



**MINISTÈRE
CHARGÉ
DES TRANSPORTS**

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CHARTER OF THE RIGHTS AND OBLIGATIONS OF THE CONTRIBUTOR LIABLE TO PAY AVIATION TAXES

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This charter only provides a summary of the most commonly used provisions with regard to auditing airport taxes. To access full information on the subject, please refer in particular to the Code of Tax on Products and Services and the Book of Tax Procedures.

PROVISIONS IN FORCE IN APRIL 2023

You have just received an airport tax notice of investigation. Investigating your declarations forms part of the standard framework of the French declarative system. The tax authorities are responsible for ensuring regularity of your tax returns, which are presumed to be true and accurate. As part of this investigation, it is preferable that you and the auditor work calmly and constructively. Furthermore, you are reminded that it is essential to remain courteous within the framework of this relationship; any breach of this obligation is liable to prosecution (Articles 433-3 and 222-8 of the French Criminal Code).

DEMOCRACY IS NOT POSSIBLE WITHOUT CONSENTING TO TAXATION.

THIS PRINCIPLE IS LAID DOWN IN THE CONSTITUTION, IN ACCORDANCE WITH THE DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN, AND BY THE SOVEREIGNTY OF PARLIAMENT IN THE WAY IN WHICH TAXATION RULES ARE DRAWN UP. HOWEVER, IN MODERN SOCIETIES, THIS NOTION ALSO IMPLIES A THAT TAXPAYERS PERSONALLY ACCEPT THE CONSTRAINTS THAT ARE IMPOSED UPON THEM BY THE VERY FACT THAT TAXATION EXISTS. WHAT ARE THE CONDITIONS?

TAXPAYERS WANT THE PUBLIC BURDEN TO BE SHARED IN AN EQUITABLE WAY. TO THIS END, THEY BELIEVE IT IS PERFECTLY LEGITIMATE FOR THE AUTHORITIES TO MONITOR HOW THE DECLARATIVE SYSTEM FUNCTIONS. HOWEVER, THEY DO EXPECT THEIR RIGHTS AS CITIZENS – RESPECT FOR INDIVIDUAL FREEDOM, RIGHT TO DEFEND, APPEALS AND FAIR PENALTIES – TO BE RESPECTED.

THE LAW THEREBY SEEKS TO MAINTAIN A BALANCE BETWEEN TAXPAYERS' RIGHTS AND OBLIGATIONS.

THE PRESUMPTION IS MADE THAT YOU WILL ACT IN GOOD FAITH AND THAT YOU HAVE THE RIGHT TO MAKE MISTAKES.

THE PURPOSE OF THIS CHARTER IS TO PROVIDE YOU WITH INFORMATION IN VERY SPECIFIC TERMS ABOUT THE GUARANTEES YOU WILL RECEIVE THROUGHOUT THIS AUDIT PROCESS ABOUT WHICH YOU HAVE JUST BEEN INFORMED.



Notice of investigation

You have just received a notice of investigation regarding the taxes to which your company is liable and functions as the taxpayer, in relation to taxable transactions for which the chargeable event took place in the French fiscal territory.

This document will give you precise information about the nature, time frame and purpose of the audit and the option to be assisted by an advisor of your own choosing.

AUDITING THE FISCAL SITUATION OF THE TAXPAYER

Auditing the taxpayer's fiscal position allows the accredited auditor to check that all the documentation required to audit one or more of the taxes for which the DGAC is responsible (Article L. 6431-6 of the Transport Code), specifically the supporting documents for boarding operations involving passengers or goods, which are generally annexed to the accounts.

This inspection procedure for aviation taxes does not include an audit of the accounts, nor does it include an on-site critical audit of a company's accounts or the supporting documentation pertaining to these accounts.

VERIFIED TAXES

The notice of investigation can specify the taxes that will be subject to an on-site inspection. In the absence of these details, all of the taxes or parts thereof as mentioned in article L. 6431-6 of the Transport Code shall be subject to inspection.

THE PERIOD BEING INVESTIGATED

With regard to aviation taxes, the DGAC can audit your situation up until the end of the third year following the year in respect of which the taxes is due. In June 2023, for example, the authorities are authorised to audit returns for the years 2020, 2021 and 2022, in addition to those returns that have been submitted up until April 2023 relating to taxes on air transportation of passengers and goods, and up to 31 March 2023 relating to tax on air noise pollution.

In principle, it is not possible to repeat an on-site tax inspection in relation to a period that has already been audited on-site, unless new items subject to tax that were not known at the time of the initial audit have since come to light after said audit, and these were items of which the auditor could not have been aware. It is possible to carry out an on-site inspection relating to the same taxes and time periods for the purpose of investigating a contentious claim.

INFORMATION RELATING TO THE AUDITOR'S FIRST ON-SITE MEETING

In general, you will be informed that an audit has been opened by means of registered letter with acknowledgement of receipt. With regard to the audit, you will have several days to prepare for the inspection. In principle, this will take place during normal business hours.

However, the law does authorise the auditor to arrive at your company's premises and hand over the notice to you in person. Nevertheless, during this initial visit, the inspector is only able to make material observations. For example, they can check the existence of any documentation that is relevant to the inspection, but it will only be possible for them to examine the documents at any depth once a reasonable period of time has elapsed, thereby enabling you to choose an advisor.

If it should be the case that all of the supporting documentation you need as proof to substantiate your aviation tax returns are paperless or stored electronically, you are able to authorise the auditor, at the time of this initial visit, to make two copies of any digital files they may discover during the course of the audit. They will leave one copy behind with you and take the other one with them; at the time of the next meeting, once a reasonable period of time has elapsed, a comparison can be made of the two copies.

ASSISTANCE FROM A CONSULTANT

The option is available to you to seek assistance from an advisor. They will be able to help you in how you work with the auditor or they can represent you in your dealings with the auditor insofar as you have appointed them to fulfil this role.

OFFICERS RESPONSIBLE FOR THE AUDIT

The name and role of the auditor will be specified on the notice of investigation. This agent shall be an established official that is part of a category A or B organisation with a public function.

They will be subject to professional secrecy.

Should you have any difficulties, you can contact the Head of the Airport Tax Management Department (SGTA) or their deputy. Their role is explained below. You are able to contact them during the audit.

The audit process

PLACE OF AUDIT

Any inspection of documents that form part of the airport tax audit shall take place at the company. The auditor is entitled to ask for any relevant documentation to be presented, or any other documents that could be used to support the different parts of the audited declarations.

However, if it would be problematic to inspect these documents on site, you can send a request to the auditor in writing to ask them to inspect them at their office. If they agree, they will issue you with a receipt for the items that you have handed over to them and these will be returned to you, against receipt, at the end of the inspection. It shall be noted that you have opposed the inspection should you or any third parties prevent the auditor from carrying out the audit. Should this be the case, your tax bases will be automatically assessed on the basis of the capacity to carry passengers and/or cargo, and in accordance with the manufacturer's maximum carrying capacity standards. Under this procedure, you will lose the rights attached to a standard audit and instead shall be exposed to high penalties (a surcharge of 100%) and criminal sanctions (Article 1741 of the General Tax Code, which carries 5 years' imprisonment and a fine of €500,000). Refusing to provide the documentation required for an inspection can carry a fine (€150, Article 1729 B of the General Tax Code). Any such refusal also has consequences in relation to the burden of proof.

DURATION OF AUDIT

The duration of an on-site tax inspection may not exceed six months.

THE AUDIT PHASE

First and foremost, an inspection is a dialogue with the auditor. This is an oral, adversarial debate during which you are able to set out your explanations for any discrepancies that the auditor may have identified using the information that was available to him. The dialogue between you and the auditor is not formalised.

Interviews can be organised by video conference as long as you submit a written request to this effect and the auditor agrees.

Without the taxpayer being able to object, the auditor is permitted to take copies of any documents presented to him.

During the course of the audit, you are entitled to rectify any errors, inaccuracies, omissions or shortcomings that have been identified by the auditor in the tax returns that have been filed by the due date, as long as they do not give rise to any surcharges being levied in respect of a wilful failure to comply. You must make any requests to this effect before any adjustment is proposed. This option gives you the option to pay a reduced rate of interest on late payments (0.14% per month instead of 0.20%) and requires you to file additional returns within thirty days of you having made the request. All additional dues and interest on late payments will be paid at the point at which the supplementary declaration is filed. Where applicable and with the authorisation of the public accounting officer of the «air traffic control and operations» extra budget, who is in charge of collecting aeronautical taxes, it is possible to pay the amounts due under a payment plan.

Pursuant to the provisions of 10° of article L. 80 b of the book of tax procedures, within the framework of the audit of aviation taxes, you are also entitled to ask the tax authorities – in writing and before any proposed adjustment is sent – to formally adopt a position with regard to any point examined during the audit.

On-site inspections are concluded at a final meeting during which the auditor will summarise their findings, specifically those points that will result in corrections and those that will not give rise to any action being taken on the part of the tax authorities. This last meeting must be held before the end of the six-month on-site inspection period noted on page 6.

Finally, it must be remembered that any physical or verbal aggression towards enforcement officers is liable to prosecution (articles 228-3 and 433-3 of the French Criminal Code).

Conclusion of the audit

You will be informed once the audit has been completed by means of:

- either a notice of no adjustment;
- or a proposed adjustment.

The proposed adjustment is the legal document used by the tax auditor to notify you of the adjustments that they intend to make once the audit is complete. The first page of the proposed adjustment sets out the nature and purpose of the audit.

It will provide you with information on:

- the deadline you have for responding;
- any penalties to which you may be subject;
- the decision to apply certain procedures or penalties will be taken by the auditor's immediate superior.

In respect of each adjustment, the proposed adjustment will include the nature of the adjustment, the reason why it is necessary and the amount.

The tax authorities will provide information in the proposed adjustment about the content and origin of the information and documentation that has been provided by third parties and which formed the basis of their adjustments. A copy of these documents can be provided to you prior to the collection assessment if you request it.

In the proposed adjustment, you will be provided with information, without the need for you to request this in advance, of any financial consequences – amount of dues and penalties – associated with the proposed adjustments.

Consequences of the procedure being used

THE ADVERSARIAL PROCESS

In general, the tax authorities follow an "adversarial rectification" process whereby a written dialogue takes place between you and the auditor.

This is the rectification procedure under common law. You have the following rights:

The burden of proof with regard to any omissions, inaccuracies or errors lies with the tax authorities: they must be able to demonstrate these findings and provide justification for any adjustments that have been made;

The proposed adjustment must be explained in such a way that you have the opportunity, within thirty days of receipt, to comment on it or accept it; should the authorities receive a request to extend the deadline before this period has expired, it shall be extended by thirty days;

The auditor must provide detailed responses to your comments;

Should it have not been possible to establish that you were acting in good faith, the decision to apply the penalties shall be made by the head of the SGTA or their deputy (proof that they have taken this decision will be in the form of a signature and a statement regarding the identity of this person);

Information about any financial consequences will be provided once again before the collection assessment is issued insofar as the dues and penalties have been changed subsequent to the proposed adjustment, i.e., this means in practice, that they have been changed in response to your observations;

In the event of any subsequent dispute, the burden of proof shall lie with the authorities.

EX OFFICIO PROCEDURES

In a very limited number of cases, ex officio procedures may be used.

This means you will not be entitled to the rights attached to the adversarial procedure.

Taxable persons who are subject to this procedure must be provided with information about the methods that have been used to determine the tax base.

These procedures will only be followed if you have failed to meet your tax obligations:

Failure to file a declaration or filing after the deadline

Opposing a tax inspection;

Performing a concealed activity within the sense that the existence of your activity has never been made known to the authorities and in respect of which, no aviation tax return has been filed.

THIRTY-DAY RESPONSE PERIOD

Within this period of time, which may be extended by 30 days at your request, a number of options are available to you. You can:

- agree with the auditor's proposals;
- state your disagreement by submitting comments.

If you have not replied within the thirty-day period, which may be extended, any corrections will have been deemed to have been tacitly accepted **if you have drawn up comments on the corrections**

You will be informed of the auditor's position by means of a document entitled "response to the taxpayer's comments". It is only mandatory to send this document, however, if the adversarial process has been followed.

This document sets out the corrections that have been upheld in terms of rights and penalties, in addition to any reasons as to why your comments were rejected.

In the event of a disagreement with the auditor

You can contact the head of the SGTA or their deputy:

Should the auditor have maintained the proposed corrections in whole or in part, it is possible for further clarification to be provided, where necessary, by a higher authority in the form of the head of the SGTA or their deputy.

You can contact this contact person:

Should significant differences remain in place once this process has taken place, you can call the contact person who has been specially designated by the director to whom the auditor reports; this will be the Secretary General of the General Directorate of Civil Aviation (or their deputy), Their offices are located at 50, rue Henry Farman, 75720 PARIS Cedex 15.

BURDEN OF PROOF

The principle: the authorities shall bear the burden of proof if the aeronautical tax returns are filed on time.

Exceptions to this: the burden of proof shall lie with the taxpayer should the tax declarations not be filed within the specified period or if no supporting documentation is provided during the on-site audit.

Outcome of the audit

Once the audit has been completed, any dues still to be collected will be recovered.

Irrespective of any pecuniary penalties, interest on late payments shall be calculated on the basis of the amount of dues; this therefore takes into account the fact that you have not paid what you owe by the statutory date. In the absence thereof, you would be at an advantage over a taxable person who had strictly complied with their obligations. This interest does not take the form of a penalty, but constitutes the price of time.

Interest on late payments is calculated at 0.20% per month, irrespective of the type of tax to which it relates.

PENALTIES

Should you fail to comply with your obligations, you will have to pay a surcharge in addition to interest on late payments. This shall be in proportion to the amount of dues that have not been paid and dependent upon the nature of the failings that have been observed.

Guarantees specific to penalties

You will be provided with information about the nature of the penalties and the grounds upon which they will be applied before they are collected.

You will have thirty days to submit your comments.

This information is generally included in the proposed adjustment, which will also note the amount of any penalties.

You have filed a declaration **Surcharge**

There is no reason to question that you have acted in good faith: no surcharge
In the event of deliberate disregard: **40%**

You have not filed a declaration **Surcharge**

No formal demand for payment has been sent to you: **10%**
A formal demand for payment was sent to you and you filed the declaration within thirty days after receiving this formal demand: **10%**

A formal demand for payment was sent to you, but you have not filed the declaration within thirty days after receiving this formal demand: **40%**

Discovery of a concealed activity: **80%**

Opposition to tax audit **100%**

In the same way as opposing a tax audit, any serious tax offences constitute a criminal offence.

SETTLEMENTS

A settlement is an agreement that is concluded between you and the tax authorities.

The tax authorities may reduce the penalties for which you are liable and, if appropriate, grant you permission to defer payment. For your part, you must undertake to dispense with any litigation procedures. If the authorities intend to offer you a settlement when they send you the proposed adjustment, information about this will be provided in this document.

You can also request that you benefit from having acted on your own volition before or after the tax has been collected.

If the principle of a settlement is accepted, any proposals will be provided to you in writing and you will have thirty days to respond to them.

PAYMENT OF FOLLOW-UPS

With regard to airport taxes, you will receive a document entitled «avis de mise en recouvrement» [notice of collection]. This will set out the nature of the taxes and penalties that are being levied upon you, the sums to be paid immediately and the address of the public accounting officer who is responsible for collection.

If you do not intend to contest the adjustments, it remains your responsibility to ensure that any payment deadlines are respected. Specific penalties shall apply in the event of late payment:

– 5% surcharge and interest on late payments at the rate of 0.20% per month for taxes.

If you intend to contest the adjustments, you can apply for a moratorium on payment, which may be granted by the public accountant, on condition that you provide sufficient guarantees.

POSITION STATEMENT OF THE AUTHORITIES

Under certain conditions required by law, the authorities are bound by the interpretations of fiscal law that it has published through instructions or bulletins, or that it has provided in an individual reply that they may have sent you. It is therefore not possible for any adjustments to be made if you applied the administrative doctrine in force at the time at which you filed your tax return, even if this doctrine has subsequently been amended or withdrawn.

The authorities are also bound by a formal statement of position pertaining to the facts of the situation as they relate to you; this remains in place until such time as the statement of position has been changed or withdrawn. Any action taken by the authorities on this point is very clearly defined.

CAN AN AUDIT BE REPEATED ?

Once a tax inspection has been completed, a new audit cannot, in principle, be carried out in relation to the same taxes and the same time periods. Once the audit has been finished, the auditor may not return to the company, with the exception of assessing the significance of any new information or comments that you may subsequently have provided or made yourself. New amendments may be made, however, if they are not derived from an on-site meeting with the authorities.

Appeals after the end of the audit

OPTION TO LODGE AN OBJECTION

Once the taxes have been collected, i.e. when you have received documentation that explains the sums to be paid and the payment deadlines for these sums, you have the right to contest the outcome in whole or in part by lodging an objection with the SGTA by post with acknowledgement of receipt or via the Air@ble website.

Period of time

As a general rule, you should send your letter lodging an objection on plain paper to the department noted above. The deadline for doing so is 31 December of the third year following the year in which you received the proposed adjustment.

Form

The objection must specify the disputed tax or taxes.

It must state the base or the amount of relief you are claiming.

It must set out the reasons as to why you consider that the levies you are being asked to pay are not justified.

This must be accompanied by the notice of collection or a copy thereof.

CAN PAYMENT OF DISPUTED DUES AND PENALTIES BE DEFERRED?

In the objection you lodge with the SGTA, you can request a deferment of payment for the proportion of the tax you are disputing.

Any moratorium of payment will be granted automatically. It shall remain your responsibility, nevertheless, to provide a guarantee that ensures only the disputed dues are collected.

Should the accounting officer reject the guarantees that you have submitted, you have the option to challenge their decision before a judge and within two weeks; you must use the summary jurisdiction procedure to do this.

The obligation to put in place guarantees does not apply where the dispute in question does not exceed the sum of €4,500.

Responding to objections

In general, the head of the SGTA or their deputy will have six months during which time they will reach a decision regarding your objection. In the absence of a decision being reached within this time frame, you have the option to directly refer the matter to the court.

Should the decision be wholly or partly in your favour, you will be granted tax relief on the corresponding additional dues.

This decision will result in the reimbursement, where applicable, of:

- either the amount of tax that has been incorrectly paid;
- or the sums paid as a security deposit as part of the scheme to defer payments.

Subject to certain conditions being met, any sums that are thereby reimbursed shall give rise to the payment of moratory interest.

Furthermore, upon request, you shall be reimbursed for specific costs that have been incurred in putting the place the guarantees – other than a cash payment – and where appropriate in proportion to the amount of relief that has been granted.

Should your claim be rejected in whole or in part, you will be provided with the reasons for this.

IF THE DISPUTE PERSISTS, YOU CAN APPEAL TO THE JUDGE

Court of jurisdiction: the Marseille Administrative Court.

The letter that will be sent to you by the head of the SGTA or their deputy will provide you with information about their decision regarding your contentious claim and state which court has jurisdiction.

Any moratorium of payment that you may have obtained at the time at which you submitted your claim, will be upheld until a decision has been made by the court.

Time limit for bringing a case before a judge

With regard to commencing proceedings, you have two months from the date upon which you receive the decision from the head of the SGTA. This period shall be extended by one month for those companies who are located in overseas departments and communities, and by a period of two months in respect of companies who have a registered office abroad.

CONSEQUENCES OF A JUDGMENT UNDER APPEAL

The judgement is in your favour...

If the judgement under appeal is in your favour, any sums that you have incorrectly paid shall be reimbursed to you, together with payment of moratory interest, even if the authorities lodge an appeal against the ruling. It is also possible to be reimbursed for specific costs that you may have incurred in setting up guarantees.

The judgement is not in your favour...

If the judgement is not in your favour, you can lodge an appeal with the Administrative Court of Appeal of Marseille within two months of the date upon which you are notified of the judgement of the Administrative Court.

The appeal does not suspend payment

If you have benefited from a moratorium on payment, the dues and penalties shall then be collected from you; furthermore, in specific cases, any interest on late payments or moratory interest shall also be collected. However, under specific conditions, you can request that the President of the Court of Appeal suspends the enforcement of the judgement.

Judgements that are handed down by the Administrative Court of Appeal may be referred to the Council of State by means of an appeal to the Supreme Court, within the two months of their notification or service. This appeal has no suspensive effect.

In front of the Council of State, appeals to the Supreme Court must be submitted by a lawyer

Further information

The provisions of Articles 49, 50 and 53 of amended law No. 78-17 of 6 January 1978 on data processing, data files and individual liberties, guarantee the rights of natural persons in relation to the processing of personal data - The provisions of Articles L. 311-1 to L. 311-8 of the code of relations between the public and authorities guarantee – specifically in relation to data concerning you – a right of access to the airport tax management service insofar as this would not prejudice the investigation nor prevent offences of any kind.



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