



Fachbereich WD 4

Desk audit under German tax procedure law

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Aktenzeichen: WD 4 - 3000 - 041/26
Abschluss der Arbeit: 09.06.2026
Fachbereich: WD 4: Haushalt und Finanzen

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1. Desk audit – Legal provisions

Tax procedural law in Germany is governed by the Fiscal Code of Germany (“Abgabenordnung”; see English version as of 2017: https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html). There is no specific procedure known as “desk (tax) audit”. A tax proceeding generally begins with the taxpayer’s tax return. The individual tax laws govern the obligations to file tax returns.

The tax authorities shall investigate the facts of a case by virtue of office according to the principle of investigation (“Untersuchungsgrundsatz”). In doing so, they shall take all relevant circumstances into account, including those that are favourable to the taxpayers (Section 88 (1) Fiscal Code of Germany). The tax authorities shall determine the type and scope of investigations based on the circumstances of each individual case and based on the principles of consistency, lawfulness and proportionality; they shall not be bound by motions for the submission of evidence or by submissions made by the participants. Decisions on the type and scope of investigations may take the general experience of revenue authorities, as well as cost-effectiveness and expedience, into account (Section 88 (2) Fiscal Code of Germany).

Within the scope of their investigative powers, the tax authorities may therefore conduct an “ex officio audit” of the tax case at any time – subject to the statute of limitations. In doing so, they may consult the documents available to them from the taxpayer’s tax files, including the tax return, as well as information regarding the tax case submitted to the tax authorities by third parties (such as employers, pension funds, and health insurance providers), and, if applicable, additional documents such as notifications from other tax authorities.

If the relevant tax authority is unable to audit the tax case after the tax return has been filed, it may nevertheless issue a tax assessment notice with a review proviso (“Vorbehalt der Nachprüfung”). The tax case then remains open for a later audit. As long as the tax case has not been subject to a final audit, taxes may be assessed generally, or in certain cases provisionally subject to review, without justification being required (Section 164 (1) Fiscal Code of Germany). The tax assessment may be cancelled or amended for as long as the review proviso remains in effect. For example, tax assessment notices to entrepreneurs and companies are usually issued with a review proviso.

2. Desk audit – Procedure

See above.

3. Desk audit – Hearing of the taxpayer

Before a tax assessment or other administrative act affecting the rights of a taxpayer (or another participant) may be issued, he should be given the opportunity to comment on the facts relevant to the decision. This shall apply particularly where there is to be a significant departure from the facts declared in the tax return to the detriment of the taxpayer (Section 91 (1) Fiscal Code of Germany).

The consultation may be dispensed with when not required by the circumstances of an individual case, in particular when there is not to be a divergence to a participant’s disadvantage from

the actual details he provided in his tax return or other statement (Section 91 (2) No. 3 Fiscal Code of Germany). The consultation should also be waived if, when issuing a tax assessment, the tax authorities use data transmitted electronically by an entity required to report such information pursuant to statutory provisions, rather than the data provided in the tax return (Section 91 (2a) Fiscal Code of Germany).

4. Desk audit – Standards and good practices

See above.
