

THE SEARCH OF PREMISES, THE SOCIAL INSPECTION AND THE TAX DAWN RAID

A search of premises, a social inspection and a tax dawn raid are measures that have a significant impact on people's privacy. Furthermore, these measures can also affect the professional environment.

Companies and their employees should therefore be prepared for such measures. It is important here to have a certain knowledge of the relevant legal framework, as these measures are only allowed in the cases stipulated by law and in the form prescribed by law.

Labour	<p><u>Principle access power and an authorisation of the Investigating judge</u></p> <p>Social inspectors have the principal power to enter workplaces without prior authorisation from a judge.</p> <p>They shall not have access to inhabited premises except in the cases expressly provided for by law (e.g., upon (prior) request or with the (prior) permission of the person having actual enjoyment of the inhabited premises, to establish an offence in flagrante delicto, in case of fire or flood or when the inspector is in possession of an authorisation, issued by the Investigating judge).</p>
Tax	<p><u>Proof of appointment, authorisation from the police judge or the taxpayer's consent</u></p> <p>In principle, tax officials must carry a proof of appointment to proceed with a tax dawn raid in business premises (such as offices, factories, workshops, warehouses, storages, garages, construction sites, etc.) where professional activities are (suspected) to be carried out.</p> <p>In addition, for entering private dwellings or inhabited premises, for which there is at least a suspicion that professional activities are carried out, an authorisation from the police judge is required. The taxpayer's explicit consent (or the consent from a person that can validly represent the taxpayer) does however suffice provided that such consent is ambiguous, fully voluntarily and in full knowledge of the facts.</p> <p>Private premises where no professional activities are carried out and for which there is no suspicion that professional activities are carried out may not be visited by tax officials, even if there is an authorisation from the police judge.</p>
Criminal Law	<p><u>A search warrant</u></p> <p>A search of premises can be conducted in all places that are not open to the public (such as a registered office, business premises, etc.), as well as in their appurtenances.</p> <p>In principle, the power to conduct a search of premises belongs to the Investigating judge, who can choose whether or not to be assisted by the police. The Investigating judge does not need a search warrant to conduct a search of premises. In practice, however, the Investigating judge will often vest the power to conduct the search of premises to officers of the judicial police. These officers must then, in principle, have a search warrant issued by the Investigating judge for this purpose, except in the cases expressly provided for by law (e.g., in the case of permission of the person having actual enjoyment of the premises, to establish an offence in flagrante delicto or in case of fire, flood or call for help).</p>

Labour	<p><u>The social inspection: when?</u></p> <p>As soon as employment can reasonably be suspected, social inspectors may enter places at any time of the day or night without notice. However, their action must be aimed at exercising the powers granted to them and must be proportionate.</p> <p>With respect to inhabited premises, a social inspection is only possible between 5:00 am and 9:00 pm.</p>
Tax	<p><u>The tax dawn raid: when?</u></p> <p>A tax dawn raid in the taxpayer's business premises is possible during the hours when professional activities are (suspected to be) carried out. There are no specific hour restrictions, which means that dawn raids can in principle be carried out during the daytime or at night.</p> <p>With respect to private dwellings or inhabited premises, a tax dawn raid is only possible between 5:00 am and 9:00 pm.</p> <p>In both cases, prior notice is not required.</p>
Criminal Law	<p><u>A search of premises: when?</u></p> <p>A search of premises must in principle start between 5:00 am and 9:00 pm. Unless a specific legal provision states otherwise, a search of premises at night is not allowed.</p>
Labour	<p><u>What to do when a social inspector shows up at the door?</u></p> <p>First, request the identification and legitimisation of the person that presents himself/herself, if possible before the person enters the business premises.</p> <p>Then, if applicable, ask to present the authorisation of the Investigating judge.</p> <p>Obstructing the inspection is an offence and is therefore punishable by law.</p>
Tax	<p><u>What to do when a tax official shows up at the door?</u></p> <p>First, request the identification and legitimisation of the person that presents himself/herself, if possible before the person enters the business premises.</p> <p>Then, request to present the proof of appointment (and, if applicable, the authorisation from the police judge) which allows the taxpayer to find out the matter to which the visit relates. The tax official must only present the proof of appointment if the taxpayer so requests.</p> <p>The taxpayer (or an authorised representative) is subsequently obliged to grant free access to the (business) premises and to cooperate with the tax dawn raid. A refusal or non-cooperation may result in the following adverse consequences or sanctions:</p> <ul style="list-style-type: none"> • the establishment by the tax authorities of an <i>ex officio</i> tax assessment; • a non-proportional administrative fine; • a criminal sanction upon an infringement with fraudulent intent or with intention to harm; • the rejection of applied tax deductions, exemptions or reductions (if the tax authorities cannot verify whether the conditions for any such tax deductions, exemptions or reductions are met); • a penalty for non-compliance (upon of decision by a court).

<p>Criminal Law</p>	<p><u>What to do when a police inspector shows up at the door?</u></p> <p>First, request the identification and legitimisation of the person that presents himself/herself, if possible before the person enters the business premises.</p> <p>Then, ask to present the search warrant (in case it is not the Investigating judge himself who conducts the search of premises). Delivery of a copy of the warrant may be requested but can be refused.</p> <p>The search warrant must be delivered before one enters the premises, and should be checked for the following entries:</p> <ul style="list-style-type: none"> • the name, capacity and signature of the principal (i.e., the Investigating judge); • the date of signature; • the capacity of the authority to whom the delegation is given (the delegation is addressed to a function/officer of judicial police); • a description of the delegation, which must be a rather specific and precisely defined assignment; • a precise description of the places where and the person on whose premises the search of premises is to be conducted, allowing the executing officer to find these places without the risk of being mistaken; and • the object of the search of premises, the offences in relation to which the search is being conducted, as well as the motives of the delegation granted and the need for the search of premises. <p>A search of premises by the Investigating judge or pursuant to a search warrant issued by the Investigating judge, cannot be refused.</p>
<p>Labour</p>	<p><u>What can the social inspection look for?</u></p> <p>In principle, social inspectors will not conduct data searches themselves. They will ask to provide any data carriers containing either social data or other data prescribed by law. However, they will search for those data carriers when they are not submitted voluntarily and if the employer does not oppose such search, or when the employer is absent and there is a risk that the data carriers or their data would disappear or be altered, or when the health or safety of the employees requires it.</p> <p>They may as well:</p> <ul style="list-style-type: none"> • obtain any information they deem necessary to verify compliance with the legislation they oversee; • proceed with the identification of persons; and • whenever they deem it necessary, question persons about any fact of which knowledge is necessary for their control, but this on condition that the interviewee's specific rights are respected. <p>They may not search data carriers containing private data or ask that they be handed over to them.</p>

Tax	<p><u>What can the tax officials look for?</u></p> <p>The tax dawn raid has a purpose-related character, i.e., verifying whether the taxpayer has correctly and fully filled out his tax return in order to determine the relevant income tax and/or VAT that is due.</p> <p>Tax officials have broad investigative powers, but they have no “active right to search”. In the context of a tax dawn raid, they may:</p> <ul style="list-style-type: none"> • not use any coercion or force; • not unilaterally allow themselves to access business premises; and • not open cupboards, safes, computer files, etc. themselves. <p>Tax officials may:</p> <ul style="list-style-type: none"> • request to submit books and records on site (both physical and digital) or to make copies of these books and records; and • examine: (i) what activities are carried out, (ii) the extent of the activities, (iii) the nature and quantity of stocks present, and (iv) the nature and quantity of objects, installations and rolling stock. <p>The right to inspect is limited to the documents that are necessary to determine the taxable income. This includes all legally required accounting documents and documents related to the professional activity. The tax authorities have no right to simply request and inspect “all” documents in the business premises.</p>
Criminal Law	<p><u>What can the police officers look for?</u></p> <p>A lot, and in particular all goods, documents and data carriers that can be useful considering the subject of the investigation, indicated in the search warrant. It concerns all supporting data regarding the (knowledge of the) facts (e.g., internal memos, reports of internal bodies, studies).</p> <p>During the search of premises, they:</p> <ul style="list-style-type: none"> • can/may record spontaneous or casual communications, utterances, clues or statements; • can/may ask objective questions (e.g., is this your laptop or your office?); • cannot ask subjective or suggestive questions (e.g., were you aware of the offences committed); • cannot subject persons to interrogation; • cannot seize documents covered by professional secrecy (if disputed, these must be brought under closed cover).
Labour	<p><u>In which places can a social inspection be carried out?</u></p> <p>Social inspection can be carried out at all workplaces, as well as at places where it is reasonable to suspect that persons are employed. In certain cases, social inspectors also have access to inhabited premises (see above).</p>
Tax	<p><u>In which places can a tax dawn raid be carried out?</u></p> <p>The tax dawn raid can be carried out in business premises (broadly defined, see above) of the taxpayer, as well as in company vehicles.</p> <p>In certain cases, authorised tax officials may also gain access to inhabited premises (see above).</p>
Criminal Law	<p><u>In which places may searches be carried out?</u></p> <p>The search of premises may take place both in the premises mentioned in the search warrant, as well as in all its appurtenances.</p>

Labour	<p><u>What about searches in data systems?</u></p> <p>When collecting social data or other data prescribed by law, social inspectors may access data carriers accessible from the place where they are present via an IT system or any other electronic device.</p>
Tax	<p><u>What about searches in data systems?</u></p> <p>Tax officials may not unilaterally proceed with inspections or copying computer systems. This is only possible with assistance from the taxpayer.</p>
Criminal Law	<p><u>What about searches in data systems?</u></p> <p>An IT systems search is permitted, being a search of the data stored on an IT system that can be accessed without any network connection.</p> <p>A network search requires a special warrant from the Investigating judge. It is the investigation of data that was stored in another place (“remote systems”) and concerns IT systems that can only be accessed through another IT system.</p> <p>There is a duty to cooperate. Failure to cooperate or obstructing the search constitutes an offence. The cooperation must be demanded by the Investigating judge.</p>
Labour	<p><u>Is seizure possible?</u></p> <p>The social inspector may seize (or seal on the spot) all data carriers containing social data or data to be kept compulsorily. It is therefore required that such seizure is necessary for the detection, investigation or proof of offences or that there is a risk of continuation of the offences or of new offences. The seizure (sealing) must be recorded in writing. This record shall be handed to the employer or, in his absence, sent to him within 14 days.</p>
Tax	<p><u>Is seizure possible?</u></p> <p>Tax officials have the right to seize certain books and supporting documents to determine the taxable income. This is the so-called retention right.</p> <p>This retention right is for tax purposes limited to (paper) documents that relate to closed financial years. However, the tax officials may request to provide a copy of the books that are not yet closed and that are saved electronically. The taxpayer should receive an official report within five working days following the day on which documents are seized.</p>
Criminal Law	<p><u>Is seizure possible?</u></p> <p>Yes, all items that can serve as evidence of the offences that are being investigated and the guilt or innocence of the persons suspected of these offences can be seized (sealing on the spot is possible as well). The seizure (sealing) must be recorded in writing, and this report has to be signed. The person whose goods are seized receives a copy of this report. Following the seizure, the person concerned must be asked to provide a statement (but this is rather pro forma).</p> <p>In case the seizure of documents could compromise the operation of the business, the Investigating judge or police officers may be asked to take a copy (only). However, they are not obliged to comply with such a request.</p>

General conclusion

A search of premises, a social inspection and a tax dawn raid are measures that often affect not only the (personal) privacy of the person on whose behalf they are taken, but also their professional environment. These measures can have far-reaching consequences for companies.

When such measures are being conducted in companies, their employees should be prepared. It is therefore important that staff who may come into contact with such measures have a certain understanding of them.

These measures should therefore be discussed beforehand within the company, so that each person knows their task, both in terms of reception staff and those ultimately responsible within the company.

It is therefore advisable to have a clear and well-established policy within the company.

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