



## Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Christine Speidel, Director at the *Federal Tax Clinic, Villanova University* and National Reporter of United States.

This set of questionnaires comprise the National Reporter's 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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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? \*

More than 24 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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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? \*

There is no limit (click here if you answered "No" to the previous question) ▼



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

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

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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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.
10. An option to quit the survey and save your answers is provided at the end of each section. This part of the survey has 12 sections.
11. 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.
12. 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.

13. 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.

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

The IRS expanded its Identity Protection Personal Identification Number (IP PIN) program. The IRS assigns an IP PIN to victims of tax-related identity theft. Also, taxpayers in some states may request an IP PIN. The IRS expanded this option to 7 additional states for the 2019 filing season, and it added 10 more states for the 2020 filing season. The Taxpayer First Act (TFA), Public Law No: 116-25, § 2005 (July 1, 2019) mandates further expansion until the program is available nationwide by July 1, 2024. See also [www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin](https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin).

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

The IRS determined that it could no longer allow taxpayers with religious accommodations to claim the child tax credit without providing a social security number for the child, due to Public Law No. 115-97 (known as the Tax Cuts and Jobs Act), enacted in December 2017. See National Taxpayer Advocate (NTA) 2020 Objectives Report to Congress vol. 1, 48-57; NTA 2020 Purple Book 97-98; Internal Revenue Manual (IRM) 3.12.3.26.17.6(2)(a) (04-15-2019).

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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

The TFA increased penalties for improper use or disclosure of information by tax return preparers. TFA § 2009(b); IRC § 6713(b).

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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

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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

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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

Taxpayers have the right to request information about themselves under the Freedom of Information Act (FOIA), 5 USC § 552 et seq. The IRS has instructed its agents to provide taxpayers information about open cases upon request (i.e., without making a formal FOIA request). However, anecdotal reports suggest that taxpayers do not always obtain full results from informal requests. The IRS has published guidance online instructing taxpayers how to request copies of tax return information. See [www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines](http://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines) and [www.irs.gov/individuals/get-transcript](http://www.irs.gov/individuals/get-transcript).

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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

The IRS continually updates its authentication procedures for online interactions with taxpayers. The IRS has made progress towards compliance with 2017 guidelines issued by the National Institute of Standards and Technology. The IRS implemented alternative methods to knowledge-based verification for its Get Transcript function and it is working on further security improvements. See [www.gao.gov/products/GAO-19-288](http://www.gao.gov/products/GAO-19-288); [www.treasury.gov/tigta/auditreports/2019reports/201920017fr.pdf](http://www.treasury.gov/tigta/auditreports/2019reports/201920017fr.pdf). For general information see [www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools](http://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools).  
Re: Questionnaire 1, Question 5: Electronic communication with the tax authority is very limited. Taxpayers can only request certain transcripts and certain types of installment agreements online. The IRS website chat function is also very limited.

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## 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

The IRS Large Business & International division's Compliance Assurance Process is being expanded, and eligibility criteria have been published. See [www.irs.gov/newsroom/irs-expanding-the-compliance-assurance-process-for-2020-accepting-new-corporate-applicants](http://www.irs.gov/newsroom/irs-expanding-the-compliance-assurance-process-for-2020-accepting-new-corporate-applicants); [www.irs.gov/businesses/corporations/compliance-assurance-process](http://www.irs.gov/businesses/corporations/compliance-assurance-process).

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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

The IRS offers in-person assistance at Taxpayer Assistance Centers (TACs). The overall number of TACs remained consistent through 2019, but 34 of the 358 TACs do not have staff. One center is only open seasonally, and eight are open less than 35 hours per week. See NTA 2019 Annual Report to Congress, 10. TFA § 1403 requires the IRS to provide notice of a TAC closure at least 90 days before the proposed closure. TIGTA found that in 2018 the IRS did not follow procedures previously mandated by Congress before closing TACs. [www.treasury.gov/tigta/auditreports/2019reports/201940029fr.pdf](http://www.treasury.gov/tigta/auditreports/2019reports/201940029fr.pdf)

The TFA codified the Volunteer Income Tax Assistance (VITA) program, which funds return preparation programs for members of underserved populations. Also, VITA programs are now permitted to refer taxpayers to Low-Income Taxpayer Clinics (LITCs). TFA § 1401; IRC 7526A(a), (g)(3). The TFA also authorizes Treasury Department employees to refer taxpayer to a specific LITC. TFA § 1402(a); IRC § 7526(c)(6).

The IRS must develop a comprehensive customer service strategy by July 2020. TFA § 1101.

In 2019 the IRS developed Form 1040SR to assist seniors who may benefit from a larger print, simpler tax form, in accordance with the Bipartisan Budget Act of 2018. Pub. L. No. 115-123, § 41106.

Re Q1,Q7: There are special arrangements for individuals who face particular difficulties, but they are limited. TACs generally require appointments. There are not enough LITC or VITA services available to meet the needs of all taxpayers who face difficulties in tax compliance. Re language access, there is free telephone interpretation but it is not publicized to taxpayers and thus is little used, and there is very limited language translation of forms, letters, and website content. See NTA 2019 Annual Report to Congress, vol. 1, 69-79.

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

Re Q 1, Q 9: A dialogue should take place between the taxpayer and the tax authority before an assessment in order to reach an agreed assessment. However, many taxpayers in the correspondence examination system do not understand that they are being audited and do not respond to an audit letter. See NTA 2017 Annual Report to Congress vol. 2, 163 (Research Study); NTA 2007 Annual Report to Congress vol. 2, 103 (Research Study); NTA 2018 Annual Report to Congress vol. 1 126-141, 131 (Most Serious Problem: Correspondence Examination). For taxpayers bewildered by the process or unable to participate in it, there is no meaningful dialogue.

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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

The IRS is making increased use of electronic filters and it continues to encourage electronic filing. However, some of the filters have significant false positive rates which harm taxpayers. See NTA 2019 Annual Report to Congress 34-44 (Most Serious Problem: Processing Delays: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship).

The TFA promotes electronic filing in multiple ways. It expands the number of employers required to file electronic information returns. TFA § 2301; IRC § 6011(e)(2)(A). Second, the IRS is directed to create a system through which users can prepare and file Forms 1099 electronically. TFA § 2102. Finally, the TFA amends the Internal Revenue Code to require that any exempt organization required to file a return must e-file the return. TFA § 3101; IRC § 6033(n).

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

In 2019, the TFA increased protections for confidential taxpayer information. Tax return information may only be disclosed to tax authority contractors and agents who have implemented safeguards to protect taxpayer information. TFA § 2004; IRC § 6103(p)(9). The TFA also increased penalties for improper use or disclosure of information by return preparers. TFA § 2009(b); IRC § 6713(b). Further, the TFA restricts access to return information by non-IRS employees, when the third-party is providing assistance to the IRS. TFA § 1208; IRC 7602.

Re Q1,Q16: information about the tax liability of specific taxpayers is not generally publicly available. IRC 6103. However, the notice of federal tax lien (NFTL) gives a public snapshot of the taxpayer's liabilities, and court filings are publicly available. An NFTL may be filed at the IRS's discretion; currently it is generally considered when the taxpayer's total liability exceeds \$10,000.

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

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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

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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

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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

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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

In *J.B. v. U.S.*, 123 AFTR 2d 2019-458 (Feb. 26, 2019) the U.S. Court of Appeals for the Ninth Circuit held that IRS Publication 1, which is sent to every taxpayer at the start of most enforcement actions, did not provide “reasonable notice in advance” of third party contacts, as required by IRC § 7602(c)(1). The TFA strengthened requirements for taxpayer notice prior to third-party contacts. TFA § 1206(a); 26 U.S.C. § 7602(c)(1). The IRS issued an implementing memorandum, SBSE-04-0719-0034 (July 26, 2019), outlining new procedures for notifying taxpayers of potential third-party contacts.

---



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

Re Q1,Q17: "naming and shaming" of non-compliant taxpayers is not practiced federally except for in criminal cases. However, some U.S. states practice "naming and shaming" for state tax liabilities.

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 \*

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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

Re Q1,Q18: the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers, but the circumstances are narrow. See, e.g., IRC 6103(h)(4)(D), (i)(1), (i)(7)(C).

---

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](mailto: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](mailto: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](mailto: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.

Re Q 1, Q 20: There is a limited accountants' privilege. IRC 7525. Also, so-called "Kovel" agreements can extend the attorney-client privilege to accountants hired by attorneys.

---

#### 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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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.

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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

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

Re Q1,Q27: The IRS may examine any books, papers, records, or other data of a taxpayer relevant to the correctness of any return. IRC 7602. Generally speaking the principle ne bis in idem applies; however the tax authority may engage in repeat audits that it deems necessary. IRC 7605(b). Also, the IRS has several summary assessment and return review processes that appear to taxpayers and function substantially as correspondence audits, but that do not trigger the protections of IRC 7605(b). See [taxpayeradvocate.irs.gov/news/nta-blog-real-vs-unreal-audits-and-why-this-distinction-matters](https://taxpayeradvocate.irs.gov/news/nta-blog-real-vs-unreal-audits-and-why-this-distinction-matters). These include math error corrections and Automated Underreporter (document matching) notices, among others. These "unreal audits" constitute the majority of IRS compliance contacts.

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

Re Q1,Q29: There are some restrictions on repeatedly auditing the same taxpayer on the same issue for more than two consecutive tax periods, but these are limited and they are not in statute or regulations. See IRM 4.10.2.13.2 (02-11-2016).

---

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

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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

Re Q1,Q10: A taxpayer can request a meeting with the tax officer in all cases; however, it is not a realistic option for most taxpayers, as most audits are conducted by correspondence. A taxpayer requesting that their correspondence examination be transferred to the field for a meeting must clear several hoops before the request will be granted. See IRM 4.19.13.15 (08-01-2012); 26 CFR 301.7605. A checklist in the IRM indicates that a case cannot be transferred unless a Statutory Notice of Deficiency has already been issued, when the agency's position has already crystallized in a proposed assessment.

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

Re Q1,Q35: There is a right against self-incrimination in criminal proceedings and with respect to crimes. However, one cannot refuse to file a tax return on that basis. See *United States v. Neff*, 615 F.2d 1235 (9th Cir. 1980).

Re Q1,Q38: IRS Criminal Investigation (CI) agents are required to show their badges and identify themselves in interviews, which should alert the taxpayer to the existence of a criminal investigation. The constitutional right against self-incrimination exists at all times and does not change; however the government's duty to give a "Miranda" warning (alerting the subject to their right to remain silent) is only triggered in very specific circumstances. IRS CI agents will give Miranda warnings when required: See [www.irs.gov/irm/part9/irm\\_09-004-005](http://www.irs.gov/irm/part9/irm_09-004-005).

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

---

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

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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

Re Q1,Q30: The IRS does not have to respond to a taxpayer's request for an audit. In designated circumstances taxpayers can pay for certainty via a private letter ruling. See IRS Revenue Procedure 2020-1.

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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

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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

In *J.B. v. U.S.*, 123 AFTR 2d 2019-458 (Feb. 26, 2019) the U.S. Court of Appeals for the Ninth Circuit held that IRS Publication 1, which is sent to every taxpayer at the start of most enforcement actions, did not provide “reasonable notice in advance” of third party contacts, as required by IRC § 7602(c)(1).

The TFA strengthened requirements for taxpayer notice prior to third-party contacts. TFA § 1206(a); 26 U.S.C. § 7602(c)(1). The IRS subsequently issued an implementing memorandum, SBSE-04-0719-0034 (July 26, 2019), outlining new procedures for notifying taxpayers of potential third-party contacts.

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### 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

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### 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

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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

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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

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

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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

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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

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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

Re Q1, Q31: authorization by a court is generally needed before the tax authority may enter and search premises; however, warrantless searches are authorized with taxpayer permission or incident to a lawful arrest. IRM 9.1.2.3.5 (01-16-2008).

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#### 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

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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

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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

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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

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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

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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

## VI. Review and appeals

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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

---

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

The inclusion of Appeals and Compliance personnel in administrative appeals conferences can delay the outcome. See NTA 2019 Annual Report to Congress 62-68 (Most Serious Problem: Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals).

Re Q1, Q49: There are certain fast-track and ADR appeals processes. See IRM 8.26, [www.irs.gov/irm/part8](http://www.irs.gov/irm/part8).

---

## 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

The TFA made several changes relevant to administrative appeals. The IRS Office of Appeals was renamed the "Independent Office of Appeals." The IRS must give a justification for denying an administrative appeal to a taxpayer in certain cases. Also, it must create procedures for taxpayers to protest such a denial, and it must report on denials to Congress. TFA § 1001(a); IRC § 7803(e). The TFA also requires the Office of Appeals to provide taxpayers with the non-privileged information in their case files no later than 10 days before the appeals conference. TFA § 1001(a); IRC § 7803(e).

Re Q1,Q50: Generally the principle of audi alteram partem applies. IRC 7803(e). However, an appeals conference can simply be an exchange of documents, and the IRS can deny taxpayers the opportunity for an appeals conference in certain limited circumstances. There is no right to an in-person hearing.

---

## 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

Re Q1, Q45: Payment is not required before an administrative appeal. For some types of tax assessments, payment is required before judicial review. See NTA 2020 Purple Book 82-84.

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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

The U.S. Tax Court adopted a rule permitting limited entries of appearance at trial sessions. This may expand the availability of legal services to taxpayers, since an attorney is no longer committed to the entire case (which can include significant legal briefing) if they wish to assist a taxpayer at trial. U.S. Tax Court Administrative Order No. 2019-01.

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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

Re Q1, Q54: taxpayers cannot generally preserve anonymity in a court judgment. IRC 7461(a); 7458. Administrative appeals are confidential.

Re Q1, Q55: Taxpayers can request a protective order or seal if their case is in court, but the court will scrutinize the request and it may not be granted. See IRC 7461(b); U.S. Tax Court Rules of Practice and Procedure 27, 103(a).

---

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

The U.S. Tax Court website provides public access to Court opinions and orders, including those which are not published by traditional legal publishers.

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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

### 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

Re Q1, Q56: There are limited restrictions on imposing multiple penalties for the same conduct. See, e.g., IRC 6662.

---

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

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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

Re Q1, Q58: On an original tax return the accuracy penalty can be avoided through disclosure. Voluntary disclosure may not help in all cases, though, particularly where the original return was incorrect. IRS Criminal Investigations voluntary disclosure program is not available if the IRS had third party information Re the noncompliance before the voluntary disclosure. See [www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice](http://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice).

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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

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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

## 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

Statutory and administrative protections exist for taxpayers who would experience economic hardship due to tax collection actions. See, e.g., IRC § 6343(a)(1)(D); IRC §§ 6320(c), 6330(c)(2)(A)(ii); IRC § 7122(d); IRM 5.16.1 Currently Not Collectible. However, the IRS could improve its systemic protections and be more proactive in identifying taxpayers at risk of economic hardship. See NTA 2020 Objectives Report to Congress, 58-67.

The TFA excluded accounts from assignment to private collection agencies where the taxpayer's gross income is at or below 200 percent of the federal poverty line, or where the taxpayer receives certain government assistance. However, the changes are not effective until January 1, 2021. TFA § 1205; IRC § 6306(d)(3)(E).

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### 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

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### 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

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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

TFA § 1102 codifies an existing administrative exception to the fee requirement for the submission of offers-in-compromise made by low-income taxpayers.

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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

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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

## 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

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Taxpayers do not have the right to be informed before information relating to them is exchanged. IRC § 6103(k)(4) allows disclosure subject to any safeguards in the applicable treaty or agreement. See NTA 2020 Purple Book 69.

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

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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

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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

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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

Re Q1, Q66: Information can be withheld under FOIA exemption (b)(3) or (b)(7)(A) in conjunction with IRC 6105.

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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

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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

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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

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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

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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

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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

The IRS reduced the number of copies of a competent authority request that an applicant is required to submit. See [www.irs.gov/individuals/international-taxpayers/competent-authority-assistance](http://www.irs.gov/individuals/international-taxpayers/competent-authority-assistance). In 2019, the IRS entered into 2 competent authority agreements with India. See [www.irs.gov/businesses/country-by-country-reporting-jurisdiction-status-table](http://www.irs.gov/businesses/country-by-country-reporting-jurisdiction-status-table).

Re Q1, Q67: A U.S. resident for purposes of a U.S. income tax treaty can request assistance from the U.S. competent authority if a taxpayer thinks that the actions of the United States, a treaty country, or both, cause or will cause double taxation or taxation otherwise inconsistent with the treaty. See Revenue Procedure 2015-40, 2015-35 I.R.B 236. However, the U.S. can make a determination or reject a request in some cases without involving the other country. Rev. Proc. 2015-40, sec. 7. Also, there are required pre-filing procedures in some instances. Id. Sec. 3.

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- Yes
- No



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

Re Q1, Q72: Some retroactive tax laws have been struck down under the due process clause, but Congress routinely makes retroactive changes of 1-2 years. See Erika K. Lunder, Robert Meltz, and Kenneth R. Thomas, Constitutionality of Retroactive Tax Legislation, Congr. Rsch. Serv. R42791 (Oct. 25, 2012).

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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

The IRS affirmed its commitment to the notice-and-comment process when issuing interpretative tax rules, which gives the public an opportunity to comment on proposed rules. Chief Counsel Notice CC-2019-006, Policy Statement on Tax Regulatory Process, 9-17-2019.

Re Q1, Q69: There is no special public comment procedure for tax legislation, but bills must go through the legislative process, which provides the public with an opportunity to weigh in with their representatives.

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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

Under FOIA and IRC section 6110, the IRS must disclose its instructions to staff and legal determinations that affect the public. Although the IRS has an obligation to disclose technical advice given in the form of a memo, the NTA raised concerns that the IRS may not be promptly disclosing all technical advice given through email. See NTA 2020 Objectives Report to Congress 68-71 (TAS Will Continue to Advocate for Counsel to Disclose Emailed Advice).

The NTA has long advocated for greater transparency. See reports cited in 2018 Int'l Taxpayer Rights report.

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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

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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

Re Q1, Q76-77: advanced rulings are binding only as to the specific issue for the taxpayer who requested the ruling, and only if all information provided was complete and correct. No appeal is available; The IRS may decline to issue a private ruling, including for workload reasons.

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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

Re Q1, Q74: Some proposed regulations state that they may be relied upon by taxpayers. IRM 32.1.1.2.2 (08-02-2018). Also, reliance on IRS guidance would be a defense against accuracy-related penalties even though it does not generally prevent the assessment of additional tax.

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Do you want to save your results and quit? \*

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- Yes
- No

## XII. Institutional framework for protecting taxpayers' rights

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto: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

The TFA requires the IRS to develop a comprehensive employee training strategy by July 1, 2020. TFA § 2402. This must include annual training on taxpayer rights, including the role of the Taxpayer Advocate Service (TAS).

Q1, Q79: The Taxpayer Bill of Rights (TBOR) is enacted in statute and requires the IRS Commissioner to ensure that IRS employees are familiar with and act in accordance with taxpayer rights afforded by other provisions of the tax laws. IRC § 7803(a)(3). The full legal effect of the TBOR has yet to be determined. See T. Keith Fogg, Can the Taxpayer Bill of Rights Assist Your Clients? 91 Temple L. Rev. No. 4 (Summer 2019).

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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

The TFA made several changes affecting TAS. TFA § 1301. Importantly, the TFA codifies and provides procedural protections for Taxpayer Advocate Directives, through which systemic issues are raised to senior IRS leadership. IRC 7803(c). The TFA also requires the IRS to provide statistical support for TAS reports. IRC 6108(d). It establishes a fixed rate of pay for the NTA, better ensuring the advocate's independence from the IRS. However, the TFA also limits the independence of TAS by requiring coordination on research studies with the Treasury Inspector General for Tax Administration. Finally, the TFA limits the NTA's annual report to the 10 most serious problems encountered by taxpayers. Under prior law, the NTA had reported "at least 20" of the most serious problems encountered by taxpayers. The NTA position was held by an acting, temporary appointee for the last five months of 2019.

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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

TAS continues to maintain offices in each state.

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