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### **RE: Tax audit - Irregularity of the accounting audit in the absence of full restitution of documents carried by the auditor.**

In the case where, at the request of the taxpayer, the auditor carries certain accounting documents, the documents taken must be returned in their entirety before the end of the audit operations.

As the failure to return to the taxpayer all or part of the accounting documents which have been carried away may deprive the latter of an oral and contradictory debate, it results that the accounting audit is irregular in its whole, which results in the discharge of all tax adjustments resulting from the irregular audit, even if some of them are not directly based on the examination of the documents taken away and not returned.

In the present case, one company argued that the refund was incomplete by specifically designating the documents not returned.

A deed delivered by a bailiff, whose mentions are authoritative until falsification, indicated that eight boxes with archives were handed over to the manager of the company. Even if this document has been accompanied by a document entitled "Minute of return of accounting documents and supporting documents", this document, which is not signed by either the taxpayer or the representative of the Administration, cannot attest to the actual content of the boxes.

Moreover, the deed of the bailiff, as it is drafted, is not intended to list the documents contained in the boxes, but only to authenticate the actual delivery of these boxes to their addressees.

In those circumstances, since the applicant disputed having received all the accounting documents taken away, the Administration cannot prove, which is its responsibility, that it returned all those documents before the end of the audit operation.

*Council of State ("Conseil d'Etat"), 8th and 3rd Chamber, November 23<sup>th</sup>, 2016, No. 392894, "Société Mimosa".*

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