

# TAX LITIGATION

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Tax

## Joint audits in the context of mutual assistance: procedural aspects and taxpayers' rights and obligations

In joint audits, conducted by the tax authority jointly with one or more other States regarding taxpayers of common or complementary interest, compliance with procedural requirements in each of the jurisdictions involved must be monitored to safeguard taxpayers' rights.

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Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7), had as its main objectives to improve the existing framework for the exchange of information and administrative cooperation within the European Union, as well as to extend administrative cooperation to new areas.

In this context, the transposition of DAC7 into Spanish law was carried out through Act 13/2023 of 24 May, which introduced specific rules for so-called joint audits in the Taxation Act. In particular, Article 177 *quinquies* of the Taxation Act regulates this device within the framework of mutual assistance between tax authorities.

First of all, it should be noted that Article 177 *quinquies* defines *joint audits* as audit checks and enquiries conducted by the tax authority jointly with one or more other States regarding taxpayers of common or complementary interest, in accordance with mutual assistance legislation. Its application is essentially limited to direct taxation, excluding indirect taxes such as value-added tax, excise duties, and customs duties.

A key point to emphasize is that a joint audit does not entail the initiation of a single supranational procedure nor does it result in a joint European assessment. Rather, it involves checks and enquiries coordinated among the tax authorities of the involved States, without replacing the national audit procedures that may be conducted in each jurisdiction. This distinction is fundamental, since the taxpayer is not facing an EU administrative procedure, but rather a framework of interstate collaboration based on the internal procedures of each State. In other words, the joint audit operates as a cooperation mechanism that supports and

may influence national procedures, but does not replace them.

Consequently, the taxpayer's safeguards and avenues for challenge will continue to be those provided for in the national legislation of each participating jurisdiction; there is, therefore, no specific European remedy against checks and enquiries conducted within the context of a joint audit, without prejudice to the possibility of considering, depending on the stage of the proceedings and the issue in dispute, potential recourse to the Court of Justice of the European Union.

From a procedural standpoint, the rights and obligations of Spanish tax authority officials are governed by the provisions of the Taxation Act regulating checks and enquiries and the audit procedure, with the specific provisions set out in Article 177 *quinquies* itself and in the mutual assistance legislation. If the checks and enquiries are conducted outside Spanish territory, these must also comply with the laws of the State where they are conducted.

In any case, officials of the Spanish tax authority participating in checks and enquiries outside Spain may not exercise any powers beyond those conferred upon them by Spanish law. This restriction is key, as it means that the tax authority may not exceed its powers under the guise of the joint audit; in practice, this requires paying attention to whether the steps taken in another State materially exceed what the Taxation Act would permit on national territory. Similarly, officials from the other participating States may take part in activities arising from the joint audit carried out on Spanish territory, subject to Spanish law and in accordance with the terms established in the mutual assistance legislation.

Participation in a joint audit does not require the participating authorities to reach a common position on all issues analysed. The leg-

to the position adopted by each tax authority during the joint audit. From the taxpayer's perspective, it is advisable to actively participate in the phase prior to the issuance of the report by making the appropriate representations and ensuring that their position is duly reflected.

## *It is essential for taxpayers to adopt a consistent and coordinated defence strategy across all affected jurisdictions to protect their rights*

islation provides that the final report shall include the relevant facts and circumstances as well as the applicable tax scheme on which there is agreement among the participating States, but it expressly allows for the possibility that there may be aspects on which consensus is not reached.

The findings of the joint audit will be documented in a final report, the content of which has different legal consequences depending on the degree of consensus reached:

- The matters agreed upon in the final report must be taken into account in the national tax proceedings that arise as a result of the joint audit, which gives the report a *de facto* binding effect that can significantly influence subsequent tax adjustments.
- Conversely, matters not agreed upon may not be taken into account in such internal proceedings; however, their potential relevance should not be underestimated, as the national tax authority could, in any case, base its adjustment on the facts established during the joint audit.

This difference in treatment gives special importance to the content of the final report and

Regarding its communication to the taxpayer, the law establishes that the final report must be notified within sixty calendar days of its issuance. Compliance with this time limit and the proper notification of the report constitute procedural requirements, failure to comply with them could affect the validity of subsequent actions.

Beyond the regulatory framework outlined above, practical experience suggests paying special attention to certain aspects that may prove decisive in defending the taxpayer's interests:

- First, it is essential to monitor compliance with procedural requirements in each of the jurisdictions involved. The coexistence of different procedural rules increases the risk of procedural defects or of the taxpayer's right to a hearing not being fully guaranteed in any of the involved jurisdictions. A procedural defect in one jurisdiction may have no consequences in another, but it could also vitiate the findings included in the final report.
- Second, coordination with local advisors in each State is practically essential. The effective defence of the taxpayer requires precise knowledge of the time limits, safeguards, and avenues for challenge

available under each legal system, as well as the ability to react in a timely manner.

- Finally, it is advisable for the taxpayer to maintain a consistent and coordinated defence strategy across all affected jurisdictions, avoiding contradictory positions that could weaken their overall case.

In short, a joint audit is a cooperative tool that strengthens the tax authorities' capacity to ad-

dress cross-border situations. For the taxpayer, this device presents specific challenges stemming from the multiplicity of applicable rules and the need to coordinate a defence across multiple jurisdictions. In this regard, adequate preparation, rigorous monitoring of procedural steps, and coordination among advisors in the various affected countries are key to ensuring the protection of the taxpayer's rights in this complex context.