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## **A Taxpayers' Charter for Europe The Fiscal Code – a German Taxpayers' Charter?**

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### **Table of Content**

1. History of the German Fiscal Code
2. Content of the Fiscal Code
3. Rights guaranteed in the Fiscal Code
4. Obligations laid down in the Fiscal Code
5. Conclusions

The Fiscal Code – a German Taxpayers' Charter? | CFE Forum 3 April 2008

2

### A brief history of the German Fiscal Code

- Drafted in 1919 by Enno Becker
- Introduced in December 1919
- Updated and slightly amended in the following decades
- Still in force after World War II
- Request of the Parliament in 1963 to prepare a reform
- Appointment of a working group by the Ministry of Finance
- Introduction of a totally revised Fiscal Code in 1977
- Regular updates and amendments

### Overview over the content of the Fiscal Code

- Definitions
- Competences of the tax authorities
- Tax secrecy
- Tax liability
- Taxation procedures
- Legal security and certainty
- Time limits to be respected
- Tax returns
- Tax assessment
- Legally binding advice
- Obligations of tax payers (keeping of books, cooperation ect.)
- Tax audit proceedings

### Overview over the content of the Fiscal Code

- Enforcement procedures
- Out-of-court remedies
- Fines and penalties

### Some fundamental rights and principles of the Basic Law

- All persons shall be equal before the law (Art. 3 I)
- Legislation shall be subject to the constitutional order
- The executive and judiciary shall be bound by law and justice (Art. 20 III)
- Everyone shall be entitled to a hearing in accordance with the law (Art. 103 I)
- The home is inviolable (Art. 13 I)

### The right to get assistance and advice

- Laid down in section 89 (support and information)
- 16 different Laender and 16 tax administrations
- Administrative decrees and projects by the Laender
- Example Lower Saxony: since 2002 hot line, service centers

### Legally binding advice

- Since September 2006 (section 89 II)
- Written application
- In advance of any taxable activity
- Providing of complete information by the taxpayer
- Indication of specific interest
- Tax authorities charge a fee
- Tax administration is legally bound by its advice

### Right to confidentiality and secrecy

- Layed down in sections 30a, 31, 31a and b
- Protected data must not be disclosed
- Disclosure is only permitted under specific circumstances:
  - To open criminal proceedings for (tax) offences
  - When the taxpayer agrees to the disclosure
  - In cases where an absolute, overriding public interest exists

### Tax audits (right to be heard and right of appeal)

- Legal base for tax audits in section 193
- Since 2002 tax authorities can conduct electronic audits (sections 146,147,200)
- Scale of audit (section 194)
- Competences of tax authorities (section 195)
- Mandatory audit notice – right of appeal (section 196, 197)
- Audit proceedings (section 199)
- Obligation of the taxpayer to cooperate (section 200)
- Right of the taxpayer to have a concluding discussion (section 201)
- Written audit report (section 202)
- Legally binding advice (section 205)

### Right to privacy

- Data protection (sections 30a, 31, 31a, b)
- Entering of premises and homes (section 99 I)
- Information of the taxpayer in advance
- Only during normal trading hours
- Private homes: only to avert acute dangers to public safety and order
- Inviolability of homes according to Art. 13 I of the Basic Law
- Search for unknown items not allowed (section 99 II)

### Right to be heard

- Art. 103 I of the Basic Law; section 91 of the Fiscal Code
- Right of taxpayer to give his view before an act is issued
- Especially in cases where the tax authority does not accept the tax return
- Tax authority needs justification when tax payer is not heard (section 91 II)

### Right of appeal

- Taxpayer is entitled to lodge an objection against acts of tax authorities (section 347)
- Within one month after delivery of the tax notice (section 355)
- Administrative procedure is free of charge
- Tax administration has to review the decision
- After proceedings have been conducted an action can be taken before the fiscal courts

### Obligations of the taxpayer laid down in the Fiscal code

- To keep sufficient accounts, records, books and procedural documentation
- To file tax returns and other documents on time
- To provide complete and accurate information
- To cooperate with the tax authorities
- To state when the taxable activity commences, changes or ceases
- To pay tax when they are due

## Summary of the rights of taxpayers layed down in the Fiscal Code

- The principle of equitable and lawful taxation
- The right to pay no more than the correct amount of tax
- The right to be heard
- The right to be informed and assisted
- The right to certainty
- The right to confidentiality and secrecy
- The right to privacy
- The right of appeal

## Conclusions

- The Fiscal Code contains fundamental rights of taxpayers
- The provisions of the Fiscal Code have legal force
- Germany has incorporated the taxpayers' rights that can be found in tax payers' charters of other countries and in the OECD reports into a law that applies to all taxes in common
- In cases of infringements of these rights actions can be taken before the fiscal courts
- The sum of the taxpayers' rights incorporated in the Fiscal Code could be regarded as a German Taxpayers' Charter
- At present there is no need to introduce an explicit Taxpayers' Charter in Germany

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**Thank you for your kind attention!**

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17