

UPDATE

Help, a tax audit!

The tax authorities need to be able to verify whether the information that you have provided is complete and accurate. They do this by auditing you. This is probably not something that you experience every day, and you should know how a tax audit works, and what the rules are.

Types of audits

A tax audit may take a variety of forms. The three most common types are:

- 1 a request for information;
- 2 an audit of your accounts and records (only for taxpayers who fall within the scope of the bookkeeping obligation¹); and
- 3 an on-site inspection.

Request for information

The tax authorities may ask you to supply certain information. Usually this will take the form of a written request. Your adviser can help you determine whether you are required to share the information requested, and in how much detail. The tax authorities may only ask for information that might be relevant for purposes of levying tax on you or another taxpayer. Our advice is not to share any information unless you are certain that you are obliged to do so. Contact us if you would like our advice in these situations. If you receive a telephone call from the tax authorities asking for data and information, we recommend that you ask the inspector to send a letter with the questions, and refuse to answer any questions by telephone in the meantime.

Audit of your accounts and records

The tax authorities may audit your accounts and records to establish whether the returns that you have filed contain any inaccuracies or omissions. Usually you will receive a written announcement of the audit, explaining what information you should have ready for inspection and what the scope of the audit is.

Before beginning the audit, auditing officials often ask for an audit file of the accounts and records. If you work with an audit file, you are obliged to provide it. If the tax official wishes to examine your automated data, we recommend that you set up a standalone computer containing the data, or else save the data onto a USB stick that only contains the relevant file. The auditing official may not edit the original data files, nor work in, or install software onto, the production system.

This type of audit will generally be conducted at your business premises, and may take several days. We recommend that you get in touch with your adviser first and make sure that he or she is present for the audit and your discussions with the tax authorities. Ask the tax official to provide ID before you sit down for the initial briefing.

¹ To find out more, study the BDO publication Recordkeeping obligations: what the tax authorities require from you.

During this briefing, the tax official will ask you about your business and about your accounts and records. It is important at this point to explain to the tax official who will be talking to him or her or who will be the point of contact during the audit. It is also advisable to make sure that the auditing official does not start questioning the company's employees without supervision. Next comes the examination of the previously specified accounts and records. However, the scope of the audit may also be broadened there and then to include other elements. You should consider arranging in advance how questions should be asked, for example whether you want them to be gathered together and put in writing. The auditing official will generally also want to take a look around to form an idea of the number of employees and to find out what is happening at your company. The person in charge may choose to show the auditing official around. After the audit, the auditing official will debrief you and explain whether he or she intends to adjust a return or an assessment, and whether a penalty will be imposed.

The briefing and debriefing sessions are the most important elements of this type of audit, and you should ask your adviser to be present at these moments, if not throughout the process. After the debriefing the auditing official will prepare a report. Any (additional) assessments that are imposed will be sent at a later date. The positions adopted in the report are not open to objection. However, you will often have the opportunity to give feedback on the text of the report. In practice you will generally be sent a draft version of the audit report first for your comments. The adjustments that will be imposed are also announced in the draft report. The report is then finalized. Any assessments resulting from the audit are open to formal objection.

On-site inspection

In an on-site inspection tax officials visit your premises to see how you run your business. This type of audit focuses primarily on establishing current facts, for example the number of employees, the range of available products, and inventories and price lists.

Case law dictates that on-site inspection must be announced in advance. Each of your employees must be able to provide the inspector with an identity document when asked, if this might be relevant for wage tax purposes. Follow-up inspections are not announced beforehand. An audit report is prepared of each on-site inspection.

Are you obliged to cooperate?

Your taxes

You are obliged to provide the tax authorities with information that might have bearing on your own tax situation. If the timing poses difficulties, it is possible to reschedule or move the audit.

Third parties' taxes

If you fall within the scope of the recordkeeping obligation, you are also obliged to supply information about the tax situation of third parties. You must allow access to your accounts and records for purposes of taxation of third parties with which you have an arm's length commercial relationship. Private individuals are not obliged to share information about third parties, and the tax authorities are required to advise private individuals that they are not under an obligation to cooperate.

Disclosure obligation: only the facts

You are obliged to answer all questions about facts. However, this does not mean that you also need to answer questions about practices: generally these are questions that begin with 'who' or 'why'. If you are not sure about a particular question, do not answer it immediately but instead talk to your adviser first. If you cannot consult your adviser there and then, you should ask for the question to be put in writing.

You are not required to allow the tax authorities to inspect your correspondence with your lawyer. Similarly, you are not required to allow access to tax advice provided by your tax adviser or accountant, or the related correspondence. This information is informally qualified as privileged.

The auditing official is entitled to make copies of books and documents. The tax official is not entitled to go in search of information, but must ask you to provide previously specified documents.

Access to accounting files

The tax authorities regularly ask taxpayers to provide access to the files that their accountant has generated. If you receive such a request, we recommend that you contact your accountant or your adviser before complying.

On request

You are only obliged to provide information that the tax authorities have explicitly requested, and you do not need to volunteer anything else. If the tax authorities ask for further information, you must be given a reasonable amount of time to provide it.

If you do not cooperate

If you do not comply fully with your disclosure obligation, the tax authorities will issue a decision known as an information requisition decision. An information requisition decision is open to objection and opens up a legal process of objection and appeal. The taxpayer achieves two important objectives by lodging an objection. Firstly, it offers confirmation of whether or not the

information requisition decision is valid and whether the requested information must in fact be supplied. Secondly, and more importantly, even if the information requisition decision is held to be valid, the taxpayer is given a new deadline for submitting the information. If you do not object, but do not supply the requested information either, the inspector can in most instances impose a heavier burden of proof and shift the onus. The inspector will make an estimate and base the assessment on that estimate, and you will need to prove that the base for the assessment is too high. Be aware that intentional non-compliance with the statutory disclosure obligations may lead to penalties under criminal law.

Do's en don'ts

- ▶ Notify your adviser beforehand if your accounts and records are going to be audited or if you receive a request for information.
- ▶ Prepare a room where the auditing official can work in peace and quiet, and make sure that the information requested by the tax authorities is in that room before the audit begins. We advise removing all other information from the room.
- ▶ If you feel that the information requested by the tax authorities in the announcement has no bearing on your tax situation, contact the auditing official.
- ▶ Designate a member of your staff as the auditing official's point of contact.
- ▶ Do not allow the auditing official to pressure you, and make sure that you understand what your rights and obligations are.
- ▶ Do not provide more information than is requested.
- ▶ Do not surrender your original documents, but instead make copies for the tax authorities. Keep a record of everything that you have supplied.
- ▶ Only answer concrete questions. If necessary ask your own questions until you understand precisely what information the auditing official wants.
- ▶ Read the draft or finalized report carefully. If you notice any mistakes, or if anything is unclear, talk to your adviser.
- ▶ If you have a difference of opinion with the auditing official, ask your adviser for assistance immediately to resolve the matter before the audit ends and the report is drawn up.
- ▶ Auditing officials perform tax audits on a daily basis and prepare them carefully. If the tax officer has reviewed your audit file beforehand, he or she will be in an even stronger position. Do not underestimate how much the auditing official knows and understands.

More information

For specific information about what BDO can do for your business, contact us to set up a personal meeting, without any commitment on your part. If you have questions or require further information based on the contents of this publication, please feel free to get in touch with your usual adviser at BDO Accountants & Belastingadviseurs B.V. or with a member of our Tax Litigation & Formal Tax Law group.

Telefoon +31 (0)13 466 62 22
E-mail fiscaleprocesvoering@bdo.nl
Internet www.bdo.nl

Although this publication has been prepared and put together with due care, its wording is broad and the information contained in it is general in nature only. This publication does not offer recommendations for concrete situations. Readers are explicitly discouraged from acting, not acting or making decisions based on the information contained in this publication without having consulted an expert. For an advice geared to your specific situation, please contact BDO Accountants & Belastingadviseurs B.V. or one of its advisers. BDO Accountants & Belastingadviseurs B.V., its

affiliated parties and its advisers do not accept liability for any damages resulting from actions undertaken or not undertaken, or decisions made on the basis of the information contained in this publication.

BDO is a registered trademark owned by Stichting BDO, a foundation established under Dutch law, having its registered office in Amsterdam (the Netherlands). In this publication 'BDO' is used to indicate the organization which provides professional services

in the field of accountancy, tax and advisory under the name 'BDO'.

BDO Accountants & Belastingadviseurs B.V. also acts under the trade names: BDO Accountants, BDO Belastingadviseurs, BDO Global Outsourcing, BDO International Tax Services, BDO IT Audit & Security, BDO Tax Consultants. BDO Accountants & Belastingadviseurs B.V. is a member of BDO International Ltd, a UK company limited by guarantee, and forms part of the

worldwide network of independent legal entities, each of which provides professional services under the name 'BDO'.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.