

5TH INTERNATIONAL CONFERENCE ON TAXPAYER RIGHTS

FOUNDATIONAL AUDIT
PRINCIPLES AND APPLICABLE
TAXPAYER RIGHTS
5/27/2021

DIFFERENT AUDITS,
DIFFERENT RIGHTS?

DIFFERENT AUDITS

- ❖ “Traditional” audits are no longer the majority
- ❖ More common are:
 - ❖ Audits by correspondence instead of in-person
 - ❖ Computer-initiated audits
 - ❖ Internal discrepancies or missing information/forms
 - ❖ Mis-match against information from third parties
 - ❖ Failure by taxpayer to file return
 - ❖ Pre-populated returns?

“ALTERNATIVE” AUDITS

- ❖ If taxpayer does not respond, may result in assessment with minimal or no human intervention
- ❖ These audits may be a reasonable, efficient response to insufficient funding of the tax authority
- ❖ But taxpayers may receive a lesser version of some taxpayer rights for these audits than for “traditional” audits

FOUNDATIONAL AUDIT PRINCIPLES AND TAXPAYER RIGHTS

- ❖ Audit objective: determine the correct amount of the tax liability
 - ❖ Implies the right to be heard
 - ❖ Implies shifting the burden of proof to tax authority if taxpayer does not have access to relevant information
 - ❖ Implies right to determination before payment
 - ❖ Implies adequate notice of right to judicial review

RIGHT TO BE HEARD

- ❖ “Alternative” audits often performed by examiners with less qualification and training
- ❖ Limit the types of evidence they will consider
- ❖ Audit by correspondence limits testimonial evidence
- ❖ Correct resolution during audit is less likely
- ❖ Solution??

SHIFTING BURDEN OF PROOF

- ❖ Normally, the taxpayer has the burden of proof because of better access to information
- ❖ In the U.S., the burden shifts to the government for, e.g., unreported income, if the taxpayer disputes it
- ❖ What about other situations?
 - ❖ Taxpayer doesn't have the information, or
 - ❖ Taxpayer cannot easily get from a third party

SHIFTING BURDEN OF PROOF

- ❖ Burden of proof is a judicial concept – neutral official making binding decision on dispute between taxpayer and tax authority
- ❖ Why not apply also in administrative part of audit, to avoid need for litigation?
- ❖ Examiners who conduct “alternative” audits are less likely to accept such obligation & be able to do it well

PRE-PAYMENT REVIEW

- ❖ Use of the tax system to distribute social benefits means many taxpayers claim significant refunds
- ❖ Tax authority may withhold claimed refunds pending completion of the administrative audit
- ❖ Delays in completing the audit is effectively the same as requiring payment of the potential adjustment while the audit proceeds
 - ❖ Justified in some instances – but not all

ADEQUATE NOTICE

- ❖ In the U.S., the gold standard:
 - ❖ Clear explanation of audit adjustments and reasons
 - ❖ **Prominent** notification of right to judicial review
 - ❖ Sufficient time to review and request judicial review
 - ❖ **Prominent** notification of how to seek judicial review, and by when taxpayer must do so
 - ❖ For low-income taxpayers, information about free legal help
- ❖ May be lacking for some “alternative” audits