

Code of Conduct for Tax Authorities, Taxpayers and Tax Advisors

Switzerland's tax laws generally set forth broad guidelines rather than detailed provisions. Accordingly, case law and doctrine play an important role in explaining these guidelines. In addition, many aspects are covered by "circular letters" ("*Kreisschreiben*") and guidelines for administrative practice ("*Merkblätter*") that the tax administration issues from time to time.

Despite these explanatory efforts, there is still ample room for interpreting the tax laws. In Switzerland, it is often good business practice to discuss tax matters with the tax administration. This dialogue and the tax climate generated therefrom are a major advantage of location ("*Standortvorteil*"), provided that these discussions are held in a climate of mutual respect. The form of this dialogue may have changed over time (e.g, these days formal meetings are often replaced by e-mail correspondence), but the basic principles on how to conduct this dialogue have not changed.

The Code of Conduct provides a very basic list of "dos" and "don'ts" which apply not only with respect to communications between tax advisors and the tax administration, but ultimately with respect to any citizen approaching an administrative authority.

The Code of Conduct is supported by the Federal Tax Administration, by cantonal tax administrations and by the "*Schweizerische Treuhandkammer*".

1. General Guidelines

- *Separate personal from factual and legal issues*
- *Focus on interests rather than taking positions*
- *Be independent as far as judgment and actions are concerned*
- *Aim at an open and unbiased dialogue*

2. Rules as to Psychology and Good Behaviour

- *Treat your counterparts respectfully as being fair and trustworthy*
 - Maintain a climate of trust between the tax administration and the tax advisors, thus avoiding arrogant or antagonistic behaviour on either side; avoid any favouritism
 - Look for a clear division of work between the tax administration and the tax advisors, and avoid any conflicts of interest
 - Be even handed: disclose your objectives and avoid any hidden agenda; look for open, accurate and transparent communication as to the facts and the law
 - Thorough preparation on both sides allows for competent discussions on the interpretation and the application of the tax laws
 - Be proportionate and efficient: do not unnecessarily use the resources of the tax administration (meetings should be arranged only when necessary)
 - Do not “forum shop” among different tax inspectors within the same tax administration
 - Do not look for a more favourable answer by presenting the same facts a second time
 - Listen to what the other side has to say before voicing any criticism in public
- *Do not put your counterpart under undue pressure*
 - Avoid unrealistic objectives and time constraints: to look for an answer within 24 hours is generally not a realistic approach
 - Avoid any threats with either internal (head of section, division manager or head of department) or external administrative proceedings (controlling authority, parliament, lobbying)
 - Do not threaten the tax administration with adverse economic consequences (relocation of the company, moving headquarters abroad, lay-offs, etc.)

- The tax administration should not refer taxpayers or their advisors to judicial proceedings as long an efficient and timely solution can still be reached
- Tax advisors should not threaten to unduly delay the assessment procedure by taking legal action
- The tax advisor must be able to say “no” to his client in any case in which he might be instrumental to dubious/questionable practices of the client
- The tax administration should not disqualify the tax advisor vis-à-vis his client or any third party
- *Take advantage of freedom of movement*
 - “Protect the client against himself”, i.e., avoid unreasonable requests and frivolous practices that will end up by harming the client, the tax advisor, or both
 - Legality and equal treatment: equals should be treated equally, and unequals should be treated unequally; taxpayers’ cases will be treated differently only if the distinctive factual or legal features can be proven
- *Ensure full transparency of administrative practices*
 - Systematic publication of administrative practices
 - Timely announcements and publication of changes affecting administrative practices, while avoiding announcements on matters that in the end will not change
 - Non-published court decisions must also be taken into consideration (equal treatment)
 - Transparency and equal treatment: no concessions for the taxpayer that would not also be granted to his advisor
 - Disclosure of interests and any potential conflicts of interest

3. Rules Regarding Form, Requests, Facts and Motivation

- *Form*
 - Disclose taxpayer’s identity and his relationship with his advisor
 - There should be an interest justifying a request for an advance tax ruling or a request for a binding information, such as
 - the completion of a given transaction depends on a tax ruling
 - there is uncertainty as to the law; avoidance of legal disputes

- competent authority; no precedents as to the particular fact situation involved
- Relax the formal standards if the taxpayer acts without a professional advisor
- *Requests (demand/legal issues)*
 - Request either an advance tax ruling or a binding information
 - Look for a fair presentation of the legal issues involved
- *Relevant Facts*
 - Do not misstate the facts, and duly consider that the presentation of the relevant facts should be accurate, true and complete; there should be no voluntary omissions; anything that has no proper bearing on the final determination should be omitted
 - Be clear in presenting your case: use a national language, be precise, use a systematic approach, include exhibits only to the extent that they are needed to support your factual issues
 - Outline your starting position, the intermediate steps, and your final objectives
 - The responsibility for the presentation and the determination of the relevant facts lies with the tax advisor; any documents submitted should be in final form; do not enclose extensive files with drafts attached
 - Make a clear distinction between the facts and their legal assessment
- *Motivation/legal considerations (legal interpretation offered by the taxpayer or his advisor)*
 - Identify the relevant legal issues involved
 - Take doctrine and precedents into consideration
 - Analyze legal considerations applicable to the underlying facts
 - Outline taxpayer's point of view
- *Final Conclusions*
 - Resulting conclusions to be drawn based on the legal considerations applicable to the underlying facts
 - Tax consequences; approval (or denial) of taxpayer's request
- *Appeals*
 - Ask for formal decision subject to appeal only in case such appeal is seriously taken into consideration (proportionality and efficiency)

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