



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Zhiyong Zhang, Retired Tax Authority at the *State Administration of Taxation* and Zhengwen Shi, Professor at the *Center for Fiscal and Tax Law Studies of CUPL*, both National Reporters of China.

This set of questionnaires comprise the National Reporters' assessment on the country practice during 2019 in the protection of taxpayers' rights (Questionnaire # 1), and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*" (Questionnaire # 2). These questionnaires were filled in considering the following parameters:

1. *For Questionnaire # 1*, an assertive assessment (yes/no) was required on the effective implementation in domestic law of 82 legal safeguards, guarantees and procedures relevant in 12 specific areas for the practical protection of taxpayers' rights, as identified by Baker & Pistone in 2015. This line of questioning aims to get an overview of the state of protection of taxpayers' rights in the country in 2019.
2. *For Questionnaire # 2*, an impartial, non-judgmental evaluation was required on the developments, either of improvement or of decline, in the level of realisation of 57 minimum standards and 44 best practices, distributed into 87 benchmarks for the practical protection of taxpayers' rights. In this regard, a summary of events occurred in 2019 (legislation enacted, administrative rulings, circulars, case law, tax administration practices), that serve as grounds for each particular assessment, was also required.

IBFD Observatory on the Protection of Taxpayers' Rights

Dear National Reporter,

On behalf of Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone, I would like to thank you for your participation in the IBFD's Observatory on the Protection of Taxpayers' Rights (OPTR).

As you are aware, the OPTR aims to keep track of the developments in the practical protection of taxpayers' rights around the world. We intend to do so through the valuable and timely information you are kindly supplying, as member of your country's group of experts. Practitioners, tax authorities, academics and the judiciary of each surveyed country form national groups, to obtain a neutral, balanced report on the situation of taxpayers' rights in these countries.

Following you will find two questionnaires, of twelve sections each, aiming to compile relevant information regarding the level of practical implementation of the minimum standards and best practices of 12 taxpayers' rights, as identified by Prof. Dr. Baker and Prof. Dr. Pistone in Basel, 2015. We kindly ask you to fill them out completely, according to the instructions provided at the beginning of each questionnaire.

We would be very grateful if you submit us this questionnaire, duly filled out, by no later than 17 January 2020. We remain at your disposal for any clarification you may need.

We look forward to your valuable contribution to what we believe is an extraordinary project!

Kind regards,

Prof. Dr. Carlos E. Weffe
Managing Editor
IBFD Observatory on the Protection of Taxpayers' Rights.

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Questionnaire 1 - Country Practice

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. For assertive questions, please answer with "yes" or "no" by clicking on the corresponding button.

3. For questions that require you to specify a period of time (namely, Q. 23 and Q. 44), please select the time applicable in your country to carry out the procedures indicated in the questions in practice, within the options provided.
4. For questions with more than one possible answer (namely, Q. 56), please check all necessary boxes to reflect better the practical situation of your country regarding the issue, by clicking on them.
5. When completed, please submit the survey.
6. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.
7. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
8. An option to quit the survey and save your answers is provided at the end of each section.
9. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.
10. For editing your answers, please use the last "edit your response" link provided to you via email. Please bear in mind that this is the only way the system will acknowledge your previous answers. If you use a link other than the last one provided, some (or all) changes might not be retrieved by the system.
11. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

I. Identifying taxpayers and issuing tax returns

1. Do taxpayers have the right to see the information held about them by the tax authority? *

Yes

No

2. If yes, can they request the correction of errors in the information? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

3. In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only? *

Yes

No

4. If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non discriminatory/non arbitrary basis? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

5. Is it possible in your country for taxpayers to communicate electronically with the tax authority? *

Yes

No

6. If yes, are there systems in place to prevent unauthorised access to the channel of communication? *

Yes

No

7. Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

II. The issue of tax assessment

8. If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them? *

Yes

No

9. Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment? *

Yes

No

10. If yes, can the taxpayer request a meeting with the tax officer? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

III. Confidentiality

11. Is information held by your tax authority automatically encrypted? *

Yes

No

12. Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs? *

Yes

No

13. If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

14. Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information? *

Yes

No

15. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data? *

Yes

No

16. Is information about the tax liability of specific taxpayers publicly available in your country? *

Yes

No

17. Is "naming and shaming" of non-compliant taxpayers practised in your country? *

Yes

No

18. Is there a system in your country by which the courts may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information)? *

Yes

No

19. Is there a system of protection of legally privileged communications between the taxpayer and its advisors? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Yes

No

20. If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

IV. Normal Audits

21. Does the principle audi alteram partem apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)? *

Yes

No

22. Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)? *

Yes

No

23. If yes, what is the normal limit in months? *

4-6 months



24. Does the taxpayer have the right to be represented by a person of its choice in the audit process? *

Yes

No

25. May the opinion of independent experts be used in the audit process? *

Yes

No

26. Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process? *

Yes

No

27. Does the principle ne bis in idem apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)? *

Yes

No

28. If yes, does this mean only one audit per tax per year? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

29. Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)? *

Yes

No

30. Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

V. More intensive audits

31. Is authorisation by a court always needed before the tax authority may enter and search premises? *

Yes

No

32. May the tax authority enter and search the dwelling places of individuals? *

Yes

No

33. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search? *

Yes

No

34. Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)? *

Yes

No

35. Is the principle nemo tenetur applied in tax investigations (i.e. the principle against self-incrimination)? *

Yes

No

36. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

37. If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority? *

Not applicable (click here if you answered "No" to question 35)

Yes

No

38. Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognised? *

Yes

No

39. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

VI. Review and appeals

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary? *

Yes

No

41. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary? *

Yes

No

42. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing? *

Yes

No

43. Are there time limits applicable for a tax case to complete the judicial appeal process? *

Yes

No

44. If yes, what is the normal time it takes for a tax case to be concluded on appeal? *

4-6 months



45. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve et repete)? *

Yes

No

46. If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

47. Does the taxpayer need permission to appeal to the first instance tribunal? *

Yes

No

48. Does the taxpayer need permission to appeal to the second or higher instance tribunals? *

Yes

No

49. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing)? *

Yes

No

50. Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals? *

Yes

No

51. Does the loser have to pay the costs in a tax appeal? *

Yes

No

52. If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of the conduct of the other party)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

53. Are judgments of tax tribunals published? *

Yes

No

54. If yes, can the taxpayer preserve its anonymity in the judgment? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

55. If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

VII. Criminal and administrative sanctions

56. Does the principle ne bis in idem apply in your country to prevent either:

*

- The principle does not apply in my country
- The imposition of a tax penalty and the tax liability
- The imposition of more than one tax penalty for the same conduct
- The imposition of a tax penalty and a criminal liability

57. If ne bis in idem is recognised, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)? *

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty? *

- Yes
- No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

VIII. Enforcement of taxes

59. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)? *

Yes

No

60. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

IX. Cross-border procedures

61. Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request? *

Yes

No

62. Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for exchange of information? *

Yes

No

63. If no to either of the previous two questions, did your country previously recognise the right of taxpayers to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information? *

Not applicable (click here if you answered "No" to either question 61 or question 62)

Yes

No

64. Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country? *

Yes

No

65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country? *

Yes

No

66. Does the taxpayer have the right to see any information received from another country that relates to him? *

Yes

No

67. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated? *

Yes

No

68. Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

X. Legislation

69. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation? *

Yes

No

70. Is tax legislation subject to constitutional review which can strike down unconstitutional laws? *

Yes

No

71. Is there a prohibition on retrospective tax legislation in your country? *

Yes

No

72. If no, are there restrictions on the adoption of retrospective tax legislation in your country? *

Not applicable (click here if you answered "Yes" to the previous question)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XI. Revenue practice and guidance

73. Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law? *

Yes

No

74. If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

75. Does your country have a generalised system of advanced rulings available to taxpayers? *

Yes

No

76. If yes, is it legally binding? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

77. If a binding rule is refused, does the taxpayer have a right to appeal? *

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XII. Institutional framework for protecting taxpayer's rights

78. Is there a taxpayers' charter or taxpayers' bill of rights in your country? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Yes

No

79. If yes, are its provisions legally effective? *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Not applicable (click here if you answered "No" to the previous question)

Yes

No

80. Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country? *

Yes

No

81. If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)? *

Not applicable (click here if you answered "No" to the previous question)

Yes

No

82. If yes to a (tax) ombudsman, is he/she independent from the tax authority? *

Not applicable (click here if you answered "No" to question 80)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

Questionnaire 2 - Standards of protection

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. All questions are two or three-tiered (namely, either with parts "A" and "B" or "A", "B" and "C"). They comprise a minimum standard and /or a best practice, and a "summary of relevant facts in 2019", a space for providing a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way.
3. Please Indicate, by clicking on the corresponding button, whether there was an improvement or a decrease of the level of compliance of the relevant standard/best practice in your country in 2019. If there were no changes, please indicate so by clicking on the corresponding button.
4. In all cases, please refer the relevant novelties in the space provided under "summary of relevant facts in 2019", for each question. Please give a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. In case there is nothing to report for a given minimum standard/best practice, please indicate so briefly.

5. If any, make additional, non-judgmental commentaries at the space provided under "summary of relevant facts in 2019".
6. Back up your assertions with the relevant documentary materials, if possible. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcomed to send us these materials to our email: optr@ibfd.org and c.weffe@ibfd.org.
7. When completed, please submit the survey.
8. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.
9. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
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Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

I. Identifying taxpayers and issuing tax returns

1 (A). Implement safeguards to prevent impersonation when issuing a unique identification number *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

1 (B). Summary of relevant facts in 2019

2 (A). The system of taxpayer identification should take account of religious sensitivities *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

2 (B). Summary of relevant facts in 2019

3 (A). Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

3 (B). Summary of relevant facts in 2019

4 (A). Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax *

- No changes
- Shifted away from the best practice
- Shifted towards / match the best practice

4 (B). Summary of relevant facts in 2019

5 (A). Where pre/populated returns are used, these should be sent to taxpayers to correct errors. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

5 (B). Summary of relevant facts in 2019

6 (A). Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

6 (B). Publish guidance on taxpayers' rights to access information and correct inaccuracies *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

6 (C). Summary of relevant facts in 2019

7 (A). Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

7 (B). Summary of relevant facts in 2019

8 (A). Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

8 (B). Summary of relevant facts in 2019

9 (A). Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

9 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

II. The issue of tax assessment

10 (A). Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

10 (B). Summary of relevant facts in 2019

11 (A). Use e-filing to speed up assessments and correction of errors, particularly systematic errors *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

11 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

III. Confidentiality

12 (A). Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced). *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

12 (B). Encrypt information held by a tax authority about taxpayers to the highest level attainable. *

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

12 (C). Summary of relevant facts in 2019

13 (A). Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

13 (B). Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

13 (C). Summary of relevant facts in 2019

14 (A). Audit data access periodically to identify cases of unauthorised access. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

14 (B). Summary of relevant facts in 2019

15 (A). Introduce administrative measures emphasizing confidentiality to tax officials. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

15 (B). Appoint data protection/privacy officers at senior level and local tax offices. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

15 (C). Summary of relevant facts in 2019

16 (A). Where pre/populated returns are used, these should be sent to taxpayers to correct errors. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

16 (B). Summary of relevant facts in 2019

17 (A). If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges). *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

17 (B). Summary of relevant facts in 2019

18 (A). Introduce an offence for tax officials covering up unauthorised disclosure of confidential information. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

18 (B). Summary of relevant facts in 2019

19 (A). Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

19 (B). Summary of relevant facts in 2019

20 (A). If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer). *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

20 (B). Summary of relevant facts in 2019

21 (A). No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

21 (B). Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data, and then reporting to Parliament. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

21 (C). Summary of relevant facts in 2019 *

Ok

22 (A). Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

22 (B). Summary of relevant facts in 2019

23 (A). If published, tax rulings should be anonymised and details that might identify the taxpayer removed. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

23 (B). Anonymise all tax judgments and remove details that might identify the taxpayer

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

23 (C). Summary of relevant facts in 2019

24 (A). Legal professional privilege should apply to tax advice. *

Please provide separately (via optr@ibfd.org) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

24 (B). Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure. *

Please provide separately (via optr@ibfd.org) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

24 (C). Summary of relevant facts in 2019 *

Please provide separately (via optr@ibfd.org) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Ok

25 (A). Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege. *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

25 (B). Summary of relevant facts in 2019 *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

OK

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

IV. Normal audits

26 (A). Audits should respect the following principles: (i) Proportionality. (2) Ne bis in idem (prohibition of double jeopardy). (3) Audi alteram partem (right to be heard before any decision is taken). (4) Nemo tenetur se detegere (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

26 (B). Summary of relevant facts in 2019

27 (A). In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

27 (B). Summary of relevant facts in 2019

28 (A). In application of ne bis in idem the taxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

28 (B). Summary of relevant facts in 2019 *

Ok

29 (A). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

29 (B). Summary of relevant facts in 2019

30 (A). In application of nemo tenetur, the right to remain silent should be respected in all tax audits. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

30 (B). Summary of relevant facts in 2019

31 (A). Tax audits should follow a pattern that is set out in published guidelines. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

31 (B). Summary of relevant facts in 2019 *

Ok

32 (A). A manual of good practice in tax audits should be established at the global level. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

32 (B). Summary of relevant facts in 2019

33 (A). Taxpayers should be entitled to request the start of a tax audit (to obtain finality). *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

33 (B). Summary of relevant facts in 2019

34 (A). Where tax authorities have resolved to start an audit, they should inform the taxpayer *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

34 (B). Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

34 (C). Summary of relevant facts in 2019

35 (A). Taxpayers should be informed of information gathering from third parties. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

35 (B). Summary of relevant facts in 2019

36 (A). Reasonable time limits should be fixed for the conduct of audits. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

36 (B). Summary of relevant facts in 2019

37 (A). Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

37 (B). Summary of relevant facts in 2019

38 (A). The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

38 (B). The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

38 (C). Summary of relevant facts in 2019

39 (A). Following an audit, a report should be prepared even if the audit does not result in additional tax or refund. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

39 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

V. More intensive audits

40 (A). More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

40 (B). Summary of relevant facts in 2019

41 (A). If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

41 (B). Summary of relevant facts in 2019

42 (A). Entering premises or interception of communications should be authorised by the judiciary. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

42 (B). Summary of relevant facts in 2019

43 (A). Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for ex-post ratification. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

43 (B). Summary of relevant facts in 2019

44 (A). Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

44 (B). Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

44 (C). Summary of relevant facts in 2019

45 (A). Access to bank information should require judicial authorisation. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

45 (B). Summary of relevant facts in 2019

46 (A). Authorisation by the judiciary should be necessary for the interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

46 (B). Summary of relevant facts in 2019

47 (A). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

47 (B). Summary of relevant facts in 2019

48 (A). If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

48 (B). Summary of relevant facts in 2019

49 (A). Where invasive techniques are applied, they should be limited in time to avoid a disproportionate impact on taxpayers. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

49 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

VI. Review and appeals

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

50 (A). E-filing of requests for internal review to ensure the effective and speedy handling of the review process. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

50 (B). Summary of relevant facts in 2019

51 (A). The right to appeal should not depend upon prior exhaustion of administrative reviews. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

51 (B). Summary of relevant facts in 2019 *

Ok

52 (A). Reviews and appeals should not exceed two years. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

52 (B). Summary of relevant facts in 2019

53 (A). Audi alteram partem should apply in administrative reviews and judicial appeals. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

53 (B). Summary of relevant facts in 2019

54 (A). Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

54 (B). An appeal should not require prior payment of tax in all cases. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

54 (C). Summary of relevant facts in 2019

55 (A). The state should bear some or all of the costs of an appeal, whatever the outcome.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

55 (B). Summary of relevant facts in 2019

56 (A). Legal assistance should be provided for those taxpayers who cannot afford it. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

56 (B). Summary of relevant facts in 2019

57 (A). Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

57 (B). Summary of relevant facts in 2019

58 (A). Tax judgments should be published. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

58 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

VII. Criminal and administrative sanctions

59 (A). Proportionality and ne bis in idem should apply to tax penalties. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

59 (B). Summary of relevant facts in 2019

60 (A). Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

60 (B). Summary of relevant facts in 2019

61 (A). Voluntary disclosure should lead to reduction of penalties. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

61 (B). Summary of relevant facts in 2019

62 (A). Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

62 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

VIII. Enforcement of taxes

63 (A). Collection of taxes should never deprive taxpayers of their minimum necessary for living. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

63 (B). Summary of relevant facts in 2019

64 (A). Authorisation by the judiciary should be required before seizing assets or bank accounts *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

64 (B). Summary of relevant facts in 2019

65 (A). Taxpayers should have the right to request delayed payment of arrears. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

65 (B). Summary of relevant facts in 2019

66 (A). Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

66 (B). Summary of relevant facts in 2019

67 (A). Temporary suspension of tax enforcement should follow natural disasters. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

67 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

IX. Cross-border procedures

68 (A). The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

68 (B). The taxpayer should be informed that a cross-border request for information is to be made. *

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

68 (C). Summary of relevant facts in 2019

69 (A). Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

69 (B). Summary of relevant facts in 2019

70 (A). Provisions should be included in tax treaties setting specific conditions for exchange of information. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

70 (B). Summary of relevant facts in 2019

71 (A). If information is sought from third parties, judicial authorisation should be necessary. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

71 (B). Summary of relevant facts in 2019

72 (A). The taxpayer should be given access to information received by the requesting state. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

72 (B). Summary of relevant facts in 2019

73 (A). Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

73 (B). Summary of relevant facts in 2019

74 (A). A requesting state should provide confirmation of confidentiality to the requested state. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

74 (B). Summary of relevant facts in 2019

75 (A). A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

75 (B). Summary of relevant facts in 2019

76 (A). For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

76 (B). Summary of relevant facts in 2019

77 (A). Taxpayers should have a right to request initiation of mutual agreement procedure. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

77 (B). Summary of relevant facts in 2019

78 (A). Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to the progress of the procedure. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

78 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

X. Legislation

79 (A). Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

79 (B). Retrospective tax legislation should ideally be banned completely. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

79 (C). Summary of relevant facts in 2019

80 (A). Public consultation should precede the making of tax policy and tax law. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

80 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XI. Revenue practice and guidance

81 (A). Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

81 (B). Summary of relevant facts in 2019

82 (A). Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

82 (B). Summary of relevant facts in 2019

83 (A). Binding rulings should only be published in an anonymised form *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

83 (B). Summary of relevant facts in 2019

84 (A). Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively. *

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

84 (B). Summary of relevant facts in 2019

Do you want to save your results and quit? *

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

XII. Institutional framework for protecting taxpayers' rights

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

85 (A). Adoption of a charter or statement of taxpayers' rights should be a minimum standard. *

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

85 (B). A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

85 (C). Summary of relevant facts in 2019

86 (A). A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

86 (B). Summary of relevant facts in 2019

87 (A). The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally. *

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

87 (B). Summary of relevant facts in 2019

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Annexe for OPTR of China

By Prof. Zhengwen Shi

For questionnaires 1

*19. Is there a system of protection of legally privileged communications between the taxpayer and its advisors? **

Chinese lawyers are authorized with professional privileges not to disclose information of the clients in terms of tax advice. While as for other tax advisors, the privilege is confined to commercial secrets.

Relative legislations:

1) Lawyers Law of the People's Republic of China (2017 Amendment)

Article 38 A lawyer shall keep the national secrets and trade secrets known in practicing law, and shall not divulge any privacy of a client.

A lawyer shall keep confidential the relevant condition and information that is known by the lawyer in practicing law and the client and other persons are reluctant to disclose, however, except facts and information on a crime compromising the national security or public security or seriously endangering the safety of the body of a person, which a client or other person prepares to commit or is committing.

2) Law of the People's Republic of China on Certified Public Accountants (2014 Amendment)

Article 19 Certified public accountants shall have the obligation to keep their clients' business secrets they come to know in carrying out their business.

*20. If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)? **

Protection of legally privileged communications does not extend to other advisors.

VI. Review and appeals

40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?

Yes. See question 42.

41. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitrateon) before a tax case proceeds to the judiciary?

Yes. Mediation are applicable during administrative reconsideration (that is internal review), thought are limited to some areas.

See: Regulation on the Implementation of the Administrative Reconsideration Law of the People's Republic of China

Article 50 An administrative reconsideration organ may conduct mediation under the principle of willingness and legality under either of the following circumstances:

(a) A citizen, legal person or any other organization applies for administrative

reconsideration against a specific administrative action taken by an administrative organ at its discretion as provided for in any law or administrative regulation; or

(b) Disputes over administrative compensation or administrative indemnification arise between the parties concerned.

Where the parties concerned reach an agreement after mediation, the administrative reconsideration organ shall make a written Administrative Reconsideration Mediation Agreement. The written Administrative Reconsideration Mediation Agreement shall clearly state the administrative reconsideration claims, facts, reasons and results of mediation, and the seal of the administrative reconsideration organ shall be affixed thereon. The written Administrative Reconsideration Mediation Agreement shall take effect in law upon being signed by both parties concerned.

Where an agreement is not reached after mediation or either parties goes back on his words before the written Administrative Reconsideration Mediation Agreement takes effect, the administrative reconsideration organ shall timely make an administrative reconsideration decision.

42. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing?

Yes. Tax dispute (dispute over assessment) is one of a few kind of disputes in China which have to exhaust administrative remedies(行政复议, translated into *administrative review* or *administrative reconsideration*) before go to judiciary. Moreover, tax payers have to pay tax before they can go to an administrative review procedure.

See: Tax Collection Administration Law of the People's Republic of China (2015 Amendment)

Article 88 If any tax dispute between the tax authority and a taxpayer, withholding agent or tax payment guarantor occurs, the taxpayer, withholding agent or tax payment guarantor must first pay or remit the taxes and the late fee in accordance with the decision on tax payment made by the tax authority, or provide corresponding guaranty, and then after may, apply for an administrative reconsideration in accordance with the law. If they object to the decision made after the administrative reconsideration, they may bring a suit in the people's court in accordance with the law.

Where a party concerned objects to a sanction decision made by the tax authority or to the mandatory measures or measures of taxation by the authority, he may apply for an administrative reconsideration in accordance with the law or bring a suit in the people's court in accordance with the law.

If the party concerned neither applies for an administrative reconsideration of the sanction decision made by the tax authority or brings a suit in the people's court within a prescribed time limit nor complies with the sanction decision, the tax authority which made the sanction decision may adopt the enforcement measures prescribed in Article 40 of this Law, or apply to the people's court for enforcement of the decision.

43. Are there time limits applicable for a tax case to complete the judicial appeal process?

Yes. There is time limit for both administrative reconsideration procedure and litigation.

See:

1) Administrative Reconsideration Law of the People's Republic of China (2017 Amendment)

Article 31 An administrative reconsideration organ shall make an administrative reconsideration decision within 60 days from the day of acceptance of application, except for the circumstances where the time of administrative reconsideration set in laws is shorter than 60 days. If circumstances are complex, and an administrative reconsideration organ fails to make a decision within the prescribed time limit, the responsible persons of the administrative reconsideration organ may approve an proper extension of the time limit within 30 days, and the extension of the time limit shall be informed to the applicant and the respondent of the application.

An administrative reconsideration organ that makes an administrative reconsideration decision shall draw up a written administrative reconsideration decision on which the organ shall stamp a seal.

Once the written administrative reconsideration decision is served, the decision is instantly legally effective.

2) The Administrative Litigation Law of the People's Republic of China (2017 Revision)

Article 81 A people's court of first instance shall enter a judgment within six months from the day when a complaint is docketed. Any extension of the aforesaid period as needed under special circumstances shall be subject to the approval of a Higher People's Court. Where a Higher People's Court trying a case as a court of first instance needs to extend the aforesaid period, the extension shall be subject to the approval of the Supreme People's Court.

44. If yes, what is the normal time it takes for a tax case to be concluded on appeal?

Usually less than two years.

45. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve et repete)?

Yes, see above 42. Art.88 of Tax Collection Administration Law of the People's Republic of China. But for penalty decisions, tax payers have no need to pay penalty first.

46. If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?

Tax payers may provide corresponding guaranty instead. See above 42. Art.88 of Tax Collection Administration Law of the People's Republic of China.

47. Does the taxpayer need permission to appeal to the first instance tribunal?

No need to get permission.

See: Administrative Reconsideration Law of the People's Republic of China (2017 Amendment)

Article 5 If any citizen, legal person or any other organization refuses to accept an administrative reconsideration decision, he or it may, in accordance with the provisions of Administrative Procedure Law of the People's Republic of China , bring an administrative lawsuit before a people's court, except that the administrative decision is, as provided for by law, a final decision.

48. Does the taxpayer need permission to appeal to the second or higher instance tribunals?

No. In china, litigators have the right to appeal once.

See: The Administrative Litigation Law of the People's Republic of China (2017 Revision)

Article 85 Against a judgment of a people's court of first instance, a party shall have the right to file an appeal with the people's court at the next higher level within 15 days of the service of the written judgment. Against a ruling of a people's court of first instance, a party shall have the right to file an appeal with the people's court at the next higher level within 10 days of the service of the written ruling. If the party fails to appeal upon expiry of the aforesaid period, the judgment or ruling of the people's court of first instance shall take effect.

49. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing?)

E-filing is prescribed in law, though is not popularly used. During tax litigation in the court, there is a simplified procedure for eligible cases.

See: The Administrative Litigation Law of the People's Republic of China (2017 Revision)

Article 82 In trying the following administrative cases, a people's court of first instance may apply the summary procedure if it deems that the facts are clear, the rights and obligations between the parties are clear, and the dispute is minor:

- (1) The alleged administrative action was taken on the spot according to the law.
- (2) The amount involved in the case is not more than 2,000 yuan.
- (3) The case involves the disclosure of open government information.

For administrative cases other than those as mentioned in the preceding paragraph, the summary procedure may be applied with the consent of all parties.

The summary procedure may not apply to a case remanded for retrial or a case retried under the trial supervision procedure.

50. Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals?

During administrative reconsideration procedure, hearing is not required. A hearing may be granted while the tax payers so applied.

See: Regulation on the Implementation of the Administrative Reconsideration Law of the People's Republic of China

Article 33 An administrative reconsideration department may, when deeming necessary, conduct the on-site investigation and verification of evidence; and in a significant or complicated case, may hear the case by adopting the manner of hearing when the applicant so requests or when it deem it necessary.

51. Does the loser have to pay the costs in a tax appeal?

Only the court cost (litigation fee paid to the court, 50 Yuan each case) is on the loser. Other cost like that for lawyers, is not granted.

See: The Administrative Litigation Law of the People's Republic of China (2017 Revision)

Article 102 The people's courts shall collect court costs for the trial of administrative cases. The court costs shall be assumed by the losing party or, if both sides are liable, assumed by both sides. The specific measures for the collection of court costs shall be developed additionally.

52. If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?

See *The Administrative Litigation Law of the People's Republic of China*, art.102, if both sides are liable, assumed by both sides.

53. Are judgments of tax tribunals published?

Yes. Judiciary decisions are published. Tax administrative reconsideration decisions are not published.

54. If yes, can the taxpayer preserve its anonymity in the judgment?

Yes.

55. If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality)?

Yes. When business secrets or privacy involved, hearing will not made public.

See:

1) The Administrative Litigation Law of the People's Republic of China (2017 Revision)

Article 54 The people's courts shall try administrative cases publicly, except those involving any state secret or individual privacy or as otherwise provided for by any law.

A case involving any trade secret may be tried in camera if a party to the case files a motion for trial in camera.

2) Rules for Tax Administrative Reconsideration(2018 revision)

Article 67 The hearing shall be held publicly unless the case involves any state secret, business secret or personal privacy.

XII Institutional framework for protecting taxpayers' rights

78. Is there a taxpayers' charter or taxpayers' bill of rights in your country?

No taxpayers' charter nor taxpayer's bill made by legislature in China.

The State Administration of Taxation issued an Announcement on Rights and Obligations of Taxpayer in 2009, which is under amendment now. In the announcement, several rights of taxpayers are enumerated. However, the rights and obligations in the announcement are not created per se, but a collection from what have been set down by other laws and administrative regulations.

79. If yes, are its provisions legally effective?

See 78.