

# Which Duties to Cooperate and Rights are Valid for External Government Audits in Germany as of 2025?

Since the January 1, 2025, numerous new regulations are valid and are to be applied for tax audits in Germany. We would like to draw your attention to a written communication concerning the duty of the taxpayer to cooperate when a tax audit is decreed, which was released by the German Ministry of Finance (BMF) on February 17, 2025.



## Background

A tax audit in Germany should contribute to confirming that tax law has been applied justly and equally.

Particularly for international matters involving related entities abroad, the German taxpayers should be fully aware not only of their rights but also their duties to cooperate. Should these duties to cooperate not be complied with, drastic penalties may result.

## What needs to be considered during a tax audit in Germany?

In the case of important reasons, a postponement of the time slots scheduled for the government field or tax audit can be applied for [Sec. 197 para. 2 of the German Fiscal Code (Abgabenordnung)].

Furthermore, you can contact the tax inspector in advance in order to ask if transfer pricing documentation should already be submitted within the new 30-day deadline when a tax audit is decreed.

The tax audit is announced in written form. As of 2025 there is a thirty-day deadline for submitting the following **documents without receiving a specific request.**

- Intercompany transactions matrix ("IC-Matrix")
- Master File
- Documentation of extraordinary business transactions.

In general, this includes submitting transfer pricing documentation, even if the tax audit should not begin for weeks or months.

The tax audit is generally to commence at the point in time when the tax inspector begins specific audit activities in reviewing and evaluating data that has been provided.

To ensure a smooth process, it is advisable to proactively comply with the increased duty to cooperate in advance, particularly in the case of foreign matters [Sec. 90 para. 2 to 4 of the Fiscal Code].

As part of the increased duty to cooperate, extensive evidence must be provided, especially the following:

- Documentation on the type and volume (in Euro) of business relationships
- Comparative analyses to determine transfer prices (arm's length principle)
- Duties to retain and to submit documents upon request of the tax authorities.

These duties to cooperate are, as a rule, to be documented in the German transfer pricing documentation.

**Important:** In addition, the company's tax advisor must be informed in order to coordinate the respective steps to be taken in order to comply with the duty to cooperate.

### **The duties to cooperate during a tax audit**

These duties to cooperate during a tax audit are the following:

- To provide a suitable room or workplace available equipped with all of the required aids [Sec. 200 para.2 sentence 3 of the Fiscal Code]
- To have the entire range of documents available, to provide all of the information requested and to explain accounting records [Sec. 200 para.1 sentence 2 of the Fiscal Code]
- To give free access to the relevant software tool required for reviewing all electronic data and records [Sec. 147 para.5 of the Fiscal Code]
- To inspect and use all data retained in the company's EDP system [Sec. 147 para. 6 sentence 1 No. 1 of the Fiscal Code] as well as the system being available with the required instructions
- To transfer data in a machine-readable format upon request, e.g. on a data storage device or a data exchange platform [Sec. 147 para 6 sentence 1 No. 3 of the Fiscal Code]

### **Performing a tax audit**

The tax inspector must report on all of the most significant findings in the sense of Sec. 199 of the Fiscal Code.

Should the tax base be changed, a written/electronic internal audit report is to be sent upon request before being inspected.

### **Suspicion of criminal tax offence or tax violation**

Unfortunately, it appears that a tax audit more quickly threatens a tax offence in order to increase the pressure on the taxpayer.

Should any suspicion arise, investigations of the facts giving rise to such a suspicion may only be continued if criminal proceedings or penalty proceedings have been initiated [Sec. 397 of the Fiscal Code]. Although participation in clarifying the facts may not be forced, unfavourable conclusions may, nevertheless, be drawn from the tax audit procedures applied [Sec. 90 and Sec. 93 para. 1, Sec. 200 para. 1 of the Fiscal Code].



### **Our recommendation**

We strongly recommend proactively preparing all required transfer pricing documentation in advance. Once the 30-day deadline mentioned above starts, it takes the "Olympic-level" efforts to meet the deadline for submitting the required documentation. That is important to avoid any unnecessary penalties and additional taxes.

In order to minimize the risk of penalties and other potential exposures, we strongly recommend engaging a tax advisor at an early stage — ideally before a government field audit or tax audit is announced, and at the latest, once such an audit has been officially initiated.

## Do you have any questions on this topic?

Do you need support? Please contact our expert Henning Straeter. He will be pleased to explain our services to you.

## Contact person

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