relationship with the company ;
4. Encourage regularizations before or during the audits ;
5. Set up a system of penalties and fines more proportionate to the error.

These measures are consistent with the firm intention of the Government to fight tax evasion. The legal means of the tax administration in this area have also been considerably strengthened (heavier criminal sanctions, extending the limitation period for tax fraud, strengthening the means of the tax police, etc.).

The tax authorities must indeed be very firm with fraudsters. It must primarily devote its resources to the fight against fraud. However tax audits must take place in a climate of mutual trust when the company has respected the tax law and respected the officials responsible for its implementation.

Axe I – Establish a tax prevention policy

Some companies, particularly the smallest of them, claim that they have neither the time nor the means to be fully aware of the latest status of tax regulations.

Consequently, they do not always take the measurement of the risks they face. A tax risk prevention system will be established.

It includes the following measures:

❖ **Inform companies of recent developments on tax audits and the applicable rules of procedure**

An information space will be reserved to tax audit on the impots.gouv.fr site. This space will provide clear, educational and updated information on:

- how a tax audits take place and in particular the company's rights and obligations;
- the position of the administration on the most significant case law developments concerning the most frequently encountered subjects in the field of tax audits;

Furthermore, examples of proven fraud or abuse of rights clearly identified will be published, so that risks are known to every business.

❖ **Broadcast of pedagogical notes on some complex subjects and on issues frequently subject to adjustments**

Some subjects are source of frequent adjustments or deal with complex and changing issues.

It was decided to elaborate forms or notes on these topics. Those notes will be made available to businesses. These notes are different from administrative circulars and tax forms in that they warn businesses on the risks in case of an audit and provides them with key points they should look out for. They are dematerialized and updated regularly.

A first illustration of this measure is an instruction on the research tax credit (CIR). This can be viewed [here](#).

These instructions provide the companies with the elements that need to be met in order to be eligible for the CIR in research and development.

Notes on the mistakes not to be made in areas that are subject to frequent adjustments will also be available. For example, inventories, provisions, certain tax credits, incentive modes leaders, valuation of securities, etc. will be mentioned in those notes.

❖ **Inform companies engaged in certain fields to take precautions to avoid being involved in VAT fraud**

Some companies operate in sectors exposed to carousel fraud on VAT.

Therefore these companies will be alerted on the risks taken and particularly on the clues that reveal the existence of a fraudulent system.

Axe II - Improve the legal security of audited companies

❖ To ensure uniform treatment when auditing companies of a same group

The companies of a same group may be audited by different services. Businesses are entitled to expect that the positions taken on the same subject by these services are identical.

Provision will be set up so that, within a group, a position taken in the framework of the audit of a company of this group is extended to all the companies of the group. This position will remain valid as long as the companies remain in the group and that the situation does not evolve. It will also apply to companies integrating the group after the audit.

❖ A more effective way to contact an interlocutor

Companies have the ability to contact an interlocutor that has been designated within the audit service. This contact has the task of examining the adjustments notified when the company challenges the adjustments.

The interlocutor should be able to analyze with a fresh pair of eyes the positions of the auditing service and of the audited company in order, if warranted, to decide to make the necessary corrections.

Axe III – Ensure an open and effective relationship with the company

Bona fide business and tax authorities want a good dialogue during the audit.

An open dialogue makes it possible to save time. It avoids getting lost in unnecessary explanations or justifications. It helps to clarify the facts.

It is therefore in the interest of companies and the administration to facilitate the establishment of a fair and transparent dialogue.

The following measures relate to general accounting audits, that is to say those that do not tend to a specific point, will likely facilitate this dialogue.

❖ **The audit notice will indicate that the first visit is to better know the company and its environment and define with the company the practical modalities of the audit:**

It is in the interest of both parties to start trading on the characteristics of the business, its economic situation and its actual situation then seek jointly the most appropriate intervention methods.

From now on, the audit notice will therefore state that the on-site tax audit will begin with an exchange on these topics.

The following points will be especially addressed: specificities and company news, financial situation, information on the audit operations, setting a provisional calendar of interventions, discussions on the modalities of exchange of information, possible fixing waypoints, etc.

❖ **The Auditor Service will state as soon as possible to the company the points that will be investigated**

Companies sometimes do not have accurate information on what the auditing service is searching for.

When one is in the presence of a bone fide company, it will be recommended to announce within a reasonable timeframe the investigated the axes. This constructive approach aims to allow to find with the company the best way to obtain the necessary information.

Of course, these points can be completed later if a new problem arises.

❖ **Tangible measures will reduce the duration of audits**

Sometimes audits can spread over very long periods. Also, several measures designed to save time in the interest of all can be taken:

- Following the review meeting that closes the on-site audit, the service will address the company, in principle within 30 days, the conclusions of the examination: adjustment notification or notice of absence of adjustments. Otherwise, a “waiting” email will be sent.
- The service will reply to the observations of the company within 30 or 60 days if the company requested an extension of time. Otherwise, a “waiting” email will be sent.

- The interlocutor will send his findings to the company within the 30-day period from the interlocution session.

❖ **A single interlocutor to monitor the aftermath of the audit will be appointed to the company**

The interlocutor's role is limited for the moment to examine disputes that may remain after the audit between the auditing service and the company. This role ends when the adjustments can be collected ("*mise en recouvrement*").

The company will then be in contact with new services (public accountants responsible for the collection, litigation department ...) who have not taken part in the audit from the beginning.

To support the company in its obligations after the "*mise en recouvrement*", each audit direction will appoint a contact person (interlocutor) with jurisdiction to control all aftermath of the audit including those relating to recovery and litigation.

The company will have a single interlocutor for the aftermath of the audit with the task of facilitating dialogue between the various services mentioned above (public accountants, etc.).

The contact information of the interlocutor will be provided in the audit notice.

❖ **Create an appeal to a committee specialized in the research tax credit**

In case of persistent disagreement on the facts, the companies that were the subject of a tax audit can contact the departmental or national commission for direct taxes and taxes on sales. The commission, chaired by a magistrate, issues an advisory opinion. It is not competent for the research tax credit (CIR), depriving companies of the right to appeal on a subject in which the technical analysis of the facts is paramount.

It will be suggested to Parliament that the question of the eligibility of a CIR on a research project can be discussed in a committee whose composition would be suitable for this type of problem.

Axe IV – Encourage regularizations before or during the audits

Two regularization possibilities are offered or improved: one before the audit, the other during the audit.

❖ **Before an audit, companies can regularize their situation if it does not comply with the analysis published by the tax authorities on certain schemes**

From now on, the tax authorities will publish an analysis on certain schemes it deems abusive.

During these broadcasts, it will be specified that companies may choose to voluntarily regularize their situation under conditions that will be specified.

❖ **During the audit, the companies will have a better regularization procedure**

Companies can, during the audit, choose to regularize the mistakes made in good faith upon payment of duties and interest for late payment equal to 70 % of the normal interest rate, as provided in Article L.62 of the LPF (Tax procedure guide).

This possibility of regularization cannot be used by companies that cannot immediately pay the adjusted amounts, often for lack of cash. But it is in the interest of the State to collect as soon as possible evaded taxes and to avoid unnecessary litigation.

An amendment to Article L.62 of the Tax Procedure guide will be submitted to Parliament to improve the regularization procedure.

Axe V – Set up a system of penalties and fines more proportionate to the error

Penalties and fines are intended to dissuade companies to waive the tax rules.

They must therefore be substantial. But they can today, in some cases, reach amounts disproportionate to the offense committed. Conversely, they are sometimes insufficiently dissuasive.

As a result, it will be suggested to parliament to revise the system of fines and penalties to make them more proportionate to the error.