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ESSAY

# Who reads the return first?

## Risk scoring and the missing law of tax audit selection

**Bamdad Shams**
Professor of Practice in Business Law, ESSEC Business School; Lawyer at the Paris Bar

**Abstract** Many tax administrations now use risk-scoring models to select the returns that their officials will audit. This essay argues that the principal legal effect of artificial intelligence (AI) in tax matters arises at that point, in the selection of taxpayers for audit, and that tax procedure has almost no rules governing it. Taking France as its principal example, it examines what selection models learn from past audits, why the law of equality and non-discrimination cannot be applied without figures on the distribution of audits, why French and European rules on automated decisions do not reach selection, and how Germany, the United States, the United Kingdom, the Netherlands and Slovakia treat the confidentiality of selection criteria. It proposes three statutory rules, suited to any system in which the administration trains selection models on its own audits: a legal basis with safeguards, published evaluation against a random sample, and disclosure of the selection factors at the close of the audit.

**Keywords** tax procedure; tax administration; tax audit selection; risk scoring; artificial intelligence; equality before taxation; non-discrimination; random audits; data protection; AI Act; comparative tax law

## Introduction

Tax procedure assumes that an official examines the return. In French law, under the Livre des procédures fiscales (LPF), the administration must give notice before an on-site audit, mention the right to assistance from an adviser, and give reasons for any reassessment so that the taxpayer can reply.[1] Other systems provide these safeguards in different forms with the same object, a decision taken by an official that can be explained and challenged.

In many large administrations, a risk model now examines the return before any official does. It compares the return with data received from third parties, assigns a score for the probability of an irregularity and ranks the file among millions of others. In the annual survey

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1 Livre des procédures fiscales (LPF), arts L. 47 and L. 57.

of the Organisation for Economic Co-operation and Development (OECD), the proportion of administrations using AI rose from 9% in 2016 to 69% in 2023; a wider inventory of technology initiatives records fraud detection and risk assessment as the most common uses.[2]

Discussion of AI in tax law usually concerns automated assessment, namely whether a machine may determine the tax due. In my view, the more important change has already occurred at an earlier stage. The selection of taxpayers for audit, described in French practice as the programming of audits (*programmation du contrôle fiscal*), determines how the law is applied and to whom, and it is the stage that tax procedure regulates least. This essay advances three claims.[3] Equality before taxation now depends on the design of selection models, and cannot be enforced without figures that only the administration can produce. The rules governing automated decisions do not reach selection, and some legal systems protect selection criteria from disclosure by statute. A statutory law of audit selection is, therefore, needed, and comparative law shows what it could contain. France serves as the principal example; the same questions arise wherever an administration trains selection models on its own audits.

## Selection by model

In France, the Direction générale des Finances publiques (DGFiP) established in 2014, by ministerial order, a data-mining system for targeting audits, the *ciblage de la fraude et valorisation des requêtes* (CFVR).[4] The administration set itself the objective of programming half its audits by this method; in 2023 the proportion reached 56% for businesses and 40% for individuals.[5] Since the Finance Act for 2020 it has been authorised, on an experimental basis, to collect content that users have made public on online platforms, including, since 2025, platforms that require an account. The Conseil constitutionnel upheld the original scheme in 2019 after noting that it excluded content accessible only after registration, and did not examine the extension when it reviewed the Finance Act for 2024.[6] Since 1 September 2026 large and mid-sized companies must issue their invoices electronically, and an order of 10

2 OECD, *Tax Administration 2025: Comparative Information on OECD and other Advanced and Emerging Economies* (OECD Publishing 2025), executive summary, covering 58 administrations; OECD, *Digitalisation and Digital Transformation in Tax Administrations: Regional Trends and Insights* (OECD Publishing 2026), executive summary, covering 108.

3 I have proposed a general framework for the use of AI by tax administrations in B. Shams, "Governing AI in Tax Administration: A Comparative Constitutional Framework for Legality, Transparency, Oversight, and Redress" (2026) 18(4) *World Tax Journal*. On taxpayers' rights more generally, see J. Owens and others, "AI Governance and Taxpayers' Rights in a Digital Age" (2025) 53(11) *Intertax* 747.

4 Arrêté du 21 février 2014 portant création par la direction générale des finances publiques d'un traitement automatisé de lutte contre la fraude dénommé "ciblage de la fraude et valorisation des requêtes", JORF 6 March 2014; Commission nationale de l'informatique et des libertés (CNIL), délibération n° 2014-045 du 30 janvier 2014. On the system, see C. Lequesne Roth, "La science des données numériques au service du contrôle fiscal français: réflexions sur l'algocratie" in A. Pariente (ed.), *Les chiffres en finances publiques* (Mare & Martin 2019) 177; C. Lequesne Roth, "La lutte contre la fraude à l'ère digitale: les enjeux du recours à l'intelligence artificielle par l'administration financière" (2021) *Revue de droit fiscal* n° 5.

5 Cour des comptes, *La lutte contre la fraude fiscale* (rapport public thématique, December 2025) 9 and 39.

6 Loi n° 2019-1479 du 28 décembre 2019 de finances pour 2020, art. 154, as amended by loi n° 2023-1322 du 29 décembre 2023 de finances pour 2024, art. 112; décret n° 2021-148 du 11 février 2021, as amended by décret n° 2024-1274 du 31 décembre 2024; Conseil constitutionnel, décision n° 2019-796 DC du 27 décembre 2019, paras 78–96, in particular para 87; décision n° 2023-862 DC du 28 décembre 2023.

July 2026 added invoicing data to the CFVR.[7]

On the administration's account, recorded by the Cour des comptes and by the French data protection authority (CNIL), the score is an aid and not a decision; local teams sort the files proposed, and only an official may decide to open an audit.[8] For data collected on platforms, the Conseil constitutionnel has held that no procedure may be opened solely on the basis of automated results.[9] The lists nonetheless carry enough weight for the ministry to have presented as a safeguard, before the CNIL in 2026, its decision to limit to 50% the proportion of audits opened on the system's signals.[10]

## What the model is asked to find

A selection model is trained on the results of past audits, and those results exist only for taxpayers who were audited. Computer scientists call this the "selective labels problem", in which the outcome is known for cases the institution chose to examine and unknown for the remainder.[11] Where a category of taxpayers has seldom been audited, the model has few results from which to learn about it, and its errors there go undetected. What the model learns depends on which taxpayers the administration audited in the past and on what it asks the model to predict.

The strongest evidence comes from the United States. A study conducted with the Treasury on Internal Revenue Service (IRS) data found that Black taxpayers were audited at 2.9 to 4.7 times the rate of other taxpayers, although the IRS does not record race, and traced much of the difference to the objective set for audit selection.[12] Among claimants of the earned income tax credit, the disparity stemmed largely from the priority given to overclaims of refundable credits; an algorithm maximising the detection of under-reported tax would not have audited Black claimants at higher rates. The IRS accepted the initial findings in May 2023 and changed its selection of audits of refundable credits.[13] In the Netherlands, a risk model for childcare benefits treated the absence of Dutch nationality as a risk indicator, for which the data protection authority fined the Minister of Finance in 2021.[14]

French sources now raise the same question. In 2023 audits originating in data cross-checking accounted for 44% of all audits and for 13.8% of the tax and penalties put into collection, and the Cour des comptes concluded that the method had yet to demonstrate its full

7 Code général des impôts, art. 289 bis; Ministère de l'Économie, "Facturation électronique entre entreprises : coup d'envoi de la réforme" (1 September 2026); arrêté du 10 juillet 2026 modifiant l'arrêté du 21 février 2014, JORF 22 July 2026, art. 2.

8 Cour des comptes, *La lutte contre la fraude fiscale* (2025) 38–40 and 45; CNIL, délibération n° 2026-068 du 18 juin 2026 portant avis sur un projet d'arrêté modifiant l'arrêté du 21 février 2014, I.A.

9 Conseil constitutionnel, décision n° 2019-796 DC du 27 décembre 2019, para 90.

10 CNIL, délibération n° 2026-068 du 18 juin 2026, II.D.

11 H. Lakkaraju and others, "The Selective Labels Problem: Evaluating Algorithmic Predictions in the Presence of Unobservables" in *Proceedings of the 23rd ACM SIGKDD International Conference on Knowledge Discovery and Data Mining* (ACM 2017) 275–284.

12 H. Elzayn and others, "Measuring and Mitigating Racial Disparities in Tax Audits" (2025) 140(1) *Quarterly Journal of Economics* 113.

13 Letters from D. Werfel, Commissioner of Internal Revenue, to the Chairman of the Senate Committee on Finance, 15 May 2023 and 18 September 2023.

14 Autoriteit Persoonsgegevens, decision of 25 November 2021 fining the Minister of Finance EUR 2.75 million, EUR 1 million of it for the indicator used in the risk classification model.

effectiveness.[15] Part of the explanation, according to the Cour, is that these are mainly desk audits of specific schemes, which yielded EUR 3,473 on average against EUR 16,676 for audits programmed locally. It adds that the lists are assessed by the proportion of files ending in reassessment, a ratio that cannot show what share of breaches is detected.[16] The parallel with the American finding lies in the focus on particular claims, judged by how often they are adjusted and not by the tax at stake. Neither the Cour nor the CNIL states what the CFVR models are trained to predict; a model whose lists are judged by that ratio is likely to be built to maximise it.

In its opinion on the 2026 order, the CNIL observed that models developed from the results of past audits may concentrate audits on certain populations or types of entity, considered that the 50% ceiling could not by itself exclude every significant risk of bias, and recorded the ministry's undertaking to study the question and to report on it.[17] The means of measuring the effect has been set aside. The DGFiP audited 539 companies at random in 2022 and did not repeat the exercise, a choice that the Cour regrets.[18]

## Selection and equality before taxation

These cases share a legal difficulty. Each reassessment may be correct, and the taxpayer who receives it has no ground of challenge under the rules governing the audit. The inequality lies in the distribution of audits among taxpayers, which no individual appeal brings before a court. German constitutional law provides the clearest authority for treating that distribution as a legal question. The Federal Constitutional Court requires equality in the actual tax burden as well as in the legislation, and has held a tax provision unconstitutional where collection rules made equal enforcement unattainable.[19] Those judgments concerned income that escaped taxation because it could not be verified, and the defect lay in the legislation. Their reasoning extends, I suggest, to verification that concentrates on particular taxpayers, because the equality they protect concerns the tax actually collected. The extension is not established law, and it presupposes evidence that only the administration holds. French law starts from the same premise, since the Conseil constitutionnel derives the objective of combating tax fraud from article 13 of the Declaration of 1789, which requires the common contribution to be distributed equally.[20] No rule, however, governs the distribution of audits.

Non-discrimination law applies to selection in principle and faces the same lack of evidence. The Charter of Fundamental Rights prohibits discrimination on grounds such as race or ethnic origin, and binds a tax administration when it implements Union law, as it does in auditing value added tax.[21] Article 14 of the European Convention on Human Rights applies to taxation and extends to indirect discrimination, of which reliable and significant statis-

15 Cour des comptes, *La lutte contre la fraude fiscale* (2025) 9–10.

16 Cour des comptes, *La lutte contre la fraude fiscale* (2025) 40–41; the figures are for 2023.

17 CNIL, délibération n° 2026-068 du 18 juin 2026, II.D.

18 Cour des comptes, *La lutte contre la fraude fiscale* (2025) 34.

19 Bundesverfassungsgericht, 27 June 1991, 2 BvR 1493/89, BVerfGE 84, 239; 9 March 2004, 2 BvL 17/02, BVerfGE 110, 94.

20 Déclaration des droits de l'homme et du citoyen du 26 août 1789, art. 13; Conseil constitutionnel, décision n° 99-424 DC du 29 décembre 1999, cons. 52.

21 Charter of Fundamental Rights of the European Union, arts 21 and 51(1); Case C-617/10 *Åkerberg Fransson* EU:C:2013:105, paras 25–27.

tics are sufficient prima facie evidence, the State then having to justify the difference.[22] No taxpayer can produce such statistics for audits. The authors of the American study had to estimate race; French constitutional law permits studies of discrimination to use objective data and excludes classification by ethnic origin or race.[23] A claim of discrimination in audit selection, therefore, depends on figures that only the administration can compile, from the categories it is permitted to use. The scoring model of the French family benefits fund shows what such figures allow. On evidence produced by the applicants in a case pending before the Conseil d'État, the Défenseur des droits has concluded that a presumption of indirect discrimination on the ground of economic vulnerability appears to be established.[24]

## Rules made for decisions

European data protection law does not prohibit lists of this kind. The Court of Justice has accepted that a tax authority may draw up a list of persons to collect tax and combat fraud, provided that national legislation entrusts it with that task, that the list is suitable and necessary, and that there are sufficient indications that the persons named are rightly included.[25] For automated decisions, article 22 of the General Data Protection Regulation (GDPR) gives a person the right not to be subject to a decision based solely on automated processing that produces legal or similarly significant effects. The Court has applied it to a credit score on which a lender draws strongly, refusing to treat the score as a preparatory act because that reading would allow the provision to be circumvented.[26]

The same reasoning applies, in my view, where officials draw strongly on a risk score in deciding whom to audit. The opening of an audit has legal effects of its own, since the taxpayer must submit to it and obstruction leads to assessment by the administration of its own motion.[27] The question is before the Conseil d'État in the case concerning the family benefits fund, which uses its score to select claimants for control.[28] The administration's answer is that an official always intervenes. Where the Regulation does apply, article 23 permits Member States to restrict the rights of data subjects in taxation matters, and the CFVR order excludes the right to object and allows access to be restricted.[29]

French administrative law follows the same approach. In 1978 the legislature prohibited decisions resting solely on an automated profile of the person concerned, and the Cour des comptes treats that rule as the limit on data mining in tax audits.[30] An individual decision

22 *Burden v United Kingdom* App no 13378/05 (ECtHR [GC], 29 April 2008), para 59; *D.H. and Others v Czech Republic* App no 57325/00 (ECtHR [GC], 13 November 2007), paras 184 and 188–189.

23 J. Bearer-Friend, "Colorblind Tax Enforcement" (2022) 97 *New York University Law Review* 1; Constitution du 4 octobre 1958, art. 1er; Conseil constitutionnel, décision n° 2007-557 DC du 15 novembre 2007, cons. 29.

24 Conseil d'État, n° 498440, *La Quadrature du Net and others*, application registered on 15 October 2024 concerning the Caisse nationale des allocations familiales, pending at the time of writing; Défenseur des droits, décision n° 2025-177, observations of 3 October 2025, unpublished, as reported in the applicants' reply of 10 December 2025.

25 Case C-73/16 *Puškár* EU:C:2017:725, paras 102–117, decided under Directive 95/46/EC, art. 7(e).

26 Case C-634/21 *SCHUFA Holding* (*Scoring*) EU:C:2023:957, paras 44–50, 61 and 73.

27 LPF, art. L. 74.

28 Conseil d'État, n° 498440, pending at the time of writing.

29 Regulation (EU) 2016/679 (GDPR), art. 23(1)(e) and (h); arrêté du 21 février 2014, art. 6, as amended by the arrêté du 10 juillet 2026; loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, art. 52.

30 Loi n° 78-17 du 6 janvier 1978, art. 2 in its original version, now art. 47; Conseil d'État, 29 July 1983, *Cloarec*; Cour des comptes, *La lutte contre la fraude fiscale* (2025) 45.

may now be taken on the basis of an algorithm if it discloses that fact and if the administration communicates the algorithm's rules on request, unless disclosure would compromise a legally protected interest such as the detection of offences.[31] The Conseil constitutionnel has added that an algorithm whose rules cannot be communicated for that reason, or which can revise its own rules without administrative validation, cannot provide the sole basis for a decision.[32] All these rules apply to decisions. If selection is not a decision, as the administration maintains, none of them applies, and nothing requires it to tell a taxpayer that a model selected the file or why. The audit notice identifies the years concerned and the right to an adviser, without giving any reason for the choice of taxpayer, and a desk audit begins without notice.[33]

The Artificial Intelligence Act (AI Act) could have filled the gap. Its requirements for high-risk systems include examining training data for bias, "especially where data outputs influence inputs for future operations", which describes a model trained on the audits it has selected.[34] They do not reach tax audits. Recital 59 states that AI systems "specifically intended to be used for administrative proceedings by tax and customs authorities" should not be classified as high-risk systems used for law enforcement, and the obligations for the systems listed in Annex III have been postponed to 2 December 2027.[35] A system used in a criminal tax investigation, or to determine entitlement to a benefit, may remain within scope.[36] For ordinary audit selection, a bank's credit-scoring model will be held to stricter requirements for its data than the model the State uses to select taxpayers for audit.

## Secrecy with and without safeguards

The United States and Germany expressly protect selection criteria from disclosure by statute. In the United States, the Internal Revenue Code provides that no law requires disclosure of "standards used or to be used for the selection of returns for examination" where the Secretary of the Treasury determines that disclosure would seriously impair enforcement.[37] The reason is sound, since taxpayers who know the criteria can arrange their affairs to avoid selection. The German tax code recognises the same concern, subject to safeguards. Since 2017 it has authorised risk management systems to identify returns requiring further examination and prohibited publication of their details where disclosure could endanger uniform and lawful taxation.[38] It also requires that a sufficient number of cases be selected at random for full examination by an official, that officials examine the cases flagged by the system and remain free to select others, and that the system be reviewed regularly against its purpose.[39]

31 Code des relations entre le public et l'administration (CRPA), arts L. 311-3-1 and L. 311-5, 2°, g).

32 Conseil constitutionnel, décision n° 2018-765 DC du 12 juin 2018, paras 70 and 71.

33 LPF, art. L. 47, which requires notice only for the on-site audit and the two other procedures it lists.

34 Regulation (EU) 2024/1689 (AI Act), art. 10(2)(f) and (g).

35 AI Act, recital 59; Regulation (EU) 2026/1744 (OJ L, 24 July 2026), amending the AI Act.

36 AI Act, Annex III, points 5 and 6; D. Hadwick, "Slipping Through the Cracks, the Carve-outs for AI Tax Enforcement Systems in the EU AI Act" (2024) 9(3) *European Papers* 936; A. Rizzo and G. Hassan, "Proportionate Risk Management for Tax-Related AI Systems: Analysis and Implications under EU and US Law" (2026) 18(1) *World Tax Journal*.

37 26 USC § 6103(b)(2), last sentence, added by the Economic Recovery Tax Act of 1981, § 701.

38 Abgabenordnung (AO), § 88(5), first and fourth sentences, in force since 1 January 2017.

39 AO, § 88(5), third sentence; see Y. Hohler, *Risikomanagementsysteme im Steuervollzug und deren Kontrolle* (Peter Lang 2020).

Two European courts have held that secrecy without such safeguards is unlawful. In 2020 the District Court of The Hague deprived of binding effect the legislation governing a Dutch risk-indication system used to detect benefit and tax fraud, because the use of the risk model was insufficiently transparent and verifiable to satisfy article 8 of the Convention.[40] In 2021 the Slovak Constitutional Court held that the automated risk assessment of traders by the financial administration required a statutory basis and specific safeguards, namely transparency, protection of the individual and supervision of the system as a whole, since individual taxpayers cannot be expected to correct its errors.[41]

In the United Kingdom, an officer may enquire into a return on giving notice, and the statute requires no ground for the choice of return.[42] HM Revenue and Customs (HMRC) selects cases with a risk system, Connect, which Daly understands to be intentionally opaque.[43] The general law is more demanding. The Equality Act 2010 prohibits discrimination in the exercise of public functions and requires public authorities to have due regard to the need to eliminate it; the Court of Appeal has held that a police force breached that duty by deploying facial-recognition software without taking reasonable steps to establish whether it was biased by race or sex.[44] The duty is enforceable only by judicial review, and a claim of indirect discrimination would in practice require figures on the distribution of enquiries that HMRC alone holds. Under its random enquiry programmes, HMRC also puts random samples of returns through full compliance checks to measure the tax gap, and accepts that the results of enquiries selected on risk would overstate non-compliance in the wider population.[45] Nothing in statute requires Connect to be tested against those samples or the result to be published.

For automated decisions, Parliament validated the automated issue of notices and penalties in 2020, and the Court of Appeal interpreted that provision broadly, while adding: "Section 103 is not intended to authorise the use of artificial intelligence".[46] Since February 2026 a significant decision taken without "meaningful human involvement" attracts the safeguards of data protection law.[47]

In France the CFVR rests on a ministerial order, and the LPF is silent on how taxpayers are selected for audit. The Finance Bill for 2027 would make the collection of data from online platforms permanent and write it into the LPF, with rules on retention and access; it does not address the models that use the data or the selection that results.[48] The comparison suggests

40 Rechtbank Den Haag, 5 February 2020, ECLI:NL:RBDHA:2020:1878 (*NJCM and others v The State of the Netherlands*).

41 Ústavný súd Slovenskej republiky, 10 November 2021, PL. ÚS 25/2019, paras 122–124 and 132–137; Owens and others, "AI Governance and Taxpayers' Rights in a Digital Age" (2025) 53(11) *Intertax* 747, 759–760.

42 Taxes Management Act 1970, s 9A(1).

43 S. Daly, "Trustworthy AI and HMRC" [2026] *British Tax Review* 161, 171 and 179.

44 Equality Act 2010, ss 29(6), 149 and 156; *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058, [2020] 1 WLR 5037 [199]–[201]. HMRC's report on its compliance with the duty for 2025 to 2026 (9 July 2026) does not mention the selection of cases.

45 HMRC, *Measuring tax gaps 2026 edition: methodological annex* (2026), chs 4 and 5; the samples for 2022 to 2023 numbered 1,008 Self Assessment and 337 Corporation Tax returns (tables A4.1 and A5.1).

46 Finance Act 2020, s 103; *Marano v Revenue and Customs Commissioners* [2024] EWCA Civ 876, [2025] 1 WLR 688 [37].

47 Data (Use and Access) Act 2025, s 80; see B. Shams, "'Meaningful human involvement' after the Data (Use and Access) Act 2025: section 103 of the Finance Act 2020 and the new threshold for automated tax administration" [2026] *British Tax Review* (No 2).

48 Projet de loi de finances pour 2027, Assemblée nationale, n° 3210, art. 30, which would insert a new article L. 80 S in the LPF; the bill was before the Sénat as text n° 155 (2026-2027) at the time of writing.

that confidentiality of the criteria is acceptable where legislation provides the checks that confidentiality prevents taxpayers from undertaking themselves.

## What the statute should say

Selection by model determines who bears the burden of an audit, and its fairness can be assessed only across the taxpayer population. I propose three rules, each drawn from one of the systems examined. They are framed for French law, and none depends on it.

First, selection of taxpayers by model should have a statutory basis in the LPF. A ministerial order can be amended without parliamentary debate, as it was in July 2026, and the Slovak court held that risk assessment of this kind cannot rest on a managerial decision alone. The provision should prescribe the safeguards required by German law: a random sample subject to full audit, examination by an official of every file selected, and the freedom of officials to select other files.

Second, the model should be evaluated against the random sample and the evaluation published. Random audits are the only source of results independent of previous selections and, therefore, the only means of testing whether the model selects the appropriate cases. The American study could test whether the disparity reflected differences in non-compliance only because the IRS audits a stratified random sample of returns, which gave its authors a measure of under-reporting that did not depend on selection.[49] The evaluation should be reported to Parliament and show how audits and their results are distributed among categories of taxpayers defined by data already in the file, such as legal form, sector, size, income and place of residence, since equality and non-discrimination can be assessed only at that level. The Act of 25 June 2026 offers a vehicle, since it requires the minister to publish each year, and send to Parliament, an evaluation of fraud based on transparent methods; it requires neither random audits nor any assessment of selection.[50]

The objection is cost. The DGFiP abandoned random audits after 2022 because of their low yield; 23.7% of them had ended in reassessment against 33.6% of targeted audits, for average amounts eight times lower.[51] Those figures are also the measure that selection lacks, since a proportion of targeted audits ending in reassessment means little until the proportion among taxpayers taken at random is known. A random audit falls on a taxpayer whom nothing designates, but it is the one form of selection that treats all taxpayers alike. The sample can be small, as the British random enquiry programmes and the 539 companies of the French exercise show. The Slovak judgment requires supervision of this kind, and a statute would turn the undertaking given to the CNIL into an obligation.

Third, a taxpayer whose audit was initiated through a model should be told so at its close and given the main factors that led to the selection of the file, whether or not a reassessment follows. Article L. 57 of the LPF already requires reasons sufficient to allow the taxpayer to reply to a reassessment, and article L. 49 requires the result of an on-site audit to be notified even where no reassessment follows.[52] The statement could accompany the proposed

49 Elzayn and others, "Measuring and Mitigating Racial Disparities in Tax Audits" (2025) 140(1) *Quarterly Journal of Economics* 113.

50 Loi n° 2026-534 du 25 juin 2026 relative à la lutte contre les fraudes sociales et fiscales, art. 16.

51 Cour des comptes, *La lutte contre la fraude fiscale* (2025) 34 and n 40.

52 LPF, art. L. 49.

reassessment or the notice that none will be made. The taxpayer whose audit finds nothing has the stronger interest in knowing why the file was chosen. A desk audit that ends without any request to the taxpayer imposes no burden and would call for no notice.

The objection to disclosure is that taxpayers who learn the criteria can avoid selection. For automated decisions, the Court of Justice requires an explanation of the procedure and principles actually applied, which disclosure of the algorithm would not provide, and leaves claims of confidentiality to be weighed by the supervisory authority or a court.[53] On the same approach, taxpayers would receive the factors relating to their own file and could correct errors in the data, while the weights and thresholds of the model remained confidential under judicial control. Disclosure after the audit, limited to the factors in one file, reveals far less than publication of the criteria and leaves the reason for secrecy largely intact.

A model's criteria, unlike the judgments of officials, are recorded, can be tested against a random sample and can be reported. Daly has argued that AI provides an opportunity for the tax administration to satisfy the requirements of the rule of law, as well as presenting risks to them.[54] The argument holds for selection. A law that could not have governed the judgments of individual officials can govern the criteria recorded in models.

53 Case C-203/22 *Dun & Bradstreet Austria* EU:C:2025:117, paras 66 and 76.

54 S. Daly, "Artificial Intelligence, the Rule of Law and Public Administration: The Case of Taxation" (2024) 83(3) *Cambridge Law Journal* 437.