



TOWARDS GREATER FAIRNESS IN TAXATION

A MODEL TAXPAYER CHARTER

Michael Cadesky, Ian Hayes, David Russell



Towards Greater Fairness in Taxation: A Model Taxpayer Charter

Why this book?

In this report, *Towards Greater Fairness in Taxation: A Model Taxpayer Charter*, the Asia Oceania Tax Consultants' Association (AOTCA), Confédération Fiscale Européenne (CFE) and the Society of Trust and Estate Practitioners (STEP) have collaborated on the development of a Model Taxpayer Charter. The provisions were derived from a survey of taxpayer rights and responsibilities in 41 countries, collectively representing over 80 per cent of world GDP.

The overriding purposes of the Charter are to foster a relationship of mutual trust, respect and responsibility between taxpayers and the State, regarding taxpayers' obligations to the State; and, on behalf of the State as to the rights of taxpayers, to codify certain duties of the tax administration. Through these means, it is suggested that it will reduce the costs of compliance, increase the quality and efficacy of willing compliance, and ensure that all taxpayers are treated equally and without bias or preference.

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Towards Greater Fairness in Taxation

A Model Taxpayer Charter

Michael Cadesky, Ian Hayes, David Russell



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Preface

This short preface emphasises the great merits of this book, which make it an important addition to the library of every member of the global tax community.

The two main contributions of this book are to develop the Model Charter as a common standard for the protection of taxpayers' rights and to conceive it as an essential component of good tax governance. This win-win vision of tax law brings together tax authorities, legislators, courts, and practitioners from around the world at a time in which it is clear that soft coordination proves very effective in this domain.

Further to this, I see two other valuable merits. The long-term vision of the three leading international professional bodies (AOTCA, CFE and STEP) that have promoted the Model Charter outlines a new role for tax practitioners in encouraging a constructive dialogue between tax authorities and taxpayers, which conceives the respective rights and obligations as the two sides of the same coin. This new dimension perfectly balances out the stronger international tax coordination that tax authorities have meanwhile achieved in the framework of the BEPS and tax transparency projects.

The methodology adopted by this book is based on a survey of rights and responsibilities in 41 countries worldwide and supplemented by comments of the stakeholders. In doing so, this book is able to combine theory with practice, and thereby goes well beyond mere statements of principles.

While this book constitutes the final product of a significant process, it also represents a valid and homogeneous starting point for the new dimension of taxpayers' rights, which interacts with the enforcement of such rights along common standards of protection and fills a gap in the current debate on global international tax law. Parts B and C of chapter 3 are the source of inspiration for further initiatives, such as the one that pursues a global, timely and effective protection of taxpayers' rights, on which IBFD actively promotes research along the pattern of the General Report for the 2015 IFA Congress. I trust that this book will likewise inspire the tax community around the world to become engaged in transforming this platform of rights into the object of actual norms.

Naples (Italy), 26 December 2015

Pasquale Pistone

Academic Chairman of IBFD

Professor of Tax Law, WU Vienna and University of Salerno

Foreword

Asia Oceania Tax Consultants' Association (AOTCA)

The OECD issued its report “Taxpayers’ Rights and Obligations: A Survey of the Legal Situation in OECD Countries” in 1990. The report outlined the Taxpayer Charters adopted in OECD member states, and it also indicated guidelines as to the desirable international model of Taxpayer Charters. Currently, many states in the world have introduced Taxpayer Charters in the forms of law or administrative statement.

Under these circumstances, AOTCA, CFE and STEP agreed to start a joint project on Taxpayer Charters with the objective of collecting information on the current status of Taxpayer Charters in the countries/regions which the respective organisations cover. The Preliminary Report of this project was issued in May 2013, and proposed a Model Taxpayer Charter based on careful and thorough studies including the result of a survey collected from 37 countries/regions. This report was circulated widely to tax authorities, international organisations such as the OECD, EU and UN, and tax professionals’ organisations around the world. Since then, the team of project members has sought the opportunity to hear comments from various organisations concerned.

The Final Report of the Model Taxpayer Charter was compiled based on these collected opinions and suggestions. Considering the balance of taxpayers’ rights and obligations, it proposes 20 principles for the Charter. These principles are the basis for the more detailed provisions of the Charter which follow.

The ultimate purpose of the Taxpayer Charter is to establish mutual trust and respect between taxpayers and tax authorities. In this context, we, tax advisors are expected to play an important role. It would be our great pleasure if the final report provides the people concerned with some guidelines or references in drafting Taxpayer Charters.

The Model Taxpayer Charter project was one of the largest undertakings of this kind in terms of the scope of study, as well as the number of countries/regions surveyed. Three professional organisations in the world jointly initiated and carried out such a remarkable project, for which I feel very pleased and honored.

Last but not least, I express my heartfelt respect and appreciation to Mr. Michael Cadesky, Mr. Ian Hayes and Mr. David Russell for their great endeavour and authorship.

Toshihiro Ikeda
President, AOTCA
January 2016

Confédération Fiscale Européenne (CFE)

The first edition of this publication was issued as a consultation document as work in progress.

Today, we are proud to publish a definitive version based on consolidated research and the results of consultation with the OECD, the European Commission, the UN Tax Committee, tax authorities, and interested organisations and individuals. We thank them all for their input, time and encouragement.

Much has happened in the tax world since the first publication. We have seen both publication of statements of taxpayer rights and acceptance that the way forward requires the development of codes of practice and ethical behaviour which reflect both rights and responsibilities of taxpayers. Our publication embraces and reflects this changed mood.

A development which requires our attention is the substantial recalibration of international taxation in the context of the OECD-driven BEPS project. Voices from the taxpayer and tax adviser communities have expressed the concern that the BEPS actions lack a counterweight to ensure that taxpayer rights and obligations will remain balanced in the future. We believe that the formal recognition of taxpayer rights and obligations could help maintain this balance.

One specific comment we received was to place more emphasis on the role and responsibilities of tax advisers, to reflect the growing importance of the tax adviser's role in cooperative compliance which does not replace but complement his traditional role as protector of taxpayer rights. Recognising the value of this suggestion, we have sought to address the issue. For us, this is an inclusion with two benefits. Firstly, it is a clear recognition that tax advisers have a core role in dealing with both taxpayer rights and responsibilities. Secondly it gives us an opportunity to set down those parameters within which tax advisers operate.

CFE is known as one of the leading organisations in the world exclusively dealing with the law and practice of tax. This collaboration with AOTCA and STEP reflects the realisation that over the coming decades, the evolution of global tax policies will need informed input from tax advisers across the world.

That input will only be possible with both individual initiative and working collaboration. For us, that is what this work represents, and as we move forward, we will look for other tax issues central to the interests of all to which we can bring our combined resource and expertise.

Henk Koller
President CFE
January 2016

Society of Trust and Estate Practitioners (STEP)

Over the past two decades, tax authorities around the world have worked tirelessly to improve the gathering of tax information. The period has been marked by a series of both multilateral initiatives, such as the work of the OECD Global Forum, and unilateral initiatives, such as the US FATCA legislation. The focus throughout has been largely on tackling the issue of tax evasion by taxpayers who hide funds from tax authorities.

The work on greater transparency continues, but in a range of major jurisdictions the issue of tackling what is seen as unacceptable tax avoidance has now also become a major focus of debate. At the heart of this debate are questions about fairness in the sharing of national tax burdens and concerns over the funding of budget deficits.

STEP recognises that a fair tax system must include effective measures to counteract abuse. Equally, however, there must also be a clear balance between taxpayer obligations and taxpayer rights. Much of the current debate about abusive tax avoidance in essence focuses on moves not just to ensure that the obligations on taxpayers are more rigorously enforced, but also to increase, at times significantly, the compliance burdens on taxpayers. It is unfortunate that the issue of how to preserve a balance with taxpayer rights – such as the right to certainty in tax laws – has received relatively little attention from those campaigning against tax abuse.

To assist the debate and help develop a more consistent international approach, STEP was delighted to work with Confédération Fiscale Européenne (CFE) and Asia-Oceania Tax Consultants Association (AOTCA) to develop the Preliminary Report in 2013, which included a survey of taxpayers' rights and obligations in a broad range of jurisdictions. What emerged from this work was that there is an international consensus on what is fair and reasonable in terms of both the protections to give taxpayers and the obligations on taxpayers. The ultimate aim of our collective work in this area was therefore to synthesise this consensus into a model 'Taxpayer Charter' that reflects what we would consider best practice.

This Final Report of the Model Taxpayer Charter follows a period of consultation with tax authorities, international organisations and practitioners around the world, and takes into consideration the feedback and suggestions received.

International professional bodies such as STEP and our colleagues in CFE and AOTCA have a key role in promoting an informed debate and developing a consistent approach internationally to what is a complex topic. Most professional advisors would agree that a level playing field should be an

important goal of the various multilateral initiatives on tax practice that are starting to take shape. The professional bodies can play a key role in helping to develop a co-operative rather than combative approach. To facilitate a similar co-operative approach in respect of tax planning, it is important that professional advisors are engaged at an early stage in the developing debate at both a national and international level.

STEP strongly supports initiatives which help ensure that tax systems around the world work fairly and predictably and fight abuse. What must be avoided at all costs are measures designed to tackle the few who abuse the system through a significant additional cost for the great majority. As a professional body, we share with tax authorities the common goal of tackling unreasonable abuse of tax systems around the world. STEP looks forward to helping the work of governments in this area in any way we can.

David Harvey
Chief Executive, STEP Worldwide
January 2016

Introduction

1.1 Objectives of a Model Taxpayer Charter

Like it or not, a tax system is vital to any modern nation. It is a fundamental cornerstone of the nation's economic engine. It is the ability to raise tax revenue which underwrites the nation's credit, its ability to borrow and its currency. A well functioning and efficient tax system promotes economic stability and prosperity, while a poorly functioning tax system can lead to bankruptcy and economic ruin. The European experience of recent years graphically illustrates how the fortunes of countries wax and wane with economic conditions. Losing control of the tax system in such situations is a shortcut to disaster.

Thus we are concerned, particularly in these economic times, with the health and well being of the world's tax systems.

Most fundamentally, this work is devoted to laying out what a good tax system should contain. It must have the support of its taxpayers and the tax advisors who assist them. Without this support, widespread voluntary compliance is hard to achieve. To get this support, a balance is needed between Taxpayer Rights and Taxpayer Responsibilities, as our work demonstrates.

In today's economic climate, many countries are introducing so-called austerity measures. These measures focus fundamentally on two things: cutting expenditures and raising taxes. This is generally expressed as an effort to right the economic wrongs of the past (generally blamed on external factors or previous governments) and put a country back on a sound economic footing.

The austerity measures have proven very unpopular, as one would predict, as shown recently in Greece and Spain. Such policies have placed an increasing strain on the relationship between taxpayers and the tax administration, with taxpayers being reluctant to pay more tax, particularly when earning less. For a tax administration, the task of enforcing unpopular tax increases in a recessionary economic environment makes what is a difficult job in the best of times a far more challenging and sometimes close to impossible undertaking. At the same time, tax administrations are typically requesting increased cooperation from taxpayers, sometimes putting forward a theory

that a “partnership” exists between the tax administration and the taxpayer, where the taxpayer, tasked with being a good partner in the system, should be expected to willingly comply and readily shoulder the appropriate portion of the tax burden.

Within this partnership, tax professionals (referred to in this report as tax advisors) play a critical role in the influence they wield to encourage taxpayer compliance.

There are many philosophical issues raised by this “good partner” theory, but of fundamental importance to such an approach, and tax compliance more generally, is whether taxpayers and tax advisors believe that the tax system is, broadly speaking, fair and recognises fundamental human rights. Without the backstop of a fair tax system, as perceived, this approach will, and in all too many jurisdictions is, falling on cynical ears. Necessarily, what lies at the heart of this work is the integrity and fairness of the tax system.

Our work does not comment on the political aspects of taxation, such as what the appropriate tax rate should be, how the tax burden should be distributed across society, or how money entrusted to governments should be spent. Taxpayers will of course have views on these issues, but the forum for expressing these views is the political arena, voting in and voting out political parties where such avenues are available.

The underlying integrity and fairness of a tax system manifests in many ways, which go far beyond the political philosophies underlying any particular tax system. They apply in any tax system and thus in all tax systems, just as human rights are universal. Fairness considerations manifest in the day-to-day operations of the tax system, the design and implementation of tax legislation, the rights of appeal, and many other aspects. It is to these points that our study is devoted.

We acknowledge that taxpayers have responsibilities under the tax system, and rightly so. A tax system which has no effective enforcement is a tax system in danger of collapse. History is full of examples of countries which have lost control of their tax systems (dating back to Roman times and even prior) and the consequences which result. But of equal importance is that Taxpayer Rights are recognised and protected by law.

Our experience, supported by our survey results, is that penalties alone are not sufficient to achieve a high level of taxpayer compliance. Faced with a tax system which is believed to be fundamentally unfair, taxpayers feel

empowered to cheat the system and justified in doing so, and the more unfair the system, the more they will do so.

Even in an ideal tax system, there will always be taxpayers who will not comply fully with their responsibilities. But that is not the issue. Instead, the challenge is to achieve greater compliance, accepting that 100% compliance is not attainable in practical terms. Again this is where the concept of fairness arises.

Over the past several decades, the responsibilities placed on taxpayers have increased continuously, through ever more complex tax systems, anti-avoidance rules of greater and greater scope, increased disclosures, and an environment of tax legislation where constant change seems to be the norm. More is expected of taxpayers today than ever before. Taxpayer Responsibilities have increased while recognition of Taxpayer Rights has at best stood still. It can be argued that there are many instances where Taxpayer Rights have been eroded or ignored. Those responsible for drafting tax legislation have not often seen a benefit to recognising additional rights of taxpayers. Quite the reverse seems to be true. This undermines the “good partner” approach to tax administration, and it has caused taxpayers and tax advisors alike to be cynical of this philosophy.

In our view, what is required is to bring Taxpayer Rights and Taxpayer Responsibilities to the forefront and into balance through a bold initiative to create a Model Taxpayer Charter. The Taxpayer Charter we have drafted is reproduced in Chapter 2. It is, in our view, a balanced document in that it covers both Taxpayer Rights and Taxpayer Responsibilities. It is comprehensive in nature, dealing with all of the issues we believe to be relevant in a typical modern tax system. It is, in our view, capable of being adopted into domestic law, although the exact process of this will vary from country to country.

The provisions in the Model Taxpayer Charter were derived from a survey of Taxpayer Rights and Responsibilities in 41 countries, representing over 80% of world GDP. While the survey was not exhaustive, it was very comprehensive and the survey results are indicative of the general state of Taxpayer Rights and Taxpayer Responsibilities around the world.

The Model Taxpayer Charter seeks to lay out Taxpayer Rights and Taxpayer Responsibilities in, broadly speaking, 20 different areas. Many of the provisions are already laid down in the laws of the countries which were

surveyed, such as the right to appeal a tax assessment. However, certain of the provisions are intentionally more novel and far reaching.

Before designing the Model Taxpayer Charter, we considered whether existing Taxpayer Charters, or the rights of taxpayers recognised under existing legislation, would be sufficient. If so, then why bother to create a Model Taxpayer Charter? We found that Taxpayer Rights, whether included in a Taxpayer Charter in place in a particular country, or recognised by legislation (tax, constitutional or other), had one or more of the following shortcomings:

- the Taxpayer Rights outlined in a Taxpayer Charter are not legally binding and, as a result, are largely ignored by taxpayers, tax advisors, and the tax administration alike
- the Taxpayer Rights are not comprehensive in scope
- where Taxpayer Rights are recognised, they do not go far enough, are listed in very general terms, and are not generally capable of enforcement
- the Taxpayer Charter is largely a policy statement issued by the tax administration which is focused mainly on enforcement, is self-serving, and not useful
- there is no attempt to hold the tax administration accountable to taxpayers
- there are no provisions dealing with drafting standards for tax legislation, a consultative process on amendments to tax laws, or generally the fairness or clarity of tax laws themselves.

We are concerned that the initial reaction of tax administrations and governments to a comprehensive Taxpayer Charter will be negative. There may be concerns that the problems it will create for the further development and administration of the tax system will be considerable, and will outweigh any benefits to be derived. And governments do not like to bind themselves to commitments, even to their own citizens, without clear benefits and careful weighing of all options. To this we would say that these concerns are overstated. For countries prepared to take a bold step and invest in the goodwill of their taxpaying population, the benefits over the longer term will be considerable in terms of improvement in compliance and acceptance of a balanced and equitable tax system.

We tested the specific provisions in the Model Taxpayer Charter against our survey results, to determine, broadly speaking, whether there were examples

of countries that would support each substantive provision. Based on this analysis, modifications were made and provisions were deleted in some cases and others were added. Not all provisions in the Model Taxpayer Charter were suitable for this analysis, so only certain provisions were selected. The results are contained in the chart reproduced at the end of our work. Looking horizontally across the chart shows the support or lack of support for a particular provision in the Charter within the 41 countries surveyed. Looking vertically down the chart gives a general overall impression of the situation of Taxpayer Rights and Taxpayer Responsibilities in a particular country.

It is important to note that every substantive provision in the Model Taxpayer Charter has support in one or more countries surveyed. Therefore, we conclude that none of the provisions in the Model Taxpayer Charter are radical and beyond the realm of reasonableness.

With our initial work published in May 2013 we asked for input on the Model Taxpayer Charter, through an extensive worldwide consultation process. We have now refined the Model Taxpayer Charter to produce a final product which reflects a global consensus among professional organisations of tax advisors.

Copies of the preliminary report were sent to Ministers and Deputy Ministers of Finance and Revenue (or their equivalent) of the countries who participated in the survey. Copies were also sent to the Parliament of the European Union, the OECD, the United Nations Fiscal Affairs Committee, the World Bank, the IMF, and certain other interested stakeholders.

Subsequent to publication of our preliminary report, the Finance Ministers (and then the leaders) of the leading 20 global economies endorsed the OECD's Base Erosion and Profit Shifting Action Plans. Recognition of Taxpayer Rights in the context of these proposals (particularly where they involve information exchange between jurisdictions whose tax system, privacy, confidentiality, and data protection laws are robust and jurisdictions where they are not) is of particular importance and has yet to be addressed. The recent hacking of the IRS database of U.S. individuals illustrates our concerns.

Collectively the participating organisations, being AOTCA, CFE and STEP, have directly or indirectly around 500,000 members who are tax advisors located in over 80 countries around the world. While there was not universal agreement among all of the survey participants on all matters, there was

an overwhelming consensus that a Model Taxpayer Charter with the force of law would be hugely beneficial to all stakeholders, being taxpayers, tax advisors and tax administrations alike. Recognising and enshrining comprehensive Taxpayer Rights in legislation will contribute substantially to both the perception and reality of fairness and integrity in the tax system. Placing statements of Taxpayer Responsibilities in an overarching document reinforces the proposition that while holding rights, taxpayers must also shoulder responsibilities and do so in good faith.

The adoption of such a document may actually bring about the partnership philosophy of the taxpayer, the tax advisor and the tax administration cooperating together. Consider that Taxpayer Rights are responsibilities for the tax administration and Taxpayer Responsibilities are rights of the tax administration. This mirror image of rights and responsibilities, laid out and acted upon in a balanced and constructive way, should enhance the relationships between all stakeholders.

We are grateful for the feedback we received, and particularly to those who gave their valuable time to write comments and/or meet with our authors and their professional bodies. In particular, we wish to acknowledge Pascal Saint-Amans of the OECD who commented that our Taxpayer Charter should be “principles based”. We agree and comment further on this below.

Initially, our thought was that the principles in our Model Charter were self-evident. But that may be because we, as authors, understood the purposes behind what we wrote. This oversight is easy to make, and, on reflection, it is the same issue we as tax advisors face when we review tax legislation to discern its purpose.

Thus we have spelled out what we believe to be the guiding principles of our Taxpayer Charter in 10 Taxpayer Rights and 10 Taxpayer Responsibilities from which the more specific provisions which follow can largely be derived. There are various ways that these principles could have been listed, and our wording and organisation is merely one choice among many. But with clarity being the main beacon in guiding us, we believe that our listing is appropriate.

Taxpayer Rights

As a taxpayer you have the right to:

1. Integrity and equality
2. Certainty
3. Efficiency and effectiveness
4. Appeal and the right to dispute resolution
5. Appropriate assistance
6. Confidentiality and privacy
7. Pay correct amount of tax
8. Representation
9. Proportionality
10. Honesty

Taxpayer Responsibilities

And the responsibility to:

1. Be truthful
2. Provide information
3. Be cooperative
4. Make payment
5. Comply with the law
6. Maintain records
7. Take due care
8. Retain responsibility for advisors
9. Show courtesy
10. Comply cross border

These headings are explained in more detail in Chapter 2 and in the Taxpayer Charter where they appear.

Some may say that these principles as they stand are enough without more. To that we say resoundingly no. While useful for guidance, they are largely not actionable. Indeed it is for exactly this reason that Taxpayer Responsibilities are laid out in precise terms in tax legislation. Without specific criteria for application to each major subject area, particularly under the heading of Taxpayer Rights (as generally there is no lack of provision for Taxpayer Responsibilities in tax legislation), we are back to where we started. And that is not where we want to be.

Another comment we received is that our approach reflects an old fashioned and confrontational approach to tax administration from which the world is moving away. The modern approach is to enter into dialogue with the tax administration and disclose areas of uncertainty. Then collectively the issues can be resolved, perhaps by rulings, and all will be well.

This may be suitable for large corporate taxpayers and ultra-high net worth persons, but beyond that, at the grass roots practice of assisting the everyday taxpayer, the entrepreneur, the small estate, it is not practical. It drives up the cost of tax compliance and contributes to, rather than resolves, uncertainty. If tax laws are clearly written, comprehensive, and administered accordingly, the need for dialogue and rulings should diminish. We see this, quite frankly, to be a failing of the tax system, being glossed over by

a stop-gap approach of resolving issues “at the margin” where the tax rules are uncharted.

In fact, this approach runs contrary to so many of the principles we list under Taxpayer Rights that it should be opposed. Among them are:

1. Integrity (different taxpayers in similar circumstances may get different results based on discretion exercised by different offices or officers of the tax administration)
2. Certainty (the process contributes to uncertainty, resolved only through the process of dialogue when the law should be clear)
3. Fairness (not cost effective)
4. Appeal (hard to appeal the exercise of discretion)
5. Corruption (any methodology that allows a tax officer to exercise discretion without an independent and objective set of rules to judge against, and without checks and balances, sets up a platform for possible corruption)
6. Complaints (it is difficult to complain about the exercise of discretion because it is not objective in the first place)

We offer these thoughts, in particular, to developing countries who are formulating and evolving their modern self-assessment tax systems. To you especially we say do not go down this path.

The Model Taxpayer Charter aims to be a balanced document that is constructive for all parties. It focuses objectively on Taxpayer Rights and Responsibilities, without favouring one party over another, and certain provisions apply to both taxpayers and to tax administrations.

We have included on the website www.taxpayercharter.com extensive comments received from the persons who completed the survey. These make for interesting reading, although many of the comments are specific to the country concerned and need to be read as such.

The survey results show that tax administrations, generally speaking, perform their duties to a high standard, particularly in the areas of providing support to taxpayers and in having an independent appeal process. Criticism tends to lie more in the areas where taxpayers do not have clearly defined rights, such as input into the legislative process, and the drafting of tax laws, rather than day-to-day conduct of tax administrations. However, the trends towards placing an increasing compliance burden on taxpayers, increased

complexity, and broadly worded anti-avoidance rules that undermine certainty, have all been noted in the majority of countries surveyed.

Chapter 2 outlines our Model Taxpayer Charter and provides commentary on most of the provisions to give a full explanation. It also notes the principles from which the more specific provisions derive. At the end, a table illustrates this in a snapshot.

Chapter 3 considers a series of topics about Taxpayer Rights and Responsibilities and ties these back to the provisions of the Taxpayer Charter. The highlights are the following:

- Taxpayer Rights have a basis in human rights, and are an essential part of a tax system that cannot be removed.
- Taxpayer Responsibilities are fundamental to the functioning of the tax system, but must be balanced with Taxpayer Rights in an equitable and readily understandable way.
- Past studies into Taxpayer Rights and Responsibilities have been largely inconclusive, and have resulted in broad generalisations, which, as a practical matter, have done little to further the relationship between taxpayers, tax advisors, and the tax administration.
- Taxpayer Charters in the past have been largely non-binding statements of general principles issued by tax administrations, and have, for the most part, not been overly useful or well received. In many cases, these Taxpayer Charters are either ignored entirely, or are not well known. They are not effective in enhancing the perception of fairness of the tax administration.
- Taxpayers should be entitled to reasonable certainty in respect of their tax matters, both as to the interpretation of the tax implications of transactions and arrangements and to provide closure through a statute of limitations. This principle of certainty is being increasingly eroded in several ways, including general anti-avoidance rules that are difficult to interpret, and exceptions to statutes of limitations.
- There are no generally agreed standards for drafting tax legislation, and the complexity of modern day tax legislation is becoming an increasing burden for taxpayers, tax advisors and tax administrations alike. If this trend continues, it may result in a situation where a tax system becomes incomprehensible to virtually all and as a result, collapses. This is particularly the case in the international tax area.

- A tax ombudsman (also called a taxpayer advocate) could be an effective mechanism to enforce and monitor Taxpayer Rights if given the legal power to do so.
- While retroactive legislation is not commonly used by tax administrations across the world, most countries do not provide limitations on its usage, potentially resulting, at worst, in a denial of fundamental Taxpayer Rights and, at best, an uneasy feeling that a State may use it as a last resort—as India attempted to do to overturn its own Supreme Court.
- Specific Taxpayer Rights are granted through the fundamental freedoms of the European Union Constitution, but with that said, this is a continuing source of tax litigation, and countries in the European Union have often been slow and resistant to reflect such provisions within their domestic tax systems. A change of attitude and a show of good faith is required of some nations.

1.2 Origin of Our Study

In today's world, nobody could credibly dispute the right of a sovereign nation to levy tax according to its laws, such as they may be, and to administer and enforce its tax system. Such is a hallmark of sovereignty – the right to tax. Taxpayers have an obligation to comply with the requirements of such a tax system. These obligations are well known and include such matters as providing true and complete information, filing tax returns on a timely basis, paying tax without protest or offset, co-operating with the tax authorities in the administration and enforcement of the tax system, and so forth. In this process, certain rights of taxpayers have traditionally been recognised, such as the right to dispute a tax assessment believed to be incorrect through an appeal process. Other rights include the expectation that a taxpayer's affairs be kept private, that a taxpayer not be subject to unreasonable search and seizure, and that a taxpayer's assets not be confiscated, seized or encumbered without due process.

It is clear as to why taxpayers have obligations. But for what reasons are their rights recognised? There must be some purpose, some benefit to a country in legislating to recognise Taxpayer Rights. The answer may lie in the concepts of fairness and efficiency and as a consequence of adherence to the Universal Declaration of Human Rights (if not to it specifically, then at least to certain of its principles). An alternative explanation is that the predictability and stability of the tax system is a factor in judging international competitiveness and a basis for evaluating economic decisions.

It is appropriate that a balance exist between Taxpayer Responsibilities and Taxpayer Rights, with the overriding goal being that the tax system of a particular country, whatever that system may be, should – broadly speaking – be fair. It is unrealistic to think that the relationship between taxpayers and the tax administration will invariably be a harmonious one, without conflict or dispute. Taxpayers can be expected not to part with their money easily and not without an exploration of all reasonable and legal ways to minimize or defer the tax outflow. It is, however, vitally important that taxpayers comply willingly. The trend in taxation is increasingly towards self-assessment, and this requires more than the forced and reluctant co-operation of taxpayers; indeed taxpayers must and should comply willingly and deal honestly in their tax affairs.

While one tool to achieve this is obviously the threat of penalties and sanctions, the evidence suggests this alone is not sufficient to achieve a high rate of compliance. In surveys conducted across the world, tax authorities are repeatedly surprised that a large percentage of the population would readily cheat in some way on their taxes given the opportunity despite the possibility of penalties. For what must be balanced, in the minds of some taxpayers, against the threat of penalties is the chance of being caught.

While much of tax evasion takes the form of petty infractions, such as paying a tradesperson in cash to avoid sales tax, it nevertheless shows the challenges which tax authorities around the world face daily. These small bad deeds add up across the population to form the tax gap: the loss of revenue due to non-compliance. It is not unreasonable that tax authorities have scepticism of taxpayers; indeed taxpayers have scepticism of the tax authorities.

Over the past several decades, the obligations placed on taxpayers have increased considerably in most countries around the world, as witnessed by the complexity of tax legislation and the burden of tax compliance. But in the area of Taxpayer Rights, arguably less (if any) progress has been made. There is certainly no agreed upon worldwide standard for the rights of taxpayers and there is considerable variation.

It is for these reasons, among others, that we (AOTCA, CFE and STEP) began a project to explore Taxpayer Rights across the world, and the attitude of taxpayers and tax advisors towards the subject of Taxpayer Rights. Fundamentally, it is our belief that if taxpayers (and their tax advisors) had greater faith in the fairness and integrity of tax systems (in the areas of both administration and policy including legislation), all stakeholders would

benefit. In this connection, we identified three fundamental stakeholders who have an interest in the tax system: governments (including the tax administration), taxpayers, and tax advisors.

In this connection, tax advisors play an important role as representatives of taxpayers in their dealings with the revenue authorities. As the number of taxpayers around the world required to self-assess grows, and the complexities of tax systems increase, a greater responsibility will be shouldered by tax advisors. These people are on the front lines of tax practice every day, assisting taxpayers in complying with their tax obligations (and quite often making sure that they do so) while at the same time advising taxpayers on ways in which their tax burden may be legitimately minimized.

The complexity of tax systems demands that taxpayers with any degree of sophistication in their financial affairs involve a tax advisor to assist them, in much the same way that a patient seeks a doctor rather than opting for a self-diagnosis and an aspirin or a home remedy. Indeed between AOTCA, CFE and STEP, there are an estimated 500,000 tax advisors in over 80 countries with a vast knowledge of taxpayers, tax systems and tax administrations. We have drawn upon their knowledge and experience.

It is our view, most fundamentally, that enhancing the fairness and integrity of the tax system in a demonstrable way benefits all stakeholders. This can be done in many ways but one way which is simple, cost effective and appropriate is through a comprehensive Taxpayer Charter enacted into domestic law.

There are precedents in the field of taxation for adopting an international standard, a model document for worldwide use.

As international trade developed, particularly after the First World War, it was recognised that the world needed an international tax system. A panel of experts was charged with developing this system, which ultimately came under the mandate of the OECD who developed a model international tax treaty. Countries have developed their international tax systems in harmony with this international tax treaty model (and a similar one developed by the UN) ever since, although there are, of course, variations. Clearly some form of standardisation was called for, and the success of the endeavour speaks for itself.

The concept of fairness in a tax system is, in conceptual terms, a universal one. While taxpayer culture and psychology may vary from one country to

another, there are, arguably, more similarities than differences. Our survey results demonstrate this.

We have surveyed 41 countries on the topic of Taxpayer Rights and Taxpayer Responsibilities (37 in our first report). The list of organisations which responded to the survey and/or are members of AOTCA, CFE or STEP is reproduced in *Appendix I*. These organisations collectively represent 500,000 tax advisors, and their countries account for over 80% of the world's GDP. As one might expect, there was not universal agreement among the persons who participated, but there is a broad consensus on a great number of important points.

Based on the survey results, we prepared a standard model of a Taxpayer Charter for consideration. In most cases, the provisions which are outlined in the Model Taxpayer Charter are supported within the laws of one or more of the countries surveyed. Furthermore, many of the provisions are supported by practice statements of tax authorities in non-binding Taxpayer Charters released by them. The Model Taxpayer Charter so derived, after refinement from the first report, is outlined in Chapter 2.

We composed a matrix which correlates the provisions of the Model Taxpayer Charter with our survey results. This shows graphically our evaluation of the support, or lack thereof, for many of the Charter provisions across the 41 countries surveyed. It can be seen that all Charter provisions have one or more countries which support it.

Unlike the supra-national government bodies and agencies around the world (the OECD, the World Bank, the United Nations, the European Union, associations of tax administrations, etc.), the tax community is just beginning to find its feet on the world stage. This project was funded with a mere \$30,000 U.S. and several thousand hours of volunteer time. Our work regrettably, but necessarily, may have shortcomings. However, we are hopeful that we have made a good start – a step in the right direction with the thoughts which we offer in this report. It is our hope that this initiative will resound around the world, producing better tax systems and a positive outcome in time for all mankind.

1.3 Survey of Taxpayer Rights and Responsibilities

This project is a three-way co-operation between AOTCA, CFE and STEP. Each organisation contributed equally in terms of funding and resources,

and each owns an equal interest in the project and any derivative rights or works including all data.

Originally the project was conceptualised as a study into Taxpayer Rights. However, several such studies have been done in the past which, while interesting, have not led to tangible and concrete outcomes. It was determined that Taxpayer Responsibilities should be reviewed as well as Taxpayer Rights, as collectively these should form a balanced package. However, the project has gone well beyond this.

The project goes where most others have not dared to tread, producing a comprehensive Model Taxpayer Charter for consideration. (The excellent work of Professor Duncan Bentley of Australia in the title, *Taxpayer's Rights: Theory, Origin and Implementation*, is one example of a comprehensive work and we commend it.)

At an early stage in the project, it was determined that one conclusion might be to suggest that a Model Taxpayer Charter be developed. But rather than leave things there, we then went ahead and developed one. A first version of this Taxpayer Charter was not released. It was used internally as a guide for construction of the survey which derived information about taxation in the 37 countries which participated. The results of the survey gave further guidance into matters to be addressed in the Model Taxpayer Charter and led to certain revisions.

A website was created for the organisation of the project, which was available only to participants. The survey questionnaire was loaded onto the website and participants completed the survey online (one for each country). The website also compiled the results of the survey in tabular form, and listed the comments which were given. These comments are available on the website www.taxpayercharter.com. The survey used and a summary of the results appear in *Appendix II*.

With 37 countries participating, and some 164 questions to be answered, together with comments in many cases, there were over 6,000 items of data to analyse and consider in our first survey.

The survey questionnaires were completed by members of the member organisations of AOTCA and CFE and local branches of STEP in the countries represented. Each participant took it upon itself to answer the questionnaire as it saw fit, and the survey results have not been independently verified. It is noted that many of the questions and also the selection of

answers offer a degree of latitude in interpretation. For this reason, the aggregate results were included, as opposed to all of the raw data. It should also be noted that the answers given to particular questions do not necessarily represent the view in all cases of AOTCA, CFE, or STEP, or their local affiliate organisations.

The survey results reinforced the strong desire to have a uniform model of a Taxpayer Charter, which could be adopted around the world. There was overwhelming (but not universal) support for the concept. This encouraged those working closely on the project to continue with this work, and to prepare a preliminary report for comment by interested stakeholders.

Following this, we added 4 further countries to the survey, refined the Taxpayer Charter and have now issued this Final Report.

The results of our survey of tax advisors has indicated strong support for a Model Taxpayer Charter. Having reviewed those Taxpayer Charters currently in place in the countries surveyed, most contain useful elements which should be included in a model to be adopted. However such Taxpayer Charters typically have one or more of the following shortcomings:

- not legally binding;
- not comprehensive in scope;
- while listing certain Taxpayer Rights, these do not go far enough;
- the document is no more than a policy notice of the tax administration which is mainly focussed on enforcement;
- tax matters dealing with tax legislation are not addressed;
- there is no attempt to hold the tax administration accountable to taxpayers.

These comments are echoed over and over in the results of the 164 questions posed to tax professionals which, in our Final Report, has expanded to 41 countries.

For these reasons and others, the authors, with input from many sources, took it upon themselves to draft and then redraft a Model Taxpayer Charter which could be adapted for use universally, and which is presented in Chapter 2.

Notes

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