

## The tax authorities audit and take: the retention right of the tax inspector in seven rules

When you have the visit of a tax inspector, he can audit all books and documents. Some tax inspectors want to take these books and documents with them to their office. They have the right to do so, but not unlimited. A recent circular letter sets out the rules. We explain them in seven points.

### 1. Income tax: the tax authorities can only take documents necessary to determine the taxable income

The tax inspector can take all documents which are necessary to determine the taxable income. However the tax payer may not be disturbed in his professional activities. Books which are not closed can therefore not be taken. The tax inspector can however still consult them at the tax payer's premises.

### 2. VAT: the right to take books and documents only possible when relating to the performed activity

VAT inspector did already have this right (for income taxes only since the beginning of 2014). The right to take books and documents only applies to those relating to the economic activity of the VAT payer. These can be in first instance purchase and sales invoices.

### 3. Making copies of documents which are stored electronically

The tax inspector can always ask for copies of all documents which are stored in any electronic format.

### 4. The tax inspector cannot take any private goods

As mentioned above the tax inspector can take all documents which are needed to determine the taxable amount. This can clearly only relate to professional documents. Controlling private goods (e.g. briefcase, purse, ...) does not fall within the competence of the tax authorities. Even if they would contain documents which can be taken, the tax inspector cannot verify that. Since he cannot check them, he can certainly not take them with him.

### 5. The tax inspector can decide what he takes

The tax inspector himself can decide which documents he wants to take. This is called the discretionary competence of the tax inspector. This means that they do not have to give a special motivation why they want to take certain documents.

Certainly there are limits:

- the tax inspector cannot act arbitrary;
- he should respect the above rules;
- he cannot just take all the documents with him, but should ask the tax payer whether he wants to give them. Consequently the tax payer can refuse;
- he should make a statement when he takes the documents and provide the tax payer with a copy.

## 6. Taking documents should remain an exception

The main rule is: audit the necessary documents at the tax payer's premises (head office of the company, place of the economic activity). Taking the documents to quietly examine them at the office should be the exception.

## 7. The tax authorities should return the documents in due time

The tax authorities can keep the documents during the normal time of the investigation. It is however not clear what the normal time is. After this period the documents should be returned to the tax payer, e.g. when the tax authorities have used the information to draft a assessment notice, whereby the tax authorities have in other words decided on the basis of which (non-reported) information the tax payer will be taxed.

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