



France taxpayers' charters  
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## A brief history of taxpayers' charters in France (1/3)

- « Charter of the audited taxpayer's rights and obligations » was adopted in 1975
- Inspired by a statement of practice issued in 1958 providing that a « taxpayers' aide-mémoire » will be delivered to audited taxpayers with the audit notice
- In 1975 this « aide-mémoire » was renamed « taxpayer's charter » but the content was hardly changed
- A statement of practice of June 19th 1975 stipulated that the charter has to be delivered with audit notices

## A brief history of taxpayers' charters in France (2/3)

- New step in 1987 after proposals from the « Aicardi commission » for improving relations between taxpayers and tax authorities
- Article L.10 of the tax procedure code modified by the so-called « Aicardi law » of July 1987 to make it compulsory for tax authorities to deliver charter prior to launch an audit and to specify that charter's provisions will be enforceable against tax authorities
- The charter of audited taxpayers has been regularly updated since then and the current version was issued in May 2005

## A brief history of taxpayer's charters in France (3/3)

- « Taxpayers' charter » issued in September 2005 is a totally different document
- Scope is much wider because it applies to all relations between taxpayers and tax authorities (and not just audit proceedings)
- Result of a political initiative inspired by the model of taxpayers' charter issued by OECD in 2003
- No special provision in tax law to make it legally binding

## Contents of France taxpayers' charters (1/5)

- « Charter of the audited taxpayer's rights and obligations » and « Taxpayers' charter » are based on the same principles recalled in their preamble
- Reference to Declaration of the Rights of Man and of the Citizen to which refers the preamble of the Constitution
- Relation between consent to pay taxes and constraints imposed on taxpayers by power of tax authorities to control tax returns
- Need for a balance between taxpayers and tax authorities obligations

## Contents of France taxpayers' charters (2/5)

- « Charter of the audited taxpayer's rights and obligations » contains 5 chapters which deal only with tax audit
- Chapter 1 « Audit notice » introduces different types of audit and recalls the right to be assisted by a counsel
- Chapter 2 « Audit proceedings » addresses audit location, timeframe,...
- Chapter 3 « Findings of the audit » recalls outcome of the audit, two-party procedure after adjustment proposal and administrative reviews after adjustment is confirmed

## Contents of France taxpayers' charters (3/5)

- Chapter 4 « Consequences of the audit » is a presentation of applicable penalties and obligations for the taxpayer to pay supplementary taxes
- Chapter 5 deals with « Remedies after the end of the audit » : filing of a complaint before tax authorities, payment deferral, right to appeal to tax court
- Charter is a very detailed 30-page long summary of the legal provisions in connection with a tax audit, but also introduces rights which cannot be found in tax law

## Contents of France taxpayers' charters (4/5)

- 2005 Taxpayers' charter is divided in six parts : 3 recalls what are the commitments of tax authorities and 3 what are the behaviour expected from taxpayers :
  - An administration which simplifies taxpayers' obligations vs a taxpayer who complies with tax obligations ;
  - An administration which respects taxpayers' rights vs a taxpayer who is co-operative ;
  - An administration which is fair in dealing with taxpayers vs a taxpayer who doesn't try to escape tax obligations.

## Contents of France taxpayers' charters (5/5)

- Examples of commitment of tax authorities : answer to phone call promptly, reply to written inquiries in less than 30 days, use clear and simple language, treat taxpayers as being honest, bound by private rulings, inform about right of review, not use or divulge personal information,...
- Examples of behaviour expected of taxpayers : declare assessable income and pay taxes in due time, inform of events like ceasing business, moving,...., provide complete and accurate information, co-operate with tax auditors, do not try to hide facts or do not use legal reviews to save time,...

## France taxpayers' charters' legal effect (1/3)

- France taxpayers' charters are not part of the French tax legislation : charters have not been voted by Parliament, they are just documents issued by tax authorities
- In France, administrative comments are not a source of law but under article L.80 A of the tax procedure code tax authorities cannot modify the original assessment of a taxpayer's tax liability when this assessment resulted from the application of an administrative statement

## France taxpayers' charters' legal effect (2/3)

- But article L.80 A provisions do not apply to procedure law and therefore administrative comments of tax audit procedure are not legally binding for tax authorities
- Before modification of article L.10 of tax procedure code in 1987, tax courts ruled that the audited taxpayers' charter was not enforceable
- Same solution should apply to the 2005 taxpayers' charter

### France taxpayers' charters' legal effect (3/3)

- As far as charters are just a reminder of statutory tax regulations absence of legal effect is not a problem as taxpayers could rely directly on tax law provisions
- But when charters contain an interpretation of tax law provisions favourable to taxpayers or introduce procedure not existing in statutory tax regulations, it is impossible for a taxpayer to rely on charters' provisions before a court
- Article L.10 tax procedure code : « The provisions contained in the charter [of the audited taxpayers] are enforceable against tax authorities » (1987)

### Implementation by tax courts of the audited taxpayers' charter (1/4)

- Once new provisions of article L.10 came into force after 1987 tax courts ruled quickly that obligation for tax authorities to deliver the charter to taxpayers prior to the launch of a verification procedure was a substantial violation of taxpayer rights
- Two interesting questions addressed by tax courts :
  - Is it also a substantial violation if the version delivered to the taxpayer is out-of-date ?
  - On who rests the burden of proof regarding delivery of the charter ?

## Implementation by tax courts of the audited taxpayers' charter (2/4)

- Until which extent a taxpayer could rely on the provisions of the charter which are not in line with statutory regulations ?
- Conseil d'Etat in CE 10 novembre 2000, n° 204805, Milhau set guidelines for invocability of taxpayers' charter :
  - this is an obligation for tax authorities to respect the rules which, without any legal basis in general tax code or tax procedure code, are nevertheless contained in the charter ;
  - if those rules were not respected, tax courts have to appreciate if there was a substantial violation of taxpayer rights established under the charter ;
  - only a substantial violation would render audit proceedings void

## Implementation by tax courts of the audited taxpayers' charter (3/4)

- Examples of substantial violation :
  - Right to have a dialogue with the auditor before request of justification in case of a two-party review of a taxpayer's personal situation
  - Right to refer the matter to the director to whom the auditor report or to call on the interlocutor in case of disagreement with the auditor

## Implementation by tax courts of the audited taxpayers' charter (4/4)

- Examples of violation not regarded as substantial :
  - Audit notice or adjustment proposal not signed by the auditor
  - Right to refer the matter to the director denied, if this right was fulfilled before confirmation of adjustments by the auditor
  
- Examples of absence of violation :
  - No denial of the right to refer to the director if taxpayer never requested to refer the matter during audit proceedings
  - No obligation for the interlocutor called on by the taxpayer to let her/him know of her/his decision

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