

Observatory on the Protection of Taxpayers' Rights



***2018 General Report
on the Protection of Taxpayers' Rights***

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Part I

The IBFD Observatory on the Protection
of Taxpayers' Rights (OPTR)

1. Human Rights and Taxation: overcoming an old tradition

Human rights, as an expression of humankind's core values,¹ are essential for social coexistence. They represent a legal domain with consolidated principles and a broad common pattern throughout the world,² and therefore a benchmark to evaluate the axiological validity of law,³ with practical consequences in every aspect of ordinary life.

However, there is a traditional reluctance towards extending the protection of human rights to tax law. This trend becomes apparent when verifying the averseness towards encompassing tax obligations within the scope of human rights conventions, either materially or subjectively. An example of the former is the application of the “fair trial” clause (Article 6) of the European Convention on Human Rights (ECHR) to tax procedures, limited only to their civil⁴ and criminal⁵ components. An example of the latter is the reluctance to grant legal entities

¹ D. Gutmann, *Chapter 6: Taking Human Rights Seriously: Some Introductory Words on Human Rights, Taxation and the EU in Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiares Maduro & P. Pistone eds., IBFD 2011), Online Books IBFD.

² G.W. Kofler et al., *Preface in Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiares Maduro & P. Pistone eds., IBFD 2011), Online Books IBFD.

³ So expressing the “correctness argument”, according to which the law's claim to validity necessarily includes a claim to moral suitability. R. Alexy, *On the Concept and the Nature of Law at Ratio Juris*. Vol. 21 No. 3 September 2008 (281–99), at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.917.3247&rep=rep1&type=pdf>.

⁴ As interpreted by the European Court of Human Rights (ECtHR), Article 6 on its civil limb does not apply regularly to tax proceedings, since tax matters “*still form part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant*”, regardless of the pecuniary nature of the tax claim. ECtHR, *Ferrazzini v. Italy*, §§ 25, 29, at: <http://hudoc.echr.coe.int/eng?i=001-59589>.

⁵ According to the understanding of the ECtHR, Article 6 on its criminal limb does not apply commonly to tax proceedings, since they lack a “criminal connotation” as stated in ECtHR, *Ferrazzini v. Italy*, § 20, at <http://hudoc.echr.coe.int/eng?i=001-59589>. In this regard, in 1976, *Engel and others v. The Netherlands* states a three-step test of applicability of Article 6 to tax proceedings on its criminal limb: (i) the classification of the offence as criminal, according to the law of the State imposing the surcharge; (ii) the very nature of the offence; and (iii) the degree of severity of the penalty that the person concerned risks incurring. See ECtHR, *Engel and others v. The Netherlands*, § 82, at: <http://hudoc.echr.coe.int/eng?i=001-57479>. Later, in 1994, *Bendenoun v. France* restates the *Engel* criteria, and sets a four-step test of applicability of Article 6 to tax proceedings on its criminal limb: (i) the provision establishing the surcharge covers all taxpayers in their capacity as taxpayers, and not a given group with a particular status; (ii) the surcharge is not meant to be a pecuniary compensation for damage suffered, but as means to deter reoffending; (iii) the surcharge was imposed, as a general rule, with purposes both deterrent and punitive; and (iv) the surcharge is substantial, even leading to imprisonment. According to the decision, “*none of them is decisive on its own, but taken together and cumulatively make the ‘charge’ a ‘criminal’ one, within the meaning of Article 6 para. 1*” of the ECHR. See ECtHR, *Bendenoun v. France*, § 47, at <http://hudoc.echr.coe.int/eng?i=001-57863>. In the same vein, see ECtHR, *Jussila v. Finland*, § 38, at <http://hudoc.echr.coe.int/eng?i=001-78135>; and *Steininger v. Austria*, §§ 34-37, at: <http://hudoc.echr.coe.int/eng?i=001-110483>. As a general reference, see ECtHR, *Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (criminal limb)*, pp. 13-14, (2018), at: https://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf. The conclusions reached in *Ferrazzini* have been heavily criticized. See R. Attard, *Chapter 22: The Classification of Tax Disputes, Human Rights Implications in Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiares Maduro & P. Pistone eds., IBFD 2011), Online Books IBFD; M.G. De Flora, *Chapter 23: A New Vision on Exercising Taxing Powers and the Right to Fair Trial in Judicial Tax Procedures under Art. 6 ECHR in Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiares Maduro & P. Pistone eds., IBFD 2011), Online Books IBFD; and P. Baker, *The Decision in Ferrazzini: Time to Reconsider the Application of the European Convention on*

the entitlement to conventional protection pursuant to Article 1.2 of the Inter-American Convention of Human Rights (ACHR).⁶ Accordingly, tax law “is often ignored and secluded within the old-fashioned framework of a legal branch that is primarily concerned with the exercise of national sovereignty in the levying of taxes, rather than also with the need to reconcile this activity with the protection of taxpayers’ rights”.⁷

Regardless of the sovereign nature of taxing powers, it is undeniable that:

[...] it does not seem reasonable to assert that human rights, as recognized under international law, can be denied whenever the individuals who demand them have the status of taxpayers and therefore face the national tax authorities. Taxpayers are, first of all, human beings and as such holders of human rights towards the taxing state as well.⁸

Therefore, as human beings,⁹ taxpayers are entitled to human rights.¹⁰ Taxpayers’ rights shall be understood as a whole, i.e. a bundle of “constitutional rights positions”¹¹ that protect them when dealing with the State in tax matters, so they are treated by tax authorities with equal concern and respect,¹² in conditions compatible with human dignity. In addition to raising revenue, tax law is also about the rights of taxpayers “to have taxes levied in compliance with

Human Rights to Tax Matters 29 Intertax, Issue 11, pp. 360–361 (2001), at: <https://www.kluwerlawonline.com/document.php?id=384261&PHPSESSID=f3btf11potvijdta5994h74bs2>.

⁶ As interpreted by the Inter-American Court of Human Rights (ACtHR), Article 1.2 of the ACHR generally excludes legal entities as entitled to treaty protection by the ACHR. However, although the figure of legal entities has not been expressly acknowledged as entitled to standing according to said article, an individual may resort to the inter-American system to enforce his fundamental rights in specific circumstances, when exercised in the context of her relationship with a legal entity (e.g., shareholders, employees, etc.). See ACtHR, *Cantos v. Argentina (Preliminary Objections)*, 7 September 2001, Series C, Nr. 85, § 29, at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_85_ing.pdf. See also *Granier and others (Radio Caracas Televisión) v. Venezuela (Preliminary Objections, Merits, Reparations and Costs)*, 22 June 2015, Series C Nr. 293, § 19, at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_293_esp.pdf; *Usón Ramírez v. Venezuela (Preliminary Objections, Merits, Reparations and Costs)*, 20 November 2009, Series C Nr. 207, § 45, at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_207_esp.pdf; *Ivcher Bronstein v. Peru (Reparations and Costs)*, 6 February 2001, Series C Nr. 74, párrs. §§ 123, 125, 138 and 156, at: http://www.corteidh.or.cr/docs/casos/articulos/Seriec_74_esp.pdf; *Perozo and others vs. Venezuela (Preliminary Objections, Merits, Reparations and Costs)*, 28 January 2009, Series C Nr. 195, § 400, at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_esp.pdf.

⁷ G.W. Kofler et al., *supra* n. 2

⁸ R. Cordeiro Guerra & S. Dorigo, *Chapter 24: Taxpayer’s Rights as Human Rights During Tax Procedures in Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiares Maduro & P. Pistone eds., IBFD 2011), Online Books IBFD.

⁹ Either as human beings or as legal entities, serving as vehicles for the unhindered development of the personality of their shareholders, employees, etc.

¹⁰ See P. Pistone & P. Baker, *General Report*, in *The Practical Protection of Taxpayers’ Fundamental Rights* p. 21 (IFA Cahiers vol. 100B, 2015), Online Books IBFD.

¹¹ R. Alexy, *A Theory of Constitutional Rights* p. 159 (Oxford University Press 2010), and C.E. Weffe H., *The Right to Be Informed: The Parallel between Criminal Law and Tax Law, with Special Emphasis on Cross-Border Situations*, 9 World Tax J. (2017), Journals IBFD.

¹² R. Dworkin, *Taking Rights Seriously*, pp. 319-320, 422 (2011).

the rule of law and the principle of legality, without having such rights sacrificed on the altar of the Revenue interest to levy taxes and carry out an effective fiscal supervision”.¹³

However, taxpayers’ rights are not only relevant to protecting the citizen, but also to optimizing the functioning of the tax administration and the tax system in general. Taxpayers’ rights are the cornerstone of a good administration,¹⁴ as well as a powerful tool for the efficiency of tax systems, including a higher level of voluntary compliance, a higher degree of certainty in the amounts of taxes assessed and a higher level of taxes collected. As stated by the OECD as early as 1990:

[M]odern tax systems require increased co-operation from the taxpayer if they are to operate efficiently and also as a result of changing attitudes towards the role of the tax administration vis-à-vis the taxpayer. This co-operation is more likely to be forthcoming if there is mutual trust between the taxpayer and the administration and if the taxpayers’ rights are clearly set out and protected.¹⁵

Therefore, a contemporary vision of tax law is bound to overcome, through a dialectical opposition,¹⁶ the traditional view of public interest and sovereignty involved in taxation, with a legal framework that warrants a modern view of taxpayers’ rights, namely “one that also includes the economic dimension of the fundamental rights of individuals and other persons”.¹⁷ This is indeed a starting point for a line of research on taxation and human rights that is worth exploring on a more general basis worldwide, in search of catalyzing best practices around the world and fostering a common dialogue worldwide.¹⁸

2. The IBFD Observatory on the Protection of Taxpayers’ Rights

The decision of IBFD to establish the Observatory on the Protection of Taxpayers’ Rights (OPTR) serves this purpose. The OPTR is a timely, relevant and enduring action for the impartial and academic research on the relationship between human rights and taxation, which also may have an impact on determining how to best protect taxpayers’ rights in practice through identifying common minimum standards, proposing best practices in the area and

¹³ G.W. Kofler et al., *supra* n. 2.

¹⁴ See Article 41, European Charter of Fundamental Rights. See also Inter-American Centre of Tax Administrations (CIAT), Minimum Necessary Attributes for a Sound and Effective Tax Administration, § 3.4, p. 4, (1996), at: [https://www.ciat.org/Biblioteca/DocumentosInstitucionales/CartaDocumento\(AtributosMinimos\)/minimum_necessary_attributes.pdf](https://www.ciat.org/Biblioteca/DocumentosInstitucionales/CartaDocumento(AtributosMinimos)/minimum_necessary_attributes.pdf). Also OECD, *Principles of Good Tax Administration – Practice Note*, §§ 3, 15 (2001), at: <https://www.oecd.org/tax/administration/1907918.pdf>, M.H.J. Alink & V. van Kommer, *Chapter 1: Taxation in Handbook on Tax Administration*, section 1.3.2. (Second Revised Edition)(IBFD 2016), Online Books IBFD, and R.A. Musgrave & P.B. Musgrave, *Public Finance in Theory and Practice*, p. 235, 4th edn (McGraw-Hill 1989).

¹⁵ OECD, *Taxpayers’ Rights and Obligations. A Survey of the Legal Situation in OECD Countries*, p. 7 (OECD 1990).

¹⁶ M. Forster, *Hegel’s dialectical method*, in *The Cambridge Companion to Hegel* (F.C. Beiser ed., Cambridge University Press 1993), p. 131.

¹⁷ G.W. Kofler et al., *supra* n. 2

¹⁸ G.W. Kofler et al., *supra* n. 2

monitoring their practical implementation. This would facilitate the much-needed rising awareness of the link between taxation and human rights, as well as help build a constructive dialogue between the parties of the tax relationship on this matter.

2.1. Goals

The OPTR aims to explore this line of research by keeping track of the worldwide developments in the practical protection of taxpayers' rights around the world through the continuous monitoring of the observance of minimum standards and the adoption of best practices around the world regarding the guarantee and protection of human rights pertaining to tax matters. In this regard, Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone identified a significant number of minimum standards and best practices at the 2015 IFA Congress on The Practical Protection of Taxpayers' Fundamental Rights.¹⁹ It provides grounds for gathering relevant information on the status of protection of these minimum standards and on the implementation of these best practices around the world.

Accordingly, the OPTR may help to detect sensitive areas and potential violations of human rights deriving from law amendments or administrative and judicial practices, raising public awareness about specific human rights phenomena in the field of taxation and revealing threats to human rights in tax situations. Therefore, the OPTR will allow:

- Carrying on awareness-raising actions on the clear linkage between human rights and taxation.
- Creating and maintaining a database on the minimum standards for the protection of taxpayers' rights, as well as the status of the legal framework and the case law on the matter.
- Organizing seminars and conferences warning of potential threats to taxpayers' rights and contributing proposals.
- Elaborating documents to contribute to the knowledge, expansion and awareness of the connection between human rights and taxation.
- Assisting international human rights organizations, especially by providing information regarding the practical protection of taxpayers' rights.
- Supporting government authorities on human rights-taxation matters, training and providing tools to their personnel for the implementation of best practices and the domestic monitoring of the minimum standards for the protection of taxpayers' rights as an instrument for the achievement of an efficient public administration.

These objectives are relevant for governments, taxpayers and different international organizations devoted to the protection of human rights. They help all parties properly grasp the implications of human rights for taxation, therefore orientating the decision-making process for levelling the playing field among taxpayers and tax authorities, increasing good governance and enhancing the overall efficiency of tax systems. Academics will also find a suitable and interesting platform for research. The OPTR will help further deepen the understanding of the ways in which taxpayers' rights manifest in different contexts and cultures, obtain valuable

¹⁹ See P. Baker and P. Pistone, *supra* n. 10.

information on the current situation of the practical protection of taxpayers' rights throughout the world and compare such data with the identified minimum standards and best practices, serving as a plateau for further research in this domain.

2.2. The relationships with other pillars of research on taxpayers' rights

The OPTR is one of many pillars of research devoted to raising awareness of and spreading knowledge on taxpayers' rights. While the OPTR is dedicated to fact-finding regarding the developments of the practical protection of taxpayers' rights, there are other pillars of research enthusiastically studying the topic, the contributions of which ensure a better understanding of taxpayers' rights, certify their importance for tax systems and strengthen the efforts to raise awareness of them.

2.2.1 The International Law Association Study Group on International Tax

The International Law Association (ILA) was founded in Brussels in 1873. Its objectives, according to its Constitution, are “the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law”. The ILA has consultative status with a number of the UN specialized agencies as an international non-governmental organization.²⁰

Since 2016, the ILA Study Group on International Tax Law²¹ has dedicated its efforts to channelling a comprehensive, thorough examination of taxpayers' rights from the perspective of International Public Law, considering its implications in the context of the fight against tax evasion and tax avoidance, as well as the demands for greater transparency.²² In a time in which tax administration is going global, taxpayers' rights must not lag behind.²³ That is the case, for instance, for taxpayers' participation and lack of certainty in the context of Mutual Agreement Procedures carried out pursuant to tax treaties,²⁴ the intertwining of soft law and the interpretation of tax treaties by courts in light of taxpayers' rights,²⁵ customary international law as it relates to taxpayers' rights,²⁶ enforceability of taxpayers' rights in cross-border situations,²⁷ etc.

²⁰ See <http://www.ila-hq.org/index.php/about-us>.

²¹ See an overview of the ILA Study Group on International Tax Law at: <http://www.ila-hq.org/alaaj/jooplug/index.php/component/content/2-uncategorised/34-?Itemid=230>.

²² See the ILA Study Group on International Tax Law Mandate at: <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=7327&StorageFileGuid=e0a92d5c-b731-4f8c-8840-3ca05a0df54d>.

²³ See ILA Study Group on International Tax Law mandate, *supra* n. 22, p. 1.

²⁴ See the ILA Study Group on International Tax Law Working Session Report (2018), p. 3, at: <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=13507&StorageFileGuid=131cc9c2-a260-4621-82a9-0b2a1266e7c9>.

²⁵ See ILA Study Group on International Tax Law, *supra* n. 24, p. 5.

²⁶ See ILA Study Group on International Tax Law, *supra* n. 24, pp. 6-8.

²⁷ See ILA Study Group on International Tax Law, *supra* n. 24, p. 9.

In this regard, the OPTR provides reliable data on policy and practical trends, which helps the ILA Study Group on International Tax Law identify and categorize human rights that are applicable to taxation matters,²⁸ as well as formulate concrete proposals to address identified issues, namely: (i) the impact of human rights on tax law, including an analysis of sources of law and general principles of international law and how they apply to tax matters; (ii) the interest – which might be perceived as colliding – between human rights and tax matters regarding the application of the former to the latter; and (iii) establishing a clear statement that links taxpayers’ rights with international minimum standards.²⁹ These efforts could finally culminate in an ILA Multilateral Charter of Taxpayers’ Rights.³⁰

2.2.2. The Annual International Conference on Taxpayer Rights

The Office of the US National Taxpayers’ Advocate, Ms. Nina Olson, has organized, since 2015, the International Conference on Taxpayer Rights (ICTR).³¹ The ICTR connects government officials, scholars and practitioners from around the world to explore how taxpayer rights globally serve as the foundation for effective tax administration, analysing many topics throughout the years.³²

²⁸ See ILA Study Group on International Tax Law, *supra* n. 24, p. 9.

²⁹ See also ILA Study Group on International Tax Law, *supra* n. 24, p. 12-13.

³⁰ See ILA Study Group on International Tax Law, *supra* n. 22, p. 2. See also ILA Study Group on International Tax Law, *supra* n. 24, p. 3.

³¹ See all information about the ICTR at its website: <https://taxpayerrightsconference.com/>

³² The topics covered in the conference, divided into the 12 areas of protection of taxpayers’ rights under the scope of the OPTR, are the following: (i) The impact of increasingly digital delivery of taxpayer assistance on vulnerable taxpayer groups, including the efficacy of different modes of communicating with taxpayers in order to promote compliance, with regard to *identifying taxpayers, issuing tax returns and communicating with taxpayers* (OPTR Area 1); (ii) Rights to confidentiality and privacy in an age of transparency, *Privacy and Transparency in Tax Administration and The impact of big data on the right to privacy in the context of tax administration, regarding confidentiality* (OPTR Area 3); (iii) Taxpayer rights and procedural justice in audit and collection activities, with regard to *normal audits* (OPTR Area 4); (iv) Good Governance and Remedies: Taxpayer Rights in Application, Preventing Disputes: Early Warnings and Intervention, and Early Resolution, Taxpayer Access to Appeals and Mediation and The ability of taxpayers to bring cases to court, especially in countries where taxpayers are either afraid of seeking assistance or relief or reluctant because of cultural reasons, regarding *reviews and appeals* (OPTR Area 6); (v) Penalties: Theory and Administration, Impact of Penalty Administration on Taxpayer Trust, The role of “whistleblowers” in tax administration, including access to tax information, and protections for both the whistleblower and the subject taxpayer, regarding criminal and administrative sanctions (OPTR Area 7); (vi) Impact of taxpayer service on compliance, with regard to *enforcement of taxes* (OPTR Area 8); (vii) Taxpayer Rights in Multi-Jurisdictional Disputes, and Taxpayer Protections in Cross-Border Taxation, regarding cross-border procedures (OPTR Area 9); (viii) The availability of administrative guidance, its role in fostering compliance, and administrative or statutory vehicles for obtaining access to that guidance, Taxpayers’ reliance on published administrative guidance, how authorities treat that reliance, and remedies for taxpayers harmed by such reliance, Challenges in “operationalizing” taxpayer rights in both mature and developing tax administrations, and Access to Taxpayer Rights: The Right to Quality Service in Today’s Environment, with regard to *revenue practice and guidance* (OPTR Area 11), and (ix) Perspectives on Taxpayer Rights: A Multidisciplinary Approach, Right to appeal to an independent forum: the role of tax tribunals in protecting taxpayer rights, Role of taxpayer advocates, defenders, and ombudspersons in protecting taxpayer rights and promoting voluntary compliance, Transforming Cultures of Agencies and Taxpayers, The existence and analysis of taxpayer charters and taxpayer bills of rights around the world, and the foundation of taxpayer rights in human rights, and The treatment of taxpayer rights, including common and civil law, with recommendations to establish some global common standards, regarding the institutional framework for protecting taxpayers’ rights (OPTR Area 12).

In this regard, the ICTR highlights an annual update on the latest developments in the practical protection of taxpayers' rights, including the output from the annual report of the OPTR. The first OPTR General Report on the practical protection of taxpayers' rights³³ was presented at the 3rd ICTR, held in Amsterdam, the Netherlands on 2 and 3 May 2018.³⁴ This report was also presented at the 4th ICTR, held in Minneapolis, Minnesota, United States on 23 and 24 May 2019.

Besides the official launch of the OPTR, the 3rd ICTR developed many insightful discussions. The conference dealt with the development of early warning and intervention systems, preventing situations that give rise to both tax evasion and potential violations of taxpayers' rights (OPTR Area 1). The situation of taxpayers in the administrative phase in order to prevent disputes, the burden of proof in tax disputes and the right to appeal to an independent forum (particularly mediation) (OPTR Area 6) were also discussed, and a multidisciplinary analysis of proportionality in the context of criminal and administrative sanctions (OPTR Area 7) was conducted. An examination of the prevention of disputes from a multidisciplinary approach, addressing the role of taxpayer rights as a foundation for good governance (OPTR Areas 8, 11 and 12), was also performed, along with a discussion on the elements of good governance practices and legal remedies for a model of tax administration that realizes the promise of taxpayers' rights in practice (OPTR Area 12).³⁵

2.2.3. The 2019 EATLP Conference on Tax Procedures

The European Association of Tax Law Professors (EATLP) is a professional organization of (tenured, full) professors teaching tax law at universities in Europe. EATLP's 330 members aim to contribute to the development of academic teaching and research programmes on European international, domestic and comparative taxation, fostering a common approach to the study of tax issues, the harmonization of taxes within the European Union and the promotion of academic teaching and research on international, domestic and comparative taxation at the universities in Europe.³⁶

At the annual EATLP Congresses, European tax law professors, as well as many other interested parties from other continents, engage actively in analysing the current trends of European taxation, promoting contact between professors of tax law within Europe, learning from each other's experiences and fostering a common approach to taxation and the further development of tax law.³⁷

³³ See the report at: https://www.ibfd.org/sites/ibfd.org/files/content/pdf/OPTR_General-Report.pdf.

³⁴ See the video of the presentation of the 2015-2017 OPTR General Report, by Prof. Dr. Baker and Prof. Dr. Pistone, at: <https://youtu.be/AVyU5Ocmf5E>

³⁵ See the ICTR archive at: <https://taxpayerrightsconference.com/conference-archive/>

³⁶ See J.M. Mössner, *Association of European Tax Professors: a common language in taxation within Europe*, 159 EC Tax Review 3, pp. 158-9 (1999), at <https://www.eatlp.org/uploads/public/EC%20Tax%20Review%201999%20No%203%20p%20158-159.pdf>.

³⁷ See the EATLP website at: <https://www.eatlp.org/>.

At the 2019 EATLP Congress, to be held in Madrid between the 6th and the 8th of June, distinguished scholars will provide in-depth analyses of tax procedures, under the general report of Prof. Dr. Pasquale Pistone. Most of the topics to be scrutinized at the conference are part of the 12 areas under study by the OPTR: the differentiation between substantive and procedural rules, the principles applying to tax procedures and their relationship with procedural human rights, the role of tax ombudspersons, tax audits, administrative review and judicial appeals and cross-border procedures.³⁸

2.3. Supervisory Council

Given the importance of ensuring the impartiality and high quality of the OPTR's research, a counselling body has been established to provide oversight of its activities in terms of monitoring the consistency of the OPTR's work with its object and purpose, reviewing and providing useful comments on the documents submitted, as well as giving advice on long-term goals to be pursued.

To fulfil these particular goals, IBFD summoned a group of well-known authorities broadly experienced in the practical protection of taxpayers' rights as prominent members of the academia, the judiciary, tax ombudsmen and the legal practice:

- [Dr. Robert Attard](#), Partner and Tax Policy Leader, EY, Central & South East Europe.
- [Judge Dennis Davis](#), President of the South African Competition Appeal Court, Judge of the High Court.
- [Porus Kaka](#), designated senior advocate by the High Court in India. Honorary President and former worldwide President of the International Fiscal Association (IFA).
- [Prof. Dr. Juliane Kokott](#), LL.M. (Am. Univ.), S.J.D. (Harvard), Advocate General at the Court of Justice of the European Union.
- [Nina E. Olson](#), J.D., National Taxpayer Advocate of the US Internal Revenue Service.

2.4. The team

The OPTR team is composed of the following persons:

- [Prof. Dr. Philip Baker, Q.C.](#), Director.
- [Prof. Dr. Pasquale Pistone](#), Director.
- [Prof. Dr. Carlos E. Weffe](#), Managing Editor.

³⁸ See the program of the 2019 EATLP Congress at: <https://www.eatlp.org/congresses/this-years-congress/325-2019-madrid-congress-programme>.

- [Prof. Dr. Betty Andrade Rodríguez](#), Managing Editor.
- [Mr. Cristian San Felipe](#), Project Coordinator.

2.5. Working standards and procedure

The OPTR working standards and procedures follow the standard working methodology of other human rights organizations around the world.³⁹ General common working standards that are fully applicable to the monitoring of taxpayers' rights – and therefore to the OPTR's research scope – have been identified. Those standards are:

- a) *Appointment of region and country⁴⁰ reporters.* Groups of experts are formed, to the fullest extent possible, by practitioners, tax authorities, academics, tax ombudsmen and the judiciary of each surveyed country in order to obtain a neutral, balanced report on the situation of taxpayers' rights in each country. To fulfil this goal, the judiciary, academic and tax ombudsmen members of each country group of experts are considered neutral, whereas the tax practitioners and tax administration members are taken as not neutral.
- b) *Questionnaires' design.* A set of two questionnaires has been devised⁴¹ for gathering information, aiming to compile relevant information regarding the level of practical implementation of minimum standards and best practices in 12 areas of taxpayers' rights, as identified by Baker and Pistone in Basel, 2015.⁴² Questionnaire #1 puts forward 82 questions regarding the effective implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights, to be answered assertively (yes/no). Questionnaire #2 comprises 87 benchmarks for the practical protection of taxpayers' rights, 57 minimum standards and 44 best practices.
- c) *Data gathering.* National reporters are asked to annually report on the developments of the practical protection of taxpayers' rights in their countries. Information is collected mainly through the questionnaires mentioned above. In addition, information may be gathered via (i) analysis of legislation and jurisprudence; and (ii) interviews with local experts. In the questionnaires, national reporters are asked to:

³⁹ Namely the Office of the High Commissioner on Human Rights of the United Nations (<http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>), the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (<http://www.osce.org/odihr>), the Office of the Commissioner for Human Rights of the Council of Europe (<http://www.coe.int/en/web/commissioner>), the European Ombudsman (<http://www.ombudsman.europa.eu/en/home.faces>), the African Commission of Human and People's Rights (<http://www.achpr.org>), the Asian Human Rights Commission (<http://www.humanrights.asia/>), Amnesty International (<http://www.amnesty.org>), HR Action Center (<http://www.humanrightSACTIONcenter.org>), and Human Rights Watch (<https://www.hrw.org/about-our-research>).

⁴⁰ See the list in section 4.2.

⁴¹ Both surveys are contained in a Microsoft Excel[®] workbook. See National Reports.

⁴² See P. Baker and P. Pistone, *supra* n. 10.

- a. *Questionnaire #1*: report on the status of the practical operation of taxpayers' rights in their countries by either confirming or denying the adoption of 87 particular practices orientated towards the protection of such rights.
- b. *Questionnaire #2*: report on the level of implementation of the minimum standards and best practices identified by Baker and Pistone⁴³ by providing a balanced, non-judgmental, summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices, etc.) on issues in which there was a shift in the level of compliance of the relevant standard/best practice. When possible, reporters shall back up their assertions with the relevant documents.
- d) *Data processing*. The information gathered is processed into draft annual reports, ascertaining the current situation of the protection of taxpayers' rights in the surveyed jurisdictions according to the available data. It also helps the OPTR (i) detect and analyse the trends in the practical protection of taxpayers' rights by comparing the level of implementation of the minimum standards and best practices used as a benchmark; (ii) identify minimum standards and/or best practices other than those identified by Baker and Pistone;⁴⁴ (iii) provide recommendations on the possible actions to improve the protection of taxpayers' rights pursuant to the relevant data; and (iv) determine sensitive topics to be addressed in future endeavours.
- e) *Dissemination*. The OPTR publishes its general report annually on its website free of charge⁴⁵ in order to propagate the information gathered and consequently raise awareness of the importance of taxpayers' rights for good governance and strong tax systems, as stated above.⁴⁶ The OPTR members also spread the research results through seminars and conferences, as well as by addressing technical issues linked to the practical protection of taxpayers' rights and contributing proposals. The OPTR also aims to produce further documentation (i.e. books) to contribute to the knowledge, expansion and awareness of the connection between human rights and taxation.

⁴³ See P. Baker and P. Pistone, *supra* n. 10.

⁴⁴ See P. Baker and P. Pistone, *supra* n. 10.

⁴⁵ See <https://www.ibfd.org/Academic/Observatory-Protection-Taxpayers-Rights>.

⁴⁶ See section 2.1.

Part II

The 2015-2017 OPTR General Report on
the Practical Protection of Taxpayers'
Rights

3 The 2015-2017 OPTR General Report on the Protection of Taxpayers' Rights

After the installation and setting of its working standards,⁴⁷ the OPTR conducted an inquiry into the status of protection of taxpayers' rights in the period from 1 January 2015 to 31 December 2017 in order to create a database of the minimum standards for the protection of taxpayers' rights in an effort to assess the status of the legal framework and the case law on the matter as a contribution to the knowledge, expansion and awareness of the connection between human rights and taxation, based on the minimum standards and best practices of procedural rights identified by Baker and Pistone.⁴⁸ As a result, it was possible to identify some shifts in the protection of taxpayers' rights in the period, thanks to the work of the national reporters who agreed to grant us part of their time for the collection of information, from which it was possible to arrive at the following general remarks. They do not intend to exhaust all considerations made in the main text of the *2015-2017 OPTR General Report on the Practical Protection of Taxpayers' Rights*, to which we refer for further reference.⁴⁹

3.1 Identifying taxpayers, issuing tax returns and communicating with taxpayers

Various countries have reported an increase in online tools for the communication between the tax administration and the taxpayers, as well as to facilitate compliance with tax duties. In addition, some countries have taken measures to restrict the access to private information of the taxpayer that may be in the possession of third parties, such as withholding agents. However, there is still work pending on expediting the procedures and increasing the protection of taxpayers' data. A close look into the case law authorizing the use of stolen data as a basis for a tax assessment is necessary.

3.2 The issue of tax assessment

While some countries still have to introduce proper measures to increase communication with the tax administrations, others have approved rules and procedures to promote voluntary disclosure, taxpayer transparency and the construction of dialogue that could reduce tax assessment and appeals on tax objections to the benefit of both the taxpayers and the tax administration.

3.3 Confidentiality

Although there have been leaks of confidential information held by the tax administrations reported, some countries have taken technical measures to protect such data. In addition, the illegal disclosure of confidential information by tax officers is punishable in most

⁴⁷ See section 4.4.

⁴⁸ See P. Baker and P. Pistone, *supra* n. 10.

⁴⁹ See the 2015-2017 OPTR General Report on the Protection of Taxpayers' Rights at: https://www.ibfd.org/sites/ibfd.org/files/content/pdf/OPTR_General-Report.pdf.

of the countries reported. *Naming and shaming* is a possible exception to confidentiality in some countries, under specific circumstances and after the administrative or judicial decision is final. However, other countries allow the tax administration to publicly reveal information on tax duties without judicial authorization.

3.4 Normal audits

The time for conducting audits is limited according to the legislation of various surveyed countries. In addition, several countries set forth a prohibition for conducting an audit on specific issues a second time (although one country provided for major exceptions to this rule), as well as limitations to the tax administration's powers in order to maintain proportionality in assessments. Various countries indicated that the right to be heard is of the essence in administrative procedures, with several even drafting good practices manuals for its tax officers. However, a close analysis is required of the case law providing for the validity of the postponed exercise of defence and the non-applicability of the "presumption of innocence" principle.

3.5 More intensive audits

Some reporters indicated that their legislation provides for court authorization for specific search and seizure, including inspections of the taxpayer's place of work and premises. Nevertheless, in one case reported, the tax administration could access information without judicial authorization.

3.6 Reviews and appeals

Most of the reporting legislations provide for the right to appeal administrative objections, although at least two countries require the exhaustion of the administrative procedure before an appeal can be filed. Generally, legislations provide for the right to be heard and to produce evidence against the tax objection, but the excessive length of the appeal was an issue highlighted by some countries. Free legal assistance and cooperation in bearing costs are offered to taxpayers who lack the means to conduct appeals against tax assessments. In addition, some legislations allow the collection of the taxes while a decision on the filed appeal is pending, while others provide for the suspension of the collection, under specific conditions.

3.7 Criminal and administrative sanctions

Several of the countries reported that the penalties for tax offences were increased, even to promote voluntary disclosure by the taxpayers. On the other side, some legislations were amended to rule the *ne bis in idem* principle, prohibiting the imposition of double penalties in relation to the same facts.

3.8 Enforcement of taxes

Part of the legislations included special provisions for allowing the payment of taxes to the extent of preventing bankruptcies, ensuring the protection of the family home and of the

minimum vitalis principle. However, other legislations provide for the full collection of taxes, regardless of the consequences for the taxpayers' rights and equity.

3.9 Cross-border procedures

The right of taxpayers to be notified of an exchange of information by request (EoIR), to oppose to the submission of data about themselves and to request the amendment of wrongful information were considered to some extent in several legislations. However, other countries did not consider the participation of the taxpayer necessary for the submission of data under EoIR. In the case of automatic exchange of information (AEOI), some provisions for securing data were included in the legal framework. Recent rules provide for the right of taxpayers to request the initiation of a mutual agreement procedure (MAP).

3.10 Legislation

There appears to be a contradiction in the legal and judicial treatment of the retrospective application of the law. While in some cases, the courts have held the unconstitutionality of such practices, others have considered it valid that norms could be applied retroactively. The same happens with respect to the public consultation of tax law, which is mandatory in some cases and not requested in others.

3.11 Revenue practice and guidance

According to the practice of several countries, public rulings, relevant court decisions and guidelines should be made available to taxpayers. Setting a time limit for the tax administration to provide a response to the taxpayers' request of a ruling was also reported as being important.

3.12 Institutional framework for protecting taxpayers' rights

In a few cases, the tax administration's intention to create a charter of taxpayer rights could be seen, which could represent a model to be replicated by other countries. In addition, most of the countries provided information on the legal and effective existence of the Ombudsman office. However, some countries indicated the need to strengthen the powers of the referred office in order to better contribute to the protection of taxpayers' rights.

Part III

The 2018 OPTR General Report on the Practical Protection of Taxpayers' Rights

4 This report

The OPTR has carried out an investigation into the state of the protection of taxpayers' rights as of 31 December 2018 in the fulfilment of its objectives of raising awareness of the link between human rights and taxation and creating and maintaining a database on the status of compliance of minimum standards for the protection of taxpayers' rights, as well as the legal framework and jurisprudence on the matter. The results are stated in this report as a contribution to the expansion and knowledge of the connection between human rights and taxation.

4.1 Scope of the research

This report summarizes the monitored developments concerning the effective protection of taxpayers' fundamental rights in 42 countries until 31 December 2018. These were with regard to, on one hand, the effective implementation into domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights, and on the other hand, an annual comparison by jurisdiction of the level of compliance of the minimum standards and best practices identified by Baker and Pistone in Basel, 2015,⁵⁰ in the following areas:

- Identification of taxpayers, issuance of tax returns and communication with taxpayers;
- The issue of tax assessments;
- Confidentiality;
- Normal audits;
- More intensive audits;
- Review and appeal;
- Criminal and administrative sanctions;
- Enforcement of taxes;
- Cross-border procedures;
- Legislation;
- Revenue practice and guidance; and
- The institutional framework for protecting taxpayers' rights.

This report sets up freely accessible information on the effective protection of taxpayers' rights as a step to establish a block of technically reliable information that can be used to support a constructive dialogue between taxpayers and tax authorities in such countries, as well as elsewhere in the world. This dialogue should take place in a legal context that includes the protection of rights pertaining to the values that determine good tax governance within a given legal system and should also achieve timely and effective justice in the case that something goes wrong.

4.2 Tasks and structure of countries' groups of experts

⁵⁰ See P. Baker and P. Pistone, *supra* n. 10.

Following its working standards,⁵¹ the OPTR selected the 25 countries whose status on the protection of taxpayers' rights regarding the scope of the research⁵² was reported for the previous OPTR General Report.⁵³ Other countries of interest in the context of international taxation were selected, and regional groups were formed to keep track of the jurisprudential developments in the practical protection of taxpayers' rights by multilateral courts dealing with tax matters.

In this regard, groups of experts from the previous survey were kept, and new groups were formed. The OPTR strived to keep them balanced to the fullest possible extent by incorporating members of both tax authorities and taxpayers' representatives, as well as members of the judiciary, ombudspersons and academia.⁵⁴

Despite all efforts, this balance was not achieved in all cases. In this scenario, the OPTR opted to include information gathered from all national expert groups. By doing so, the OPTR aims to: (i) provide updated information on the status of the protection of taxpayers' rights in those jurisdictions; (ii) further build and strengthen the OPTR database; and (iii) motivate other stakeholders in these countries to participate in the OPTR's work in order to achieve the required balance and strengthen a comprehensive and balanced information network. The national groups of experts for 2018 are structured as follows:

Country	Position	Name
Argentina	Practitioner-Academic	Alberto Tarsitano
Australia	Ombudsperson	Ali Noroozi
		Duy Dam
	Academic	John Bevacqua
Austria	Practitioner	Christina Schwarzenbacher
	Ombudsperson	Alfred Faller
	Academic	Barbara Gunacker-Slawitsch
Belgium	Practitioner	Véronique De Brabanter
		Liesbeth Vermeire
		Luk Cassimon
		Jef Van Eyndhoven
	Academic	Anne Van de Vijver
Brazil	Practitioner-Academic	Paulo Ayres Barreto

⁵¹ See section 2.5.

⁵² See section 4.1.

⁵³ Namely: Argentina, Australia, Brazil, Canada, China, Colombia, Denmark, Finland, Germany, Greece, India, Italy, Japan, Luxembourg, Mexico, New Zealand, Poland, Portugal, Serbia, South Africa, Spain, Sweden, Switzerland, Turkey and Venezuela. See OPTR, *supra* n. 48, pp. 10-12.

⁵⁴ See the OPTR Working Standards, at section 2.5.

		Dalton Luiz Dallazem
Bulgaria	Practitioner	Dimitar Benev
		Boyana Milcheva
Canada	Practitioner	Salvatore Mirandola
	Ombudsperson	Sherra Profit
		Nathalie Terrien
Chile	Practitioner	Yuri Alberto Varela
China	Tax Administrator (retired)	Zhiyong Zhang
	Academic	Zhengwen Shi
Colombia	Tax Administrator	Natalia Quiñones Cruz
	Ombudsperson	Leonardo Bautista
		Yvonne Carolina Florez
Cyprus	Tax Administrator	Yiannis Tsangaris
	Practitioner-Academic	Venetia Argyropoulou
Czech Republic	Practitioner-Academic	Hana Skalická
Denmark	Tax Administrator	Henrik Klitz
	Practitioner	Henrik Peytz
Finland	Practitioner	Eero Männistö
	Academic	Kristiina Äimä
Germany	Tax Administrator	Eva Oertel
	Practitioner	Martin Bartelt
	Academic	Daniel Dürschmidt
Greece	Tax Administrator	Lydia Sofrona
	Tax Administrator-Academic	Katerina Perrou
Guatemala	Tax Administrator	Abel Cruz
	Practitioner	Alfredo Rodríguez
	Judiciary	Iván Romero Morales
	Academic	Juan Carlos Casellas
India	Academic	D. P. Sengupta
Ireland	Practitioner	Tatiana Kelly
Italy	Practitioner	Pietro Mastellone
		Isabella Cugusi
		Alessandro Rigillo Collizzolli

	Academic	Giovanna Teghi
		Alessandro Baracco
Kenya	Tax Administrator	Josephine Muchiri
	Practitioner	Brian Njenga Kagunyi
		Daniel Aburili Makhanu
Luxembourg	Academic	Katerina Pantazatou
Mauritius	Practitioner	Ahmad Khalid Phul
Mexico	Practitioner	César Alejandro Ruiz Jiménez
		Fernando Juárez Hernández
	Ombudsperson	Diana Bernal Ladrón de Guevara
		Edson Uribe
	Academic	Carlos Espinosa Berecochea
Netherlands	Practitioner	Arjo van Eijsden
Panama	Practitioner	Camilo Valdés Mora
Peru	Practitioner	Cecilia Delgado Ratto
		Julio Fernández Cartagena
		Esteban Montenegro Guillinta
Poland	Judiciary-Academic	Dominik Mączyński
Portugal	Practitioner	Rui Camacho Palma
Russia	Practitioner-Academic	Natalia Soloveva
Serbia	Tax Administrator	Dejan Stojanović
	Academic	Svetislav V. Kostić
		Lidija Živković
Slovenia	Tax Administrator	Mateja Vraničar Erman
	Practitioner	Aleksander Pevec – Odvetnik
	Practitioner-Academic	Maruša Pozvek
	Judiciary	Boštjan M. Zupančič
South Africa	Ombudsperson	Eric Mkhawane
	Academic	Jennifer Roeleveld
		Byron Thomas
South Korea	Academic	Hyejung Byun
Spain	Ombudsperson-Academic	Javier Martín Fernández
	Academic	Yolanda Martínez Muñoz

		Elizabeth Gil García
		Felipe Alonso Murillo
Sweden	Practitioner	Lynda Ondrasek Olofsson
	Academic	Eleonor Kristoffersson
Switzerland	Judiciary	Michael Beusch
Taiwan	Academic	Huang Shih Chou
Turkey	Academic	Billur Yalti
United Kingdom	Practitioner	Ian Young
United States	Tax Administrator	Rostyslav I. Shiller
		Amanda K. Bartmann
Venezuela	Practitioner	Ronald Evans Márquez
		Alberto Benshimol B.
	Academic	Melissa Elechiguerra Labarca

Two regional groups were also created to keep track of the developments of the jurisprudence of international courts dealing with taxpayers' rights, namely: (i) for Europe, comprising the case law of the European Court of Human Rights (ECtHR) and the ECJ; and (ii) for the Americas, covering the judgments of the Inter-American Court of Human Rights (ACtHR). The regional groups of experts for 2018 are structured as follows:

Region	Position	Name
Europe	Tax Administrator-Academic	Katerina Perrou
	Judiciary	Natalia Vorobyeva
Americas	Practitioner	Guzmán Ramírez

4.3 Data collection

National reporters were requested to fill in two questionnaires comprising 169 questions, 87 of which measured the effective implementation into domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights, and 87 of which pertained to an annual comparison by jurisdiction of the level of compliance of the minimum standards and best practices identified by Baker and Pistone in Basel, 2015.⁵⁵ As previously indicated, information was mainly collected through the questionnaires. Reporters were also asked to provide relevant documents to back up their assessments of the practical implementation of a given minimum standard or best practice.⁵⁶ A total of 67 national reports and 2 regional reports were collected.

⁵⁵ See P. Baker and P. Pistone, *supra* n. 10.

⁵⁶ See section 2.5

4.4 Data processing

Once the OPTR received the national and regional reports, the information collected was processed and analysed in order to identify the status of the protection of taxpayers' rights in the surveyed countries as of 31 December 2018 with regard to the following:

- Assessing the effective implementation into domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights.⁵⁷
- Determining the level of implementation of the minimum standards and best practices identified by Baker and Pistone⁵⁸ by, in particular:⁵⁹
 - Considering whether there was a development towards or away from their implementation;
 - Identifying possible innovations regarding the practical protection of taxpayers' rights since 2017, if any.
- Distinguishing minimum standards or best practices other than those identified by Baker and Pistone.⁶⁰
- Ascertaining sensitive topics to be addressed in future endeavours.
- Providing recommendations on the improvement of the protection of taxpayers' rights, pursuant to the relevant data.

5. The practical protection of taxpayers' rights in 2018

The issue at hand in this report is the determination of how taxpayers' rights are protected in practice, referring to all of the minimum standards and best practices identified by Baker and Pistone.⁶¹ Assuming that states wish to protect the rights of their taxpayers, on one hand, there are some features associated with the protection of taxpayers' rights that are characteristic of legal systems, the practical implementation of which in the surveyed jurisdictions by the end of 2018 is worth investigating.⁶² On the other hand, based on the classification of those minimum standards and practices best suited for the practical protection of taxpayers' rights made by Baker and Pistone,⁶³ this report investigates the practical experiences of the surveyed jurisdictions regarding the implementation of such minimum standards and best practices compared to what they had achieved in this regard until 2018.⁶⁴

⁵⁷ Listed in Questionnaire # 1. See section 2.5.

⁵⁸ See P. Baker and P. Pistone, *supra* n. 10.

⁵⁹ Listed in Questionnaire # 2. See section 2.5.

⁶⁰ See P. Baker and P. Pistone, *supra* n. 10.

⁶¹ See P. Baker and P. Pistone, *supra* n. 10.

⁶² Questionnaire # 1 was used by Baker and Pistone in 2015 to this end, namely to ascertain whether particular practices exist in that jurisdiction. See P. Baker and P. Pistone, *supra* n. 10, pp. 83-88.

⁶³ See P. Baker and P. Pistone, *supra* n. 10.

⁶⁴ Therefore, using Baker and Pistone's list as a checklist to test the practical protection of taxpayers' rights in their jurisdiction. P. Baker and P. Pistone, *supra* n. 10, p. 23.

5.1 Identifying taxpayers, issuing tax returns and communicating with taxpayers

5.1.1 General issues

The efficiency of tax administration in respect of tax compliance demands a strong identification system. Technology has provided a substantial aid by simplifying the efforts of collecting, retrieving and storing large amounts of data, and even making new and better information available for identification purposes. A single example is biometrics: this technology is claimed to have incorporated the *human body* as a means for automated identification of people,⁶⁵ making it widely used for passports and other similar documents. Information technologies have also improved the way tax administrations communicate with taxpayers in ways that were unimaginable just 3 decades ago, therefore improving the efficacy of tax collection, saving costs and reducing the compliance burden.

However, whereas the necessity of improved identification and communication between tax administrations and taxpayers is undeniable, considering the wide scope of taxes and taxpayers involved in the day-to-day operation of a tax system, the need for identification opens a wide range of challenges for taxpayers' rights, concerning the right to privacy, the safety of information and the risks of impersonation, counterfeiting and fraud, particularly in a digitalized environment. In order to reliably associate data with particular individuals, it is necessary that an effective and efficient identification scheme be established and maintained⁶⁶ that entails the appropriate protection of taxpayers' rights in this regard.

5.1.2 Identification of taxpayers

Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- See *AVTO ATOM DOO KOCANI v. the Former Yugoslavian Republic of Macedonia* (Application No. 21954/16, 21-02-2018) *infra*, at section 5.8.

Many reports refer to their countries' efforts to strengthen their taxpayer identification systems in order to prevent breaches and illegal activity, particularly in corporations. Also, information-gap reporting has been further enforced by law, discrimination issues have been addressed and registration in taxpayers' registries has been simplified in some countries.

⁶⁵ See I. van der Ploeg, *The illegal body: 'Eurodac' and the politics of biometric identification*, 1 *Ethics and Information Technology* 4, pp. 295–302 (1999), at: <https://doi.org/10.1023/A:1010064613240>.

⁶⁶ See R. Clarke, *Human Identification in Information Systems: Management Challenges and Public Policy Issues*, 7 *Information Technology & People* 4, pp.6 (1994), at: <https://doi.org/10.1108/09593849410076799>.

In **Australia**, the Australian Government has announced reforms to address illegal phoenix activity, including the introduction of a unique, lifelong Director Identification Number (DIN). The person will keep that unique identifier even if their directorship in a particular company ceases. As such, the DIN will provide traceability of a director's relationships across companies, enabling better tracking of directors of failed companies and preventing the use of fictitious identities. This initiative intends to assist regulators in mapping relationships between entities and individuals over time.⁶⁷ In partnership with the Digital Transformation Agency, the Australian Taxation Office (ATO) is developing *GovPass*, which is a way to manage one's digital identity across governments. *GovPass* forms the government's client identity programme, allowing individuals to securely and easily identify themselves, connect with government digital services and authorize people to act on their behalf.⁶⁸

From 22 February 2018, the ATO (as an entity covered by the Australian Privacy Principles (APPs)) has clear obligations to report eligible data breaches. If an eligible data breach is confirmed, as soon as practicable, they must provide a statement to each of the individuals whose data was breached or who are at risk, including details of the breach and recommendations of the steps that the individuals should take. A copy of the statement must also be provided to the Office of the Australian Information Commissioner.⁶⁹

In **Colombia**, personal access codes for the DIAN (tax authority) server have been implemented in order to avoid impersonation. Independent keys are even assigned to the legal representative of a company and its fiscal auditor. Digital signature continues working efficiently.⁷⁰

In **Cyprus**, by virtue of Law 97(I)/2017,⁷¹ starting from tax year 2017 (reported in 2018), tax returns have to be submitted online via the *taxisnet* portal. In order for taxpayers to register in said portal, they need to be physically present at the Tax Department with valid means of identification, following which the Tax Department will issue them a unique authorization code.⁷² Regarding religious sensitivities, there has been no initiative to take any specific action.⁷³

In **India** the Supreme Court in a 9 Member Bench upheld the Right to Privacy as a fundamental right (Justice K S Puttaswamy v. UDI [2017] 19 SCC1). India also launched an ambitious biometric identity card called *Aadhaar* and by another landmark Constitutional

⁶⁷ See <https://treasury.gov.au/consultation/c2018-t330649/>. Also, See Australia, Tax Ombudsman's report, Questionnaire # 2, Question 1.

⁶⁸ See the ATO Annual Report, 2017-18, p 56 (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF). Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 1.

⁶⁹ See Australia, Academic's report, Questionnaire # 2, Question 1.

⁷⁰ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 1.

⁷¹ See http://www.cylaw.org/nomoi/arith/2017_1_097.pdf

⁷² See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 1.

⁷³ See Cyprus, Tax Administrator's report, Questionnaire # 2, Question 2.

Bench (Justice K S Puttaswamy v. UDI [2018] SCC Online SC 1642) the validity of the project was upheld in a limited way and by excluding the right of private agencies to obtain such data.

The Hon'ble Supreme Court however in UOI v Shreya Sen (SLP (C) 34292/2018 dt 4-2-2019) upheld the requirements of connecting *Aadhaar* with the income identification number called PAN (Permanent Account Number), being the Income tax identification number.

Kenya has unique Personal Identification Numbers for all taxpayers, although it does not take account of religious sensitivities.⁷⁴

In **Slovenia**, safeguards to prevent impersonation when issuing unique identification numbers have been implemented. One cannot systematically connect a tax identification number with a concrete legal person or individual. The system of taxpayer identification is also based on the constitutional principle of non-discrimination on the basis of gender, race, religious affiliation, etc.⁷⁵

In **Taiwan**, the tax numbers of natural and legal persons can be easily acquired.⁷⁶

In the **United States**, in late 2017, Congress passed the Tax Cuts and Jobs Act (TCJA) which amended IRC § 24 (the Child Tax Credit provision (CTC)) and required that a Social Security Number (SSN) be provided for each dependent for whom the credit was being claimed. This provision disqualified certain taxpayers who are members of a religious group, most notably the Amish, from claiming the CTC, because they often do not claim SSNs for their children due to their deeply held religious beliefs. In 2018, the National Taxpayer Advocate raised this issue to IRS senior management and at the end of 2018; she was told a workaround has been established permitting these taxpayers to claim the CTC. Notwithstanding this agreement, on February 6, 2019, the IRS issued guidance instructing the suspension of amended returns where the Child Tax Credit was claimed, and no SSN was provided for the dependent(s) due to the taxpayer's religious beliefs. After considering this issue further, the IRS Chief Counsel issued advice on April 4, 2019 concluding that "... *the Service need not provide administrative relief for these taxpayers*".⁷⁷

Also in the **United States**, in the IRS Taxpayer Protection Program (TPP), if a return is selected by identity theft filters, the taxpayer must go through authentication procedures which involve either providing certain information online or visiting a walk-in center and presenting photo identification. In 2018, the IRS created an exception and alternate authentication procedures for taxpayers who do not have photo identification due to religious beliefs.⁷⁸

⁷⁴ See Kenya, Practitioner's report (2), Questionnaire # 2, Questions 1 and 2.

⁷⁵ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 1 and 2.

⁷⁶ See Taiwan, Academic's report, Questionnaire # 2, Question 1.

⁷⁷ See United States, Tax Administrators' report, Questionnaire # 2, Question 1.

⁷⁸ See 25.23.2.19.2.2, Returns Selected by Identity Theft Filters - Taxpayers Visiting the TAC (June 15, 2018). https://www.irs.gov/irm/part25/irm_25-023-002r. See also United States, Tax Administrators' report, Questionnaire # 2, Question 2.

5.1.3 Information supplied by third parties and withholding obligations

Recent Relevant Case Law

Inter-American Court of Human Rights

Admissibility Reports:

- ***Alfredo Arresse and 483 others v. Argentina (Application No. 89-00, Admissibility Report No. 107/13, 05-11-2013)***: Between 1975 and 1986, public employees from the Argentine Ministry of Health and Social Services received productivity bonuses (in Spanish, *bonificaciones por productividad*). From such bonuses, the Ministry withheld not only the social security taxes payable by the employees, but also those payable by the Ministry. The employees requested, before the Ministry, both the suspension and the reimbursement of the improper withholding. In 1989, the Ministry decided to recognize their right to be reimbursed, but only to those who (at the time) were working for such a Ministry. As a result, the retired employees filed a claim with the Inter-American Commission, arguing that the Argentine Government violated their right to equal and non-discriminatory protection enshrined in Article 24 of the American Convention. The Inter-American Commission on Human Rights declared such a claim as inadmissible. The claimants did not fulfill the requirement provided under Article 46.1.A of the American Convention on Human Rights, which means that domestic remedies had not been properly exhausted.

Modern administration of taxes demands the increasing participation of third parties in tax collection through information supply and withholding obligations. These duties demand confidentiality from those third parties and appropriate measures to protect the integrity of such information. New legislation has also been enacted regarding data protection that enhances the confidentiality and proper treatment of the information obtained by withholding agents, and an appropriate distribution of withholding agents' legal responsibilities vis-à-vis taxpayers and tax administrations has proved to be necessary. In this regard, the widespread use of withholding tax by third parties and the supply of information by third parties to the revenue authorities is at the heart of systems with pre-populated tax returns. It is an obvious safeguard that the pre-populated return be sent to the taxpayer concerned so that he or she has the opportunity to correct errors.⁷⁹ Throughout 2018, some countries have shown developments in this regard, and there have been discussions about the scope and extent of the liabilities of third parties due to withholding duties.

In **Belgium**, the taxpayer is not always discharged from tax liabilities because of the withholding. In the case of tax on securities accounts, enforceable since 2018, the holder of the securities account (the taxpayer) can be held jointly and severally liable with the intervening

⁷⁹ See P. Baker and P. Pistone, *supra* n. 10, p. 25.

bank (the withholding agent) in the case that the bank did not withhold the tax. The same principle applies in the case of an intervening foreign bank if this bank did not withhold the tax.⁸⁰

In **Colombia**, by operation of a reform approved in December 2016 and a ruling approved in December 2017, the application of non-profit regimes demands the publication of information about donors that was not necessary before. According to these demands, the donations imply the authorization to publish the donor's name, the amount of his or her donation and the purpose of said donation. The tax authorities are working on implementing data mining regarding the digital movements of people in the near future.⁸¹

In **Italy**, the Court of Cassation (ICC), by Order No. 31742 of 7 December 2018, acknowledged the existence of a judicial disagreement concerning taxes withheld by third parties and their subsequent obligations. The question regards the subsistence or lack thereof of the obligation, borne by the taxpayer in joint and several liability with third parties, to pay the withheld tax if not paid by third parties. Now, the First President of the Court has to decide on its possible assignment to the United Sections in order to define that question.⁸²

In **Kenya**, legislation on data protection is drafted with a potential impact on taxpayers and those withholding taxes, namely the Privacy and Data Protection Bill, discussed in 2018, but the law is yet to be enacted. Additionally, VAT withholding agents will be introduced in the country.⁸³ Still, the Tax Procedures Act imposes a strict obligation of confidentiality on all third parties who gain access to a taxpayer's information. Tax laws in **Kenya** also impose a liability on the third party as though the tax was due from them for failure to deduct and remit the tax.⁸⁴

In **Peru**, Article 92 of the Tax Code imposes an obligation of confidentiality regarding the tax information delivered to SUNAT (Peruvian tax authority), but this obligation excludes the exchanged information regulated in tax treaties.⁸⁵

In **Russia**, the tax secrecy regime has been extended to cover certain information received by the financial authorities of the subjects of the Russian Federation in the territories of which the members of the consolidated group of taxpayers operate.⁸⁶

In **Slovenia**, Article 30 of the Tax Procedures Act defines confidentiality obligations for third parties. They are obliged to respect the confidentiality of information related to tax obligations in the same manner that tax officials must protect tax secrecy. Additionally, when

⁸⁰ See Belgium, Practitioner's report, Questionnaire # 2, Question 4.

⁸¹ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 3.

⁸² See Italy, Tax Practitioner and Academic's joint report, Questionnaire # 2, Question 4. See also Italy, Practitioner's report, Questionnaire # 2, Question 4.

⁸³ See Kenya, Practitioner's report (1), Questionnaire # 2, Questions 3 and 4.

⁸⁴ See Kenya, Practitioner's report, (2), Questionnaire # 2, Questions 3 and 4.

⁸⁵ See Peru, Practitioner's report (1), Questionnaire # 2, Question 3.

⁸⁶ See Russia, Practitioner-Academic's report, Questionnaire # 2, Question 3.

third parties withhold taxes, the tax obligation lies with the person who is obliged by law to withhold the tax. The tax administration can recover the not-withheld tax from the person obliged to withhold it, and not from the taxpayer. This does not preclude possible other arrangements between the taxpayer and the person who should withhold the tax.⁸⁷

In **Taiwan**, tax information is safeguarded by the tax authorities. The third party is allowed to acquire the information via application in accordance with legal conditions. The taxpayer is regarded as the guarantor of the tax liabilities in the case of withholding tax.⁸⁸

5.1.4 The right to access (and correct) information held by tax authorities

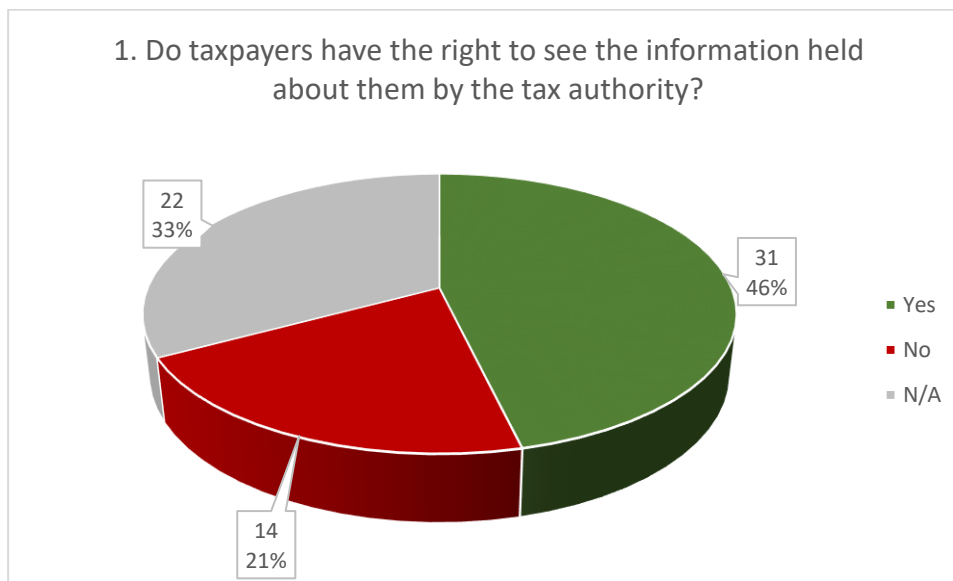
Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- See *Shammat v. Romania (Application No. 15807/14, 16-10-2018) infra*, at section 5.3.12.

The collection of information by tax authorities entails a correlative taxpayers' right to access such information and correct its inaccuracies, along with an obligation for tax authorities to protect its confidentiality to the fullest extent possible from any form of misuse, either by tax administration officials or by third parties. Naturally, a best practice in this regard is publishing guidance on these taxpayer rights.

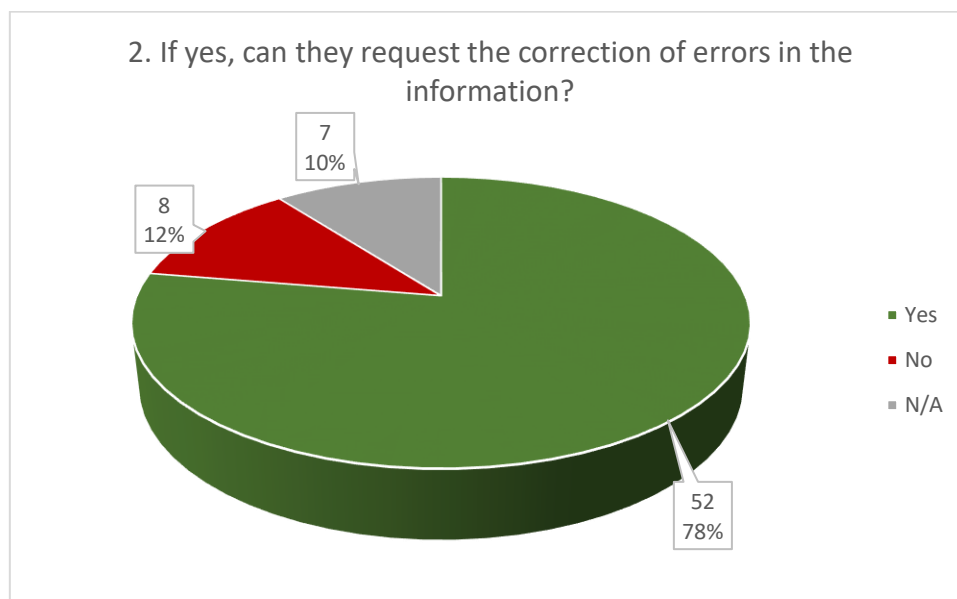


⁸⁷ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 3 and 4.

⁸⁸ See Taiwan, Academic's report, Questionnaire # 2, Question 3 and 4.

According to the national reports,⁸⁹ in country practice, an important number of jurisdictions acknowledge this right of taxpayers. However, a significant number of countries also do not report information in this regard, whereas 14 jurisdictions do not recognize this fundamental right, as shown in the chart above.

Out of those jurisdictions who acknowledged the taxpayers' right to see the information held about them by the tax authorities, the vast majority allows taxpayers to request the correction of errors in the information, as shown in the chart below:



According to the national reports, there were numerous developments in the practical protection of *habeas data* in tax matters as well. Many of them were driven by the entry into force of the EU General Data Protection Regulation (GDPR), which has been regarded as the most important change in data privacy regulation in 20 years. The GDPR aims to strengthen data protection rules across Europe in order to give individuals – including taxpayers – more control over their personal data, and businesses benefit from a level playing field.⁹⁰

Moreover, there were developments in practice in other parts of the world. Procedures were implemented to help taxpayers through pre-populated returns, allowing them to correct mistakes and simplifying tax compliance. Legislation has been also enacted to ensure the protection of taxpayers' rights in this context, facilitate data collection and require tax officials to disclose documents used in making decisions, granting taxpayers further access to information that could potentially affect them. As a rule, steps were taken in order to grant taxpayers the possibility to access and correct information in pre-populated returns, although in some cases, that might lead to tax audits.

⁸⁹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

⁹⁰ For further reference, see the official site of the GDPR at https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en.

In **Australia**, the Data Matching Protocol was amended to include data matching using pre-populated information from State and Territory motor vehicle authorities, particularly for transfers or new registration information when the purchase price or market value is greater than AUD 10,000. The Protocol was also extended to include data from the Department of Home Affairs. Legislation has also been introduced to facilitate the collection of Tax File Number information when applying for work visas. This legislation, the Migration and Other Legislation Amendment (Enhanced Integrity) Bill 2017, is currently under review by the Senate Committee. The proposed Section 506B to the Migration Act will authorize the collection of Tax File Numbers, and it is proposed to do this for applications for certain temporary and permanent employer-sponsored visas.⁹¹ In this regard, the ATO continues to work to obtain data more quickly following the end of the financial year and to expand the amount of information that may be pre-filled in taxpayers' income tax returns. This work enables the ATO to continue to provide a more complete pre-filling service earlier for individual taxpayers to review for accuracy. In the future, the ATO aims to streamline the lodging process for individuals with straightforward affairs, making it easier for taxpayers to meet their tax obligations on time.⁹²

Also in **Australia**, the Taxpayers' Charter – accessing information under the Freedom of Information Act 1982 (FOI Act) requires the ATO to publish documents used in making decisions. The FOI Act gives taxpayers the right to access other documents that the ATO holds, including documents that contain information about them. Taxpayers can ask the ATO to correct information held about them if it is incomplete, incorrect, outdated or misleading.⁹³

In **Austria**, the EU GDPR has been incorporated into the Austrian tax code (*Bundesabgabenordnung*, BAO) via introducing (the new) Article 48d et seq.⁹⁴

In **Belgium**, the law of 5 September 2018 (Belgian Official Gazette, 10 September 2018) provides rules with respect to data protection and the processing of data by the tax authorities. The rules are in line with the EU GDPR and include the right to information (articles 13 & 14 GDPR), the right to access personal data (article 15 GDPR) and the right to rectification (article 16 GDPR). The new rules also provide for certain restrictions on taxpayers' rights, but these restrictions are subject to strict conditions (article 23 GDPR). For instance, the law provides the tax authorities with the right to use data mining and provides for restrictions on the taxpayers' right to access personal data and correct inaccuracies.⁹⁵

⁹¹ See Australia, Academic's report, Questionnaire # 2, Question 5.

⁹² See <http://www.ato.gov.au> - *We are an active and capable regulator*, 12 July 2018. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 5.

⁹³ See <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/Taxpayers--Charter--accessing-information-under-the-Freedom-of-Information-Act/>. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 6.

⁹⁴ See Austria, Tax Administrator, Practitioner, Academic and Tax Ombudsman's Joint Report, Questionnaire # 2, Question 6.

⁹⁵ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 6; and Belgium, Practitioner report, Questionnaire # 2, Question 6.

In **Canada**, the Access to Information Act and Privacy Act give taxpayers the right to access personal and other information collected and used by the Government of Canada. Taxpayers may obtain access to their personal information held by the Government of Canada, including the Canada Revenue Agency (CRA), by (i) calling or writing the CRA or other government institution most likely holding that information; (ii) submitting a Personal Information Request Form; or (iii) submitting an Access to Information Request. Generally, people are supposed to be able to access information about themselves through informal methods. In 2012, the Taxpayers' Ombudsman conducted a systemic investigation on service issues in the CRA's Access to Information and Privacy (ATIP) processes, titled "Acting on ATIP".⁹⁶ This was done as a result of receiving complaints about the CRA not responding promptly, not providing enough information about how to file ATIP requests, not explaining the reasons for delays in providing the requested information and requiring taxpayers to make formal requests for information pursuant to the Access to Information Act or Privacy Act rather than allowing taxpayers to request the information informally by simply asking a CRA employee to provide it. On the basis of the Taxpayers' Ombudsman's recommendations, the CRA has taken steps to process its backlog of ATIP requests, initiate actions to promote the use of informal disclosure within the CRA, increase training for employees and provide more complete information publicly to taxpayers about informal requests for information through its website, publications and telephone enquiry lines. Despite improvements being made, the Office of the Taxpayers' Ombudsman receives complaints from taxpayers about not being able to access their personal information through informal disclosure methods.⁹⁷

The Government of **Canada** has taken steps to modernize the Access to Information Act. In 2017, Bill C-58⁹⁸ was proposed to extend the laws that provide access to information under the control of the Government of Canada and to set requirements for the proactive publication of certain information. The Standing Senate Committee on Legal and Constitutional Affairs is currently studying the Bill. The CRA's electronic services (e-services), which include portals for individuals, businesses and their authorized representatives to access tax information, offer taxpayers a self-service option to view or update their personal information. There is functionality in the portals that allow taxpayers to submit adjustments to their income tax and benefit returns to correct inaccuracies. Revised income tax and benefit returns can also be submitted to the CRA on paper.⁹⁹

Also in **Canada**, access to the e-services is dependent on a person's ability to validate their identity with the CRA. Through outreach, the Taxpayers' Ombudsman heard repeatedly that difficulty in clearing security questions posed by CRA agents is a barrier to obtaining access to information, particularly with respect to more vulnerable segments of the population, including those that are homeless, have unstable living arrangements or are transient, students, and those who have mental health issues, cognitive disabilities, hearing loss or speech impairment, etc. These observations were shared with the Minister of National Revenue. Also

⁹⁶ See <https://www.canada.ca/en/taxpayers-ombudsman/programs/reports-publications/special-reports/acting-atip.html>.

⁹⁷ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 6.

⁹⁸ See <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-58/third-reading>.

⁹⁹ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 6.

noteworthy is the ongoing lack of access to reliable internet service in some regions of Canada (which was recently raised in the Fall 2018 report of Canada's Auditor General)¹⁰⁰ and the resulting impact on access to e-services and information.¹⁰¹

In **Colombia**, the DIAN (tax authority) is working on implementing pre-populated returns. They are expected to be operational by 2020. The DIAN has also conducted campaigns permanently, in order to avoid fraud by means of fake communications falsely issued by the DIAN. In rural areas, the DIAN has focused on virtual management and visits to conduct personalized attention campaigns for users, awareness and tax culture.¹⁰²

Following the implementation of the GDPR in **Cyprus**, such rights have been attributed to taxpayers as a direct effect of the GDPR, as no change was effected in these regards to any Tax Laws.¹⁰³ In **Cyprus**, pre-populated returns allow taxpayers to make corrections before submissions.¹⁰⁴

In **Denmark**, the right to access follows from general Danish tax and administrative law, as well as from the EU GDPR and the Danish Personal Data Protection Act (Act No. 1502 of 23 May 2018), supplementing the GDPR. Requests for access to personal information based on the GDPR may be addressed to the central DPO covering all tax authorities.¹⁰⁵

The right of taxpayers to access personal information held about them and the right to correct inaccuracies has improved in **Germany** as well, due to the implementation of EU GDPR.¹⁰⁶

In **India**, a while ago the government launched procedures to match taxes deducted at source with the person entitled to receive the tax credit. Deductors were required to fill Form 26 AF which then enabled the recipient to receive the credit. There were however many cases of mismatch requiring Courts' intervention to obtain proper credit. In India only the Assessing Officer has the power to correct the information on the website of the centralised processing centre (CPC).

In **Italy**, since 25 May, 2018, the Italian Tax Agency has also applied the GDPR and informed taxpayers about the processing of their personal data. The citizen taxpayers are entitled, at any time, to email entrate.updp@agenziaentrate.it to confirm whether their data exist and to verify their use. They have also the right to request the rectification of inaccurate personal data and the integration of incomplete entries. Without prejudice towards the special discipline relative to some treatments, they can also ask either for the deletion of the data after the

¹⁰⁰ See http://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_01_e_43199.html.

¹⁰¹ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 6.

¹⁰² See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 5, 7 and 9.

¹⁰³ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 6.

¹⁰⁴ See Cyprus, Tax Administrator's report, Questionnaire # 2, Question 5.

¹⁰⁵ See Denmark, Tax Administrator and Practitioner's joint report, Questionnaire # 2, Question 6.

¹⁰⁶ See Germany, Tax Administrator, Practitioner and Academic's joint report, Questionnaire # 2, Question 6.

expiration of the due time limits of preservation or for the limitation of the treatment. Finally, opposition to data processing “*is permitted unless there are legitimate reasons for the continuation of the treatment*”.¹⁰⁷

In **Kenya**, taxpayers have access to their *iTax* portals, allowing them to access the pre-populated information prior to filing. The electronic filing system allows taxpayers to make amendments to errors in the information provided.¹⁰⁸

In **Mexico**, on 12 November 2018, the Mexican Tax Administration Service (*Servicio de Administración Tributaria*, or SAT) announced that it had released a tax return simulator on its webpage. The simulator is accessible to all taxpayers using their corresponding digital passwords. The system allows taxpayers to review the information that the SAT will consider for their 2018 annual tax returns. If there is any mistake in the information held by the SAT, taxpayers are able to correct it. Taxpayers had until 31 December 2018, to get into contact with their clients and/or goods and services providers to correct any existing mistakes in the digital invoices issued during 2018. The simulator is quite user-friendly, with step-by-step instructions on how to access the simulator and review the information held by the SAT.¹⁰⁹

In **Peru**, Articles 88.2 and 92c) of the Tax Code provide the right of taxpayers to correct their tax returns.¹¹⁰

In **Slovenia**, pre-populated personal income tax returns are sent to taxpayers as “information on tax obligations”. Taxpayers can change the information or simply pay the amount due. If data are changed, the tax administration will issue a new tax return. In addition, legal rules (Law on Financial Administration, Article 78) and the administrative practice of the tax administration allows access to and corrections of information contained in the official records of the tax administration on each individual taxpayer. Corrections are possible according to general information on providing data to the tax administration; special guidance is not published.¹¹¹

In **South Africa**, pre-populated returns may be corrected by taxpayers. However, changing a pre-populated form always leads to subsequent verification and possibly an audit.¹¹²

In **Spain**, the Supreme Court rejected, in its judgment of 13 November 2018, that the data of lawyers and attorneys should be provided to the Tax Administration. In May 2017, the tax inspection department made a request to obtain information from lawyers and attorneys

¹⁰⁷ See Italy, Practitioner and Academic’s joint report, Questionnaire # 2, Question 6. However, it has been noted that taxpayers have no right to access and/or know related information until after the formal delivery or notification of an assessment from the Tax Administration. See Italy, Practitioner’s report, Questionnaire # 2, Question 6.

¹⁰⁸ See Kenya, Practitioner’s report (2), Questionnaire # 2, Questions 5 and 6.

¹⁰⁹ See Mexico, Tax Ombudsman’s report, Questionnaire # 2, Questions 5 and 6.

¹¹⁰ See Peru, Practitioner’s report (1), Questionnaire # 2, Question 6.

¹¹¹ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Questions 5 and 6.

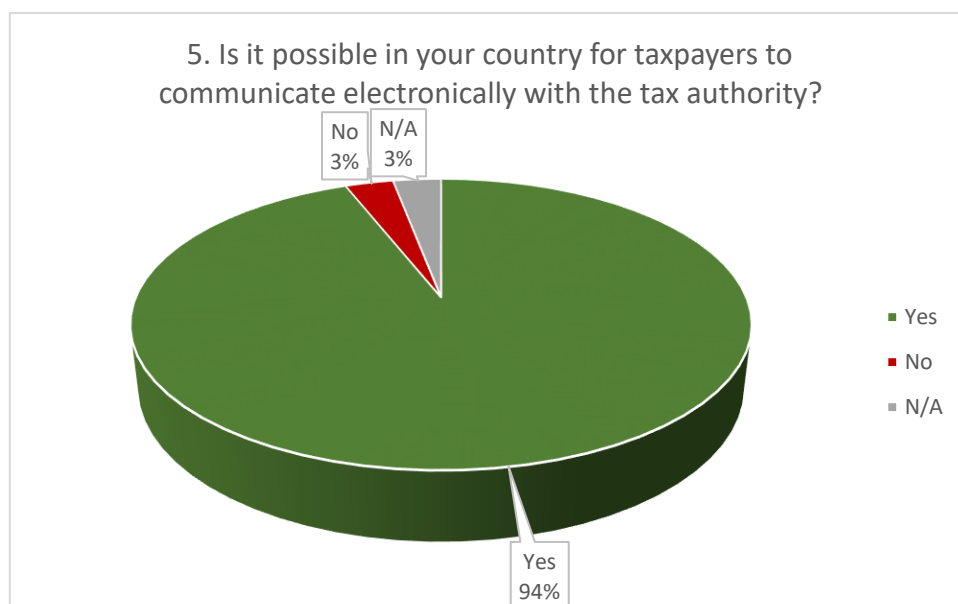
¹¹² See South Africa, Tax Ombudsman and Academic’s joint report, Questionnaire # 2, Question 5.

(e.g. identification data or the value of the claim), with the aim to combat tax fraud. When an information request is made, it is necessary that it refers to relevant tax information. The Supreme Court considered that the information requested was not reasonable. On the other hand, Law 3/2018 (Official Gazette of Spain, 6 December 2018) was enacted, which provides mechanisms to protect personal data and digital rights. In particular, articles 79-97 refer to the guarantee of digital rights, such as digital security, privacy and data protection of minors on the internet.¹¹³

In the **United States**, taxpayers have the right to request information about themselves under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et. seq. The IRS has also instructed its agents to provide taxpayers information about open cases upon request (i.e., without making a formal FOIA request).¹¹⁴

5.1.5 Communication with taxpayers

According to the national reports,¹¹⁵ as expected, an overwhelming majority of jurisdictions have implemented some form of electronic communication between taxpayers and tax authorities, as shown in the chart below.

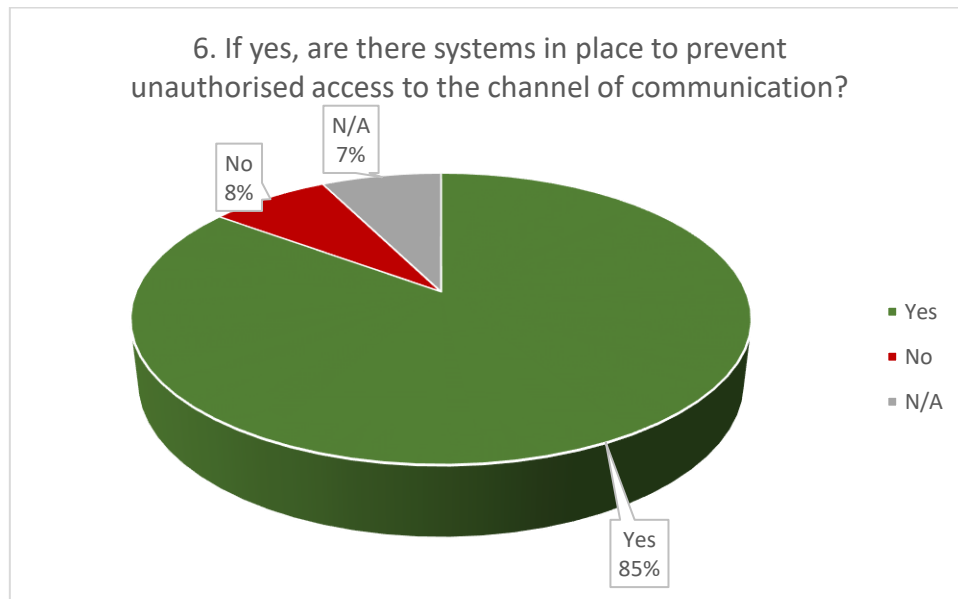


Most of those jurisdictions have also implemented safeguards to prevent unauthorized access to the channel of communication, as shown in the chart below.

¹¹³ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Question 3.

¹¹⁴ See https://www.treasury.gov/tigta/congress/congress_09262018.pdf. See also United States, Tax Administrators' report, Questionnaire # 2, Question 6.

¹¹⁵ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



In **Australia**, the availability of application programming interfaces (APIs) has increased the number of third-party digital service providers (DSPs) with access to ATO data and the array of services they provide on the ATO’s behalf. APIs perform a range of registration functions, assisting with tax reporting and employer obligations, as well as assisting tax practitioners and superannuation reporting. To maintain integrity across the digital environment, the ATO developed the DSP Operational Framework, which sets out the minimum requirements that a DSP needs to meet in order to use its APIs. Through adherence to the framework, the ATO is able to mitigate risk and increase security across the digital supply chain. It is an evolving governance model that will be adapted to meet emerging digital risk. The ATO Cyber Security Operations Centre is actively monitoring DSPs certified under the operational framework and their use of its APIs.¹¹⁶

During 2018, **China** implemented a system in order to prevent impersonation or interception of tax-related electronic data, limit access to tax-related information and reduce the risk of leakage of tax-related information during electronic transmission.¹¹⁷

The Commissioner of Data Protection in **Cyprus** issued guidelines to this end on the basis of ensuring that there is no authorized access to personal data, but these have not yet been implemented.¹¹⁸ Additionally, regarding the installation of systems for communicating electronically with taxpayers in order to prevent impersonation, there is a system in place for the identification of both physical and legal persons, with the use of an ID and certificate of incorporation.¹¹⁹

¹¹⁶ See the ATO Annual Report 2017-18, pp 42-43 (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF). Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 7.

¹¹⁷ See China, Academic’s report, Questionnaire # 2, Question 7.

¹¹⁸ See Cyprus, Practitioner-Academic’s report, Questionnaire # 2, Question 7.

¹¹⁹ See Cyprus, Tax Administrator’s report, Questionnaire # 2, Question 7.

In **India** the Revenue is increasingly using the ability to send Notices by email for which there is legislative sanction in section 282 read with rule 127 of the rules.

In **Italy**, the Tax Agency is entitled to the treatment of personal data, supported by Sogei (an IT company wholly controlled by the Ministry of Economy), which is entrusted with the management of the informative system of the Tax Register, thus authorized as “Responsible for the Treatment”.¹²⁰

In **Kenya**, the Revenue Service has installed *iTax*,¹²¹ an electronic portal that protects and facilitates electronic communication with taxpayers.¹²² *iTax* accounts have passwords to prevent interception by unauthorized persons.¹²³

In the **Netherlands**, *eHerkenning* has been introduced for entrepreneurs for logging in to governmental institutions (such as the Dutch tax authorities). It safeguards and prevents hijacking of the identity of the entrepreneur. *eHerkenning* will be aligned with the European eIDAS regulation.¹²⁴

In **Slovenia**, the IT system of tax administration uses all safeguards necessary to ensure that the communication between a taxpayer and the tax administration is safe and protected. Safety standards have been assessed by external assessor and have been rated as A+.¹²⁵

In **Sweden**, during the last 2 years, there has been a very strong increase in the number of taxpayers that register for the service through which they receive documents from the Swedish Tax Agency digitally in a secure digital mailbox, where they have to log in with a personal digital ID. In December 2018, it reached 3 million (out of 8 million taxpayers). There has also been a very strong increase in the number of digital IDs issued. By the end of 2018, 7.9 million taxpayers had a digital ID, and 7 million of them had that digital ID on their smart phone.¹²⁶

In **Turkey**, on 28 February 2018, the Ministry of Finance published Communiqué No. 492 on all kinds of electronic services provided through its Tax Portal to taxpayers, including their right to access taxpayer information. Accordingly, taxpayers may have online access to identification information, returns, notifications, debt, credit penalty information, seizure applications, etc.¹²⁷

¹²⁰ See Italy, Practitioner and Academic’s joint report, Questionnaire # 2, Question 7.

¹²¹ See <https://itax.kra.go.ke/KRA-Portal/>

¹²² See Kenya, Practitioner’s report (1), Questionnaire # 2, Question 7.

¹²³ See Kenya, Practitioner’s report (2), Questionnaire # 2, Question 7.

¹²⁴ See Netherlands, Practitioner’s report, Questionnaire # 2, Question 7.

¹²⁵ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 7.

¹²⁶ See Sweden, Practitioner and Academic’s joint report, Questionnaire # 2, Question

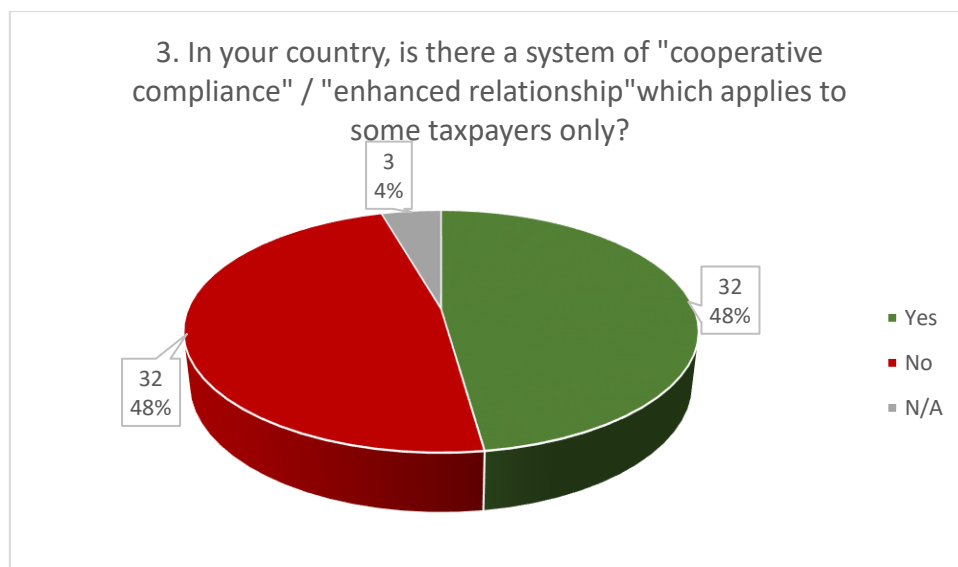
¹²⁷ See Turkey, Academic’s report, Questionnaire # 2, Question

In the **United States**, as the IRS focuses more on delivering taxpayer services online, it continually updates its e-authentication procedures. Specifically, over the last year, the IRS is updating its procedures to comply with the new guidelines issued by the National Institute of Standards and Technology (NIST).¹²⁸

5.1.6 Cooperative compliance

Trust and cooperation are valuable tools for the enhancement of tax systems. These are the fundamental grounds for the implementation of so-called “cooperative compliance” systems, presided by good faith and striving to achieve improved levels of interaction by both parties in order to ensure compliance through cooperation.¹²⁹

In this regard, although many countries have implemented cooperative compliance systems since 2008, thus making this form of enhanced relationship a major trend,¹³⁰ there is still a long way to go according to the national reports.¹³¹ Although an increasing number of countries have put a system of that sort into operation, the majority of surveyed jurisdictions have *not* implemented a cooperative compliance system, as shown in the chart below.



However, there is concern that the opportunity to enter into these arrangements is offered on a discriminatory basis or that pressure may be put on certain businesses to enter into these arrangements.¹³² In this regard, according to the data provided by the national reporters,

¹²⁸ See https://www.treasury.gov/tigta/congress/congress_09262018.pdf. See also United States, Tax Administrators' report, Questionnaire # 2, Question 7.

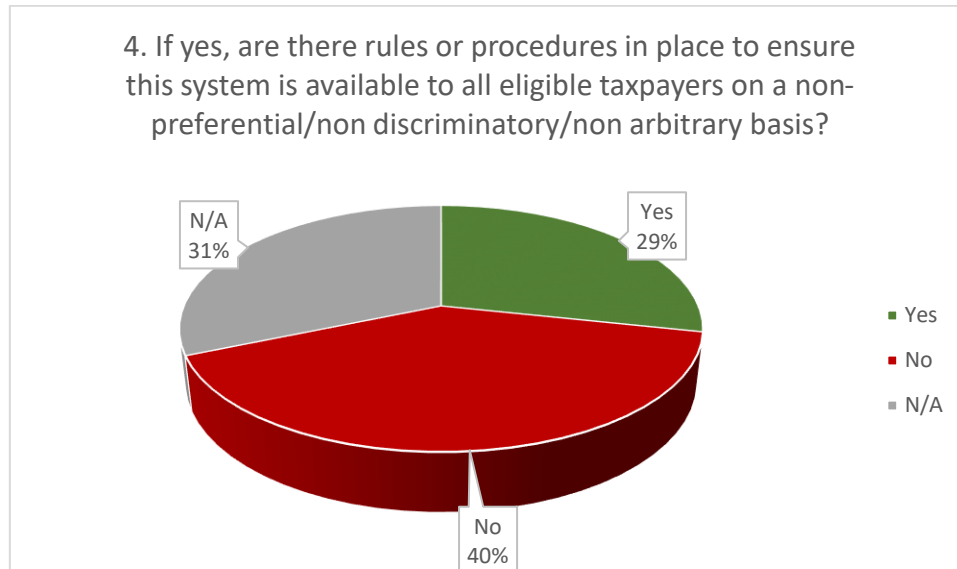
¹²⁹ As encouraged by the OECD. See OECD, *Co-operative Compliance: A Framework from Enhanced Relationship to Co-operative Compliance*, p. 13 (OECD Publishing, 2013), at: <https://dx.doi.org/10.1787/9789264200852-en>.

¹³⁰ See OECD, *supra* n. 121, at p. 13.

¹³¹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

¹³² See P. Baker and P. Pistone, *supra* n. 10, at p. 26.

just a few of those jurisdictions that carried out a system of cooperative compliance have enacted rules of procedure to ensure open access to all eligible taxpayers on a non-preferential, non-discriminatory and non-arbitrary basis, as shown in the chart below.



For those countries that have implemented a system of cooperative compliance, there have been significant developments. Some countries have implemented cooperative compliance systems from scratch and have enacted limits on the ability of the tax authorities to change interpretations of laws and regulations that might affect the position of taxpayers in these programmes.

In **Australia**, the Commissioner of Taxation's remedial power was introduced to give the Commissioner limited powers to modify the operation of tax law in circumstances in which entities will benefit, or at least be no worse off, as a result of the modification. The Commissioner is supported in this work by the Commissioner's Remedial Power Advisory Panel, which consists of representatives from the ATO, the Treasury and the private sector. A register showing modifications is available on the ATO's website at ato.gov.au/CRP and will be expanded over time to improve transparency in the Commissioner's remedial power process.¹³³

In **Austria**, a system of cooperative compliance has been introduced into the Austrian Tax Code (*Bundesabgabenordnung*, BAO) via the Annual Tax Act 2018 (*Jahressteuergesetz* 2018, JStG 2018). It entered into force on 1 January 2019.¹³⁴

¹³³ See Taxation Administration Act 1953, Sch 1, Div 370; ; ATO Annual Report 2017-18, pp 42-43 (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF). Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 8.

¹³⁴ See Austria, Tax Administrator, Practitioner, Academic and Tax Ombudsman's Joint Report, Questionnaire # 2, Question 6.

In **Belgium**, the tax authorities recently initiated a pilot project installing a system of cooperative compliance in Belgium. Since this is just a pilot project, there is no legal basis yet. Participation in the cooperative compliance project is voluntary. Certain conditions must be met before one can participate in this project. After two years, the results of the pilot project will be evaluated.¹³⁵

In **Brazil**, the State of São Paulo enacted a conformity programme (*Nos Conformes*), which provides for objective criteria that the taxpayer must adhere to in order to have an easier relationship with the tax administration. The Federal Revenue Service is currently considering a similar programme.¹³⁶

In **Canada**, the 18 September 2018 Auditor General's audit report concluded that the CRA extended favourable treatment to some taxpayers, but not to others. According to this report, the CRA not only failed to apply tax rules consistently, but also could not accurately gauge its own performance. The Auditor General attributed these inconsistencies to a number of sources, including the judgement of the CRA tax auditor or agent, the region where the taxpayer's file was reassessed and the type of taxpayer (i.e. individual, small business or large corporation). In particular, the Auditor General concluded that (i) the CRA's favourable treatment tended to fall upon larger international businesses and taxpayers with offshore assets or transactions; (ii) the CRA tended to apply stringent response deadlines to employees while granting seemingly unlimited extensions for large corporate taxpayers and taxpayers with offshore assets and transactions; and (iii) for most taxpayers who were individuals with Canadian employment income, the CRA requested information from these taxpayers more quickly and gave them less time to respond than for other taxpayers, such as international and large businesses and taxpayers with offshore transactions. The CRA agreed with this report and has already started to put processes in place through education, outreach and enforcement through which the law will apply consistently while taking taxpayers' individual circumstances into account.¹³⁷

On 15 December 2017, the Government of **Canada** released a revised version of Information Circular IC00-1R6 (Voluntary Disclosures Program). The CRA administers the discretionary authority of the Minister of National Revenue to grant relief from interest and penalties arising from errors and omissions relating to income tax, source deductions and other amounts. In order to be accepted into this revised programme, the disclosure must be voluntary and complete, must involve the application or potential application of a penalty, must include information that is at least one year past due and must either include payment of the estimated tax owed with the voluntary disclosure payment application, or acceptable arrangements must be made for payment with the CRA's collection officials. The changes to the programme are generally restrictive in nature. Relief is restricted in certain circumstances, and additional conditions have been introduced for making valid voluntary disclosure.¹³⁸

¹³⁵ See Belgium, Practitioner's report, Questionnaire # 2, Question 8.

¹³⁶ See Brazil, Practitioner's report (2), Questionnaire # 2, Question 8.

¹³⁷ See Canada, Practitioner's report (2), Questionnaire # 2, Question 8.

¹³⁸ See Canada, Practitioner's report (2), Questionnaire # 2, Question 8.

As a shift towards best practice on cooperative compliance, **China** reported that, according to the SAT Rules for Provision of Tax Services and Administration of Large-sized Companies (Trial),¹³⁹ SAT and enterprise groups can sign a Tax Compliance Cooperation Agreement (TCCA) based on the principles of voluntariness, equality and mutual openness and trustworthiness. The measure tends to enhance the cooperation towards the prevention and control of tax risks. It was negotiated with large enterprises with a high tax compliance level that jointly signed the tax compliance cooperative agreements. According to reports, the agreements signed in 2018 were improved in respect of both type and content as compared to those of 2017.¹⁴⁰

In **Cyprus**, taxpayers are invited by the Tax Administration to correct any errors in their returns.¹⁴¹

India has had a scheme for consolidation of assessments of large taxpayers in one jurisdiction.

In **Slovenia**, there is legal basis for a cooperative compliance system in the Law on Financial Administration. Rules that are more precise are defined in the regulations on granting special status for the promotion of voluntary compliance, issued by the Minister of Finance.¹⁴²

In **Spain**, the project for the implementation of the so-called *Norma UNE 19602* (UNE standard) for the management system of tax compliance has been submitted for public consultation (Official Gazette of Spain, 7 December 2018). This standard for tax compliance has been elaborated by the Spanish Association of Normalization and Certification (AENOR) and is aimed to spread compliance and prevention within an entity, set up control measures for the prevention of tax risks and provide certainty and confidence before the tax authorities, governing bodies, shareholders and investors.¹⁴³

In the **United Kingdom**, the largest businesses with turnover in excess of GBP 30 million or with more than 250 employees are dealt with by Her Majesty's Revenue and Customs (HMRC) Large Business Directorate and fall under the HMRC cooperative compliance arrangements.¹⁴⁴ All of these businesses have a personal customer compliance manager allocated to their "case". All of these large businesses are required to be part of the cooperative compliance regime, which is not available to other, smaller businesses.¹⁴⁵

¹³⁹ Issued by the SAT, Guoshuifa [2011] No. 71.

¹⁴⁰ See China, Tax Administrator's (retired) report, Questionnaire # 2, Question 8.

¹⁴¹ See Cyprus, Tax Administrator's report, Questionnaire # 2, Question 8.

¹⁴² See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 8.

¹⁴³ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Question 8.

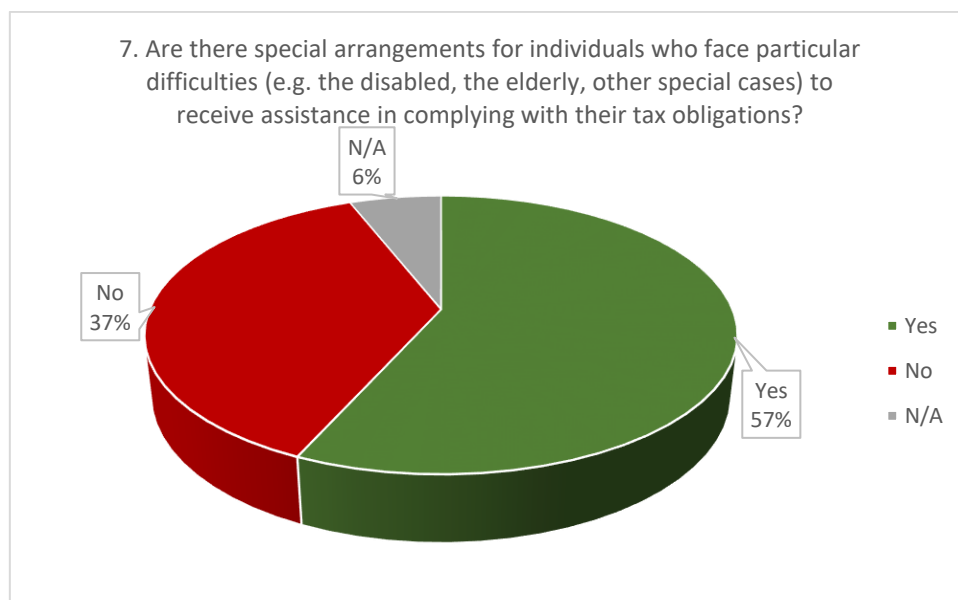
¹⁴⁴ HMRC guidance on its approach to these large businesses is explained at <https://www.gov.uk/guidance/hm-revenue-and-customs-large-business#history>.

¹⁴⁵ See United Kingdom, Practitioner's report, Questionnaire # 2, Question 8.

5.1.7 Assistance with compliance obligations

It seems obvious that an efficient tax system, based on good governance and therefore committed to treating all taxpayers as holders of human rights with equal concern and respect,¹⁴⁶ shall implement special procedures to help those who face particular difficulties in meeting their compliance obligations.¹⁴⁷

There is a trend in this direction in the majority of the surveyed jurisdictions. Out of 67 reports, 38 reported special arrangements for individuals who face particular difficulties, such as the disabled, the elderly and other special cases, to receive assistance in complying with their tax obligations. This number is not ideal yet, considering that 25 reports stated that state authorities in their jurisdictions have made no special arrangements for these particular cases. 4 reports made no statement in this regard. These statistics are shown in the chart below.



In those jurisdictions that have implemented some sort of assistance for those facing difficulties in complying with their tax liabilities, there are some significant developments reported. Assistance by telephone and other communication media have been installed for assisting those who are either unable or unwilling to access the internet.

In **Australia**, assistance is provided through the Tax Help programme in remote areas to facilitate lodging for taxpayers who are unable (and, by default, some who are unwilling) to lodge electronically and provides assistance to taxpayers who have disabilities.¹⁴⁸ The ATO supported the Australian Security and Investment outreach programme in the *Anangu Pitjantjatjara Yankunytjatjara* (APY) lands in northwest South Australia in a week-long series

¹⁴⁶ R. Dworkin, *supra* n. 12, pp. 319-320, 422.

¹⁴⁷ P. Baker and P. Pistone, *supra* n. 10, at p. 26.

¹⁴⁸ See <https://www.ato.gov.au/individuals/lodging-your-tax-return/tax-help-program/>. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 9.

of community events drawing attention to basic superannuation literacy/education for the remote indigenous community. The ATO has developed a “balancing community conversations” initiative to understand current community beliefs, attitudes and norms about tax, and improve education to new entrants, such as youth and migrants. Community perceptions have been benchmarked, and the ATO will track results through regular surveys. The ATO will also commission research to better understand existing beliefs, attitudes and norms in the community and motivational drivers of engagement.¹⁴⁹ In addition, the ATO provides support for small businesses through the Let’s Talk website, which offers free workshops and webinars on a variety of tax topics. Dates and locations of events in each state are detailed on this site, and taxpayers can register to attend workshops in their area at a time that suits them. Taxpayers are also encouraged to register to take part in online engagement activities and contribute their ideas and views that can help inform and guide decisions made by the ATO.¹⁵⁰

In Belgium, according to its tax law, certain categories of taxpayers are exempt from the obligation to file a personal income tax declaration (article 306, § 1 Income Tax Code). The tax authorities have to send these taxpayers a “proposal of simplified declaration”, indicating the tax base as well as the tax due (article 306, § 2 Income Tax Code). A Royal Decree of 6 March 2018 (Belgian Official Gazette, 20 March 2018) expands the cases to which the exemption from the declaration obligation applies.¹⁵¹

In Bulgaria, as communicated by the National Revenue Authority (NRA) on 18 December 2018, it has introduced a service for video gesture translation for people with hearing impairment, available through an online platform for providing equal access to the Agency’s services for hearing-impaired citizens.¹⁵²

In Canada, the CRA has initiatives that aim to provide assistance to those who face difficulties in meeting compliance obligations, including (i) conducting consultations with taxpayers living in northern and remote regions to expand outreach and partnership, improve services and help taxpayers better understand how to claim an allowance for people living in prescribed zones; (ii) reinstating the Disability Advisory Committee to improve the way the CRA administers the tax measures supporting disabled Canadians; and (iii) providing an automated telephone filing service called File my Return, which allows eligible taxpayers with low or fixed income to file their income tax and benefit returns by answering a series of short questions through a dedicated, automated phone service, making tax filing easier and simpler.¹⁵³ The CRA also supports large numbers of Canadian volunteers who annually participate in the Community Volunteer Income Tax Program (CVITP), through which community organizations

¹⁴⁹ See the ATO Annual Report 2017-18, p 47 (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF). Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 9.

¹⁵⁰ See <https://lets-talk.ato.gov.au/>. Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 9.

¹⁵¹ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 9.

¹⁵² See Bulgaria, Practitioner’s report, Questionnaire # 2, Question 9.

¹⁵³ See Canada, Tax Ombudsman’s and Practitioner(s) reports, Questionnaire # 2, Question 9.

host free tax clinics in which volunteers complete income tax and benefit returns for eligible people.¹⁵⁴

In **Canada**, barriers to service remain an issue for many people as a result of issues such as (i) the inability to get through to a CRA agent via telephone; (ii) inconsistent and incorrect information provided by CRA agents through telephone lines; (iii) difficulty in obtaining paper forms and guides; (iv) not meeting the criteria for assistance services (the CVITP is only open to taxpayers who have a modest income *and* simple tax situation; (v) the fact that File my Return is only open to people with low or fixed incomes who receive an invitation from the CRA to participate; (vi) living in a remote area not serviced by a volunteer clinic or without adequate internet access; (vii) language barriers; and (viii) difficulty clearing the security questions posed by CRA agents. Taxpayers also face challenges in meeting their obligations when paying amounts they owe.¹⁵⁵ An upcoming report from the Taxpayers' Ombudsman¹⁵⁶ shows that while almost all taxpayers receive a legal warning prior to the CRA taking legal action to collect debt, many taxpayers do not understand what the legal warning means or the seriousness of the specific measures that can be taken by the CRA. The CRA can take legal action against some taxpayers even when they are making payments. The Taxpayers' Ombudsman's report finds a lack of clarity of information on the part of the CRA regarding (i) when a legal warning is given, what it means and what duration it covers; (ii) when payment arrangements are binding; and (iii) the consequences of defaulting on a payment when a binding payment arrangement has been made.¹⁵⁷

In **Canada**, the CRA continues to improve the number of services it can provide online.¹⁵⁸ Although this does not help taxpayers who are unwilling or unable to use electronic forms of communication, it does help those located in remote areas. In this regard, on 24 August 2018, the CRA announced that it will open three new Northern Services Centres in Whitehorse, Yellowknife and Iqaluit to better support indigenous communities and Canadians living in the north. In addition to maintaining a physical presence throughout the year, the CRA will expand the activities of the outreach programme, the CVITP and the Liaison Officer service offered to businesses and self-employed individuals. The CRA will also set up dedicated telephone lines

¹⁵⁴ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 9.

¹⁵⁵ Additional information on the challenges taxpayers face in meeting their obligations can be found in the following reports:

Office of the Auditor General: Connectivity in Rural and Remote Areas: http://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_01_e_43199.html.

Office of the Auditor General: Compliance Activities – Canada Revenue Agency: http://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_07_e_43205.html.

Office of the Auditor General: Call Centres – Canada Revenue Agency: http://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_02_e_42667.html

Canada Revenue Agency: Serving You Better – Report on the Canada Revenue Agency's consultations with northern residents: <https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/small-medium-businesses-canada-revenue-agency-committed-serving-you-better/consultations-northern-residents/report-table-contents.html>

¹⁵⁶ Once published in March 2019, the full text of the report of the Taxpayers' Ombudsman will be found at: <https://www.canada.ca/en/taxpayers-ombudsman/programs/reports-publications/special-reports.html>.

¹⁵⁷ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 9.

¹⁵⁸ The main landing page on CRA's website is <https://www.canada.ca/en/revenue-agency/services/e-services.html>

to make it easier for territorial residents to contact officers with specialized training to address their needs. Additionally, the Benefits Unsheltered Initiative represents the CRA's communication and outreach efforts towards shelters and other support organizations about benefits and credits administered by the CRA. In 2018, the CRA reported on its accomplishments to date in respect of this initiative.¹⁵⁹

In **China**, tax law requires the tax authorities to provide convenient tax services for taxpayers. The State Administration of Taxation has also required tax authorities to improve efficiency and to standardize procedures. It has been taking steps to enhance the transparency of the tax agencies and the interpretative work in respect of tax policy. However, tax law does not yet offer any special provisions for the assistance of special populations, such as the disabled.¹⁶⁰

In **Cyprus**, seminars were organized throughout the country, and taxpayer service desks have been established in all district offices.¹⁶¹

In **India**, there are no special arrangements for the disabled or elderly to receive assistance with compliance. However, there is a general scheme of income tax return preparers (TRPs), in which a TRP will come to the residence of a person and help with return preparation and filing, for a nominal fee. Of course, this is available only to those that do not have to have their accounts audited.¹⁶²

In **Italy**, for the municipalities of the Island of Ischia affected by the earthquake of 21 August 2017, the Law of 27 December 2017, No. 205 (*Legge di Stabilità* 2018) introduces more favourable measures for the fulfilment of taxes and duties to pay. Moreover, the system of assistance for the management of electronic invoicing has been implemented.¹⁶³

In **Kenya**, Revenue Authority Camps have been taking place within the country to raise the awareness of the public on tax issues.¹⁶⁴ Additionally, the Kenya Revenue Authority has a customer care line available to taxpayers for assistance with filing returns and other tax-related issues.¹⁶⁵

In **Portugal**, the 2019 Budget Law (Law 71/2018 of 31 December) expands the scope of taxpayers required to receive notifications only in electronic form to encompass certain non-resident taxpayers who may have failed to designate a tax representative.¹⁶⁶

¹⁵⁹ See Canada, Practitioner's report (2), Questionnaire # 2, Question 9.

¹⁶⁰ See China, Academic's report, Questionnaire # 2, Question 9.

¹⁶¹ See Cyprus, Tax Administrator's report, Questionnaire # 2, Question 9.

¹⁶² See <https://www.incometaxindia.gov.in/Pages/trps.aspx>. Also, See India, Academic's report, Questionnaire # 2, Question 9.

¹⁶³ See <http://www.fatturapa.gov.it>. See also Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 9.

¹⁶⁴ See Kenya, Practitioner's report (1), Questionnaire # 2, Question 9.

¹⁶⁵ See Kenya, Practitioner's report (2), Questionnaire # 2, Question 9.

¹⁶⁶ See Portugal, Practitioner's report, Questionnaire # 2, Question 9.

In **Slovenia**, the standard applies generally for all administrative procedures on the basis of the General Administrative Procedures Law, which must also be respected by the tax administration. There are no special legal provisions in tax legislation. In practice, the tax administration has local tax offices all around the country with the special task to assist taxpayers and provide necessary information. Leaflets and brochures on different tax topics are available at tax offices and on the tax administration's website.¹⁶⁷

In **Sweden**, many of the services provided are being updated to new versions, living up to modern standards of accessibility.¹⁶⁸

In the **United States**, the IRS has further consolidated the number of Taxpayer Assistance Centers (sites where taxpayers can go in person to receive assistance) and moved these sites to an appointment only system. While the IRS has made some investigation into using virtual services, it has not invested in the technology or a robust system to make this program successful. The IRS continues to attempt to shift taxpayers to electronic only communications, including by limiting when and what topics a taxpayer can call the IRS about.¹⁶⁹

5.2 The issue of tax assessment

Effective means of enforcing the right to access information and the establishment of non-discriminatory forms of cooperative compliance¹⁷⁰ boost the possibilities of implementing a constructive dialogue between tax authorities and taxpayers, which enhances the tax self-assessment system by allowing the parties to proceed smoothly towards agreed solutions to factual and legal issues connected with the levying of taxes. In particular, such dialogue allows taxpayers to exercise timely protection of their rights from measures that are liable to affect them adversely and enhances good tax administration by the tax authorities.¹⁷¹

According to national reports,¹⁷² country practice shows a positive trend towards building this positive dialogue. Most jurisdictions reported the existence of dialogue before tax determination in order to reach an agreed assessment, as shown in the chart below.

¹⁶⁷ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 9.

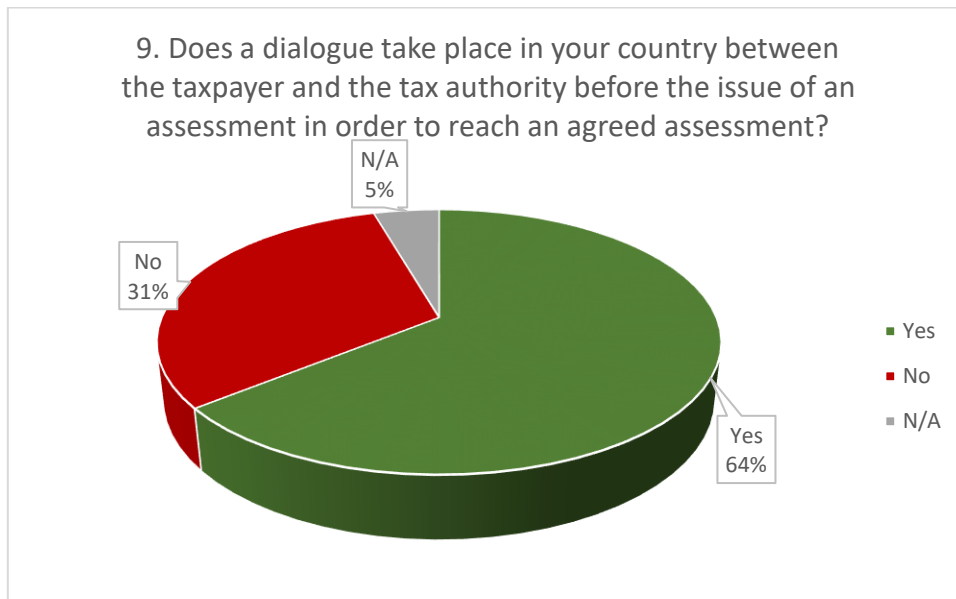
¹⁶⁸ See Sweden, Practitioner and Academic's joint report, Questionnaire # 2, Question 9.

¹⁶⁹ See National Taxpayer Advocate 2018 Annual Report to Congress 17-33 (Most Serious Problem: Tax Law Questions: The IRS's Failure to Answer the Right Tax Law Questions at the Right Time Harms Taxpayers, Erodes Taxpayer Rights, and Undermines Confidence in the IRS); National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance). See also United States, Tax Administrators' report, Questionnaire # 2, Question 9.

¹⁷⁰ See section 5.1.6.

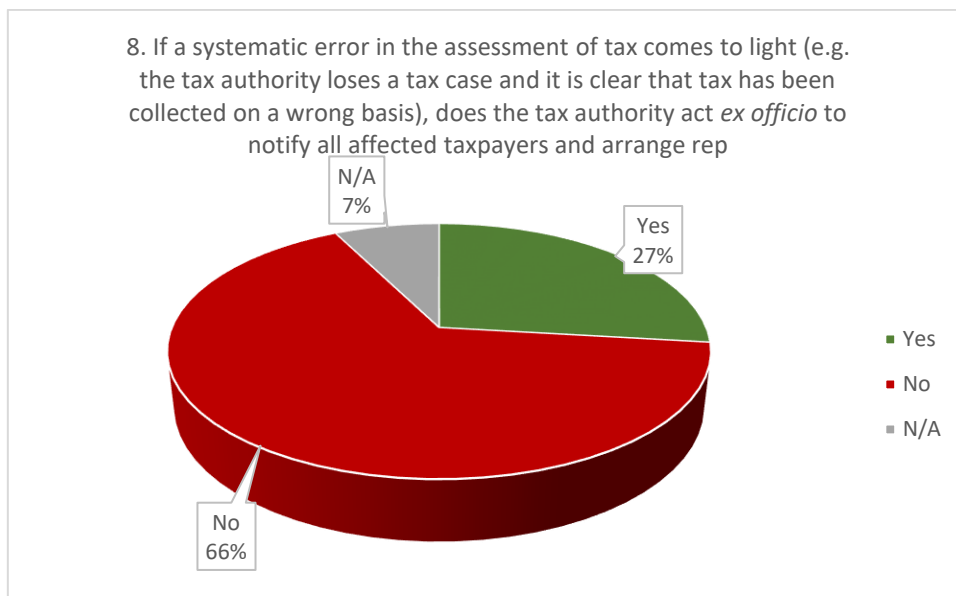
¹⁷¹ See P. Baker and P. Pistone, *supra* n. 10, at p. 27.

¹⁷² For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

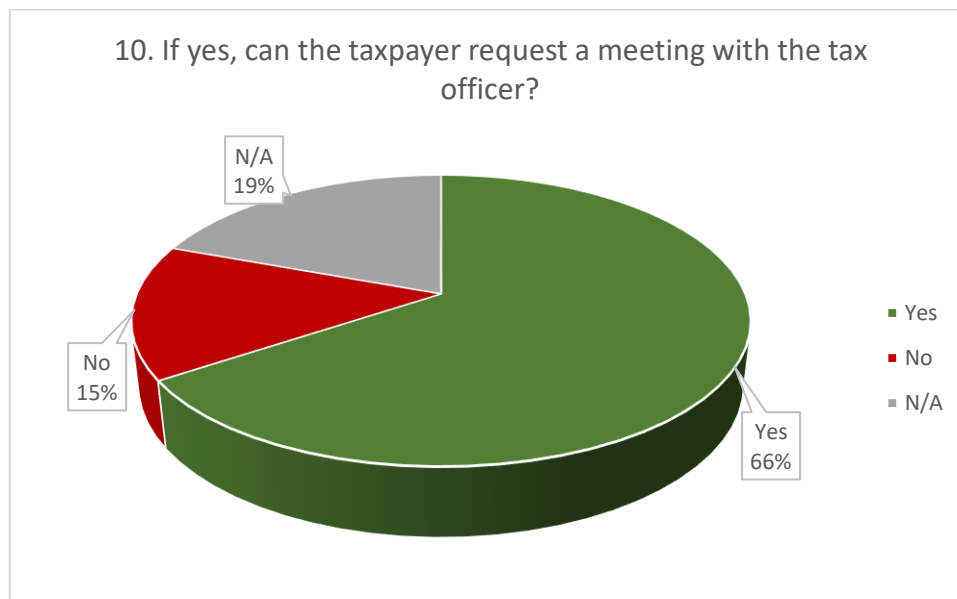


A further example of how this constructive dialogue can be encouraged on the grounds of good faith and a levelled playing field for both parties of the tax relationship is that in which tax authorities notify taxpayers *ex officio* of systematic errors in the assessment of taxes and arrange repayment for the affected taxpayers. This might be the case of judgements making clear that the tax authorities have been collecting taxes on an inappropriate basis.

However, in practice, most reports showed that no measures of this kind have been implemented in the surveyed countries, as shown in the chart below.



In such a case, the majority of reports stated that the taxpayer is entitled to request a meeting with the tax officer, as shown in the chart below.



During 2018, this balance between self-assessment of taxes by taxpayers and a constructive dialogue between them and the tax authorities was pursued from various perspectives, allowing taxpayers to exercise their rights in a timely manner and tax authorities to prevent unnecessary conflicts and litigation. This trend allowed for the reporting of some important developments in this regard: some jurisdictions provide public assistance and guidance to make taxpayers understand their rights in the context of an audit, simplified audits were implemented, and opportunities for discussion of the issues at hand before the issuance of an assessment were made available. New regulations providing for a more horizontal relationship between the parties have been enacted, even though some setbacks have occurred, such as the establishment of presumptions of guilt for establishing facts relevant for tax purposes.

In **Australia**, the ATO continues to engage with taxpayers at an early stage to provide public advice and guidance assisting taxpayers in understanding their rights and obligations in a range of situations. The ATO aims to provide pre-emptive advice to inform people about issues before they emerge and continue to publish law companion rulings with specific and early guidance on significant new law. The early engagement strategy was extended to all client segments in 2017-2018, with some specific activities being the following:¹⁷³

1. **Individuals:** Taxpayers were guided with 170,000 real-time messages, for example, on work-related expenses and dividend and interest income to assist with getting their tax returns right.
2. **Small businesses:** The ATO provided guidance on ride-sourcing, accommodation sharing and the sharing economy more generally. Other activities designed to help

¹⁷³ See the ATO Annual Report 2017-18, p 35 (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF). Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 10.

small businesses meet their tax and superannuation obligations included visits to regional communities, webinars, after-hours assistance via web chat or call-backs and a range of self-help and public information videos.

3. **Tax professionals:** The ATO commenced implementation of the Cash Flow Coaching Kit with tax professionals who work with small businesses, and services continue to be developed for tax agents, including guidance and education on specific areas of concern and assistance in correcting large volumes of tax returns when errors are identified.
4. **Privately owned and wealthy groups:** The ATO's pre-lodging advice services and taxpayer engagement programmes for privately owned and wealthy groups are designed to resolve potential disputes and errors before lodging. By working in advance with large taxpayers to agree on tax treatment, the ATO aims to create certainty both for itself and the taxpayer about their tax positions now and in the future. The ATO also adopts a tax assurance approach to estimate the proportion of tax reported that it is highly confident is correct. This measure is based on the concept of justified trust. The ATO considers that it has achieved justified trust and considers tax to be ensured when it has objective evidence that the right amount has been reported. Amongst other entities, the ATO's Justified Trust programme includes 320 private groups. When the ATO is unable to access evidence to ensure the tax or achieve justified trust, it uses other tools, such as the Tax Payments Reporting System, industry benchmarks, real-time analytics and risk algorithms, to increase confidence in the tax amounts that have been reported.
5. **Public and multinational businesses:** The integrated tax risk management and governance review guide helps taxpayers develop a whole-of-tax governance framework and evaluate their strategic and operational risks.
6. **Not-for-profit organizations:** Assistance specifically for not-for-profit organizations includes providing up-to-date, tailored information on the ATO website and a not-for-profit news service. The ATO has also established a dedicated phone service for not-for-profit organizations.
7. **Superannuation funds:** The ATO is continuing to educate employers about their superannuation guarantee obligations, using new data models (nearest-neighbour risk models) to identify non-compliant employers and ensure that employees receive their correct entitlements.

Also in **Australia**, the ATO recently offered self-preparers with simple tax affairs the option of an automated or "push" assessment. Taxpayers who chose to participate were not required to complete a tax return, with the ATO issuing an assessment notice along with their refund. In the future, this offer aims to streamline the lodging process for taxpayers with straightforward affairs, making it easier for people to meet their tax obligations on time. To support individual taxpayers in correctly reporting income in their tax returns, the ATO uses automated programmes that identify and correct errors once a return is lodged, checked against the third-party data received. This means that returns are processed more quickly, reducing

refund delays and the need to contact a taxpayer about the error. It also avoids potential debt issues at a later stage. For their part, individual taxpayers are able to request amendments to their previously lodged income tax returns via their MyGov account (even for returns not lodged online). These amendments are processed in a shorter period than paper-based amendment requests.¹⁷⁴

In **Belgium**, at the end of a tax audit, before establishing the actual tax assessment, the tax authorities must send the taxpayer a notification indicating which remarks/comments made by the taxpayer are not taken into account and the motives justifying this decision (a so-called “notification of the decision to tax” – article 346, 5° and article 352 bis Income Tax Code). The Court of Appeal of Liège ruled that sending this notification is a substantial formality, the non-compliance of which by the tax authorities leads to the annulment of the tax assessment (Liège 25 May 2018, no. 2016/RG/1233).¹⁷⁵

In **Bulgaria**, a positive trend can be traced throughout 2018, as the National Revenue Agency of Bulgaria has been gradually broadening its E-services, including E-filing, in order to speed up assessments, correct of errors, access information, etc. Notable new electronic possibilities are expanding the scope of electronically accessible services through a qualified electronic signature and personal identification codes, especially the latter, and setting up new internal rules for accepting and sending documents and messages through the secure electronic notification system at the National Revenue Agency (approved by the NRA on 30 November 2018).¹⁷⁶

In **Canada**, taxpayers can contact the CRA to request an explanation of their tax assessment or file a notice of objection if they dispute the assessment. However, among the highest volume of complaints received by the Office of the Taxpayers’ Ombudsman (OTO) is the accuracy and clarity of information provided by agents of the CRA’s individual tax enquiries telephone line to taxpayers with respect to the processing of individual income tax and benefit returns and adjustments.¹⁷⁷ The CRA’s service complaint process encourages taxpayers to address service issues at the lowest administrative level. First, the taxpayer is asked to raise their service issue with a CRA agent or their supervisor. Second, if the taxpayer is not satisfied, they can make a service complaint to have the CRA review the service issue. If the taxpayer is unsatisfied with the outcome of the CRA’s review, they can submit a service complaint to the Taxpayers’ Ombudsman. In cases of compelling circumstances (for example, personal or financial hardship), the Taxpayers’ Ombudsman can review a complaint prior to the taxpayer submitting their service complaint to the CRA for review. While the Taxpayers’ Ombudsman is not an advocate for the taxpayer, the OTO facilitates the resolution of service-related issues with the CRA and lessens the power imbalance between the individual and the

¹⁷⁴ See the ATO Annual Report 2017-18, p 33 (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF). Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 11.

¹⁷⁵ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 10.

¹⁷⁶ See Bulgaria, Practitioner report, Questionnaire # 2, Question 11.

¹⁷⁷ See Office of the Taxpayers’ Ombudsman’s Annual Report 2017-2018: <https://www.canada.ca/en/taxpayers-ombudsman/programs/reports-publications/annual-reports/annual-report-2017-2018.html#toc20>.

CRA. The CRA also offers a free Liaison Officer service for unincorporated small businesses to help them better understand their tax obligations. Taxpayers may benefit from this service through in-person meetings or pre-arranged group seminars.¹⁷⁸

Also in **Canada**, the Canada Revenue Agency's (CRA) 2017-2018 Departmental Review Report indicated that 88% of individual income tax and benefit returns and 90% of corporate income tax returns were filed online. The CRA's published service standards indicate that a notice of assessment for an individual income tax and benefit return will be sent to the taxpayer within two weeks of the CRA receiving a digitally filed return and within eight weeks of the CRA receiving a paper-filed return. This timeline is only valid for returns received on or before the filing due date. The CRA aims to meet this standard 95% of the time. The CRA's published service standards indicate that a notice of assessment for a corporate income tax return will be sent to the taxpayer within six weeks of the CRA receiving a digitally filed return and within sixteen weeks of the CRA receiving a paper-filed return. This timeline is only valid for returns received on or before the corporation's respective filing due date. The CRA aims to meet this standard 95% of the time. In 2017-2018, the CRA processed 96% of individual returns and 94% of corporate returns in fulfilment of this standard.¹⁷⁹

Recently in **Canada**, the CRA launched the "Auto-fill my return" service for individual taxpayers or their authorized representatives to automatically complete portions of a 2015, 2016, and 2017 income tax and benefit return based on information submitted to the CRA by a third party. Taxpayers are advised by the CRA to verify that the information is reported correctly when using the Auto-fill my return service.¹⁸⁰ A large volume of complaints have been received by the OTO over the last two years regarding delays in the processing of individual income tax and benefit returns and adjustment requests for individual income tax when the processing time for assessments and reassessments exceeded the CRA's published service standards. When the processing of a return is delayed, there can be an impact on the benefits received by taxpayers, such as reduced or delayed benefit payments, resulting in financial hardship. Additionally, the OTO has received complaints about not receiving clear, consistent and accurate information from the CRA regarding delays in the processing of an assessment or reassessment. The OTO is currently conducting further research on the issue of delays in processing.¹⁸¹

On 24 August 2018, the **Canada** Revenue Agency announced that it will open three new Northern Services Centres in Whitehorse, Yellowknife and Iqaluit to better support indigenous communities and Canadians living in the north. In addition to maintaining a physical presence throughout the year, the CRA will expand the activities of the outreach programme, the CVITP and the Liaison Officer service offered to businesses and self-employed individuals. The CRA will also set up dedicated telephone lines to make it easier for territorial residents to contact officers with specialized training to address their needs.¹⁸²

¹⁷⁸ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 10.

¹⁷⁹ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 11.

¹⁸⁰ See <https://www.canada.ca/en/revenue-agency/services/e-services/about-auto-fill-return.html>.

¹⁸¹ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 11.

¹⁸² See Canada, Practitioners report (2), Questionnaire # 2, Question 11.

In **Chile**, Circular No. 34 was issued, which provides new instructions regarding the administrative review procedure provided by the Tax Administration, in the sense of considering the taxpayer in a more horizontal relationship, in full respect of their rights, constitutionally and legally guaranteed, aimed to recognize good faith as a normal standard of taxpayer behaviour.¹⁸³

In **Colombia**, the proximity to the citizen has been formulated as one of the pillars of the new Integrated Planning and Management Model of the DIAN. In this context, taxpayers have been publicly invited to make their problems known, even allowing them access to high-level officials to find effective solutions.¹⁸⁴

In **Cyprus**, by virtue of Law 97(I)/2017, submissions of tax returns starting from tax year 2017 (reported in 2018) have to be submitted online via the *taxisnet* portal.¹⁸⁵

In **India**, the government has introduced electronic processing of returns in certain cases vide CBDT Circular no 01/2018. Besides, the tax department will also conduct scrutiny of cases electronically in all cases during the year 2018-19 except in search and seizure cases. (CBDT Instruction No 3/2018) (F.No 225/249/2018-ITA-II).¹⁸⁶ The CBDT in India has launched an ambitious scheme for faceless assessments which are carried out without requiring the presence of the Assessee. This is an endeavour not only to reduce the requirement of physical presence but also to prevent corruption by reducing interaction between the tax payer and the tax gatherer.

In **Italy**, there is no “equality of arms” or development from judgment no. 24823/2015, in which the Italian Court of Cassation (ICC) confirmed disparity/unequal protection.¹⁸⁷ In this regard, the ICC, in judgment No. 1778 of 23 January 2019, has confirmed the validity of verification that does not involve evaluating the brief submitted by the taxpayer within 60 days after the term for verification. This omission, although it constitutes a mandatory fulfilment, is not a cause for legal nullity.¹⁸⁸

In **Kenya**, the Revenue Service has installed *iTax*,¹⁸⁹ an electronic portal that allows taxpayers to use e-filing to speed up assessments and error corrections.¹⁹⁰ Kenya has adopted an e-filing system and has begun issuing tax assessments to taxpayers electronically.¹⁹¹ Also, the Kenya Revenue Authority has put in place an Alternative Dispute Resolution (ADR)

¹⁸³ See Chile, Practitioner’s report, Questionnaire # 2, Question 10.

¹⁸⁴ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 10.

¹⁸⁵ See Cyprus, Practitioner and Academic’s report, Questionnaire # 2, Question 11.

¹⁸⁶ See India, Academic’s report, Questionnaire # 2, Question 11.

¹⁸⁷ See Italy, Practitioner’s report, Questionnaire # 2, Question 10.

¹⁸⁸ See Italy, Practitioner and Academic’s joint report, Questionnaire # 2, Question 10.

¹⁸⁹ See <https://itax.kra.go.ke/KRA-Portal/>

¹⁹⁰ See Kenya, Practitioner’s report (1), Questionnaire # 2, Question 11.

¹⁹¹ See Kenya, Practitioner’s report (2), Questionnaire # 2, Question 11.

process to resolve disputes and maintains an open-door policy regarding engagement with taxpayers at all times. A relationship management approach is used.¹⁹² Indeed, Section 75 of the Tax Procedures Act authorizes the use of an electronic tax system. Taxpayers are afforded the opportunity to explain information provided during a revenue authority audit or give additional information prior to a final tax assessment being issued by the Commissioner.¹⁹³

In **Mexico**, an amendment to the Tax Code was published on 1 June 2018. In such amendment, article 69-B bis was added to the Code. In this regard, the Code provided that tax losses are deemed illegally transferred in cases in which the taxpayer was part of a reorganization, merger or spin-off. Such presumption can be disqualified by the taxpayer in a procedure set out in the Tax Code. This amendment has been regarded as going against the self-reporting principle for taxpayers, as the tax authority assumes that any tax loss is illegal only because there is a corporate reorganization. Therefore, this provision has been considered as going against a constructive dialogue between the taxpayers and tax authorities.¹⁹⁴ On the other hand, the items that make up the electronic declarations are becoming more accurate, and practically all fiscal information of the taxpayer is pre-filled.¹⁹⁵

In **Peru**, Article 75 of the Tax Code establishes the right to file a petition before the issuance of a tax assessment, but it has been reported that taxpayer participation in the procedure does not change the position of the tax authorities in practice.¹⁹⁶

In **Portugal**, there has been an expansion of the circumstances in which elements in tax returns are “pre-populated” according to elements available to the Tax Authority from other parties (e.g. banks and employers). They continue to be checked and submitted by taxpayers.¹⁹⁷

In **Russia**, the powers of the tax authorities are expanding every year, so the dialogue between taxpayers and revenue authorities cannot be characterised as “the dialog based on equality of arms”. For example, since 2018, tax authorities are entitled to request information about a taxpayer from audit organizations that provide accounting, tax, legal or management advice to the taxpayer. Another example is the extension of the grounds on which tax authorities have the right to suspend transactions on taxpayers’ bank accounts.¹⁹⁸

In **Slovenia**, a dialogue is established on individual tax matters as well as on general issues via regular meetings with taxpayers’ representatives and the business community. Additionally, electronic filing and electronic communication is obligatory for all business taxpayers and is encouraged for individuals.¹⁹⁹

¹⁹² See Kenya, Tax Administrator’s report, Questionnaire # 2, Question 10.

¹⁹³ See Kenya, Practitioner’s report (2), Questionnaire # 2, Question 10.

¹⁹⁴ See Mexico, Practitioner’s report (1), Questionnaire # 2, Question 10.

¹⁹⁵ See Mexico, Academic’s report, Questionnaire # 2, Question 11.

¹⁹⁶ See Peru, Practitioner’s report (1), Questionnaire # 2, Question 11.

¹⁹⁷ See Portugal, Practitioner’s report, Questionnaire # 2, Question 11.

¹⁹⁸ See Russia, Practitioner-Academic’s report, Questionnaire # 2, Question 10.

¹⁹⁹ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Questions 10 and 11.

In **Spain**, there is a constant tendency towards an increase of electronic means to submit assessments and to correct errors. With the purpose to facilitate the fulfilment of tax obligations, the Resolution of 21 December 2018 (Official Gazette of Spain, 7 January 2019) broadens the scope for the rectification of self-assessment by electronic means.²⁰⁰

In **Sweden**, e-filing of tax returns is one of the main focus areas of the Swedish Tax Agency.²⁰¹

In **Turkey**, in 2018, the Ministry of Finance (MoF) widened the electronic services provided through the Tax Portal, introducing electronic cross-checking. The taxpayers may electronically reply to the MoF's invitation for explanation.²⁰²

5.3 Confidentiality

5.3.1 General issues

It is undisputable that everyone has the right to respect for his private and family life, his home and his correspondence. Hence, public authority shall not interfere with the exercise of this right, except when strictly necessary in a democratic society in the interests, among others, in the economic well-being of the country.²⁰³ The exercise of investigative powers in tax matters, while fundamental for the “economic well-being of the country”, pose considerable threats to the right to privacy.²⁰⁴ Needless to say, the necessity for governmental measures that (i) restrict the invasion of privacy inherent to tax collection to a bearable minimum vis-à-vis the public interest involved in tax collection; (ii) legally guarantee protection for the taxpayer and his information in the hands of the tax authorities; (iii) protect the information from possible leaks, mainly through encryption; (iv) restrict access to taxpayers' confidential information only to the tax officials involved in the assessment; (v) strengthen the security measures for accessing the information; and (vi) punish any form of breach or unauthorized access to the taxpayers' information is of paramount importance.

In this regard, throughout 2018, many developments have been achieved to better protect taxpayers' right to privacy.

In **Belgium**, in certain specific cases in which a large number of data were seized by the tax authorities, in practice, it can be agreed with the Tax Authorities to proceed to an encryption of the data and agree upon specific access procedures.²⁰⁵ In general, tax law provides that the tax authorities have the obligation of professional secrecy (article 337 Income Tax Code). Nevertheless, the Court of First Instance of Brugge ruled that the additional tax imposed

²⁰⁰ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Question 11.

²⁰¹ See Sweden, Practitioner and Academic's joint report, Questionnaire # 2, Question 11.

²⁰² See Turkey, Academic's report, Questionnaire # 2, Question 11.

²⁰³ See Article 8 of the ECHR, EU Law IBFD.

²⁰⁴ See P. Baker and P. Pistone, *supra* n. 10, at p. 28.

²⁰⁵ See Belgium, Practitioner report, Questionnaire # 2, Question 12.

because of an unannounced audit and access to professional premises whereby the tax authorities were accompanied by a film crew and wore bodycams for the purpose of reality television was not contrary to the law and could not be annulled. The Court also refused to grant compensation to the taxpayer for the authorities' alleged breach of professional secrecy. The Court took into consideration that in the television broadcast, the faces had been blurred (Court of First Instance of Brugge, 22 May 2018, no. 18/298/A).²⁰⁶

In **Bulgaria**, an official who disseminates tax and/or social security information is subject to a sanction. According to National Revenue Agency reports, this sanction was imposed more often during 2018.²⁰⁷

The Office of the Privacy Commissioner (OPC) of **Canada**²⁰⁸ and the Privacy Act²⁰⁹ govern the personal-information-handling practices of Canadian federal departments and agencies. The OPC conducts investigations and audits of personal-information-handling practices to ensure compliance with the laws and adequate management of personal information. Audits can look at the physical and security controls used to protect personal information, the organization's policies, practices and procedures and how privacy incidents are managed. From these audits, the OPC will identify any areas requiring improvement and highlight the good privacy practices of the organization. Where appropriate, the Privacy Commissioner may make recommendations to help prevent issues from recurring.²¹⁰

In **Colombia**, through Decree 2184 of 2017, the Information Security Office was created as a unit responsible for leading the Information Security Management System in order to protect information and information systems, as well as unauthorized access, use, disclosure, disruption and destruction. This office was created in compliance with the treaties on information exchange as a measure to ensure the confidentiality and treatment of information. Recently, Circular 001 of 2019 was issued to inform the Personal Data Treatment Policy compiled by the DIAN. Confidentiality, as a principle that governs data processing, implies that the DIAN guarantees that all persons involved in the processing of personal data are obliged to ensure the confidentiality of the information.²¹¹

In **Italy**, since 25 May 2018, the Tax Agency has applied the GDPR on the protection of individuals with regard to the processing of personal data.²¹² The Tax Agency employs appropriate security measures – whether organizational, technical or physical – to protect information from alteration, destruction, loss, theft or improper or unlawful use.²¹³

²⁰⁶ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 12.

²⁰⁷ See Bulgaria, Practitioner's report, Questionnaire # 2, Question 12.

²⁰⁸ See <https://www.priv.gc.ca/en/>.

²⁰⁹ See <https://laws-lois.justice.gc.ca/eng/acts/P-21/>

²¹⁰ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 12.

²¹¹ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 12.

²¹² The Italian Tax Agency is entitled to process data with headquarters in Via Cristoforo Colombo N. 426 C/D – 00145-Rome-E-mail address: entrate.updp@agenziaentrate.it. See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 12.

²¹³ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 12.

In **Kenya**, Section 6 of the Tax Procedures Act imposes a requirement on all Kenya Revenue Authority officials to maintain confidentiality of taxpayer information. Officials who fail to do so commit an offence under Section 102 of the Act. Tax officials are provided with credentials to access taxpayers' information.²¹⁴

In the **Netherlands**, in response to research done by a Dutch TV programme at the beginning of 2017 that showed that the personal data of citizens are not sufficiently secured, the Dutch Tax Authority has undertaken measures to restrict access to personal data by their employees.²¹⁵

5.3.2 Guarantees of privacy in the law

The entry into force of the GDPR in Europe gave impulse to most of the developments regarding guarantees of taxpayer privacy in the law.

In **Belgium**, following the implementation of the GDPR, there are currently specific rules that govern the right to access of (personal) data (cf. Law of 3 August 2012 regarding the processing of personal data by the Federal Public Service of Finance (FPS) in the framework of its tasks). Pursuant to Article 10 of this law, the right of access will be individual and personally awarded on the basis of a profile. Access rights may not be transferred. Every user of the internal network of the Federal Public Service to which a personal access has been granted is personally responsible for its use. Any access to files, data or electronic applications will be controlled by the management system in terms of the identity of the person requesting access and in terms of the match with his profile. Any access or attempt to access the data is logged and is subject to automatic registration. For each application, an access matrix is created according to a standard procedure taking into account business and technical aspects. This access matrix contains access rules that can respond to the questions: "who may see what, where, when and in what capacity", "who can see what" and "what-where". The current standard is the Identity & Access management system (IAM). It is a computer tool in which any new application developed within the FPS should be included. This system offers an identification, authentication, authorization, login and audit system (cf. Article 3 Royal Decree of 10 December 2017 implementing Article 4, third paragraph of the Act of 3 August 2012 containing the provisions on the processing of personal data by the FPS in the context of its missions).²¹⁶

In **Canada**, the largest employee-initiated breach ever discovered at CRA occurred in March 2018, when a worker briefly accessed the files of 11,745 individuals.²¹⁷

In **Colombia**, the DIAN has implemented measures to ensure that only authorized officials can access the information that they require for the fulfilment of their duties. It also

²¹⁴ See Kenya, Practitioner's report (2), Questionnaire # 2, Questions 12 and 13.

²¹⁵ See Netherlands, Practitioner's report, Questionnaire # 2, Question 12.

²¹⁶ See Belgium, Practitioner's report, Questionnaire # 2, Question 13.

²¹⁷ See Canada, Practitioner's report, Questionnaire # 2, Question 13.

has firewalls that completely prevent unauthorized access to data held by revenue authorities, and even authorized use is restricted to specific IP addresses. On the other hand, the DIAN has put effective mechanisms into operation to guarantee the integrity, availability and confidentiality of the information exchanged with other jurisdictions. In this regard, an audit of active authorizations was carried out in 2018 in order to maintain strict control of the officials of each unit with access to information according to their functions. Audits are possible only when an investigation into unauthorized access to confidential information is in progress. No audit has been carried out so far.²¹⁸

The Commissioner of Data Protection in **Cyprus** issued guidelines to this end on the basis of ensuring that there is no authorized access to personal data, but these have not yet been implemented. Additionally, on 24 May 2018, the Ministry of Finance issued a Circular²¹⁹ specifying that all documents that contain personal data should only be accessed by officials that are authorized to access such documents for the purpose of fulfilling their duties, explaining the process to be followed for the identification of such officials.²²⁰

In **Denmark**, the GDPR has led to a higher degree of focus on practical restrictions on access to data within the tax authorities. The compartmentalization of access to data and the control of user rights to access data has been strengthened.²²¹

In **Italy**, since 25 May 2018, the Tax Agency has applied the GDPR on the protection of individuals with regard to the processing of personal data. If there are privacy violations, there is a privacy obligation on the Ombudsman in the case of infringement.²²²

In **Slovenia**, basic rules on confidentiality are included in the Tax Procedures Act (Articles 15-30). Sanctions for third parties for violating the rules are defined in Article 395 of the Tax Procedure Act. Violation of confidentiality on the part of tax officials is considered a major violation of working obligations and sanctioned accordingly. Best practice is respected as well. The tax IT system has been evaluated for safety standards and received an assessment rating of A+. Additionally, access to data is restricted, according to the legal provisions, only to officials in need of information because of their tasks. The use of data is restricted in accordance with the provisions of the Law on Financial Administration.²²³

²¹⁸ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 13 and 14.

²¹⁹ See:

[http://www.mof.gov.cy/mof/papd/papd.nsf/All/ED0B7551CB22CAC0C22582A3004118D3/\\$file/%CE%95%CE%B3%CE%BA%CF%8D%CE%BA%CE%BB%CE%B9%CE%BF%CF%82%20%CE%B1%CF%81.%201575.pdf?Openelement](http://www.mof.gov.cy/mof/papd/papd.nsf/All/ED0B7551CB22CAC0C22582A3004118D3/$file/%CE%95%CE%B3%CE%BA%CF%8D%CE%BA%CE%BB%CE%B9%CE%BF%CF%82%20%CE%B1%CF%81.%201575.pdf?Openelement)

²²⁰ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 13.

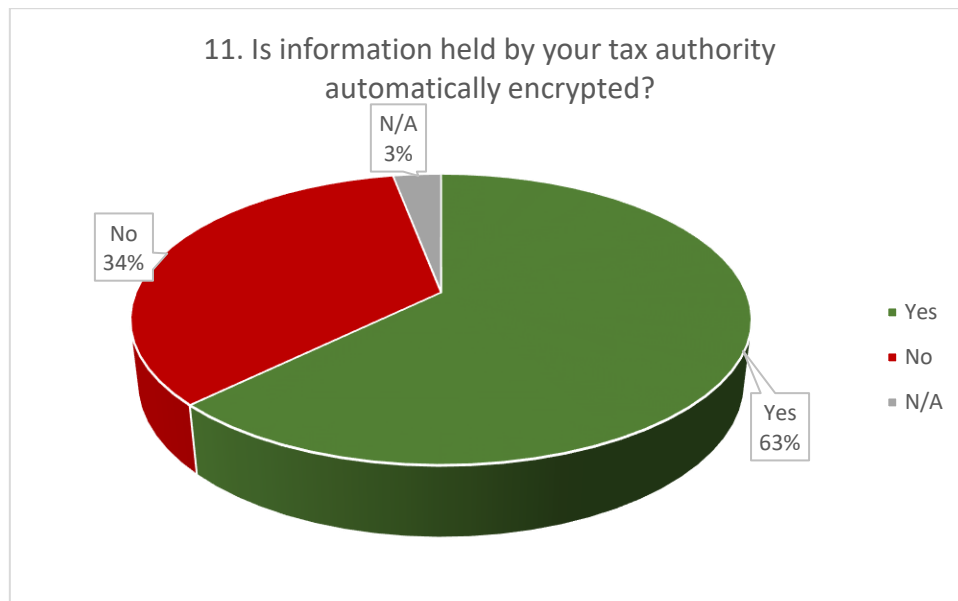
²²¹ See Denmark, Tax Administrator and Practitioner joint report, Questionnaire # 2, Question 13.

²²² See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Questions 13 and 14.

²²³ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 12 and 13.

5.3.3 Encryption

Combined with legal guarantees of privacy, encryption of the information held by a tax authority to the highest level of security attainable is the best practice for the protection of taxpayers’ confidentiality. Most reports reflect agreement with this statement, as depicted in the chart below.



This situation tends to be steady in the surveyed countries, as reported by national reporters. In this regard, only two developments were reported.

In **Austria**, the taxpayers have the right to correct an assessment based on a pre-populated return for 5 years. Therefore, if the assessment is made for 2018, taxpayers have the right to correct it until 31 December 2023.²²⁴

In **Kenya**, taxpayers are able to amend assessments and any other information on their *iTax* profile.²²⁵

5.3.4 Control of access

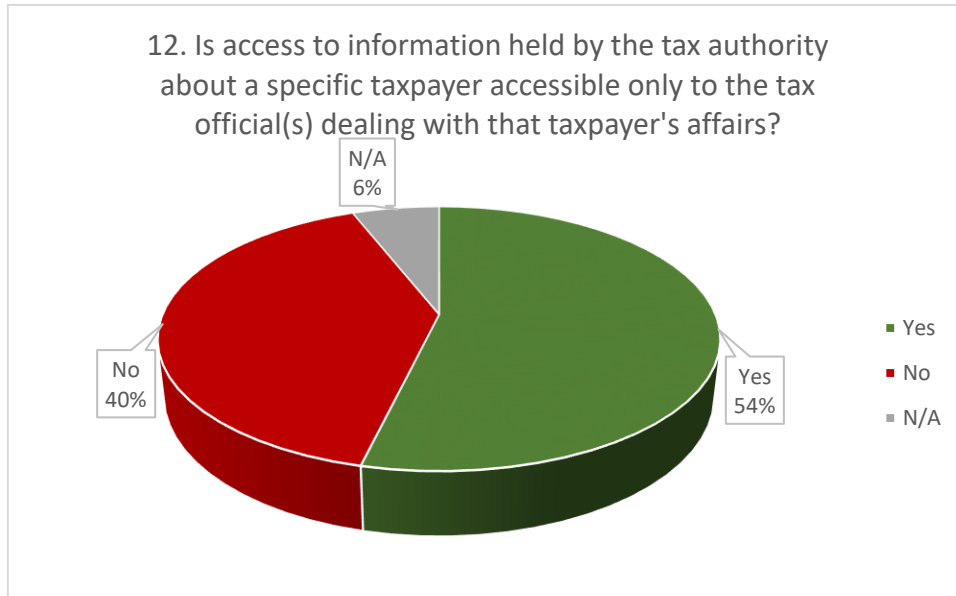
It is apparent that confidentiality is ensured when only authorized personnel is allowed to have access to taxpayers’ information. As a rule, access shall be granted only to those tax officials engaged in assessing taxpayers’ situations, under the strictest conditions.

As a further measure for guaranteeing confidentiality, access to information held by the tax authority about a specific taxpayer is granted only to the tax official(s) dealing with that

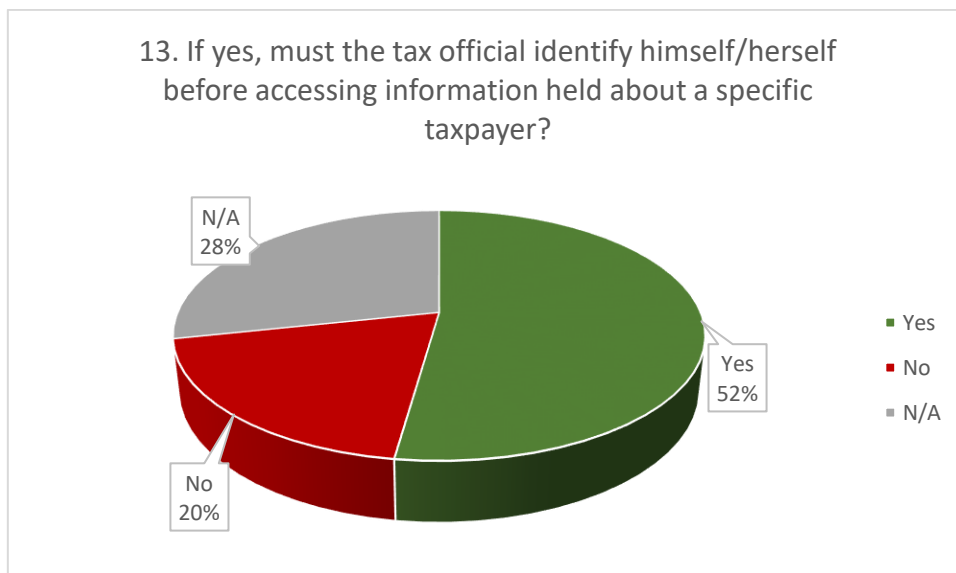
²²⁴ See Austria, Tax Administrator, Practitioner, Academic and Tax Ombudsman’s Joint Report, Questionnaire # 2, Question 16.

²²⁵ See Kenya, Practitioner’s report, Questionnaire # 2, Question 16.

taxpayer’s affairs in most of the surveyed jurisdictions, following the trend in encryption depicted above. This trend can be seen in the chart below.²²⁶



In this context, it is logical that tax officials engaged in an investigation of the taxpayer’s affairs (and therefore allowed to access information on the taxpayer held by the tax authorities) identify themselves. That is the trend followed by a steady number of jurisdictions, according to the national reports²²⁷ and as shown in the chart below.



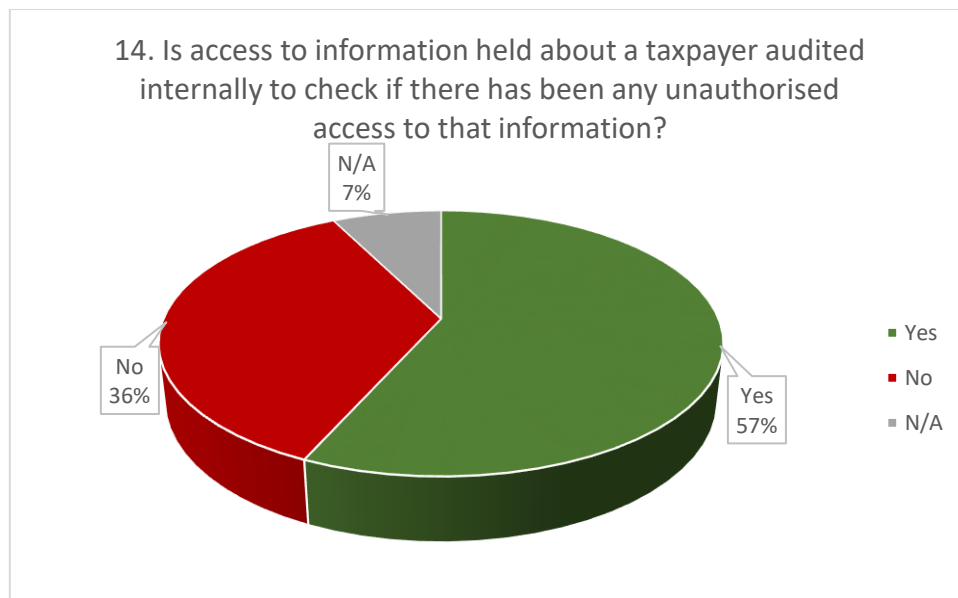
²²⁶ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

²²⁷ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

No developments were reported in this regard during 2018.

5.3.5 Auditing of access

A sound administrative practice to ensure confidentiality demands regular audits of the access to information held about a taxpayer in order to verify possible unauthorized access, and therefore information leaks that might harm the taxpayers’ right to privacy. Following the same trend of all questions regarding encryption, 38 reports informed of a policy of the tax authorities to conduct internal audits of information held about taxpayers to check for leaks. On the other hand, 24 reports indicated that no such audits were conducted in their jurisdictions, and 5 reports did not provide an answer.²²⁸



For developments in 2018, only **Slovenia** reported that data access is audited regularly by an internal audit unit of the tax administration. This information can also be audited externally (by the Court of Auditors), but this is not done on a regular basis.²²⁹

5.3.6 Administrative measures to ensure confidentiality

Several national reports refer to specific administrative measures taken to emphasize the importance of confidentiality to the tax officials. In the case of European countries, these measures were driven by the implementation of the GDPR, fundamentally by the appointment of a Data Protection Officer and the adaptation of the administrative infrastructure to the tasks of such officer.

²²⁸ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

²²⁹ Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 14.

In **Australia**, the Government's Notifiable Data Breaches Scheme came into force on 22 February 2018. It requires agencies and organizations that hold data to have appropriate plans in place to minimize the risk of data breaches and, when they do occur, (i) to take action to remediate the potential harm to the affected citizens; or (ii) when remedial action is not effective, to notify the affected citizens so that they may take action to protect themselves against harm.²³⁰ Pursuant to the scheme, all Australian government agencies were required to implement the Australian Government Agencies Privacy Code on 1 July 2018. The Code requires all agencies to appoint a full-time designated Privacy Officer and Privacy Champion and implement protocols and safeguards to manage confidential, personal and sensitive information and action plans for dealing with potential breaches.²³¹

In **Canada**, the tax authority completed, in March 2017, a CAD 10.2 million technology project known as the Enterprise Fraud Management Solution. The purpose of the project was to track and deter any unauthorized access to taxpayer information by CRA employees.²³²

In **Kenya**, an officer that fails to follow the provisions for confidentiality commits an offence.²³³

In the **Netherlands**, in response to research done by a Dutch TV programme at the beginning of 2017 that showed that the personal data of citizens are not sufficiently secured, the Dutch Tax Authority has undertaken measures to restrict access to personal data by their employees.²³⁴

In **Slovenia**, rules on the implementation of the Tax Procedure Act define administrative measures: every document should be marked as tax secret, all premises where tax data are kept should be clearly marked and special security measures should be applied to all premises where tax data are kept and processed or where meetings with taxpayers take place. In this regard, the tax administration has a special Data Protection Policy in place to provide for a high standard of protection of data and privacy. It is an obligation of every employee to follow this policy.²³⁵ Breaches of confidentiality are investigated internally by the tax administration, as these can be seen as breaches of working obligations (disciplinary measures). These cases may eventually be brought before a court. The conduct of the tax administration in the event of a breach of confidentiality is defined by internal policy. In addition, if the breach of confidentiality involves the misuse of personal data, further investigation and sanctioning is possible from the Personal Data Protection Commission, pursuant to the Slovenian Law on Protection of Personal Data.²³⁶

²³⁰ See <https://www.oaic.gov.au/privacy-law/privacy-act/notifiable-data-breaches-schem>. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 15.

²³¹ See <https://www.oaic.gov.au/privacy-law/australian-government-agencies-privacy-code/>. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 15.

²³² See Canada, Practitioner's report (2), Questionnaire # 2, Question 15.

²³³ See Kenya, Practitioner's report (2), Questionnaire # 2, Question 15.

²³⁴ See Netherlands, Practitioner's report, Questionnaire # 2, Questions 14 and 15.

²³⁵ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 15.

²³⁶ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 17.

5.3.7 Official responsibility for data confidentiality

Following the trend predicted by Baker and Pistone²³⁷ and because of the entry into force of the GDPR, many countries have appointed or intend to nominate specific tax officials with the responsibility of ensuring confidentiality, bringing this requirement closer to being considered a minimum standard.

In **Belgium**, the Data Protection Officer shall periodically monitor access and attempts to access information in an effort to detect security incidents (cf. Article 10, §4 of the Act of 3 August 2012, containing provisions regarding the processing of personal data by the Federal Public Finance Service in the context of its missions (changed in September 2018)). A Service for Information Security and Protection of Privacy is set up within the Federal Public Finance Service and is placed directly under the authority of the Chairman of the Management Committee of the Federal Public Finance Service. This service assists the Data Protection Officer in the execution of his tasks as defined in the GDPR.²³⁸

In **Colombia**, the culture of information security among public servants was strengthened through training courses in 2018, and information security and privacy policies have been generated and included in the DIAN's good governance code, updated in 2019. In the event that a breach of confidentiality occurs, DIAN officials report the conduct to the competent judicial authority.²³⁹

In **Cyprus**, the Tax Department will proceed with the appointment of a Data Protection Officer (DPO) following the implementation of the GDPR. This task is currently undertaken by the Legal Service.²⁴⁰

In **Denmark**, the GDPR requires all tax authorities to appoint DPOs. The Tax Administration has appointed a central DPO and a central DPO team cooperating with appointed personal data coordinators across the different tax authorities.²⁴¹

In **Greece**, a DPO was appointed at the senior level according to the GDPR.²⁴²

In **Italy**, since 25 May 2018, the Tax Agency has applied the GDPR on the protection of individuals with regard to the processing of personal data. Because of the GDPR, there is a privacy obligation on the Ombudsman if there are privacy violations.²⁴³

²³⁷ See P. Baker and P. Pistone, *supra* n. 10, at p. 30.

²³⁸ Cf. Article 8 of the Act of 3 August 2012 containing provisions regarding the processing of personal data by the Federal Public Service Finance in the context of its missions (changed in September 2018). See Belgium, Practitioner's report, Questionnaire # 2, Questions 14 and 15.

²³⁹ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 15 and 17.

²⁴⁰ See Cyprus, Practitioner and Academic's report, Questionnaire # 2, Question 15.

²⁴¹ See Denmark, Tax Administrator and Practitioner's joint report, Questionnaire # 2, Question 15.

²⁴² See Greece, Tax Administrator and Academic's joint report, Questionnaire # 2, Question 15.

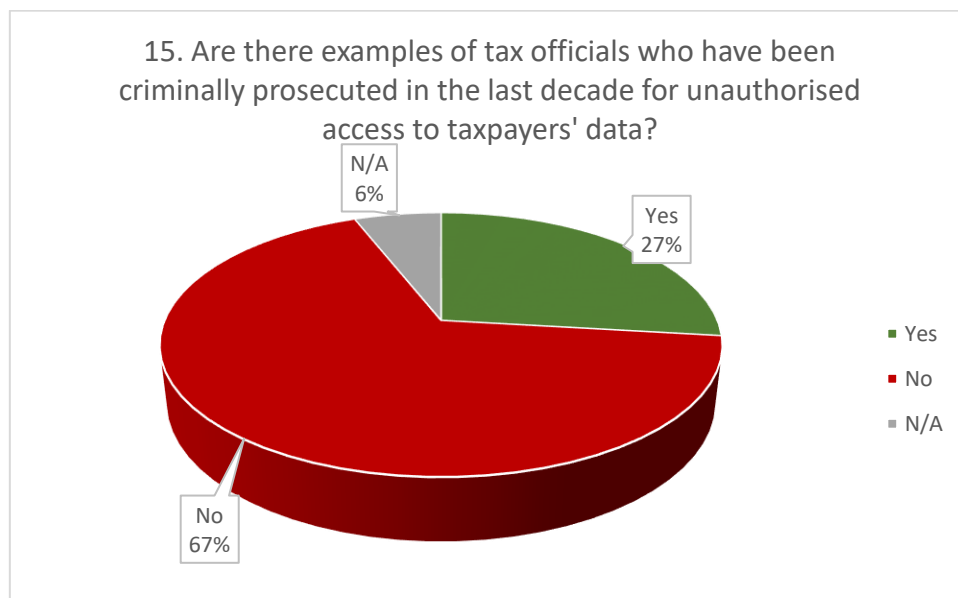
²⁴³ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Questions 15 and 17.

In **Sweden**, the GDPR entered into force on 25 May 2018. Thereafter, anyone who processes personal data wholly or partly by automated means is obliged to have a DPO.²⁴⁴

5.3.8 Breaches of confidentiality – investigations

Confidentiality is ensured when breaches are fully investigated by independent persons, preferably judges, with an appropriate level of seniority. This conduct can be identified as a minimum standard.²⁴⁵ As Baker and Pistone point out straightforwardly, breaches of taxpayer confidentiality should never happen, given the damage to the taxpayers’ right to privacy and the potentially catastrophic harm to the relationship between them and the revenue authority.²⁴⁶

However, most surveyed jurisdictions reported no prosecutions of tax officials for unauthorized access to taxpayers’ data in the last decade. There is a possibility of this being due to the lack of unauthorized access to such data, although it seems very unlikely.



In this regard, in **Australia**, no officers were found guilty of any confidentiality-related offences in the financial year ending on 30 June 2018.²⁴⁷ In addition, a 12-month pilot of independent reviews of small business (with turnover of < AUD10 million) who have faced audit was started in July 2018.²⁴⁸

In **China**, illegal disclosures of taxpayers’ tax-related confidential information constitute administrative or criminal violations, and there are special administrative and

²⁴⁴ See Sweden, Practitioner and Academic’s joint report, Questionnaire # 2, Question 15.

²⁴⁵ See P. Baker and P. Pistone, *supra* n. 10, at p. 75.

²⁴⁶ See P. Baker and P. Pistone, *supra* n. 10, at p. 30.

²⁴⁷ See Australia, Academic’s report, Questionnaire # 2, Question 12.

²⁴⁸ See Australia, Academic’s report, Questionnaire # 2, Question 17.

criminal proceedings to regulate them. There was a new special supervisory system created during 2018 that applies to the tax administration.²⁴⁹

In **Colombia**, violation of personal data was codified as a felony by Law 1273 of 2009, which amended the Criminal Code. This behaviour can be committed by any citizen, and it is an aggravated crime when the disclosure is committed by a public authority. Additionally, facilitating the disclosure is also provided for in the Code. It can be committed by any citizen who helps evade the action of the authority or impede an investigation that is pending for any crime, such as the crime of violation of personal data. Regarding disciplinary offences, Law 1581 of 2012, which regulated the protection of personal data, established the disciplinary responsibility of public authorities for the breach of what is regulated therein, for example, the failure to keep the information under the conditions of security necessary to prevent consultation, use or unauthorized access. Accordingly, the new Disciplinary General Code, approved in January 2019, maintains the general duty of confidentiality of state officials.²⁵⁰

In **Cyprus**, following the implementation of the GDPR, the Tax Department is obliged to investigate data breaches. However, no specific guidelines have been published to that effect.²⁵¹

In **Kenya**, an officer that fails to follow the provisions for confidentiality commits an offence. Tax officials who contravene the confidentiality requirements commit an offence under Section 102 of the Tax Procedures Act.²⁵²

In **Slovenia**, according to the Law on Financial Administration and the Law on Public Servants, a breach of confidentiality constitutes a major violation of working obligations and is sanctioned accordingly. In very severe cases, a tax official can be prosecuted for a criminal offence (abuse of an official position or official rights) pursuant to Article 257 of the Criminal Code.²⁵³

5.3.9 Breaches of confidentiality – remedies

No developments were reported in this matter during 2018.

5.3.10 Countries with a tradition of transparency

No developments were reported in this matter during 2018.

5.3.11 Exceptions to confidentiality – the general principle

²⁴⁹ See China, Academic's report, Questionnaire # 2, Question 17.

²⁵⁰ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 18.

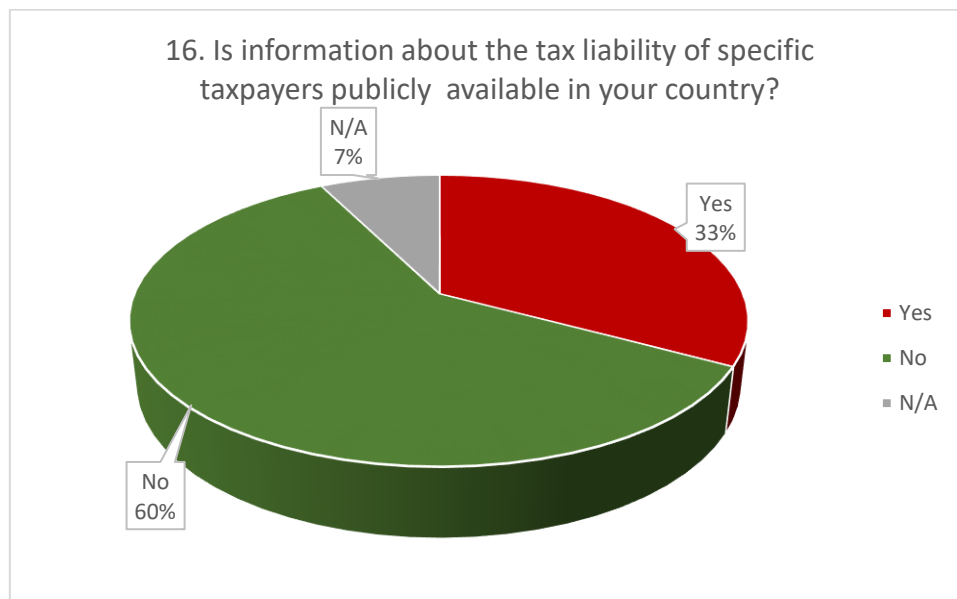
²⁵¹ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 17.

²⁵² See Kenya, Practitioner's report (2), Questionnaire # 2, Questions 17 and 18.

²⁵³ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 18.

Exceptionally, the right to privacy needs to give priority to other values constitutionally protected in a democratic society by operation of balancing.²⁵⁴ Provided that the fundamental nature of the right of privacy, as part of a bundle of “constitutional rights positions”²⁵⁵ granted to taxpayers because of their *human dignity*, it seems obvious that situations in which the right to privacy is superseded by other public considerations should be exceptional, explicitly stated in the law and narrowly interpreted.²⁵⁶

Following this trend, most surveyed jurisdictions do not make information about the tax liability of specific taxpayers publicly available, as shown in the chart below.²⁵⁷



Colombia complies with this minimum standard. Law 1581 of 2012 regulates exceptions to confidentiality expressly and exhaustively.²⁵⁸

In **Poland**, information about settlements with the tax authorities (in 2012-2018) of companies whose annual revenues exceed EUR 50 million and 60 tax groups operating in Poland is made public. In this way, information about their income, costs, losses, amount of CIT due and percentage share of the tax due in gross profit, which the company showed in the financial statements, will be disclosed. The information will be published every year until the

²⁵⁴ A way of solving the problems arising from conflicting principles applicable to a given situation, by assigning the proper value to each principle and weighing their rational applicability to the case at hand. See R. Alexy, *supra* n. 11, at pp. 102, 107.

²⁵⁵ R. Alexy, *supra* n. 11, at p. 159, and C.E. Weffe, *supra* n. 11.

²⁵⁶ See P. Baker and P. Pistone, *supra* n. 10, at p. 32.

²⁵⁷ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

²⁵⁸ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 19.

end of September and updated every quarter according to the Act of 24 November 2017 amending the act on income tax from legal persons (Journal of Laws 2017.2369).²⁵⁹

In **Slovenia**, exceptions are limited to those especially defined in Articles 18-28 of the Tax Procedures Act.²⁶⁰

In **Spain**, it should be highlighted that the *recurso de amparo* (action for protection) that was submitted by the SDC in respect of the *Falciani* case (Judgment of the Supreme Court of 23 February 2017) was accepted by the Constitutional Court in October 2017, and it remains unresolved for the time being.²⁶¹

In the **United States**, as an exception to the confidentiality rules under Section 6103, the IRS may contact third parties in connection with certain tax enforcement actions under Section 6702, provided it gives the taxpayer advanced notice of the contact. However, the generic advanced notice it provides on IRS Publication 1, which it sends to every taxpayer at the beginning of most enforcement actions, is inadequate because it does not give the taxpayer a reasonable opportunity to provide the information and avoid the contact. In *J.B. v. United States*, 2019 WL 923717 (2019) the United States Court of Appeals for the Ninth Circuit held that IRS Publication 1 did not provide the taxpayer with “reasonable notice in advance” of third party contacts, as required by IRC § 7602(c)(1).²⁶²

5.3.12 Exceptions to taxpayer confidentiality – disclosure in the public interest: naming and shaming

Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- **Shammat v. Romania (Application No. 15807/14, 16-10-2018):** The request concerns the disclosure of the applicant’s personal data (surname, first name, domicile and administrative number of the dwelling) by the town hall of his domicile for publication on three occasions in a local daily newspaper. The purpose of this publication was to inform the public of the non-payment by certain taxpayers, including the applicant, of taxes due to the local Community budget. The claimant filed a civil action in tort and the internal courts recognized that by disclosing the

²⁵⁹ See Poland, Judiciary report, Questionnaire # 2, Question 19.

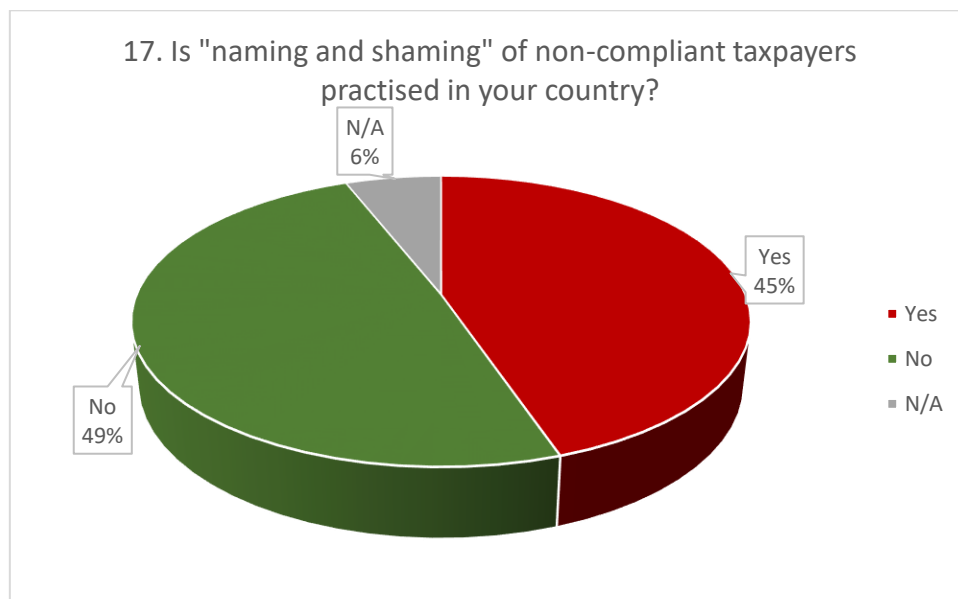
²⁶⁰ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 19.

²⁶¹ See Spain, Tax Ombudsman, Judiciary and Academic’s joint report, Questionnaire # 2, Question 19.

²⁶² See National Taxpayer Advocate 2015 Annual Report to Congress 123-142 (Most Serious Problem: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers’ Businesses and Reputations); National Taxpayer Advocate 2018 Objectives Report to Congress 98-101 (Area of Focus: IRS Third Party Contact (TPC) Notices Should Be More Specific, Actionable, and Effective). See also United States, Tax Administrators’ report, Questionnaire # 2, Question 19.

applicant's personal data without his consent, the local authority had ignored article 8 of the Convention. The applicant was granted, at first instance, a civil remedy worth EUR 1,000, which was reduced, in appeal, to EUR 50 by the judgment of 9 September 2013 of the Bihor County Court, on the ground that the law did not have specific criteria.

Naming and shaming is not per se an appropriate policy. Human dignity should prevent the state from applying any punitive measure that, instead of reinserting the non-compliant citizen into the paths of the law, may keep them resentful and rebellious.²⁶³ This would contradict any rational enforcement goals that naming and shaming might obtain. The situation worsens if naming and shaming is not applied with adequate safeguards,²⁶⁴ such as *res iudicata*, in protection of the presumption of innocence (and therefore human dignity). The measure might be regarded as unfair, and therefore might discourage regular compliance with the law. However, naming and shaming has been reported as being practised in almost half of the national reports, as shown in the chart below.²⁶⁵



In **Australia**, the Government announced a measure, as part of its 2017 Mid-Year Economic Fiscal Outlook, to empower the ATO to disclose details of business tax debts to credit-reporting bureaus where those taxpayers have not effectively engaged with the ATO to

²⁶³ See K. Murphy, *Enforcing Tax Compliance: To Punish or Persuade?*, 38 Economic Analysis & Policy 1 (Economic Society of Australia (Queensland), 2008), at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.869.9456&rep=rep1&type=pdf>.

²⁶⁴ See P. Baker and P. Pistone, *supra* n. 10, at p. 32.

²⁶⁵ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

address the debt. As part of the safeguarding measures, the ATO is required to consult with the Inspector-General of Taxation prior to making any disclosures.²⁶⁶

In **Brazil**, on 12 November 2018, the Federal Revenue Service enacted Ordinance 1.750, whereby it was made public that the Agency will disclose information about taxpayers prosecuted with regard to alleged tax crimes. Previous judicial authorization is required for such disclosure.²⁶⁷

In **China**, naming and shaming is employed either (i) when the Tax Inspection Bureau has made written decisions of tax disposal or a tax administrative penalty and the taxpayers neither applied for administrative review nor filed administrative litigation during the statutory period; or (ii) if there is a remedial procedure followed, when the final decisions have been made. The disclosure of confidential information by the revenue authorities needs no judicial authorization.²⁶⁸

In **India**, income tax proceedings are confidential, and the details of a taxpayer cannot ordinarily be disclosed under section 138 of the Income Tax Act ITA. However, a list of top tax defaulters has been publicized since 2016. This does not give other details, such as the facts or the modes employed by the taxpayers.²⁶⁹

There is no naming and shaming in **Kenya**.²⁷⁰

In **Peru**, naming and shaming is not a practice of the tax authorities. However, a similar effect has been produced in practice by the media in certain renowned cases (e.g. *Telefónica del Perú*, *Scotiabank* and mining companies).²⁷¹

In **Poland**, amendments to the VAT Act will enable the head of the National Tax Administration to keep a blacklist of active VAT taxpayers, i.e. taxpayers removed from the register and taxpayers restored to it, pursuant to the Act of 5 July 2018 amending the Act – Tax Ordinance and certain other acts (Journal of Laws 2018.1499).²⁷²

In **Slovenia**, naming and shaming has been employed since 2012. It applies to taxpayers with outstanding tax debt of EUR 5,000 or more with a payment delay of more than 90 days

²⁶⁶ See <https://static.treasury.gov.au/uploads/sites/1/2017/12/c2017-t246047-Exposure-Draft.pdf>. As well, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 20.

²⁶⁷ See Brazil, Practitioner's report (1), Questionnaire # 2, Question 20.

²⁶⁸ See China, Academic's report, Questionnaire # 2, Question 20.

²⁶⁹ See <https://www.businesstoday.in/sectors/banks/income-tax-department-names-and-shames-loan-defaulters-490-crore/story/273661.html>. Also, see India, Academic's report, Questionnaire # 2, Question 20.

²⁷⁰ See Kenya, Tax Administrator's report, Questionnaire # 2, Question 20, and Kenya, Practitioner's report (2), Questionnaire # 2, Question 20.

²⁷¹ See Peru, Practitioner's report (3), Questionnaire # 2, Question 20.

²⁷² See Poland, Judiciary report, Questionnaire # 2, Question 20.

and to taxpayers who do not file withholding tax returns to the tax administration (so called “non-filers”). The latter is especially important for social security withholding returns.²⁷³

5.3.13 Exceptions – disclosure in the public interest: combating fraud

Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- ***Halet v. Luxembourg (Application No. 21884/18, 27-11-2018)***: The case concerns the applicant’s conviction for a fine of EUR 1,000 in the case of the so-called “Luxleaks”. The applicant – at the time, an Administrative Officer at PricewaterhouseCoopers (PwC) – had extracted and revealed to a reporter fourteen tax returns from his employer’s clients, which were used for a second television broadcast of the show Cash Investigation (one year after the first broadcast), dealing with the massive tax evasion practised by multinational companies. In the course of his trial, the applicant invoked article 10 of the Convention and supported, inter alia, that the documents given to the journalist were relevant, as the tax declarations made it possible to exploit and analyse the practice of advance tax agreements (ATAs) and to highlight the magnitude and inadequacy of this process and the tax gains achieved. The Court of Appeal, sitting in correctional matters, considered that the tax declarations produced by the applicant were merely endorsing the result of the journalistic investigation and were certainly useful to the journalist but provided no essential, new and unknown information until then. It also considered that, although acting in good faith, the applicant would not have been able to take advantage of the cause of the warning launcher’s justification, since the balancing of interests at stake leaned towards those of PwC, which had necessarily been adversely affected by the applicant’s actions. In sentencing, however, the Court of Appeal took into account, as a mitigating circumstance, the repute of the motive that had prompted the applicant to act. In civil court, the applicant was ordered to pay PwC symbolically one euro as compensation for moral damage.

Sometimes, the application of the law of balancing would lead to a waiver of confidentiality, due to the prevailing interest of preventing fraud. This exception would apply to rebellious taxpayers who failed to file their returns, those reluctant to provide information to the tax authorities in a timely manner, etc. This exception might raise the same concerns discussed in the previous section: a general application of this exception might lead to substantial damages to taxpayers’ right to privacy and harm the effective validity of principles

²⁷³ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 20.

such as *nemo tenetur*, for example. Consequently, specific legislation and judicial authorization for applying these powers shall be regarded as a minimum standard.²⁷⁴

In **Australia**, the Tax Debt Information Disclosure Declaration 2018 – as of 31 December 2018, before Parliament – proposes allowing the ATO to report to credit-reporting agencies the tax debt information of businesses that do not “effectively engage” with the ATO to manage those debts.²⁷⁵

In **Belgium**, the law of 5 September 2018 (Belgian Official Gazette, 10 September 2018) provides rules with respect to data protection and the processing of data by the tax authorities. The rules are in line with the EU GDPR and include the right to information (Articles 13 & 14 GDPR) and the right to access personal data (Article 15 GDPR). The new rules also provide certain restrictions on the taxpayers’ rights, but these restrictions are subject to strict conditions (Article 23 GDPR), for instance, the law provides the tax authorities with the right to use data mining and provides for restrictions on the taxpayers’ right to access personal data.²⁷⁶

In **Kenya**, Section 6 of the Tax Procedures Act lists the persons that can access a taxpayer’s information. However, all of these persons are subject to similar confidentiality requirements as the tax officials. Politicians are not part of this list.²⁷⁷

5.3.14 Exceptions – supply to other government departments

As a general principle, information supplied to the revenue authorities for tax purposes should not be made available to other government departments. Any exceptions should be explicitly stated in the law, and taxpayers should be made aware of those exceptions: unauthorized disclosure to other civil servants (even to other tax officials who are not authorized to receive the information) should be regarded as a breach of taxpayer confidentiality and lead to the consequences discussed above.²⁷⁸

All developments produced in 2018 follow this path. In **Colombia**, the President issued Circular 001 of 2018 to invite high-level public authorities of the Executive Branch to publish their tax returns in order to give the government greater transparency.²⁷⁹

In **Cyprus**, taxpayer information is disclosed in Parliament only when required for control purposes.²⁸⁰

²⁷⁴ See P. Baker and P. Pistone, *supra* n. 10, at p. 33.

²⁷⁵ See Australia, Academic’s report, Questionnaire # 2, Question 19.

²⁷⁶ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 19.

²⁷⁷ See Kenya, Practitioner’s report (2), Questionnaire # 2, Questions 19 and 21.

²⁷⁸ P. Baker and P. Pistone, *supra* n. 10, at p. 33.

²⁷⁹ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 21.

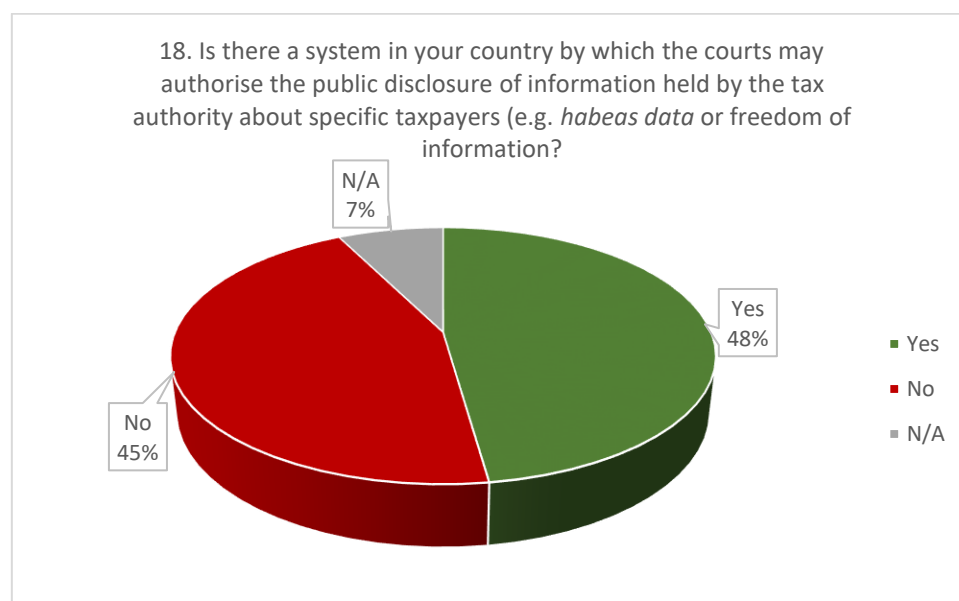
²⁸⁰ See Cyprus, Tax Administrator’s report, Questionnaire # 2, Question 21.

In **Kenya**, any data sent to parties like Parliament on general matters is anonymized, protecting taxpayers’ identities. For supervisory purposes, the data requested by Parliament is subject to confidentiality obligations.²⁸¹

In **Slovenia**, parliamentary supervision is restricted to summarized data on tax collection and tax debt. In accordance with Article 23 of the Tax Procedure Law, the Parliament can access confidential taxpayer information only if needed for carrying out obligations of the Parliament defined by law. For example, no confidential information will be shared with a member of Parliament on the basis of a parliamentary question. On the other hand, if the Parliament establishes an Investigation Commission and tax data are needed to fulfil the task of the Commission, confidential taxpayer information can be provided. In this case, anyone reading or using this information must observe confidentiality of this information, pursuant to Article 30 of the Tax Procedure Act.²⁸²

5.3.15 The interplay between taxpayer confidentiality and freedom-of-information legislation

Nearly half of the national reporters²⁸³ declared the existence of a system of judicial authorization for the public disclosure of information held by the tax authorities about specific taxpayers, such as habeas data or freedom of information, as portrayed in the chart below.



In **Colombia**, a reform approved in December 2018 established that the information and procedures administered by the Risk Management System of the tax authority (DIAN) is confidential. In practice, this information is confidential, even for the taxpayer. Regarding the

²⁸¹ See Kenya, Tax Administrator’s report, Questionnaire # 2, Question 21.

²⁸² See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 21.

²⁸³ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

exchange of information, the taxpayer's access to information about himself is not allowed, unless there is an investigation against him. A confidential document can only be disclosed with judicial authorization.²⁸⁴

In **Kenya**, third-party access to taxpayer information is not allowed, and the court has yet to order that this be granted.²⁸⁵ Section 60 of the Tax Procedures Act states that tax officials shall only have access to a taxpayer's information once they have obtained a warrant.²⁸⁶

In **Luxembourg**, the General Tax Act does not contain any specific provisions allowing taxpayers to access their personal tax files, as recently (2017) confirmed by the *Tribunal Administratif* (Trib. Adm. 30 June 2017 no 37931 and 38551). In the absence of any express provisions, the Tribunal ruled that such a right should be interpreted by virtue of the right to defence guaranteed under §205 of the General Tax Act. According to §205, the Luxembourg tax authorities have the obligation (i) to hear taxpayers prior to issuing adjusted tax assessments; (ii) to request additional information from taxpayers whenever necessary; and (iii) to inform taxpayers prior to the issuance of a tax assessment containing significant changes. Usually, when the tax authorities comply with one of the three obligations, according to the situation at hand, the taxpayer right to defence is deemed respected by the Courts. The application of §205 of the General Tax Act, however, requires a pending assessment procedure. Outside of such procedure, a taxpayer cannot rely on §205 to request access to his tax file, as confirmed by the *Tribunal Administratif* in 2002. Despite the lack of explicit provisions regarding access to information, it may not be excluded that in practice, tax offices provide, on a voluntary basis, copies of information requested by the taxpayer. This may vary according to the personal circumstances put forward by the taxpayer to access the requested data and the flexibility of the competent tax office.²⁸⁷

In **Mexico**, in October 2018, the Mexican Tax Ombudsman Agency (hereinafter *Procuraduría de la Defensa del Contribuyente*, or PRODECON) issued a non-binding criterion stating that the Mexican National Institute of Access to Information (INAI, for its Spanish acronym of *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*) must provide an opportunity to all parties involved in an information request to argue against the disclosure of their information, regardless of whether such information is marked as "public". The non-binding criterion issued by the PRODECON is derived from the substantive services rendered to taxpayers. All non-binding criteria issued by the PRODECON are derived from the Technical Committee that meets every month and is composed of the Tax Ombudsman, Deputies and General Directors.²⁸⁸

Also in **Mexico**, in order to avoid VAT avoidance through outsourcing operations, the tax authorities enacted a rule that provides that contracting companies are required to request information from service providers by means of an electronic questionnaire. No special rule

²⁸⁴ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 22.

²⁸⁵ See Kenya, Tax Administrator's report, Questionnaire # 2, Question 22.

²⁸⁶ See Kenya, Practitioner's report (2), Questionnaire # 2, Question 22.

²⁸⁷ See Luxembourg, Academic's report, Questionnaire # 2, Question 22.

²⁸⁸ See Mexico, Tax Ombudsman's report, Questionnaire # 2, Question 22.

about confidentiality was enacted. The rule discussed is provided in rule number 3.3.1.44 of the First Amendment to the Treasury General Miscellaneous Tax Regulations for 2018.²⁸⁹

In **Slovenia**, the Law on freedom of information (Article 6, para. 1, item 5) provides for an exemption as far as confidential tax information is concerned. As a principle, this information should not be disclosed. However, there is a possibility in the law that tax information be disclosed in exceptional cases in which the interest in making the information public prevails over the confidentiality. The test of public interest is done by the tax administration, and its decision can be appealed against at the Office of the Information Commissioner. A judicial procedure is provided for against a decision of the Office of the Information Commissioner.²⁹⁰

5.3.16 Anonymized judgments and rulings

Balancing between the taxpayers' right to privacy and transparency in judicial proceedings is one of the biggest challenges for the practical protection of taxpayers' rights in a democratic society. Whereas taxpayers are entitled to privacy (and equally to the protection of industrial and/or commercial secrets as part of their competitive position in the relevant market), there is an obvious public interest in the proper functioning of the judiciary, and it is also important for taxpayers' awareness of the interpretative criteria of tax law by the courts. The best way to achieve a proportionate balance still seems to be the anonymization of rulings and judgments:²⁹¹ it protects the taxpayer's privacy while allowing the judiciary to be transparent and the taxpayers to know the courts' criteria for relevant tax cases in advance.

In **Bulgaria**, published tax rulings/judgments are strictly anonymized. There is no date allowing for the identification of the taxpayer.²⁹²

In **Italy**, by a decision of the Director of the Tax Agency dated 7 August 2018 (prot. No. 185630), since 1 September 2018, all types of rulings are to be published on the website of the Tax Agency anonymously in order to release the interpretation of the Tax Agency on the issues proposed by the taxpayer.²⁹³

In **Kenya**, The Tribunal's decisions are public information. However, the Tax Appeals Tribunal Section 29(10) states that the Tribunal shall take measures to prevent the disclosure of trade secrets or other confidential information.²⁹⁴

²⁸⁹ See Mexico, Practitioner's report (1), Questionnaire # 2, Question 21.

²⁹⁰ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 22.

²⁹¹ See P. Baker and P. Pistone, *supra* n. 10, at p. 34.

²⁹² See Bulgaria, Practitioner's report, Questionnaire # 2, Question 23.

²⁹³ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 23.

²⁹⁴ See Kenya, Practitioner's report (2), Questionnaire # 2, Question 23.

In **Slovenia**, standard and best practices are observed. Individual tax rulings in principle are not published by the tax administration. Rulings of courts in tax matters are published, but anonymized.²⁹⁵

5.3.17 (Legal) professional privilege

Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- ***Kolev v. Bulgaria* (Application N° 38482/11, 07-06-2018):** The applicant, an accountant, complains, under Article 8 (relying, in addition, on Article 6), that the search of his office for information concerning his clients was disproportionate and that the authorities seized numerous items that were unrelated to the aims of that search. He points out that the search and seizure paralyzed the work of his company and damaged his good name and professional reputation. The applicant complains, in addition, under Article 13, that he did not have any effective domestic remedy in relation to his complaints.
- ***Ljubas v. Croatia* (Application No. 4101/14, 07-06-2018):** The applicant, an accountant, complains, under Article 8 (relying, in addition, on Article 6), that the search of his office for information concerning his clients was disproportionate and that the authorities seized numerous items were unrelated to the aims of that search. He points out that the search and seizure paralyzed the work of his company and damaged his good name and professional reputation. The applicant complains, in addition, under Article 13, that he did not have any effective domestic remedy in relation to his complaints.

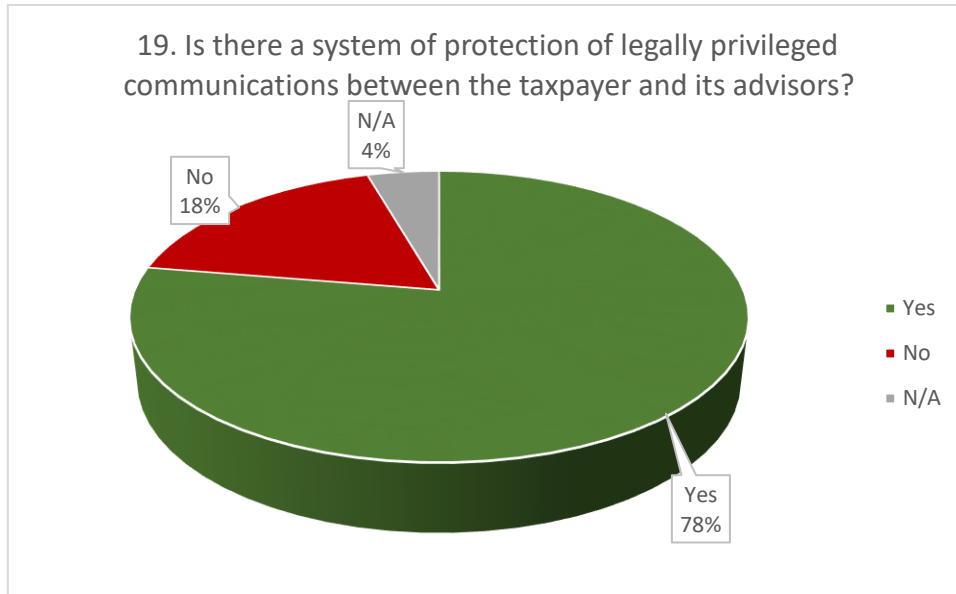
The search for transparency in the fight against tax evasion and tax avoidance, powered by the OECD Action Plan against Base Erosion and Profit Shifting (BEPS), has become a major challenge for taxpayer rights linked to professional assistance, namely the rights to defence, certainty and legitimate expectations. The (legal) professional privilege is under siege. The BEPS Action 12 Final Report on Mandatory Disclosure Rules²⁹⁶ proposes major constraints to this fundamental right by binding intermediaries to provide information on tax optimization schemes that might eventually be regarded as aggressive, and the European Union has followed this path by enacting Council Directive 2018/822 of 25 May 2018.²⁹⁷

²⁹⁵ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 23.

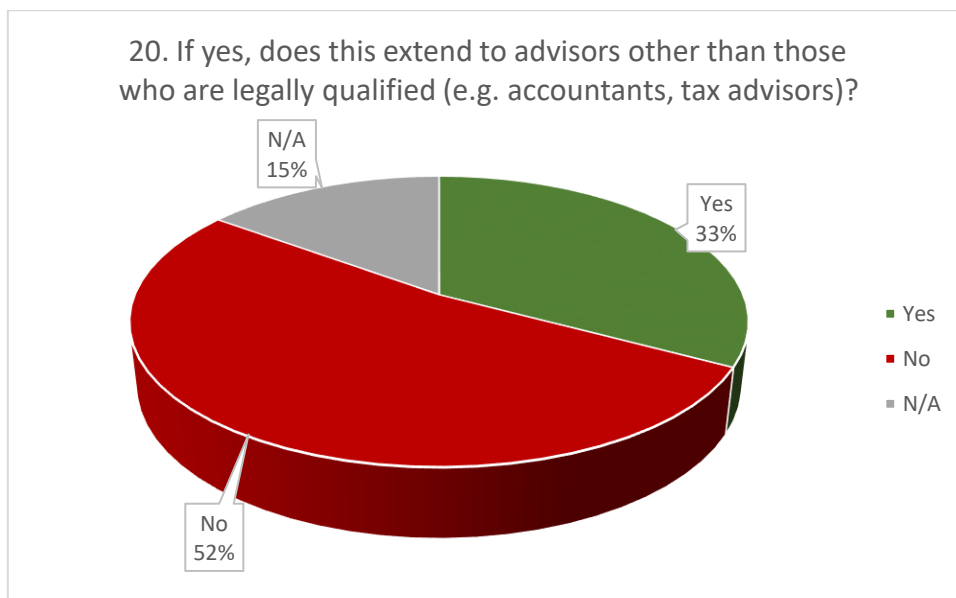
²⁹⁶ See OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing (2015), at: <https://doi.org/10.1787/9789264241442-en>.

²⁹⁷ See N. Čičin-Šain, *New Mandatory Disclosure Rules for Tax Intermediaries and Taxpayers in the European Union – Another "Bite" into the Rights of the Taxpayer?*, 11 World Tax J. (2019), Journals IBFD.

However, most jurisdictions keep the (legal) professional privilege as one of the features of tax systems, following the minimum standard, as shown by the chart below.



Regretfully, in the surveyed jurisdictions, this guarantee of proper assistance when dealing with tax matters for taxpayers is mostly limited to the legal profession, so the best practice is not followed by the majority of surveyed jurisdictions, as shown by the chart below.



In this regard, most of the developments registered about the professional privilege in tax matters follow the trend set by the OECD.

In **Belgium**, on 18 January 2018, the Supreme Court ruled that information that was obtained from a lawyer in breach of the client-attorney privilege could be used by the tax authorities to establish a tax assessment (Supreme Court 18 January 2018, F. 16.0031.N).²⁹⁸

In **Bulgaria**, in December 2018, offices of a law firm were searched, as well as the accounting office providing services to the law firm and its clients, and documents were seized, based on a decision of a Specialized Criminal Court.²⁹⁹

In **Canada**, in *MNR v. Atlas Tube Canada ULC*, 2018 DTC 5124 (FC), the Federal Court held that a due diligence report prepared by an accounting firm was not protected by solicitor-client privilege. The Court also held that tax accrual working papers, if prepared by a non-lawyer (and not by the direction of a lawyer) and requested by the CRA in the context of an active audit of particular issues, is not subject to solicitor-client privilege.³⁰⁰

In **Colombia**, legal professional privilege applies to lawyers and accountants when they provide tax advice.³⁰¹

In **Kenya**, Section 60 (10) of the Tax Procedures Act states that tax officials may access taxpayer information despite any law relating to privilege or contractual duty of confidentiality. The Tax Procedures Act provides that tax officials will have access regardless of rules regarding the privilege in the Evidence Act.³⁰²

In **Peru**, Legislative Decree N° 1372 has established that lawyers, accountants, financial advisers and notaries public who interact with companies or investment vehicles as shareholders, directors, trustees or similar must inform the tax administration of the beneficial owner of said companies or investment vehicles. This is quite common in Peru, given that the law requires that corporations have a plurality of shareholders. Therefore, it is common for a client to have 99.9% of the shares while his lawyer has the remaining 0.01%.³⁰³

In **Portugal**, although aiming to fight money laundering and the financing of terrorism and partially transposing EU legal instruments on those matters, Law no. 83/2017 of 18 August (entering into force on 1 January 2018) requires lawyers to take the initiative to report certain transactions carried out by their clients in such ample terms that it may affect legal privilege and even the balance of the burden of proof.³⁰⁴

In **Slovenia**, professional privilege applies to lawyers, but not to tax advisers. The profession of tax advisers is not regulated in the country. If tax officials enter premises or

²⁹⁸ See Belgium, Practitioner's report, Questionnaire # 2, Question 24.

²⁹⁹ See Bulgaria, Practitioner's report, Questionnaire # 2, Question 24.

³⁰⁰ See Canada, Practitioner's report (2), Questionnaire # 2, Question 24.

³⁰¹ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 24.

³⁰² See Kenya, Practitioner's report (2), Questionnaire # 2, Questions 24 and 25.

³⁰³ See Peru, Practitioner's report (3), Questionnaire # 2, Question 24.

³⁰⁴ See Portugal, Practitioner's report, Questionnaire # 2, Question 24.

conduct a search, independent witnesses must be present. No special arrangements on how to deal with privileged material are defined in the general guidance on tax audit/investigation.³⁰⁵

In the **United Kingdom**, the legal professional privilege does not apply to tax advice provided by chartered accountants and other advisers who are not members of the legal profession. This position was confirmed in a Supreme Court judgment in 2013 in the case of *R (on the application of Prudential plc and another) (Appellants) v. Special Commissioner of Income Tax and another (Respondents)*, [2013] UKSC 1.³⁰⁶ The judgment stated that “legal advice privilege should not be extended to communications in connection with advice given by professional people other than lawyers, even where that advice is legal advice which that professional person is qualified to give”. Chartered accountants do have litigation privilege, which applies to advice given in anticipation of or in relation to cases that are going to appear before the courts.³⁰⁷

In the **United States**, communications with tax advisors might be privileged in general under Title 26, Section 7525, unless they concern a transaction that has a significant purpose the avoidance. In addition, the attorney-client privilege may apply to communications with an accountant if the communications are "made in confidence for the purpose of obtaining legal advice from the lawyer."³⁰⁸

5.4 Normal audits

5.4.1 Tax audit and its foundation principles

Recent Relevant Case Law

European Court of Human Rights

Cases decided in 2018:

- See *Gohe v. France (5th Section, Applications N° 65883/14, 21434/15, 48044/15 and 51477/15, 3-7-2018)* in section 5.5.3.

Cases communicated in 2018:

- *Maroslavac v. Croatia (Application No. 64806/16, 26-11-2018)*: The case concerns the tax-related administrative proceedings in which the applicant, a notary public, was ordered to pay VAT for the period between 1 January 2003 and 31 May 2007, profit tax for the period between 1 January 2003 and 31 December 2006 and income

³⁰⁵ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 24 and 25.

³⁰⁶ The Supreme Court press release explaining the judgment is available at <https://www.supremecourt.uk/cases/docs/uksc-2010-0215-press-summary.pdf>.

³⁰⁷ See United Kingdom, Practitioner's report, Questionnaire # 2, Question 24.

³⁰⁸ See *United States v. Kovel*, 296 F.2d 918, 921-22 (2nd Cir. 1961). See United States, Tax Administrators' report, Questionnaire # 2, Question 24.

tax for the period between 1 January 2003 and 31 December 2005. The tax assessment was based on the tax inspection of the applicant's financial activities, which was conducted over a period of four months. The applicant complains, under Article 1 of Protocol No. 1, that she was unable to effectively participate in establishing her obligation to pay income tax, given that the order extending the tax inspection to income tax had been served to her only one day before the tax inspection ended. She also complains that the tax inspection took into account her financial activities in 2001 and 2002 and that she was ordered to pay profit tax for that period even though the statutory limitation period for doing so had expired. She complains that the domestic authorities never properly addressed her complaints in that respect.

Court of Justice of the European Union

Cases communicated in 2018:

- **IN – C 469/18 (OJ C 427, 26-11-2018, p. 4):** This case involved a request for a preliminary ruling from the *Hof van Cassatie* (Court of Cassation of Belgium), lodged on 19 July 2018 (*IN v. Belgische Staat*). The issue was of whether Article 47 of the Charter of Fundamental Human Rights of the European Union, in cases of VAT, should be interpreted as (i) precluding, in all circumstances, the use of evidence obtained in violation of the right to respect for private life as guaranteed by Article 7 of the Charter; or (ii) leaving room for a national regulation under which the court that has to decide whether such a piece of evidence can be used as the basis for a VAT assessment has to make an evaluation such as the one set out in paragraph 4 of this judgment.

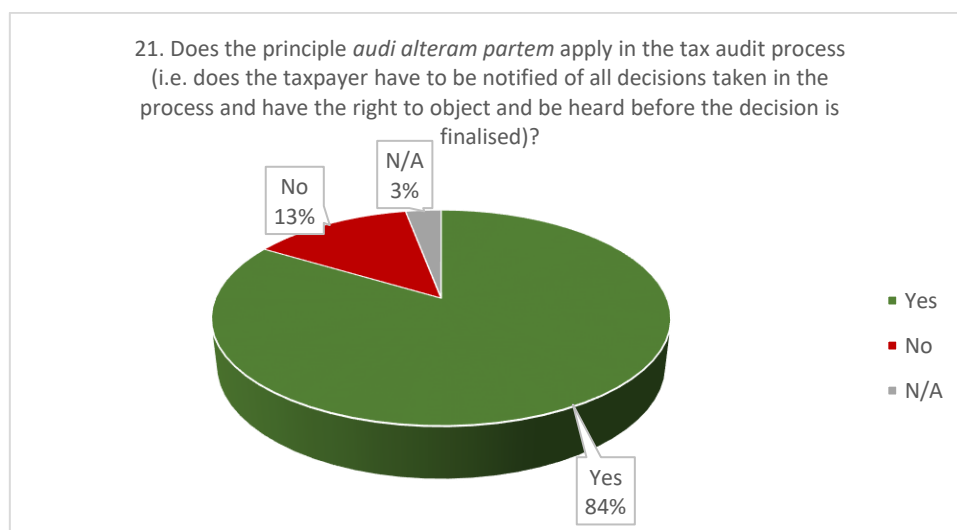
Inter-American Court of Human Rights

Decisions:

- ***I. V. v. Bolivia* (Application No. 12.655, Serie C No. 329, 30-11-2016):** In November 2016, the Inter-American Court on Human Rights delivered its judgment on merits in a case in which the claimant was subjected, without her consent, to a tubal ligation procedure in a Bolivian state hospital. The Court ruled in favour of the claimant, finding that the State violated several of her rights. A few months later, the same woman requested the Court to order provisional measures for the protection of her life and personal integrity (Articles 4 and 5 of the Convention) due to a deemed “tax persecution” against her by the Bolivian Tax Office. The Tax Administration filed a legal action against the claimant, requiring the payment of VAT and income tax debts, allegedly in retaliation of the judgment rendered by the Inter-American Court. The petitioner of the provisional measures would have suffered a psychological crisis as a direct result of the filing of such a legal action, being confined to a private mental health hospital. Because of this, she requested that the Bolivian Government (i) desist the legal action aimed to collect taxes; (ii) take charge

of the medical and other related expenses incurred by the woman; and (iii) identify the names of the individuals responsible for the harassment and persecution conducted by the authorities. The Inter-American Court denied the request for provisional measures on the basis that the claimant had not provided sufficient evidence for demonstrating that (i) the legal action, filed by the Tax Office to collect debts for a total amount of USD 155, caused irreparable damage; and (b) her rights to life and personal integrity were facing a threat or violation of extreme gravity that would require an urgent response. Furthermore, the Court clarified that Article 53 of its Rules of Procedure does not provide, to the victim, any sort of overall immunity that may prevent the Government from initiating all legal proceedings. On the contrary, such a rule only entails that the authorities are not allowed to take action against someone in retaliation of having appeared before the Inter-American Court of Human Rights. Everyone should feel free to do so without fear of persecution or harassment.

The tax audit is the procedural activity through which the tax authorities declare, after their own investigation, fact-finding and legal qualifications of relevant facts, whether the taxpayer has performed the taxable event or not and, if so, the amount of tax due. This activity can be performed in lieu of the taxpayer’s self-assessment in the case that the taxpayer has not filed a return or as a means by which to monitor the taxes assessed by taxpayers or third parties, such as withholding agents, on their behalf. As a rule, when conducting an audit, the tax authorities must abide by all legal guarantees established for the proper exercise of state powers according to the rule of law. According to Baker and Pistone,³⁰⁹ best practice in tax audits should be developed around four foundation principles: (i) *audi alteram partem*, or the right to be heard before any decision is taken; (ii) *nemo tenetur se detegere*, or the principle against self-incrimination; (iii) proportionality; and (iv) *ne bis in idem*, or the prohibition of double jeopardy. Regarding the first of these ground rules, the majority of surveyed jurisdictions integrate the *audi alteram partem* into their assessment procedures, as shown in the chart below.



³⁰⁹ See P. Baker and P. Pistone, *supra* n. 10, at p. 36.

In **Australia**, recent initiatives by the ATO have also aimed to take a more proportional approach to the imposition of penalties. This has been done through the introduction of penalty relief in some circumstances of inadvertent errors that result from a failure to take reasonable care in adopting positions that are not reasonably arguable. Penalty relief is available for individual taxpayers, small businesses, self-managed superannuation funds, strata bodies, not-for-profit organizations and cooperatives.³¹⁰

Also in **Australia**, in the 2018 financial year, the ATO pre-filled over 80 million transactions to streamline taxpayer reporting and enhance its accuracy. The ATO extended its data sources, obtained data more quickly following the end of the income year and expanded the range of information available via its pre-filing services. This assisted in reducing the reporting burden on individuals when completing their annual income tax returns. Initiatives such as the Real Time Reporting of Salary and Wage information through Single Touch Payroll and the introduction in 2018 of the prefilling of information on the disposal of shares and units are examples of how the ATO has increased the speed and breadth of its pre-filing service. Making better use of its data allows for early engagement with taxpayers to assist them and enables the ATO to identify taxpayers that may be non-compliant. In the 2018 financial year, 87.5% of the value of income reported in individual tax returns exactly matched the pre-filled information. The ATO has also introduced a programme for taxpayers who are entitled to a refund of franking credits, which has removed the need for these taxpayers to lodge a claim form in order to get their refund. The ATO uses the data that it holds to calculate and provide the taxpayer with the refund due. These taxpayers are able to opt out of the automated programme and lodge a claim form for the refund. In the 2018 financial year, the ATO issued refunds of franking credits to approximately 59,000 taxpayers.³¹¹

In addition to the above, in **Australia**, the ATO uses automated programmes to identify and correct errors once a return is lodged by checking reported income against the third-party data that it holds. This enables returns to be processed more quickly, reducing refund delays and the need to contact a taxpayer about the error, as well as minimizing the risk of debt issues arising at a later stage.³¹²

Also in **Australia**, the ATO is aiming to reach this best practice standard for the “one audit per taxable period” standard in certain areas of compliance. For example, it is piloting a new approach for worker classification assurance that should minimize the need for audit activity.³¹³

In **Belgium**, at the end of a tax audit, before establishing the actual tax assessment, the tax authorities must send the taxpayer a notification indicating which remarks/comments made by the taxpayer are not taken into account and the motives justifying this decision (a so-called

³¹⁰ See <https://www.ato.gov.au/general/interest-and-penalties/penalties/penalty-relief/>. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 26.

³¹¹ See Australia, Tax Ombudsman's report, Questionnaire # 2, Question 27.

³¹² See Australia, Tax Ombudsman's report, Questionnaire # 2, Question 27.

³¹³ See Australia, Tax Ombudsman's report, Questionnaire # 2, Question 28.

“notification of the decision to tax”: Article 346, 5° and Article 352bis Income Tax Code). The Court of Appeal of Liège ruled that sending this notification is a substantial formality, the non-compliance of which by the tax authorities leads to the annulment of the tax assessment (Liège 25 May 2018, no. 2016/RG/1233).³¹⁴

Also, in **Belgium**, the tax authorities send a formal request for information to a “Payment Service Provider” (PSP), as a third party, requesting to provide “all” transaction data of “all” foreign payment cards used in 2015 and 2016 via the systems of that PSP. The Court of First Instance of Antwerp ruled that this is a “fishing expedition”, which is allowed. The possibility to request information from third parties does not allow the tax authorities to request data for which it can be established in advance to a very large extent that it is by no means likely that it will have any relevance for taxation purposes (Court of First Instance of Antwerp 2 February 2018, no. 17/1638/A).³¹⁵

Regarding the *nemo tenetur* principle, in **Belgium**, the Court of First Instance of Leuven ruled, in a VAT case, that it cannot be generally permitted for a taxpayer to refuse to submit his bookkeeping and accounting documents by relying on his right to remain silent. The Court ruled that the obligation to submit the books and documents that the law requires a taxpayer to keep is not subject to the right to remain silent, since they already exist independently of the will of the taxpayer (Court of First Instance of Leuven, 9 February 2018, no. 12/1462/A). It should be noted that the taxpayer in this case had already been notified by the tax authorities that he was being suspected of having committed tax fraud.³¹⁶

Also in **Belgium**, since 2015, the Supreme Court has repeatedly confirmed that evidence illegally obtained by the tax authorities must not necessarily be excluded from a court litigation as evidence. Such evidence should only be discarded if the manner in which the tax authorities obtained the evidence is completely opposed to good governance or if the use of such evidence would impede the taxpayer’s right to a fair trial. On 18 January 2018, the Supreme Court again confirmed this jurisprudence and ruled that the mere fact that the evidence was obtained in violation of the professional secrecy of a lawyer does not necessarily mean that it cannot be used in court (Supreme Court, 18 January 2018, F.16.0031.N). On 28 June 2018, having regard to the ECJ *WebMindLicenses* judgment (ECJ, 17 December 2015, C-419/14), the Belgian Supreme Court asked the EC J for a preliminary ruling on the question of whether evidence obtained in violation of the right to respect for private life in VAT cases must be excluded “in all circumstances” or whether EU law allows for a weighing of interests in the case of such violations, as is the case in Belgian jurisprudence (“Antigoon doctrine”) (Supreme Court 28 June 2018, no. F.17.0016.N).³¹⁷

Also in **Belgium**, the principle of *ne bis in idem* is not enacted in the law. Therefore, a taxpayer may be subject to double jeopardy (e.g. VAT and direct taxes) and a double sanction. Moreover, the Belgian courts tend to apply the most recent case law of the ECtHR in a very

³¹⁴ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 26.

³¹⁵ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 27.

³¹⁶ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 30.

³¹⁷ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 35.

broad manner (*A and B v. Norway*, ECtHR 15 November 2016) and already confirmed the application of a VAT fine combined with a tax increase in income taxes. The same applies for the principle against self-incrimination. This principle is not enacted in Belgian tax law. Moreover, the Belgian Courts interpret this principle very strictly (in accordance with the case law of the ECtHR).³¹⁸

Also in **Belgium**, there is a recent trend that the tax authorities request more and more information from the taxpayer that is not always strictly needed. The Court of First Instance of Antwerp, div. Antwerp ruled that the scope of an investigation with payment service providers when the tax authorities requested all the transaction data of payments made in Belgium with foreign debit and credit cards during multiple years was too broad and concluded the illegality of this request (CFI Antwerp, div. Antwerp, 2 February 2018).³¹⁹

In **Bulgaria**, the tax authorities are constantly requesting more information than necessary by law in the case of tax audits. In 2018, there was a significant increase in the number of requested transport documents related to intra-community supplies/deliveries for VAT purposes.³²⁰ Additionally, in the case that the taxpayer remains silent in the case of an ongoing tax audit, the tax authorities may determine the tax base at their discretion.³²¹

In **Canada**, in the course of an audit, review or verification, if the CRA requires information in addition to that already submitted by a taxpayer on their notice of assessment(s) and that found in the taxpayer's file, the CRA can request supporting documentation. Taxpayers are given a clear timeframe for providing the requested supporting documentation. Tax preparers and tax professionals (accountants and tax lawyers) have informed the Office of the Taxpayers' Ombudsman that they are often asked by the CRA to submit the same documents more than once. This creates an additional burden for professionals and additional costs for the taxpayer. Requests to provide the same documentation within a tax year, or year-over-year when the information does not change, are inconsistent with Article 10 of the Taxpayer Bill of Rights, which states that taxpayers have "the right to have the costs of compliance taken into account when administering tax legislation". Corporations have also successfully challenged the CRA in Federal Court regarding the requirement to provide internal accounting documents. In the court case *BP Canada Energy Company v. Canada (National Revenue)*, 2017 FCA 61,³²² the Federal Court of Appeal allowed the appeal of BP Canada to an order of the Federal Court (2015 FC 714) that allowed the application of the Minister of National Revenue, pursuant to subsection 231.7(1) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) (the Act) compelling the production of internal accounting documents, generally referred to as tax accrual working papers (TAWPs). The order was issued for the purpose of assisting the Minister in conducting ongoing audits of BP Canada. The information contained in TAWPs is highly sensitive, as these papers typically reveal uncertain tax positions taken by public corporations in filing their tax returns, opinions as to the likely outcome in the event of a challenge by the Minister and related

³¹⁸ See Belgium, Practitioner's report, Questionnaire # 2, Question 26.

³¹⁹ See Belgium, Practitioner's report, Questionnaire # 2, Question 27.

³²⁰ See Bulgaria, Practitioner's report, Questionnaire # 2, Question 27.

³²¹ See Bulgaria, Practitioner's report, Questionnaire # 2, Question 30.

³²² See <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/229222/index.do>.

provisions established to ensure sound and fair financial reporting. BP Canada maintains that the Federal Court judge failed to take into account the exceptional nature of this information in ordering its provision. The Canadian Ombudsman is of the view that the documents ordered to be produced, given the purpose for which they were sought, were beyond the reach of the Minister and that the Federal Court judge committed a number of legal and factual errors in ordering their provision.³²³

Also in **Canada**, it is possible that taxpayers could be subject to an audit, review or verification for a previously audited/reviewed/verified issue or period. This generally occurs when the taxpayer has multiple accounts (for example, goods and services/harmonized sales tax, income tax and payroll) or when new information about an issue becomes available to the CRA after the completion of an audit/review/verification. According to the CRA, there are multiple points in an audit (such as the initial contact and interview, audit queries, meetings, proposals and the final interview) at which a taxpayer is asked to provide information and representations. In the review or verification of a claim in an income tax return, the CRA may request supporting documentation from the taxpayer. According to Article 15 of the Taxpayer Bill of Rights, taxpayers have the right to be represented by a person of their choice. All CRA audit programmes issue a proposal letter to taxpayers and their representatives prior to reassessment, and taxpayers have the opportunity to submit representations. The extent to which these established protocols are available to the taxpayer in practice or the extent to which the information provided by taxpayers is taken into account by auditors before the completion of an audit is unclear. A 2016 report by Canada's Auditor General on Income Tax Objections³²⁴ found that taxpayers objecting to their reassessments post-audit had the reassessment overturned in 66.1% of cases. For reviews and verifications of a claim in an income tax return, the CRA may issue a notice of assessment or reassessment based on information already held by the CRA without input from the taxpayer, or it may issue a notice of assessment or reassessment based on the supporting documentation submitted by the taxpayer at the CRA's request.³²⁵

In **Canada**, in the case of *BP Canada Energy Co. v. Minister of National Revenue*, 2017 FCA 61, the Federal Court of Appeal reversed a lower court decision that had the effect of generally granting the CRA unrestricted access to the tax accrual working papers of a taxpayer. The CRA intends to issue guidance clarifying its policies on the circumstances in which it may request such information. Additionally, in *Canada (National Revenue) v. Hydro-Quebec*, 2018 FC 622, the Federal Court made a strong statement against an interpretation of the CRA's auditing powers that would allow virtually unlimited invasion of taxpayer privacy. The decision dealt with the CRA's power to compel the provision of information and documents about unnamed taxpayers from third parties. In this context, the decision held that the Court will both strictly interpret the CRA's audit powers and exercise its discretion in appropriate cases to protect taxpayers from unjustified intrusions by the government and to prevent abusive "fishing expeditions". Additionally, in *MNR v. Cameco*, 2017 DTC 5102, the Federal Court held that the Minister's powers are broad, but not unlimited. The Court concluded that the Minister does

³²³ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 27.

³²⁴ See http://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_02_e_41831.html#appa

³²⁵ See Canada, Tax Ombudsman's report, Questionnaire # 2, Questions 28 and 29.

not have an unlimited ability to conduct oral examinations during an audit and that Parliament intended for there to be a restraint on the Minister's ability to question a taxpayer's employees.³²⁶

In **China**, according to an Announcement of Regulating and Improving Tax Enforcement³²⁷ and an Announcement of Implementing Certain Measures on Further Supporting and Serving the Development of Private Economy³²⁸ made by the Tax Administration, the tax authorities shall standardize law enforcement and effectively reduce the disturbance of enterprises and reduce the burden on taxpayers. Compared with 2017, the tax bureau has made progress in this regard. Additionally, according to the Announcement of Regulating and Improving Tax Enforcement,³²⁹ the tax authorities shall clarify the applicable range of their duty and enforcement, standardize the enforcement protocol, alleviate the burden on taxpayers, improve enforcement procedures, standardize the discretionary power, strengthen enforcement supervision and protect the lawful rights and interests of the taxpayers.³³⁰ In addition, according to Article 2(1) of the SAT Announcement on Regulating and Improving Tax Enforcement,³³¹ the tax authorities shall plan and unify their administration regarding tax enforcement for the same targets, make the effort to jointly conduct tax enforcement and administration through a single visit and share the outcomes.³³²

In **Colombia**, Law 1819 of 2016 modified the regulation of provisional tax assessment, which, as from that moment, do not allow the taxpayer to be heard before the decision is made, in relation to the *audi alteram partem* principle. So far, no provisional tax settlements have been issued under these conditions. Additionally, Law 1943 of 2018 created the simplified tax assessment, which is also issued without the taxpayer having the right to be previously heard. In both cases, the silence of the taxpayer on these tax assessments generate their acceptance. On the other hand, the right not to provide documents that are in the hands of the tax authority was provided to taxpayers by Law 1607 of 2012. In practice, the DIAN requires information that is even in their possession, and any information refused to be provided by the taxpayer in the course of an audit may be interpreted as prejudicial by appeals and the courts.³³³

Also in **Colombia**, the procedure for issuing a provisional tax assessment and simplified tax assessment does not imply the issuance of a prior act. Therefore, taxpayers have no right to be heard before such decisions are made. In fact, taxpayers will be aware of the start of an audit when they are notified of these types of tax assessments. However, taxpayers have the right to provide factual information and submit their views once a provisional tax assessment and simplified tax assessment are notified. In audits, the DIAN respects the taxpayer's right to

³²⁶ See Canada, Practitioner's report (2), Questionnaire # 2, Question 27.

³²⁷ Shui Zong Fa [2017] No. 107.

³²⁸ Shui Zong Fa [2018] No. 174.

³²⁹ Shui Zong Fa [2017] No. 107.

³³⁰ See China, Tax Administrator's (retired) report, Questionnaire # 2, Question 26.

³³¹ Shui Zong Fa [2017] No. 107.

³³² See China, Tax Administrator's (retired) report, Questionnaire # 2, Question 27.

³³³ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 26 and 27.

remain silent, without prejudice to the powers it has to make decisions with the evidence in the file. When a taxpayer does not respond to a request for information, it is interpreted as reluctance that can lead to adverse decisions.³³⁴

Although the principle of proportionality has long been recognized by **Cyprus** courts, following the implementation of the GDPR in **Cyprus**, its application has been increased, and the Commissioner of Data Protection has issued guidelines in this regard.³³⁵ Not all of the principles are respected, although steps are taken towards regarding all of them.³³⁶

In **Denmark**, the current government's *Retssikkerhedspakke III* (Third Package on Legal Protection) introduced completely new Tax Control and Tax Reporting Acts (Act No 1535 19 December 2017 and Act No 1536 19 December 2017), replacing the former Tax Control Act dating back to 1948. Generally, the new acts, to some extent, improve the structure and transparency regarding the rules on tax control and reporting. It is worth noting that several provisions in the new Tax Control Act explicitly refer to proportionality as a requirement for the application of the provision, e.g. Sections 57 and 58 of the Tax Control Act on the obligation of third parties to provide information to the Tax Administration. The development in the form of the new Tax Control Act and Tax Reporting Act is of a more general nature and relevant to both normal and more intensive audits. Additionally, the new Danish Tax Control Act appears to have a stronger focus on proportionality.³³⁷

In **Italy**, taxpayers' right to "participate" fully in the tax administrative procedural phase has been claimed to not be generally recognized.³³⁸ However, on the principle of proportionality, the Italian Court of Cassation (ICC) has recently reiterated the principle that tax penalties must be suitable for the circumstances of the specific case and fulfil the principle of proportionality (ICC, Section V, 28 September 2018, no. 23506). Additionally, the Court of Cassation, adopting the long-standing case law set by the EC J, stated that penalties cannot be determined automatically on the basis of a tax increase according to a flat rate, but they must be graduated in relation to the specific features of the case. In addition, on *ne bis in idem*, the Italian Constitutional Court also ruled (decision no. 43, 2 March 2018), and considered it correct to recall the standard of a "sufficiently close connection in substance and time", as derived from the case law of the Large Chamber CEDU *A and B C v. Norway*, by which, where subsistence exists between the two administrative and criminal proceedings, the double track is made compliant with the Convention and, in particular, with Article 4 of the Protocol. Regarding *audi alteram partem*, the safeguard for the right to be heard before any decision is claimed to be taken, established as mandatory by Article 12, paragraph 7 of Law no 212/2000 (ITBOR), applies to all investigations involving access to the taxpayer's premises, even if it is only for the acquisition of documents. The illegality of the act of assessment issued *ante tempus* is determined by the failure to unfold and safeguard the right to be heard, which constitutes a primary expression of the principles of constitutional derivation, cooperation and good faith

³³⁴ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 29 and 30.

³³⁵ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 27.

³³⁶ See Cyprus, Tax Administrator's report, Questionnaire # 2, Questions 26 and 27.

³³⁷ See Denmark, Tax Administrator and Practitioner's joint report, Questionnaire # 2, Question 26.

³³⁸ See Italy, Practitioner's report, Questionnaire # 2, Question 29.

between the tax administration and taxpayer, and it is directed towards the best and most effective exercise of taxation (ICC, Section VI, Order of 18 July 2018 no. 19128).³³⁹

Additionally in **Italy**, according to the ICC (ICC Ord. No. 4001/2018, 19 February 2018), if the Tax Agency sends a note asking the taxpayer for justification in writing, the taxpayer needs to reply within the terms stated. Otherwise, the taxpayer will no longer be able to raise any defence during the trial before the Tax Commission, at least not if the office did not clearly inform the taxpayer of the consequences that, in the absence of a reply, he/she would have met. This tendency recently established by the ICC certainly turns out to heavily penalize the right to defence. According to the Court, this warning about the repercussions arising from the omitted or delayed production of the required acts, as it constitutes a breach of the obligation of loyal cooperation with the Tax Agency stated even by the ITBOR (Law no. 212/2000, Article 10), justifies a derogation from the principles of the Constitution that have always guaranteed the right to defence during a trial.³⁴⁰

In **Mexico**, a binding Tax Court ruling was issued in August 2018. The title of such ruling states that a “Tax assessment issued by the tax authorities in response to a tax refund request is illegal”. In such ruling, the Tax Court concluded that if the taxpayer files a refund request and the tax authorities not only deny such refund claim, but at the same time issue a tax assessment, such liability is illegal. This is because, in order to issue a tax assessment, the tax authorities must follow the audit process provided by the Tax Code. Such ruling preserves and strengthens the right of the taxpayers to be heard before a tax assessment is issued, as well as the right of the taxpayers not to self-incriminate.³⁴¹

Also in **Mexico**, an amendment to the Tax Code was published on 1 June 2018. In such amendment, a new type of audit was added to the Tax Code. This new type of audit allows the tax authorities to visit taxpayers at their offices and tax domiciles to personally verify the transactions that are being carried out by the taxpayer. This audit allows the authorities to observe and record all of the commercial transactions that take place during the period in which the audit is being carried out. This kind of auditing process clearly is disproportionate with the taxpayers’ commercial activity, as the tax authorities are being intrusive in their domiciles and transactions.³⁴²

In **Peru**, Article 62B of the Tax Code allows, since 2012, two tax audits related to each tax period, one partial and one definitive. However, there is only one tax assessment per tax period. When the tax authorities perform both types of audits in relation to a tax period, the results of the partial audit are included as part of the final assessment. The issues reviewed in the partial audit cannot be reviewed again in the definitive audit.³⁴³

³³⁹ See Italy, Practitioner and Academic’s report, Questionnaire # 2, Questions 26 and 29.

³⁴⁰ See Italy, Practitioner and Academic’s report, Questionnaire # 2, Question 30.

³⁴¹ See Mexico, Practitioner’s report (1), Questionnaire # 2, Question 26.

³⁴² See Mexico, Practitioner’s report (1), Questionnaire # 2, Question 27.

³⁴³ See Peru, Practitioner’s report (3), Questionnaire # 2, Question 28; and Peru, Practitioner’s report (1), Questionnaire # 2, Question 28.

In **Portugal**, the 2018 Budget Law introduced the possibility of a second audit for the “mere review or collection of documents”. There is not yet sufficient clarity as to how the tax authority will interpret this concept.³⁴⁴

In **Slovenia**, audits are conducted in accordance with the Tax Procedure Act and General Administrative Procedure Act. Proportionality, *ne bis in idem* and *audi alteram partem* are fully respected. Regarding proportionality, in practice, it can occur that the perception of the burden on the taxpayer might differ. About *ne bis in idem*, multiple audits of different taxes for the same tax period are possible. It is also possible that quick audits and comprehensive audits will address the same tax period. Quick audits will control only specific elements of a tax assessment, while comprehensive audits will control all aspects of one or multiple taxes for the same tax period. Regarding *audi alteram partem*, according to the Tax Procedure Law, the taxpayer has the right to be present at all meetings and all parts of the audit process. A taxpayer can be present in person or authorize another person, usually a lawyer or a tax adviser, to act as his/her representative in a tax matter. The representative should present to the tax authority written authorization to act as a representative of the taxpayer. Authorization can be general or limited to certain parts of the procedure. In administrative procedures, this principle is not observed to the degree of criminal procedures. However, in tax assessments, the tax administration has the right and obligation to investigate and take into account all circumstances of a tax case and all of the facts in favour or to the detriment of a taxpayer. A decision is made upon assessing all of the circumstances of a case. As far as *nemo tenetur* is concerned, it should be noted that one of the basic principles of tax procedure is that the tax administration has to examine all of the circumstances and facts of a case and should examine facts in favour as well as to the detriment of a taxpayer. It is in the taxpayer’s interest to provide all of the information relevant to the case. If not, the tax administration will assess the tax obligation on the basis of the information available to them. Therefore, if the tax administration is not in possession of evidence to the detriment of a taxpayer, it is not the taxpayer’s obligation to present such evidence. A decision (tax notice) would be null and void in cases defined by Article 279 of the General Administrative Procedure Act.³⁴⁵

In **Spain**, in application of the *ne bis in idem* principle, taxpayers should only receive one audit per taxable period. However, the Spanish tax system recognizes the possibility that verification could have been carried out by two different bodies (*Gestión-Inspección*) with the limitation established by Article 140 of the General Tax Act (*Ley General Tributaria*, or LGT), i.e. that it is necessary to discover new facts or circumstances from different administrative actions. It is interesting to note the judgment of the Supreme Court of 2 July 2018, which states that the use of a data verification procedure when a limited check should have been used constitutes automatic nullity. This constitutes an unfair use of the procedure, since the beginning and the actions effected in the course of this procedure do not interrupt the statute-of-limitations period.³⁴⁶

³⁴⁴ See Portugal, Practitioner’s report, Questionnaire # 2, Question 28.

³⁴⁵ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Questions 26, 27, 28, 29 and 30.

³⁴⁶ See Spain, Tax Ombudsman, Judiciary and Academic’s joint report, Questionnaire # 2, Question 28.

In the **United States**, under section 7602 of the Internal Revenue Code (IRC), the IRS has the authority to examine any books, papers, records, or other data that may be relevant to ascertain the correctness of any return. These types of examinations, which can occur through correspondence, at the taxpayer's home or business, or at an IRS office, are "real" or traditional audits. However, the IRS has several other types of compliance contacts with taxpayers that it does not consider to be "real" audits, including math error corrections, Automated Underreporter (AUR) (a document matching program), which constitute the majority of IRS compliance contacts. More importantly, "unreal" audits lack taxpayer protections typically found in "real" audits, such as the opportunity to generally seek an administrative review with the IRS Office of Appeals (Appeals) or the statutory prohibition against repeat examinations.³⁴⁷

5.4.2 The structure and content of tax audits

Regarding the structure and content of tax audits, there are some developments worth reporting that occurred during 2018. Countries made the general features of procedures, the criteria for selecting taxpayers for audits, the average time for audits, etc. available to general audiences. Some jurisdictions granted taxpayers the possibility of requesting an audit so that they could gain certainty, whereas other countries relied on rulings on specific facts to provide such certainty to taxpayers. Other provisions allowing taxpayers to be informed of the content of tax audits were published, as well as the general criteria followed for conducting an audit.

In **Canada**, the CRA makes the Large Business Audit Manual and the Income Tax Audit Manual available to the public in the CRA's online virtual reading room. Additional information on the CRA's website provides information on "What you should know about audits", which includes how the CRA chooses a file for audit, how the CRA does an audit, how long it takes to complete an audit and taxpayer rights and responsibilities, and also provides contact information for if a taxpayer requires further information. There is also a series of videos on the CRA website that explain the CRA's tax audit process.³⁴⁸

Also in **Canada**, taxpayers are not entitled to request the start of an audit or obtain audit finality from the CRA. Taxpayers can request advance income tax rulings or pre-ruling consultations to confirm how the CRA will interpret specific provisions of Canadian income tax law as they apply to a definite transaction or transactions that the taxpayer is contemplating. The ruling services are available for a fee, which may be prohibitive for some taxpayers.³⁴⁹ The business audit processes of the CRA include contact by the auditor(s) by mail, phone or both to advise on the start and location of the audit process. For verifications or reviews of individual income tax assessments, taxpayers may only be made aware of the review when they receive a request for supporting documentation.³⁵⁰

³⁴⁷ See National Taxpayer Advocate Blog: "Real" vs. "Unreal" Audits and Why This Distinction Matters, July 6, 2018, <https://taxpayeradvocate.irs.gov/news/nta-blog-real-vs-unreal-audits-and-why-this-distinction-matters>. See also United States, Tax Administrators' report, Questionnaire # 2, Question 26.

³⁴⁸ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 31.

³⁴⁹ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 33.

³⁵⁰ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 34

In **Colombia**, there is a tendency to move away from best practice. In effect, guidelines have a limited scope, since it is impossible to regulate each of the situations that may arise in an audit.³⁵¹

Also in **Colombia**, the law does not allow taxpayers to request an audit with the purpose of correcting tax returns to reduce the tax charged or increase the favourable balance. In general, a special summons writ (the first administrative stage of an audit) must be notified to taxpayers when the tax authorities decide to start an audit. However, since 2016, it is allowed to issue provisional tax assessments without there being a prior approach between the DIAN and the taxpayers. The same applies to the simplified tax assessments created by Law 1943 of 2018.³⁵²

In **Italy**, the new “Operational handbook on combating tax evasion and fraud” (Recommendation no. 1/2018) has been enacted. It contains updated operational guidelines of the *Guardia di Finanza* concerning the execution of audits, fiscal controls and economic-financial police investigations aimed at combating tax evasion, circumvention and fiscal fraud. In particular, as regards the taxpayer’s role and safeguard, see Vol. I, Chap. “(Support for compliance), Vol. II, Chap. 3, 1.c. (Start, run and end of verification), 1. C. 1 (Taxpayer’s guarantees) and Chap. 6 (The protection of the taxpayer).³⁵³ Additionally, a recent order by the ICC, Tax Section, 9 November 2018, no. 28692 stated the principle that tax inspection is valid even if the *Guardia di Finanza* did not submit to the taxpayer the reason for the access. The agents can generically justify themselves based on annual programme guidelines or the economic sector of special interest.³⁵⁴

In **Kenya**, the Taxpayers’ Charter of 2007 provides for guidelines on the audit process.³⁵⁵

In **Slovenia**, the basic pattern of a tax audit is defined by the Tax Procedure Law. A tax audit starts with a decision of the tax administration that needs to be communicated to the taxpayer. The decision should define the scope of the audit and tax period(s) covered. On the basis of the decision, a meeting with a taxpayer takes place, and a request to present documentation relevant to the audit is made. A tax audit can last from six to nine months. At the end of the audit, a written record of the audit with the main findings is presented to the taxpayer. The taxpayer has the right to comment on the record and ask for corrections of the facts. The decision with a possible tax assessment is issued only after the comments and proposals of the taxpayer are examined. The tax administration has to respond to all of the comments and proposals of the taxpayer in the justification of the decision on a tax assessment. A more detailed pattern of tax audits is defined in a manual of tax audits, but this document is used by the tax administration as internal guidance and is not made public, but it provides useful

³⁵¹ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 31.

³⁵² See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Questions 33 and 34.

³⁵³ See <http://www.gdf.gov.it/documenti-e-pubblicazioni/circolari/circolare-1-2018-manuale-operativo-in-materia-di-contrasto-allevasione-e-alle-frodi-fisca>. Also, see Italy, Practitioner and Academic’s joint report, Questionnaire #2, Question 31.

³⁵⁴ See Italy, Practitioner and Academic’s joint report, Questionnaire # 2, Question 34.

³⁵⁵ See Kenya, Practitioner’s report (2), Questionnaire # 2, Questions 31 and 32.

tools for a more uniform application of tax laws. In the past, taxpayers were provided with the possibility of requesting the start of an audit. Since the introduction of the voluntary disclosure procedure, taxpayers utilize this possibility and, in practice, do not utilize the possibility to request a tax audit. If a request is made, there is no legal obstacle for the tax administration to follow this request.³⁵⁶

Also in **Slovenia**, if information obtained from third parties is used in the course of an audit, the taxpayer is informed of all of the information used in the assessment of tax obligations, regardless of the source of information. If information is gathered by the tax administration in a preliminary investigation process, this information is not shared with the taxpayer.³⁵⁷

In **Spain**, the Decision of 8 January 2018 of the General Directorate of the Tax Administration approved the general guidance of the 2018 Annual Audit Plan for Taxes and Customs.³⁵⁸

5.4.3 Time limits for tax audits

Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- ***S. C. Mic Petrochim Industrie SRL v. Romania (Application No. 74120/14, 06-04-2018)***: Were the tax surcharge proceedings opened against the applicant company fair and conducted within a reasonable time in accordance with the requirements of Article 6 of the Convention? In particular, did the tax surcharge proceedings respect the principles of legal certainty and equality of arms and were they concluded speedily?

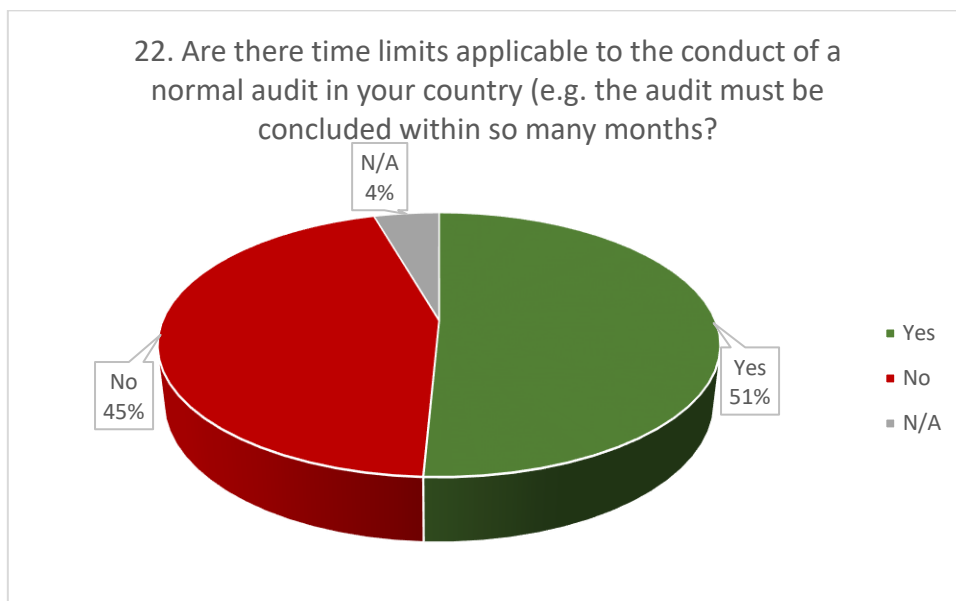
Taking into account that tax audits represent a (major) disturbance in the day-to-day operations of taxpayers and also that the economic implications of a tax audit might be of importance, time is particularly important as a limit to the exercise of the investigative powers of tax administrations. In a democratic society, organized pursuant to the rule of law, state powers shall not be exercised sine die. Additionally, certainty plays a major role in this context. Taxpayers are entitled to acquire assurance of what their tax liabilities ultimately are. Once again, in tax audits, time plays a major role.

³⁵⁶ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 31 and 32.

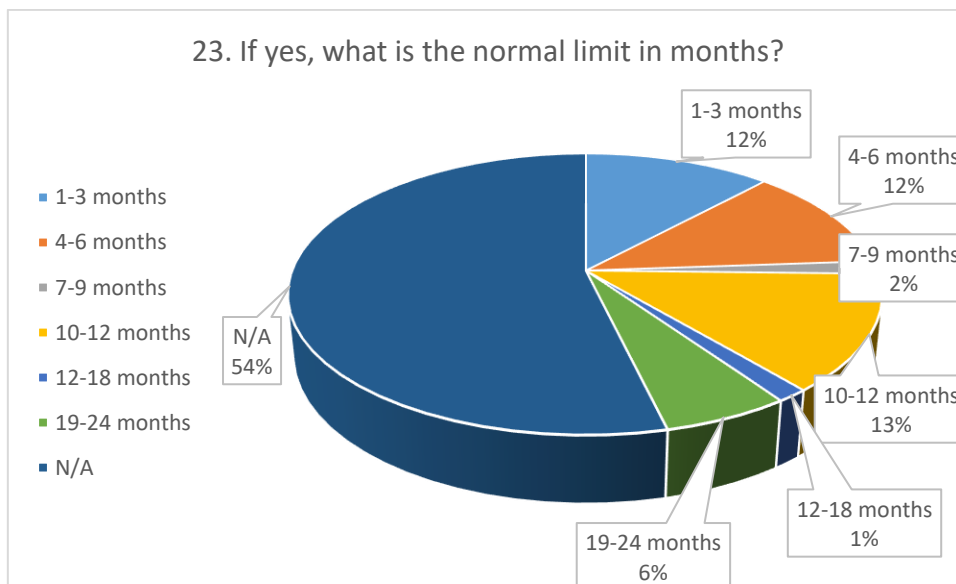
³⁵⁷ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 33, 34, and 35.

³⁵⁸ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Question 31.

However, it is noteworthy that, according to the national reports,³⁵⁹ nearly half of the surveyed jurisdictions do not apply any time limits for conducting a normal audit, leaving the tax authorities with broad possibilities of extending tax audits beyond reasonable time limits. Fortunately, a majority (although *slim*) of surveyed countries apply time limits to tax audits, as shown in the chart below.



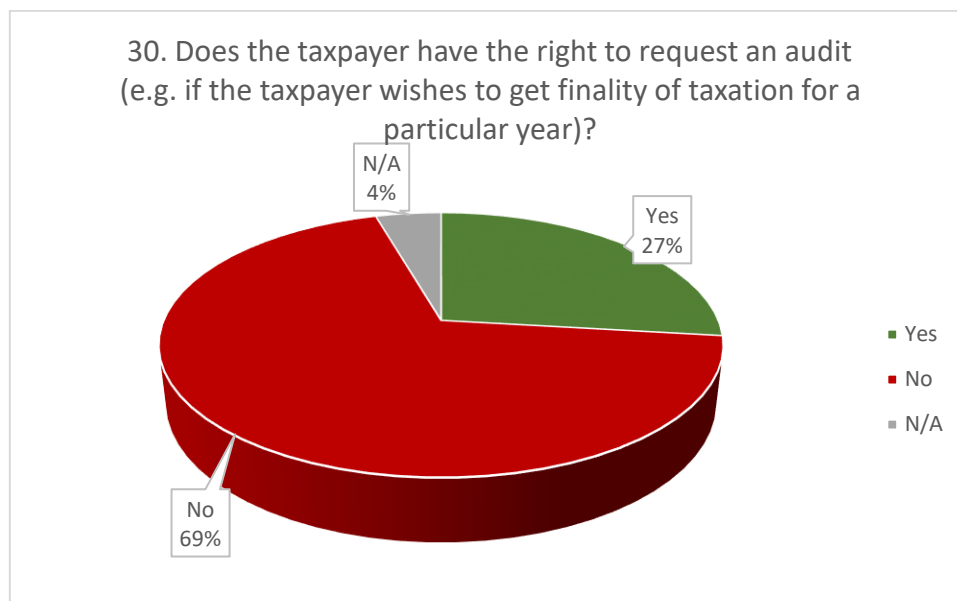
On average, the applicable time limits for tax audits in the surveyed jurisdictions are those displayed in the chart below.³⁶⁰



³⁵⁹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

³⁶⁰ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

Certainty can also be achieved through a *cooperative* attitude of the taxpayer. It entitles him, as the holder of rights vis-à-vis the tax administration, to request the latter to perform an assessment so that the taxpayer acquires certitude of the appropriateness of the business conducted within a given period, while at the same time, the tax administration can ensure prompt tax collection in the case that differences are spotted. Despite these many advantages, a majority of surveyed jurisdictions do not grant the taxpayer the right to request an audit so they can attain certainty, as portrayed in the chart below.



In **Belgium**, the law does not foresee a time limit for conducting audits, but the tax authorities are still bound by the statute of limitations. Moreover, when the tax authorities have the intention to apply a penalty or tax increase, the taxpayer can invoke the protection of Article 6 ECHR.³⁶¹

In **Canada**, the CRA does not have published service standards for the completion of audits, verifications and reviews, as the time spent can vary significantly based on various factors, such as the complexity of the issues identified or the books and records maintained by the taxpayer. The Office of the Taxpayers' Ombudsman agrees that reasonable time limits should be established for audits, verifications and review processes while acknowledging the importance of collaboration on the part of the taxpayer to ensure that audits, verifications and reviews are conducted in a timely manner. In this regard, the Auditor General (AG) of Canada released a report in autumn 2018 on the CRA's Compliance Activities.³⁶² The AG found that the CRA did not consistently apply tax rules when it audited or reviewed taxpayers' files, even though the Taxpayer Bill of Rights includes the right to have the law applied consistently. The AG indicated a number of reasons for the inconsistencies, including the judgment of the CRA

³⁶¹ See Belgium, Practitioner's report, Questionnaire # 2, Question 36.

³⁶² See http://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_07_e_43205.html

on the “staff conducting compliance activities; the region where the file was reassessed; and the type of taxpayer – for example, a small business or a large corporation”. According to the report, “taxpayers in one region waited an average of 7 months longer than those in another region for the CRA to complete an audit. In one region, it took the CRA more than 40 weeks to process taxpayers’ requests for adjustments, while in another region, the Agency took 12 weeks”. With respect to timelines, the AG recommended that the CRA “set time limits for all audit workloads to provide information requested and should consistently enforce the provisions of the Income Tax Act³⁶³ to compel taxpayers to produce information once those time limits have passed”. The CRA agreed with the recommendation and committed to “set[ting] timelines for information to be provided, criteria for extensions, and more formal deadlines, past which the [CRA] would move to the courts to compel cooperation, by March 2020”.³⁶⁴

In **Cyprus**, only in very occasional cases can the taxpayer request the start of a tax audit so that they can obtain finality.³⁶⁵ As a general rule, the tax administration shall notify the taxpayer of an investigation, unless it is within the scope of an already ongoing investigation.³⁶⁶

In **Portugal**, the 2018 Budget Law clarified that the suspension of a tax audit for more than six months (for reasons not attributable to the taxpayer) renders such period irrelevant for the purposes of the otherwise applicable suspension of the four-year statute of limitations to issue additional tax assessments.³⁶⁷

In **Russia**, the deadline for tax audits of VAT returns was reduced from three months to two months in 2018. However, the tax authority has the right to extend the established two-month period for another month without notifying the taxpayer.³⁶⁸

In **Slovenia**, the Tax Procedure Act, Article 141, defines that a tax audit in principle should last no more than six months. Only in especially defined cases can this time limit be extended for an additional three months (if the tax audit concerns related persons, if the tax audit concerns persons that are under general yearly audit obligations or if tax audit implies the need to estimate the taxable base). If the taxpayer does not cooperate in the tax audit and does not provide the information requested by the tax authorities, or if a tax audit is part of simultaneous audits in two or more EU Member States, time limits for audits do not apply. However, if, in practice, the time limit is exceeded, no legal consequences occur.³⁶⁹

³⁶³ See <https://laws-lois.justice.gc.ca/eng/acts/l-3.3/>

³⁶⁴ See Canada, Tax Ombudsman/s report, Questionnaire # 2, Question 36.

³⁶⁵ See Cyprus, Tax Administrator’s report, Questionnaire # 2, Question 33.

³⁶⁶ See Cyprus, Tax Administrator’s report, Questionnaire # 2, Question 34.

³⁶⁷ See Portugal, Practitioner’s report, Questionnaire # 2, Question 36.

³⁶⁸ See Russia, Practitioner-Academic’s report, Questionnaire # 2, Question 36.

³⁶⁹ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 36.

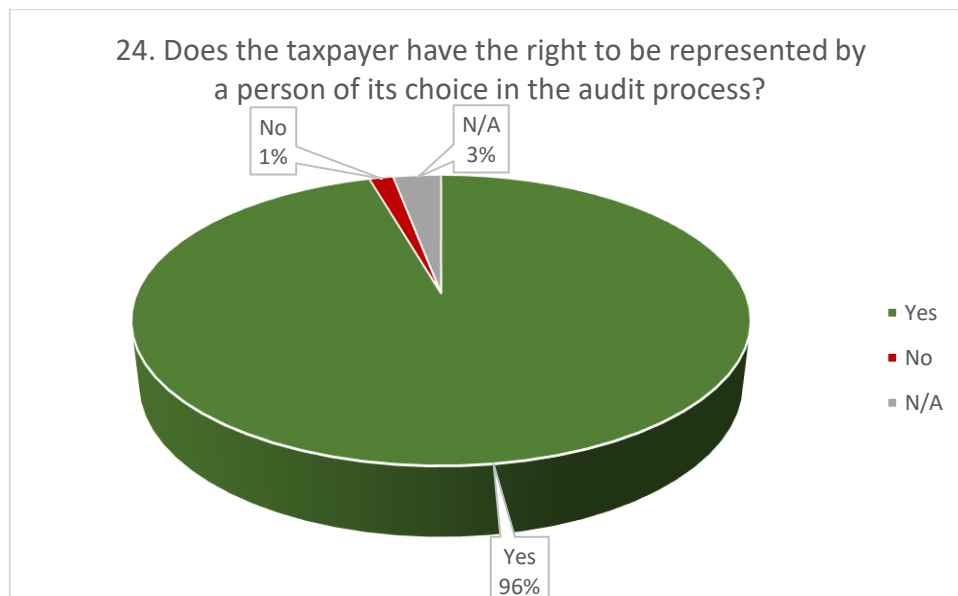
In **South Africa**, reasonable time limits for the conducting of audits are stated in the South African Revenue Service (SARS) Service Charter.³⁷⁰

In **Spain**, there have been no developments related to this point since the 2015 IFA Spanish Report. However, the Supreme Court admitted a cassation appeal (Auto of 19 January 2018) to determine if the audit can be initiated with a request for information to the taxpayer (article 93 of the LGT) or should be understood as being initiated with the notice of the beginning as a consequence of the information provided to the tax administration. Regarding the inspection procedure duration, the judgment of the Supreme Court of 3 May 2018 established that, in a particular complex case in which the inspection could foresee that it was impossible to meet the deadline, it had to request the term extension and not try to justify the failure to comply with the time on account of delays not attributable to the taxpayer.³⁷¹

In **Turkey**, effective from 1 January 2019, VAT refund audits must be completed within three months. A two-month extension may be provided. The usual audit period is set as one year for full audits and six months for partial audits.³⁷²

5.4.4 Technical assistance (representation) and the involvement of independent experts

Among the surveyed jurisdictions, an overwhelming majority stands by the minimum standard: almost all jurisdictions grant the taxpayer the right to be represented by a person of his/her choice in the audit process.

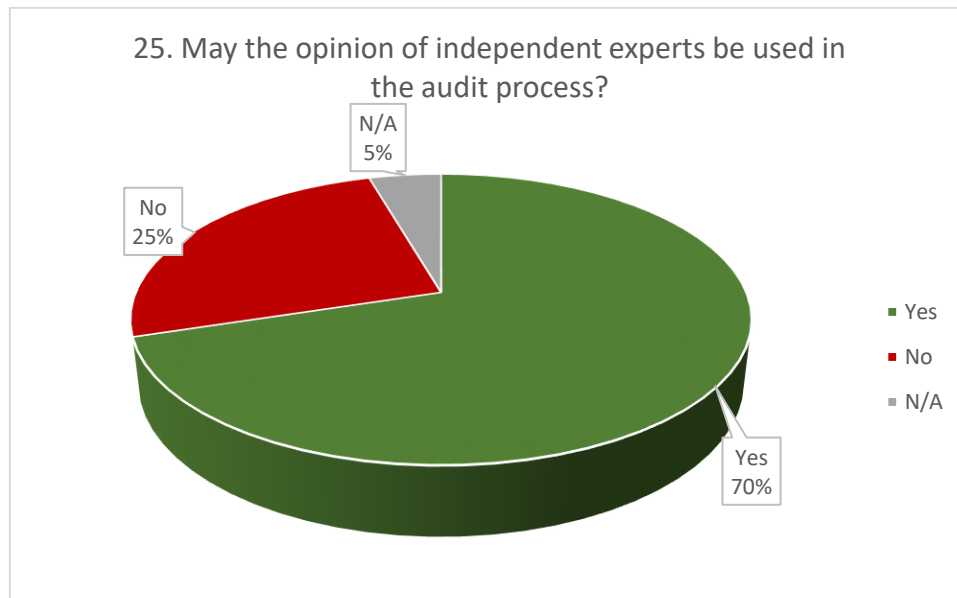


³⁷⁰ See South Africa, Tax Ombudsman and Academic's joint report, Questionnaire # 2, Question 36.

³⁷¹ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Questions 34 and 36.

³⁷² See Turkey, Academic's report, Questionnaire # 2, Question 36.

Furthermore, according to the majority of reports, the opinions of independent experts may be used in the audit process, although there is a bigger number of jurisdictions that do not allow it. Within the surveyed jurisdictions, the situation is described by the chart below.



There were no major developments in this regard in 2018. Only two countries reported developments, both with regard to the acceptance of the minimum standard and best practice. In **Canada**, the Taxpayer Bill of Rights includes the right to be represented by a person of choice (Article 15). Information provided on the CRA’s website under “What you should know about audits” provides a link to the Taxpayer Bill of Rights, but it provides no additional information to the taxpayer on how a representative or expert of the taxpayer’s choosing can participate in the audit process. The cost of representation or technical assistance is borne solely by the taxpayer. This cost may be prohibitive for the taxpayer and could be contrary to Article 10 of the Taxpayer Bill of Rights “to have the costs of compliance taken into account when [the CRA administers] tax legislation”.³⁷³

In **Slovenia**, the taxpayer has the right to participate in the audit by himself or appoint a duly authorized representative, namely a tax adviser, a lawyer or any other person he selects.³⁷⁴

5.4.5 The audit report

All administrative procedures shall end with a formal expression of the findings of the administration, along with a declaration of the adherence or lack thereof to the law of those behaviours of the citizen that justify the exercise of public power. Such manifestation shall be fully motivated so that the citizen is able to understand *why* the administration has taken a given measure and has the possibility of both (i) controlling the administrative activity, determining

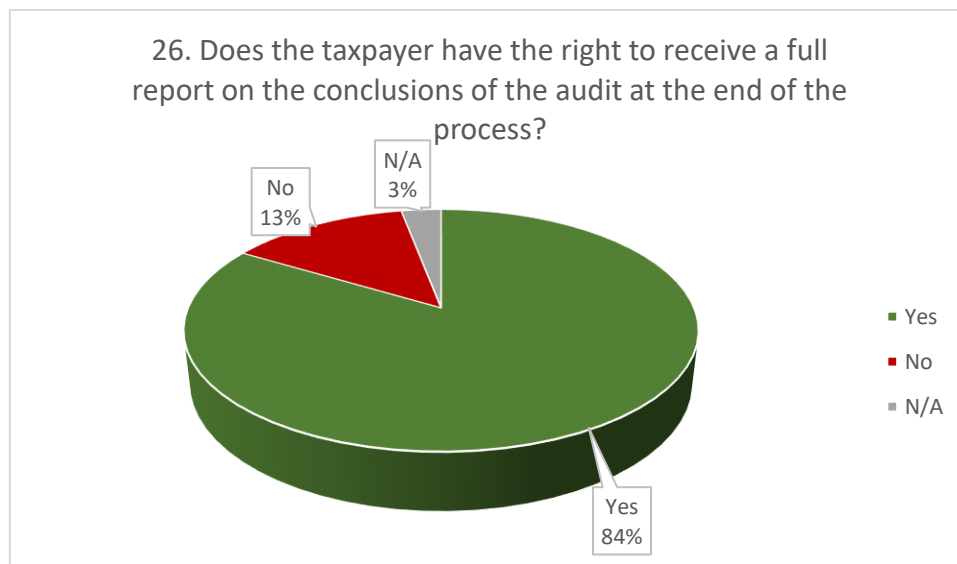
³⁷³ See Canada, Tax Ombudsman/s report, Questionnaire # 2, Question 37.

³⁷⁴ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 37

whether it was performed pursuant to the law; and (ii) exercising his defence against the measures taken against him by the administration.

Tax audits are no exception to these rules, which are aimed to guarantee taxpayers adequate protection of their right to proper defence (particularly their right to be heard), their presumption of innocence (in the case of penalties), their right to be informed and to fully participate in every instance in which the state exercises its power against him, etc.³⁷⁵

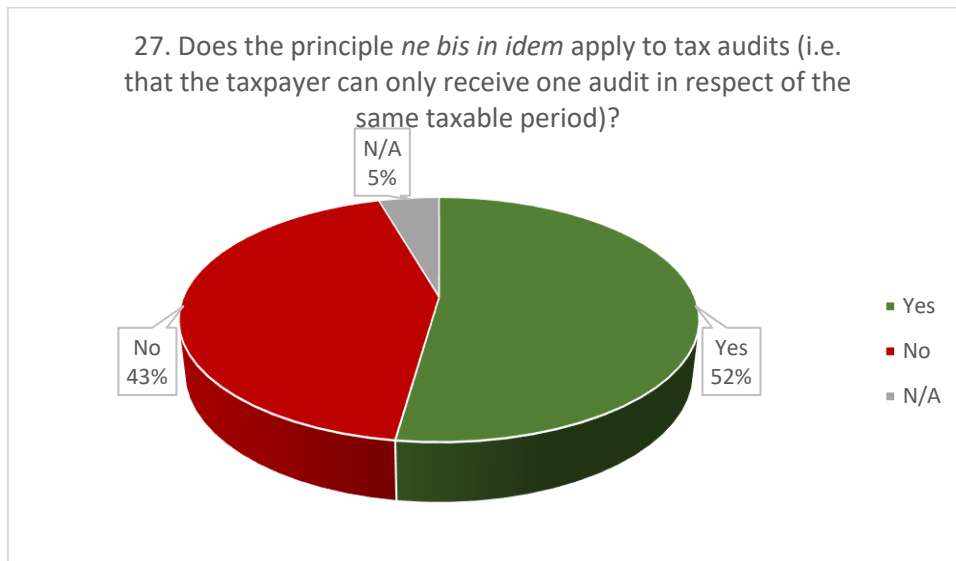
As a natural consequence, the taxpayer has the right to receive a full report on the conclusions of the audit at the end of the process. Most surveyed jurisdictions acknowledge this, as depicted in the chart below.



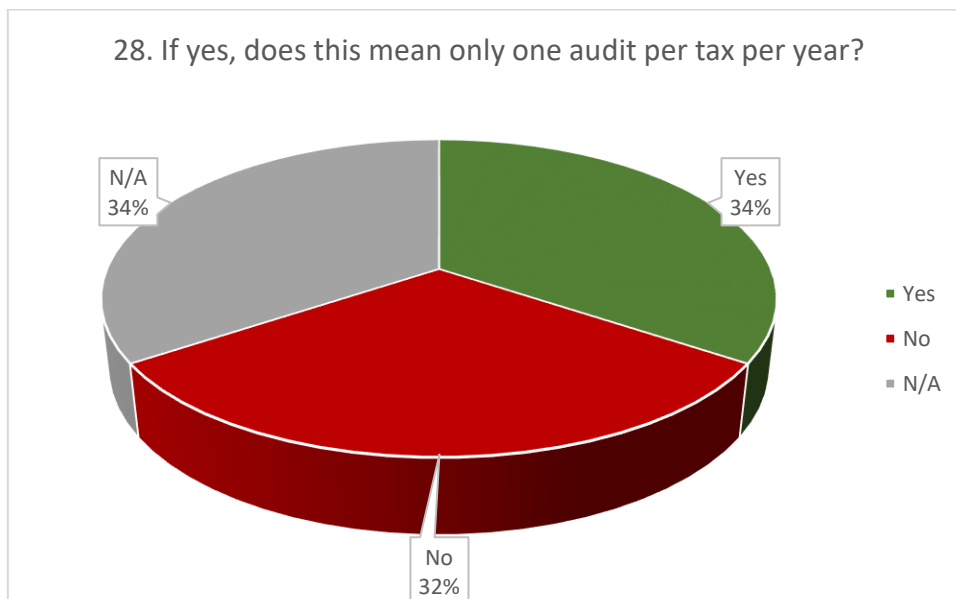
The issuance of a final report to be notified does represent an additional safeguard for taxpayers: it is a form of protection of the *ne bis in idem* principle.³⁷⁶ In this regard, about half of the surveyed countries grant this kind of safeguard, as shown in the chart below.

³⁷⁵ See C.E. Weffe, *supra* n. 11.

³⁷⁶ See P. Baker and P. Pistone, *supra* n. 10, at p. 43.

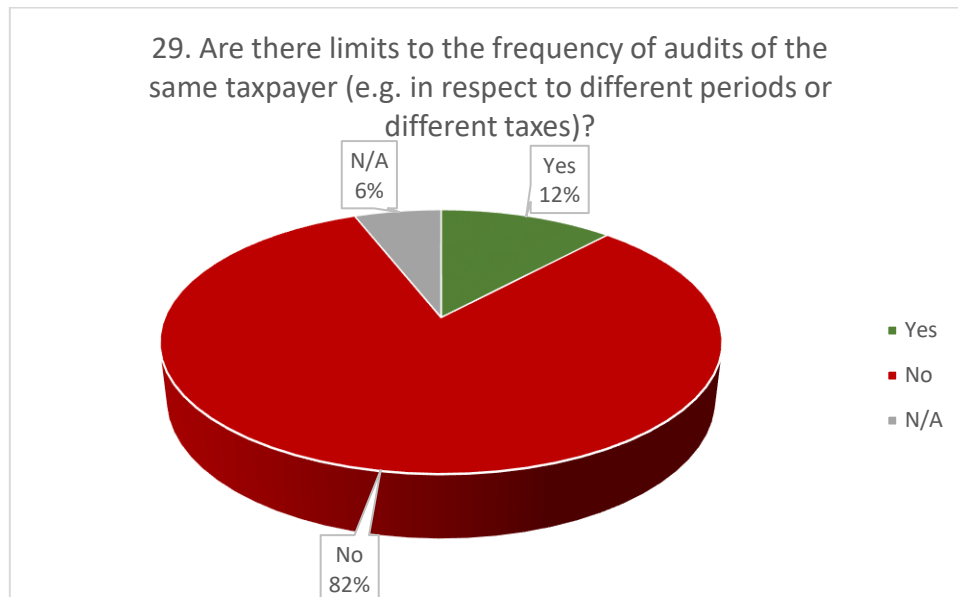


Moreover, even in the case that protection against double jeopardy is upheld, it does not mean that in practice, a single audit per tax will be conducted for a taxpayer. As the national reports show, only one third of the reports stated that their jurisdictions understand *ne bis in idem* as a “one tax, one year, one audit” rule.



Also according to national reports, there are no limits to the frequency of audits of the same taxpayer in most jurisdictions.³⁷⁷

³⁷⁷ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



Particularly in **Canada**, in practice, the CRA sends a final letter to the taxpayer indicating the result of the audit upon completion. This letter indicates whether no adjustments will be made to the previous assessment, an adjustment resulting in more tax owing will be made (reassessment) or an adjustment resulting in less tax owing will be made (reassessment resulting in the entitlement to a refund). Prior to this final letter, the auditor sends a proposal letter to the taxpayer with details of the adjustments necessary to resolve the issues identified. Taxpayers are given a prescribed period to respond to the letter and may request an extension to respond. The extent to which these established protocols are available to the taxpayer in practice or the extent to which the information provided by taxpayers is taken into account by auditors before the completion of an audit is unclear. A 2016 report by Canada’s Auditor General on Income Tax Objections³⁷⁸ found that taxpayers objecting to their reassessments post-audit had the reassessment overturned in 66.1% of cases. For reviews and verifications of a claim in an income tax return, there is no report, but the CRA may issue a notice of assessment or reassessment based on information already held by the CRA without input from the taxpayer, or it may issue a notice of assessment or reassessment based on the supporting documentation submitted by the taxpayer at the CRA’s request.³⁷⁹ Additionally, a taxpayer is issued a letter upon completion of an audit even when the audit does not result in an adjustment.³⁸⁰

In this regard, on 5 June 2017, the Federal Taxpayers’ Ombudsman of **Canada** released a report entitled “Rights and Rulings: Understanding the Decision”.³⁸¹ In the report, the Ombudsman made recommendations to improve transparency associated with the CRA ruling letters in respect of determination of whether a worker is an employee or is self-employed and whether a worker’s employment is pensionable under the Canada Pension Plan or insurable for

³⁷⁸ See http://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_02_e_41831.html#appa

³⁷⁹ See Canada, Tax Ombudsman/s report, Questionnaire # 2, Question 38.

³⁸⁰ See Canada, Tax Ombudsman/s report, Questionnaire # 2, Question 39.

³⁸¹ See <https://www.canada.ca/content/dam/oto-boc/migration/rpts/spcl/cppe-report-eng.pdf>.

employment insurance purposes. The CRA was expected to complete the implementation of the report's recommendations by the end of 2018.³⁸²

In **China**, the tax authorities must make a tax audit report to report the situation after the tax audit. Even the absence of illegal facts should also be described in the report.³⁸³

In **Colombia**, only minutes of inspections and visits may be read and approved by the taxpayer before said inspections and visits are finalized. The final audit report is carried out by the official in charge without the participation of the taxpayer. Based on this, a special summons or a closure notice is issued, duly motivated.³⁸⁴

In **Peru**, a report following an audit is not always issued. However, it is normal that on request, the taxpayer obtains a final assessment that reflects the lack of observations,³⁸⁵ even though Article 75 of the Tax Code enshrines the right of the taxpayer to be notified of the conclusion of the tax audit. The assessment does not always include the full information about the tax audit; this information is completed in the appeal through the so-called "Intendance Resolution".³⁸⁶

In **Russia**, in the case of additional tax control measures, the tax authorities should make an addition to the tax audit act and familiarize the taxpayer with such addition to the act, as well as with all relevant materials. There was previously no such obligation of the tax authorities before.³⁸⁷

In **Slovenia**, when the tax audit is finalized and before the decision is issued, a record of the tax audit is prepared by the tax auditor and presented to the taxpayer. The taxpayer has 20 days to make comments or propose corrections and tax authority has to respond to all comments and proposals.³⁸⁸

5.5 More intensive audits

5.5.1 The general framework

Cases of risks, or indicia, pointing to possible non-compliance of taxpayers, particularly those that might result in criminal responsibility, entitle the tax administration to conduct more intensive audits.³⁸⁹ In such context, the fact-finding powers shall be stronger while also balanced

³⁸² See Canada, Practitioner's report, Questionnaire # 2, Question 38.

³⁸³ See China, Academic's report, Questionnaire # 2, Question 39.

³⁸⁴ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 38.

³⁸⁵ See Peru, Practitioner's report (3), Questionnaire # 2, Question 39.

³⁸⁶ See Peru, Practitioner's report (1), Questionnaire # 2, Questions 34 and 38.

³⁸⁷ See Russia, Practitioner-Academic's report, Questionnaire # 2, Question 37.

³⁸⁸ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 39.

³⁸⁹ See P. Baker and P. Pistone, *supra* n. 10, at p. 44.

with the human dignity of taxpayers, therefore will be within the boundaries of a democratic society organized under the rule of law: in a word, proportionate.

In this line of thought, in 2018, in the **Canada**, the CRA confirmed that it is directing more audit resources towards wealthy families and large businesses in part through the CRA's "related party initiative" and "risk-based audits" programmes.³⁹⁰

In **China**, according to the SAT Announcement of Two Years of Special Actions to Fight Against Tax Fraud,³⁹¹ the SAT Commissioner, Wang Jun, emphasized that tax authorities shall focus on fighting against the "two types of fraud". One of these involves fake enterprises with no substantial business that are set up only for issuing false invoices, and the other involves fake exports for defrauding export tax refunds. Any determination of illegal activities shall be strictly based on illegal facts. Further, tax bureaus shall provide high-quality services for taxpayers in good faith in accordance with laws and precisely extracting case resources by using information technology. Compared with 2017, this line of conduct has been regarded as progress in the matter.³⁹²

In **Denmark**, as mentioned above, the new Tax Control Act appears to have a stronger focus on proportionality.³⁹³

In **Russia**, in the case of a submission by the taxpayer of a specified tax return in which a smaller amount of the tax is specified in comparison with an amount stated earlier, the tax authorities have the right to conduct a repeated field tax audit. The subject of such a repeated field tax audit is limited only to the correction of the calculation of the tax on the basis of the amended figures in a specified tax return.³⁹⁴

5.5.2 The implications of the *nemo tenetur* principle in connection with subsequent criminal proceedings

In the context of possible wilful non-compliance with tax obligations (and therefore a possibility of attributing criminal responsibility to the taxpayer), the protection of human dignity through the right not to self-incriminate is paramount.³⁹⁵ This guarantee entails the possibility not to confess under duress, either physically or psychologically, so the collision between the *nemo tenetur se ipsum accusare* principle and the taxpayer's information duties to the tax authorities in the context of an assessment becomes apparent. It is necessary to bear in mind that all citizens are entitled to be treated by the tax authorities with equal concern and

³⁹⁰ See Canada, Practitioner's report, Questionnaire # 2, Question 40.

³⁹¹ Shui Zong Fa [2018] No. 135.

³⁹² See China, Tax Administrator's (retired) report, Questionnaire # 2, Question 40.

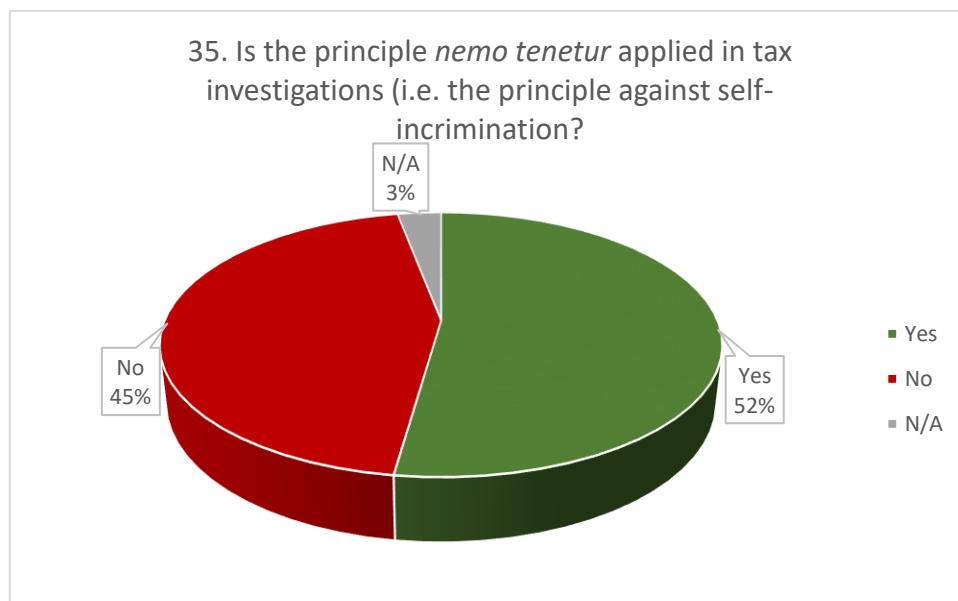
³⁹³ See Denmark, Tax Administrator and Practitioner's joint report, Questionnaire # 2, Question 40.

³⁹⁴ See Russia, Practitioner-Academic report, Questionnaire # 2, Question 40.

³⁹⁵ A.P. Dourado & A. Silva Dias, *Chapter 8: Information Duties, Aggressive Tax Planning and nemo tenetur se ipsum accusare in the light of Art. 6(1) of ECHR in Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiares Maduro & P. Pistone eds., IBFD 2011), Online Books IBFD.

respect,³⁹⁶ since taxpayers, just by being human beings, are endowed with an intrinsic value that forbids being treated or treating others as a means, but always as an end in themselves.³⁹⁷

Consequently, that the *nemo tenetur* principle that is applicable to tax investigations shall be regarded as a minimum standard.³⁹⁸ Half of the surveyed jurisdictions do so, as reported by the national reporters and shown in the chart below.



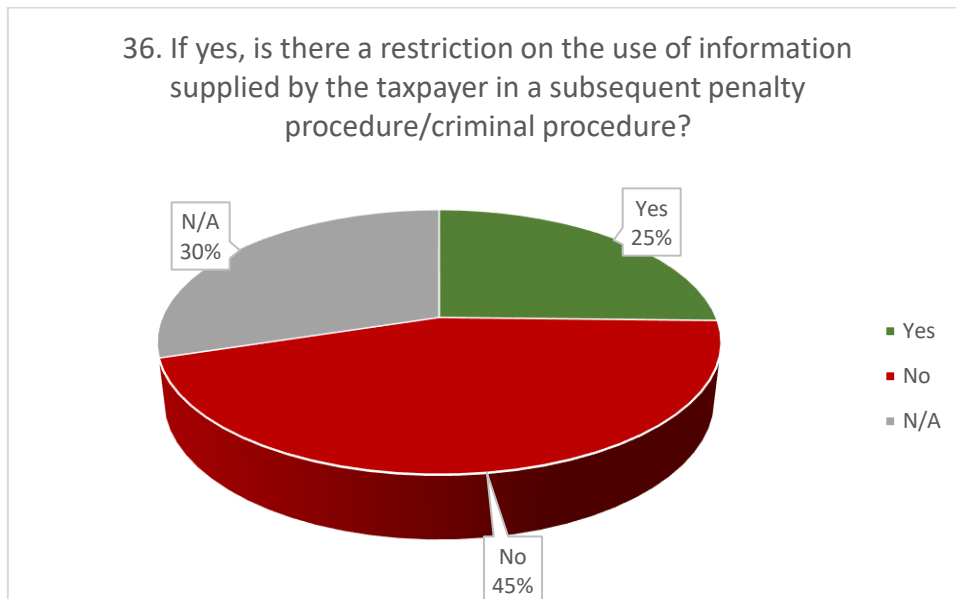
However, in many surveyed jurisdictions, there are no restrictions on the use of information supplied by the taxpayer in a subsequent penalty or criminal procedure, potentially harming the practical validity of *nemo tenetur*. The trend is shown in the chart below.³⁹⁹

³⁹⁶ R. Dworkin, *supra* n. 12, pp. 319-320, 422 (2011).

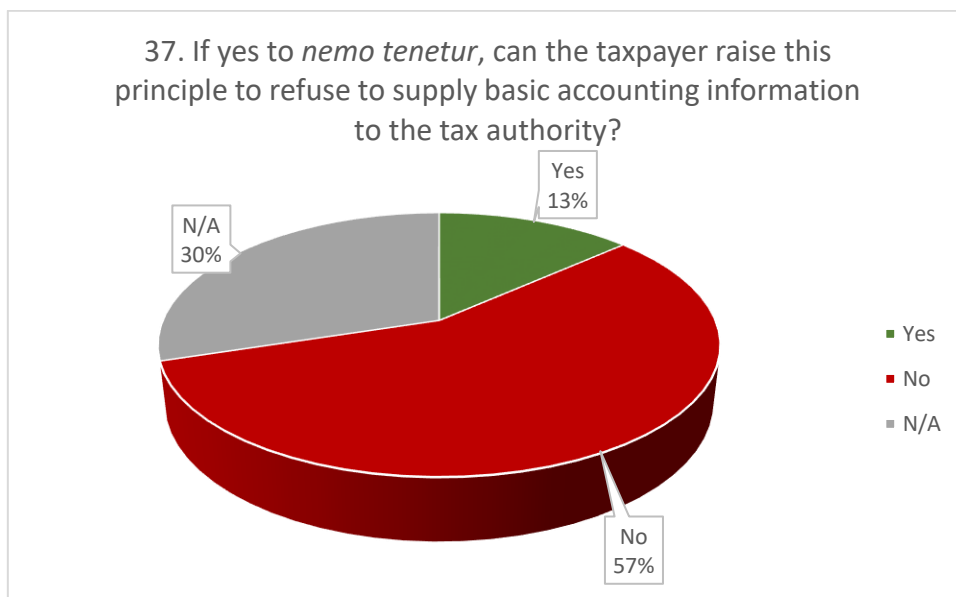
³⁹⁷ As rightfully stated by Kant, “all rational beings stand under the law that each of them should treat himself and all others never merely as a means but always also as an end in himself. This gives rise to a systematic union of rational beings through shared objective laws, i.e. a realm; and it may be called a realm of ends because what these laws have as their purpose is just the relation of these beings to each other as ends and means”. I. Kant, *Groundwork for the Metaphysic of Morals*, p. 32 (J. Bennett, ed., 2017), at: <https://www.earlymoderntexts.com/assets/pdfs/kant1785.pdf>.

³⁹⁸ See P. Baker and P. Pistone, *supra* n. 10, at pp. 77-78.

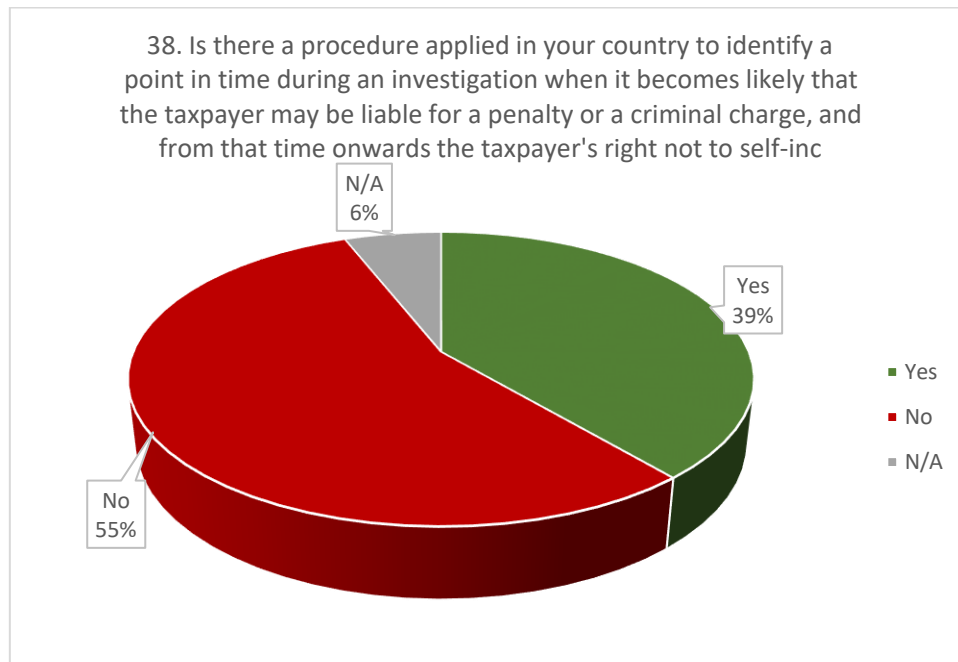
³⁹⁹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



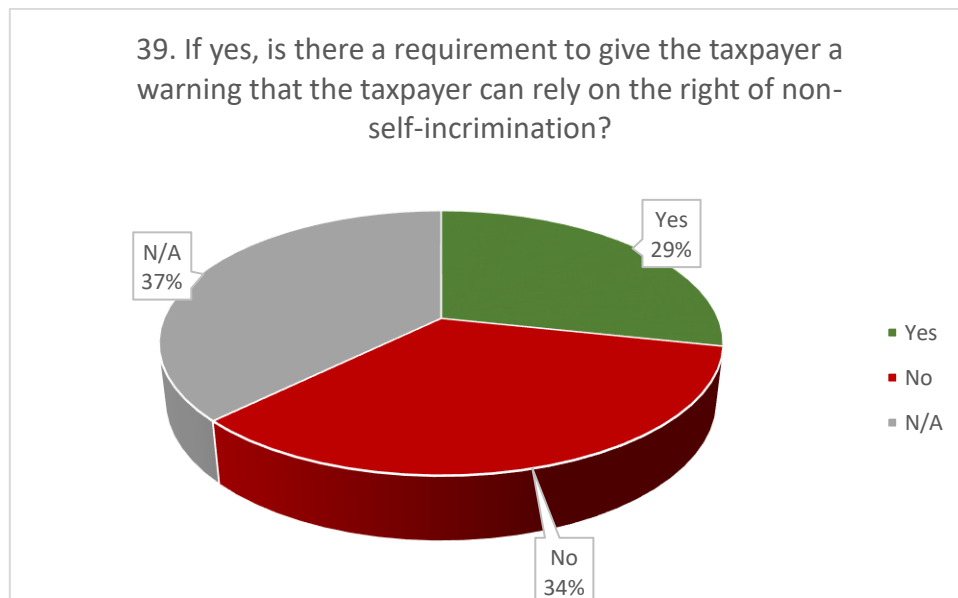
Following this trend *against* all practical implications of *nemo tenetur*, in the majority of surveyed jurisdictions, the taxpayer *cannot* raise this principle to refuse to supply basic accounting information to the tax authority:



As an obvious consequence, in most surveyed jurisdictions, there is no procedure applied 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, as shown in the chart below.



Moreover, in many of the jurisdictions in which such differentiation is made, there is no requirement to give the taxpayer the so-called “Miranda warning”⁴⁰⁰ so that he can rely on the right of non-self-incrimination, as depicted in the chart below.



During 2018, *nemo tenetur* suffered some setbacks, simultaneously with its acknowledgment as a means for protecting taxpayers in criminal investigations. Whereas in some countries, the judiciary forbade taxpayers to refuse submitting their accounting documents under conditions that might lead to criminal charges, in others, the information

⁴⁰⁰ See C.E. Weffe, *supra* n. 11.

obtained through the enforcement of the obligations of the taxpayers to submit information to tax authorities was deemed inadmissible.

In **Belgium**, the Court of First Instance of Leuven ruled, in a VAT case, that it cannot be generally permitted for a taxpayer to refuse to submit his bookkeeping and accounting documents and rely on his right to remain silent. The Court ruled that the obligation to submit the books and documents that the law requires a taxpayer to keep is not subject to the right to remain silent, since they already exist independently of the will of the taxpayer (Court of First Instance Leuven, 9 February 2018, no. 12/1462/A). It should be noted that the taxpayer in this case had already been notified by the tax authorities that he was being suspected of having committed tax fraud.⁴⁰¹

In **Denmark**, the Data Protection Agency published, on 17 May 2018, in anonymized form, a decision ordering the tax administration to delete certain information on a taxpayer. Originally, the information was obtained by the Danish Police and the Danish State Prosecutor for Serious Economic and International Crime under a court order during a criminal investigation. In connection with an investigation, the Police and the State Prosecutor for Serious Economic and International Crime had also obtained correspondence and recorded phone conversations between the taxpayer and the taxpayer's lawyer. In contravention of the Administration of Justice Act, the correspondence and recorded phone conversations between the taxpayer and the taxpayer's lawyer had not been deleted, apparently due to a simple mistake. The State Prosecutor for Serious Economic and International Crime passed on the information to the tax administration, including the correspondence and recorded phone conversations between the taxpayer and the taxpayer's lawyer. The passing on of information to the tax administration in itself was undisputedly legal, whereas the original obtaining of the information was undisputedly illegal. The Data Protection Agency took the view that the original illegality amounted to a lack of legal basis under data protection law – now art. 5 of the General Data Protection Regulation – for the processing of the data also in a subsequent tax procedure of a purely non-criminal nature and ordered the tax administration to delete the data. This approach under data protection law appears to have a significant impact on tax procedure. Up until now, the typical point of view in a Danish context has been that information not originally obtained legally but of relevance to the tax procedure cannot be excluded from a tax procedure. The Data Protection Agency takes quite the opposite view. The interaction between data protection law and tax procedure raises further new interesting – yet unresolved – questions. The tax administration actually made use of the information during the audit of the taxpayer and issued a decision to the taxpayer relying, to some extent, on the information, and the taxpayer appealed against the decision to the National Tax Tribunal before the Data Protection Agency ordered the deleted information. Thus, the National Tax Tribunal will be faced with the question of whether and how to take into consideration the effect of this procedural error of the tax administration in the form of the use of the now-deleted data if the National Tax Tribunal is not to see and evaluate the data (and in doing so, also process the data).⁴⁰²

⁴⁰¹ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 41.

⁴⁰² See Denmark, Tax Administrator and Practitioner's joint report, Questionnaire # 2, Question 41.

In **Slovenia**, a process of determination of tax obligations is an administrative procedure and separate from possible criminal charges. Criminal offence investigations will be conducted by criminal investigation authorities and not by the tax administration, so both procedures can run in parallel.⁴⁰³

5.5.3 Court authorization or notification

Recent Relevant Case Law

European Court of Human Rights

Cases decided in 2018:

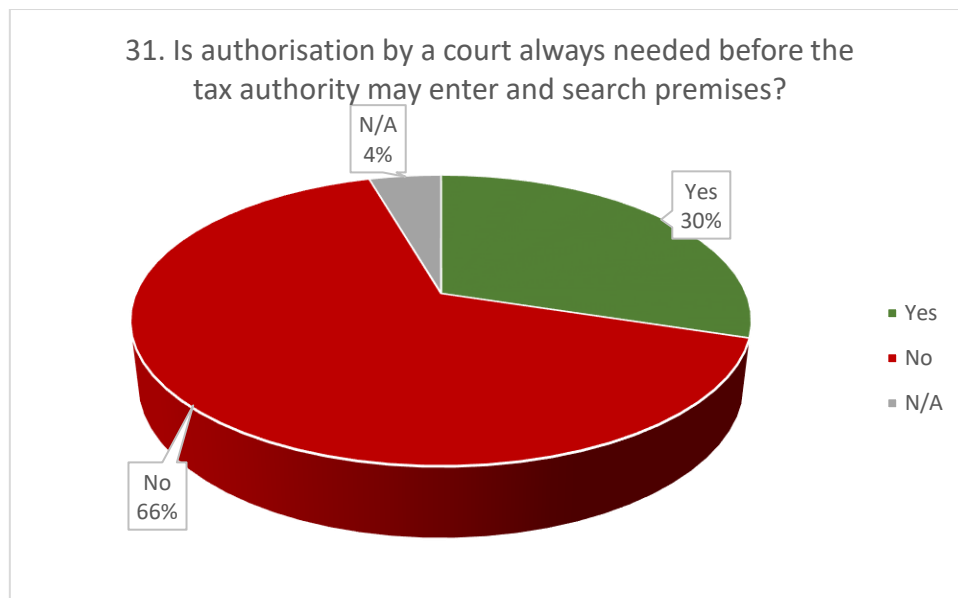
- ***Gohe v. France (5th Section, Applications N° 65883/14, 21434/15, 48044/15 and 51477/15, 3-7-2018)***: This case concerned house searches and subsequent seizures carried out at the homes of third parties, on the basis of which the applicants underwent separate tax inspections that led, in some cases, to tax assessment proceedings and, in one case, to a conviction for tax fraud. The applicants complained in particular about the dismissal of their submissions at all stages of the proceedings and their inability to challenge the lawfulness of the house searches and seizures carried out. The Court declared the applications **inadmissible** as being manifestly ill-founded. It observed, in particular, that where no search or seizure operations had been carried out at an applicant's own home or premises, he or she could not claim to be the victim of a breach of the right to respect for private life or the home. The Court also found that the domestic proceedings as a whole had been fair. The applicants had been represented by lawyers throughout the proceedings and thus had an opportunity to challenge the lawfulness of the proceedings and put forward their defence arguments. The domestic courts had also expressly examined the issue of compliance with the adversarial principle and had ruled out any violation.
- ***Brazzi v. Italy (1st Section, Application N° 57278/11, 27-9-2018)***: This case concerned a search carried out by the Italian tax authorities in a house that the applicant had owned in Italy since 2009 and where his wife and children lived during the school year. The applicant complained in particular of a breach of his right to respect for his home. The Court held that there had been a **violation of Article 8** (right to respect for the home) of the Convention. It found, in particular, that the interference with the applicant's right to respect for his home had not been in accordance with the law, within the meaning of Article 8 § 2 of the Convention, because he had not had the benefit of the effective oversight required by the rule of law in a democratic society. No judge had examined the lawfulness or necessity of the warrant for the search of his home, neither before nor after the search. Italian law did not, therefore, provide sufficient upstream or downstream safeguards against risks of abuse of power or arbitrariness.

⁴⁰³ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 41.

Cases communicated in 2018:

- ***Ilieva v. Bulgaria* (Application No. 22536/11, 20-09-2018):** The case concerns a search of the home of a couple, during which numerous items were seized. The applicant complained, under Article 8 of the Convention, about the search of her flat and the premises of the company managed by her, as well as the seizure of numerous items, arguing that these actions were in breach of domestic law, since the circumstances were not such as to justify search and seizure without prior judicial authorization.
- See ***Kolev v. Bulgaria* (Application N° 38482/11, 07-06-2018) *supra***, at section 5.3.17.
- See ***Ljubas v. Croatia* (Application No. 4101/14, 07-06-2018) *supra***, at section 5.3.17.

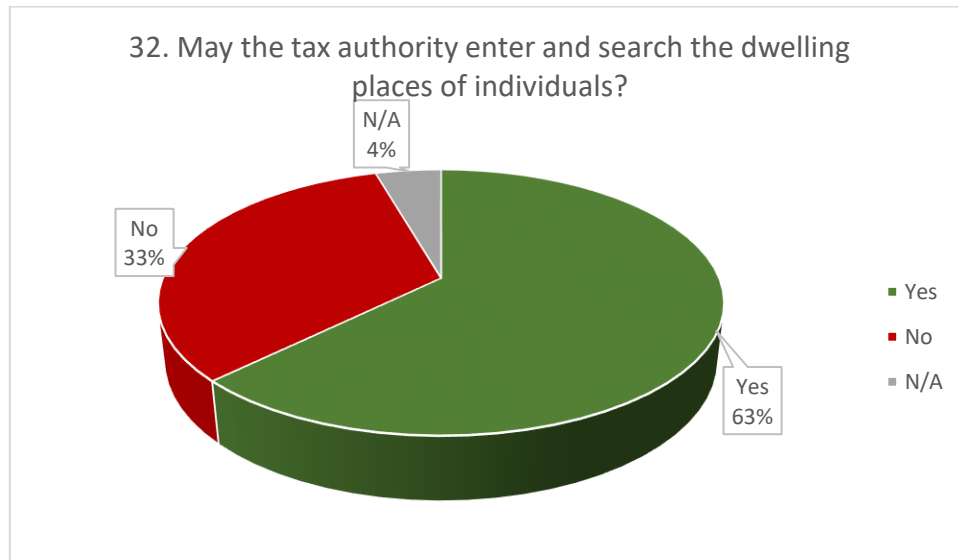
Considering the intensiveness of the state intrusion in the sphere of rights of the taxpayer during a more intensive audit and having regard of the likelihood of requiring strong means of proof (such as entering premises and intercepting communications), previous approval by the judiciary is a minimum standard. It allows an impartial body to balance the situation and the necessity of more invasive means within the boundaries of proportionality in a democratic society governed by the rule of law, as it happens, for instance, in purely criminal matters.⁴⁰⁴



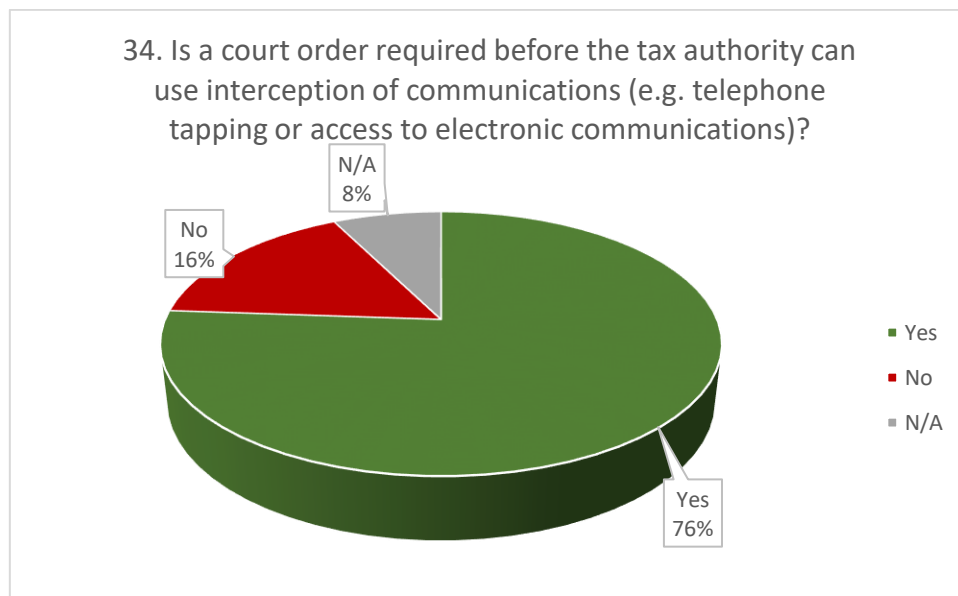
However, as it can be seen in the chart above, in the majority of surveyed jurisdictions, there is no need for authorization by a court before the tax authority may enter and search premises. This is a strong reminiscence of the traditional reluctance towards extending the

⁴⁰⁴ See P. Baker and P. Pistone, *supra* n. 10, at pp. 45-46, and C.E. Wefte, *supra* n. 11.

protection of human rights beyond its criminal limb,⁴⁰⁵ even though the type of intervention in taxpayers' affairs is identical to that of criminal proceedings.⁴⁰⁶ This is tantamount to the situation in which the tax authorities in most of the surveyed jurisdictions may enter and search the dwelling places of individuals.



That is not the case when dealing with phone tapping; most surveyed jurisdictions require a court order before the tax authority can use interception of communications, either by telephone or electronically, as depicted in the chart below.⁴⁰⁷



⁴⁰⁵ See G.W. Kofler et al., *supra* n. 2.

⁴⁰⁶ See C.E. Weffe, *supra* n. 11.

⁴⁰⁷ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

In this regard, in **Belgium**, according to the Income Tax Code, the tax authorities have the right to access professional premises (Article 319). The Court of Appeals of Gent ruled that, accordingly, the tax authorities also have access to the garden of a house that is also at the address of a company in order to look into the house through the window at the back of the house. The Court took into consideration that, at the time of this observation, the tax official was not aware of the fact that the house was also being used as a private home (Court of Appeals of Gent, 23 October 2018, no. 2017/AR/974). Also, The Court of First Instance of Antwerp has requested a preliminary ruling from the Belgian Constitutional Court for asking whether it is compatible with the right to privacy that tax authorities can enter premises (private dwellings) based on authorization from a Police Judge, who decides, based on a request, that is not in the least substantiated on the basis of concrete facts (Court of First Instance of Antwerp, 13 June 2018, no. 17/3858/A).⁴⁰⁸

In **Colombia**, the DIAN is authorized to order the search of premises. The interception of communications is not a practice of the tax administration. The DIAN does not have the power to make emergency decisions, subject to subsequent ratification. However, it can be foreseen that the minimum standard will be impacted with the creation of the Tax and Crime Office in 2019. The DIAN's searching power also does not authorize entry into the taxpayers' homes, for which a search warrant issued by a judicial authority is required. When the commercial establishment and the taxpayer's home are at the same address, the tax authority should refrain from entering the dwelling and withdraw goods from it without a search warrant. The best practice is not applied that the search warrant is known by the taxpayer when the search is going to be carried out.⁴⁰⁹

Also in **Colombia**, the implementation of the Common Reporting Standard (CRS) makes bank information available without any need for a judicial order. The DIAN can access banking information without requiring judicial authorization, either through a periodic report of general information on banking operations by financial institutions or through a request for specific information. Tax authority has more and more access to banking information via digital channels.⁴¹⁰

It is noteworthy that in **Cyprus**, when the tax authorities intend to search the taxpayer's premises, the taxpayer is not given the right to appear before a judicial authority (by statute).⁴¹¹

In **Italy**, the "new" Fiscal Agency has the power to seize bank accounts without judiciary authorization, pursuant to Law 225/2016 and Budget Law 2017.⁴¹²

In **Kenya**, there are no instances in which a search of a taxpayer's premises will be conducted without a court order. The law requires that a court order be obtained and a search

⁴⁰⁸ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 44.

⁴⁰⁹ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 42, 43 and 44.

⁴¹⁰ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 45.

⁴¹¹ See Cyprus, Tax Administrator's report, Questionnaire # 2, Question 44.

⁴¹² See Italy, Practitioner's report, Questionnaire # 2, Question 45.

warrant issued. This authorization is obtained on an *ex parte* basis. Also, as a general rule, the Kenyan Revenue Authority does not intercept taxpayers' telephone communications.⁴¹³ On the other hand, whilst the reason for seizure of documents, when practiced, is given, no timeframe for the return of the documents seized is set or communicated.⁴¹⁴

In **Peru**, a law and a regulation (Legislative Decree N° 1434 and Supreme Decree N° 256-2018-EF) were enacted in 2018. Both oblige financial institutions to disclose substantial financial information to the tax authorities. This was done within the framework of the obligations of the Peruvian authorities related to the agreement for the automatic exchange of information.⁴¹⁵

In **Portugal**, the 2019 Budget Law requires financial institutions to communicate to the Tax Authority any transfer of funds to tax privileged jurisdictions, irrespective of any indication of tax wrongdoing.⁴¹⁶

In **Slovenia**, the tax administration has no authority to intercept the communications of taxpayers. This measure can be used only in criminal cases by criminal investigators. The authority of the tax officials to enter premises is defined by the Law on Financial Administration, Article 22. In principle, tax officials can enter all premises where business activities of a taxpayer are carried out. They can enter the private home of the taxpayer only if a taxpayer conducts business activity therein or has identified his home as a seat of his business activity, or with the authorization of the judiciary. Whenever the tax administration can enter the private home of a taxpayer and judicial authorization is needed, this authorization cannot be replaced by internal authorization; judicial authorization is always needed. Tax officials can inspect a taxpayer's home without the judiciary's authorization if there is evidence that the taxpayer conducts business activity therein or has identified his home as a seat of his business activities. In all other cases, tax officials can enter a taxpayer's home only with the authorization of the judiciary.⁴¹⁷

5.5.4 Treatment of privileged information

Given the broad powers mentioned above, a procedure for ensuring that legally privileged material is not taken in the course of a search is a minimum requirement for the protection of taxpayers' rights. Such a procedure is granted in nearly half of the surveyed jurisdictions, as shown in the chart below.⁴¹⁸

⁴¹³ See Kenya, Tax Administrator's report, Questionnaire # 2, Questions 43, 44 and 46.

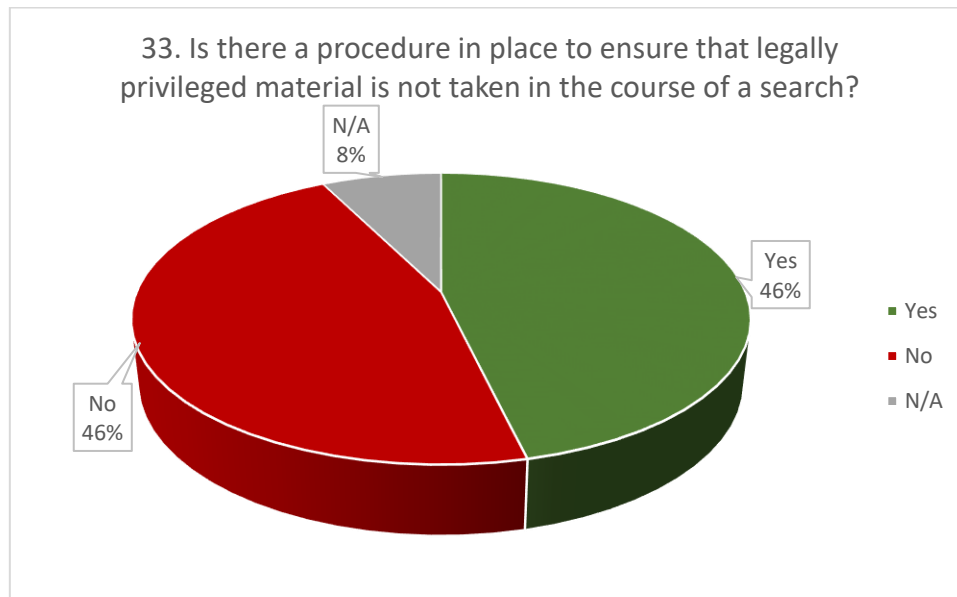
⁴¹⁴ See Kenya, Tax Administrator's report, Questionnaire # 2, Question 47.

⁴¹⁵ See Peru, Practitioner's report (3), Questionnaire # 2, Question 45.

⁴¹⁶ See Portugal, Practitioner's report, Questionnaire # 2, Question 45.

⁴¹⁷ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 43 and 44.

⁴¹⁸ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



In **Belgium**, the Supreme Court has ruled that, in principle, tax officials can observe, unnoticed and from the public road, the professional activities of a taxpayer, as well as the professional transactions he carries out with other taxpayers, in order to determine tax liabilities, even if these observations take place repeatedly. In a specific case, it is up to the judge to determine the legitimacy of the observations and, in particular, whether they are not of such nature that they constitute a violation of the right to privacy of those involved. In doing so, the judge can take into account, among other things, the location where these observations are carried out, their systematic or permanent nature, the context of the observations and the reasonable privacy expectations of those involved (Supreme Court, 14 December 2018, no. F.18.0093.N).⁴¹⁹

In **Mexico**, an amendment to the Tax Code was published on 1 June 2018. In such amendment, a new type of audit was added to the Tax Code. This new type of audit allows the tax authorities to visit taxpayers at their offices and tax domiciles to personally verify the transactions that are being carried out by the taxpayer. This audit allows the authorities to observe and record all of the commercial transactions that take place during the time period in which the audit is being carried out. The time duration of this type of audit is up to the discretion of the tax authorities, which makes it a really invasive procedure.⁴²⁰

In **Russia**, as there are no special rules about the seizure of computer hard drives and laptops, in practice, the tax authorities seize original computer hard drives and laptops, apparently without copying the information, let alone in the presence of the taxpayer.⁴²¹

In **Slovenia**, tax officials are granted access to bank information without judicial authorization. Bank information is regularly automatically exchanged between financial

⁴¹⁹ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 49.

⁴²⁰ See Mexico, Practitioner's report (1), Questionnaire # 2, Question 49.

⁴²¹ See Russia, Practitioner-Academic's report, Questionnaire # 2, Question 48.

institutions and the tax administration. The tax administration has no authority to intercept the communications of taxpayers. This measure can be used only in criminal cases by criminal investigators, and the Criminal Procedure Act must be respected. Tax officials can seize documents if needed in the course of audits. Seizure is limited to 30 days, and in exceptional cases, 90 days. The seizure of documents and the rights of the tax administration are defined in the Law on Financial Administration, Article 21. Backups are always made in the presence of the taxpayer or his authorized representative and independent witnesses. Proportionality is one of the basic principles of tax procedures in accordance with the Tax Procedure Law. When the tax administration applies special techniques, the Law on Financial Administration defines the limits. If the taxpayer is of the opinion that his human rights were violated during a tax investigation, he has the right to appeal to the superiors of the tax official who presumably violated his rights.⁴²²

5.6 Reviews and appeals

5.6.1 The remedies and their function

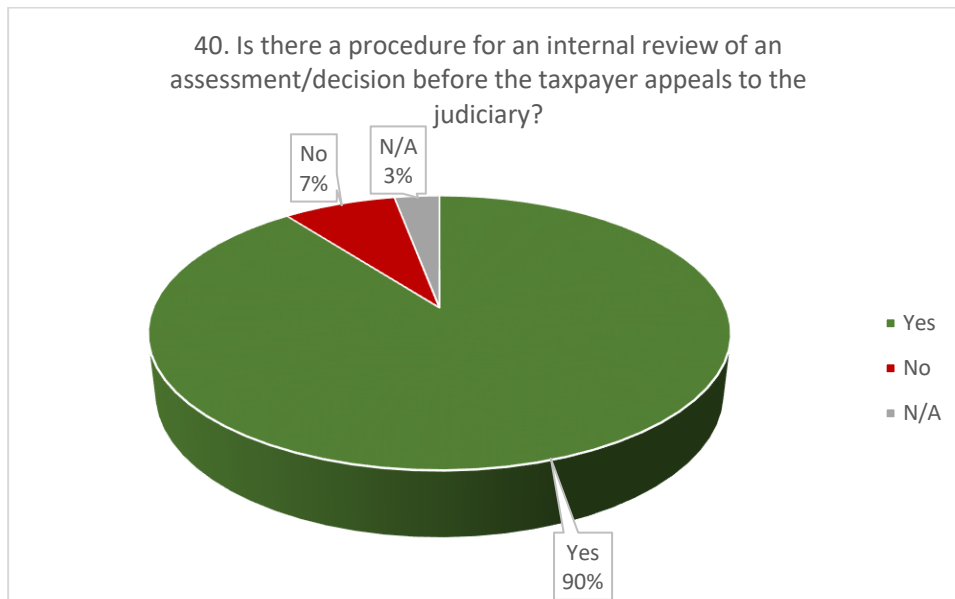
A basic principle of the rule of law demands all administrative activity be subject to some form of control, performed either by the administration itself (reviews) or by an impartial authority, such as the judiciary (appeals). This form of restraint allows the legal system to regulate itself, avoiding the improper exercise of public powers by quashing decisions that somehow do not abide by the law and therefore harm citizens' rights. Naturally, this scheme is suited for dealing with tax assessments. There are (i) reviews, which are mechanisms that achieve the annulment of a tax notice as a consequence of the action of the same tax official who issued it or an official above him in the hierarchy; and (ii) appeals, which are remedies available to the taxpayer when a judicial authority or similar impartial body within the tax administration may quash the tax notice or determine the rights of the taxpayers in connection with it.⁴²³

Hence, the existence of a procedure for an internal review of an assessment before the taxpayer's appeal to the judiciary shall be identified as a minimum standard,⁴²⁴ as is the case in a broad majority of the surveyed jurisdictions, as shown in the chart below.

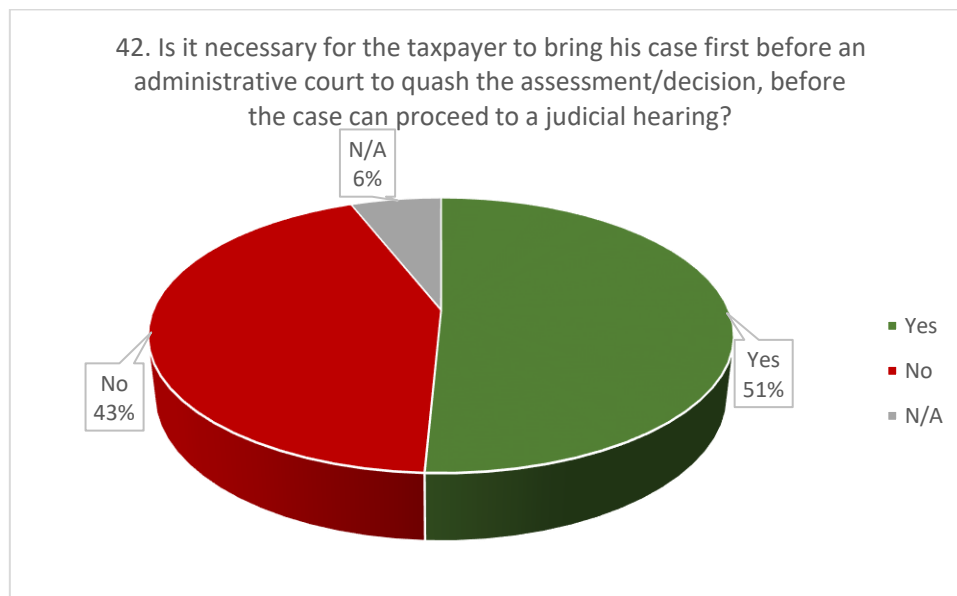
⁴²² See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 45, 46, 47, 48 and 49.

⁴²³ See P. Baker and P. Pistone, *supra* n. 10, at p. 49.

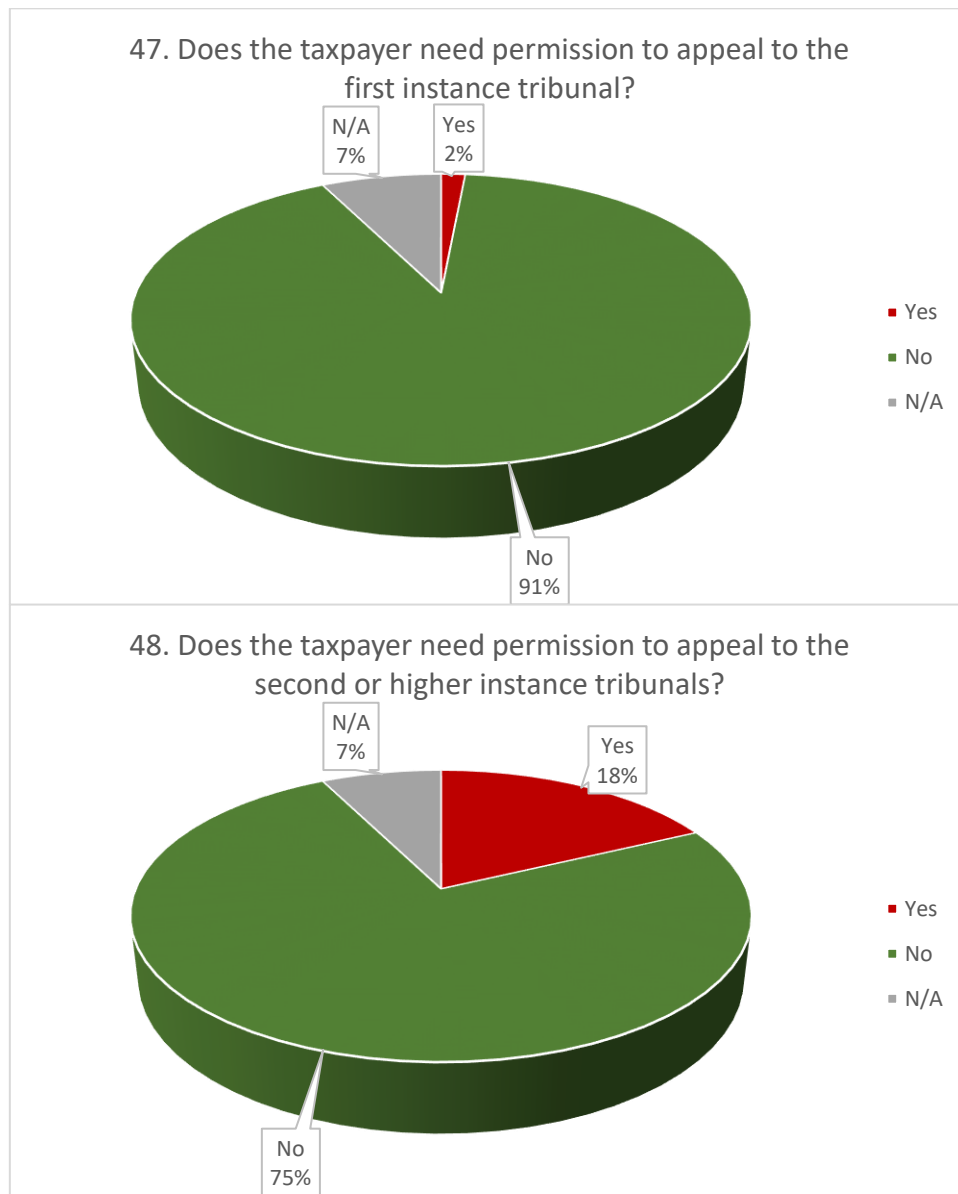
⁴²⁴ See P. Baker and P. Pistone, *supra* n. 10, at p. 49.



Asking for a review or an appeal should be optional for the taxpayer. However, in most of the surveyed jurisdictions, it is necessary to first bring the case before an administrative court. While this grants the authorities an opportunity to self-review their own acts, it makes the review longer and costly. This problem is maximized, considering that in many jurisdictions, the tax authorities seldom quash their own assessments, as explained by some reports.



However, once the administrative review has been performed, there is great freedom in exercising appeals before the judiciary. In the vast majority of the surveyed countries, there is no need for administrative permission to appeal to the first instance tribunal. Even though this freedom is generally respected with regard to appeals to second or higher tribunals, the possibility of filing an appeal in one of those tribunals is reduced by 20%, compared to the first instance, as shown in the charts below.



Regarding the prior exhaustion of administrative reviews in **Belgium**, in income tax cases, the exhaustion of a prior administrative review is mandatory before an appeal can be made before the tax court. In 2018, several judicial appeals were found to be inadmissible, on the grounds that prior administrative review had not been exhausted (Court of First Instance of Antwerp, 7 September 2018, no. 17/3882/A; Court of First Instance of Leuven, 13 April 2018, no. 17/535/A; Court of First Instance of Bruges, 11 April 2018, no. 17/1756/A; Court of First Instance of Bruges, 9 April 2018, no. 16/3681/A). Also, the Supreme Court ruled, in a case of withholding tax (on wages), in which the tax is not formally assessed (*ingekohierd*), that a third party who withholds the tax and wishes to reclaim it must first exhaust the administrative review procedure before being able to file an appeal before the tax court (Supreme Court, 9 February 2018, no. F.15.0141.F). The Supreme Court thus annulled the judgment of the Court of Appeal of Brussels, which had found the judicial appeal without prior administrative review admissible.

This is perhaps even more remarkable, as it was revealed in 2018 that there was (is) an internal administrative instruction called “process 101”, which obliges tax officials to reject every administrative appeal made by a taxpayer if the administrative appeal contains no new grievances or arguments in comparison with those made by the taxpayer in the assessment procedure.⁴²⁵

In **Belgium**, a protest letter can be filed online. Moreover, in the case of a court procedure, legal briefs can be also deposited online.⁴²⁶

In **Bulgaria**, during 2018, a trend of introducing new e-services of the National Revenue Authority, which corresponds to the amendments in the respective legislation, can be noticed. Among others, in the context of e-filing of requests for internal reviews to ensure the effective and speedy handling of the review process, the following notable decisions can be outlined:⁴²⁷

1. As communicated on 19 February 2018 by the NRA, its debtors started receiving e-messages if an enforcement procedure was initiated. The procedure is part of the Tax and Social-Insurance Procedure Code.
2. Rules for electronic submission of acts (enforcement grounds) with which a public claim has been established were introduced on 6 November 2018 to support the related e-service. It is intended for all state authorities, including the judiciary and local authorities, which, by their acts, establish public state and municipal tax claims.
3. A continuation of the aim towards future changes includes the Reasons for the proposed Project of a Law for amending and supplementing the Bulgarian Tax and Social-Insurance Procedure Code (published on 5 November 2018), namely Section 5, which relates to the e-exchange of documents and the handling over of letters during the administrative proceedings under the Tax and Social-Insurance Procedure Code. Its aim is can be described as follows: “To optimize the process of handling over of documents issued by the NRA authorities, a possibility is provided for documents being delivered electronically not only by a revenue authority, but also by other NRA employees. The possibilities for the transmission of electronic documents to the persons liable are also expanded through some of the means (certification services) provided for in Regulation (EU) No 910 of the European Parliament and of the Council of 23 July 2014 on Electronic Identification and Certification Services in Electronic Transactions on the internal market and repealing Directive 1999/93/EC and the e-Government Act.” This section of the project for amendments to the Tax and Social-Insurance Procedure Code follows a positive trend of the NRA, considering its intention to expand the e-services.

⁴²⁵ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 51.

⁴²⁶ See Belgium, Practitioner’s report, Questionnaire # 2, Question 50.

⁴²⁷ See Bulgaria, Practitioner’s report, Questionnaire # 2, Question 50.

In **Canada**, the CRA’s “Register My Formal Dispute” service, which is available in its online portals, allows taxpayers to electronically file a request for internal review. The CRA also accepts electronic submissions of documentation to support requests for review by individuals, businesses and representatives who are registered users of the CRA’s secure portals. Complaints about the service provided by the CRA can also be submitted electronically.⁴²⁸ However, the CRA does not allow taxpayers to appeal a decision to Federal Court without the prior exhaustion of administrative reviews by the CRA. The use of an internal administrative review process, followed by an appeal to a court, is consistent with Article 4 of the Taxpayer Bill of Rights, which states that ““you have the right to a formal review and a subsequent appeal””.⁴²⁹

In **China**, current law and practice allow the e-filing of review applications. If technical conditions are satisfied, review departments usually accept online filing. At present, Beijing, Zhejiang, Jiangxi and other local governments have online administrative review service platforms on their official websites.⁴³⁰

In **Colombia**, a stage of administrative reviews must be exhausted before exercising the right to appeal.⁴³¹

In **India**, although there is no appeal against the Authority for Advance Rulings (AAR) ruling, the taxpayers can challenge the rulings before the Court under the Court’s writ jurisdiction. However, writs are not the same as appeals.⁴³² For regular audits **India** has a well-established independent judicial system to challenge findings and determinations made by the Revenue”

In **Kenya**, the *i*Tax portal provides a platform for taxpayers to file their objections.⁴³³

In **Mexico**, since January 2017, all administrative appeals have to be filed electronically through the SAT’s digital system. Also in January 2017, a new tax trial was created. Together with the tax authorities, the PRODECON proposed to Congress an amendment to the Law of the Federal Tax Court to create the Tax Substance Trial. The objective of the trial is to resolve the substantive controversy presented to the Court, regardless of the formal issues surrounding the controversy. Both procedures, the digital administrative appeal and the substance trial have made significant progress during 2018 and are being increasingly used by taxpayers.⁴³⁴

In **Slovenia**, e-filing is becoming the most common way of communication between the tax administration and taxpayers. The tax administration encourages the use of e-filing,

⁴²⁸ See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 50.

⁴²⁹ See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 51.

⁴³⁰ See China, Academic’s report, Questionnaire # 2, Question 50.

⁴³¹ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 51.

⁴³² See India, Academic’s report, Questionnaire # 2, Question 51.

⁴³³ See Kenya, Practitioner’s report (2), Questionnaire # 2, Question 50.

⁴³⁴ See Mexico, Tax Ombudsman’s report, Questionnaire # 2, Question 50.

although not all processes are possible in electronic form (for example, the administrative appeal board cannot process appeals in e-form). The right to appeal a decision in tax cases is, in principle, governed by the provisions of the Law on Administrative Procedures and the Tax Procedure Act. An administrative appeal is defined as an appeal to an independent administrative body. Only if the case is not resolved on an administrative level can a lawsuit be filed at an administrative court.⁴³⁵

In **Spain**, Royal Decree 1073/2017 of 29 December 29 2017 introduced a modification to the revision regulation: notifications will be made by electronic means in cases in which it is obligatory to communicate with the administration in this way. The Spanish tax system makes the prior exhaustion of the available administrative reviews a condition on which to submit a judicial appeal. However, the Supreme Court (Judgment of 21 May 2018) has established that, in some cases, administrative review is not mandatory in order to submit a judicial appeal, in particular when the administrative review is only based on the illegality or unconstitutionality of the law and the economic-administrative courts (*Tribunales Económico-Administrativos*) have no jurisdiction on the matter. Even though the judgment only concerns the local area, it could be applied in others areas as well.⁴³⁶

In **Sweden**, the Administrative Procedure Act (*Förvaltningslagen* (2017:900)) that entered into force in 2018 is neutral in relation to technology. E-filing is hence generally allowed, which also corresponds to the reality of the authorities.⁴³⁷

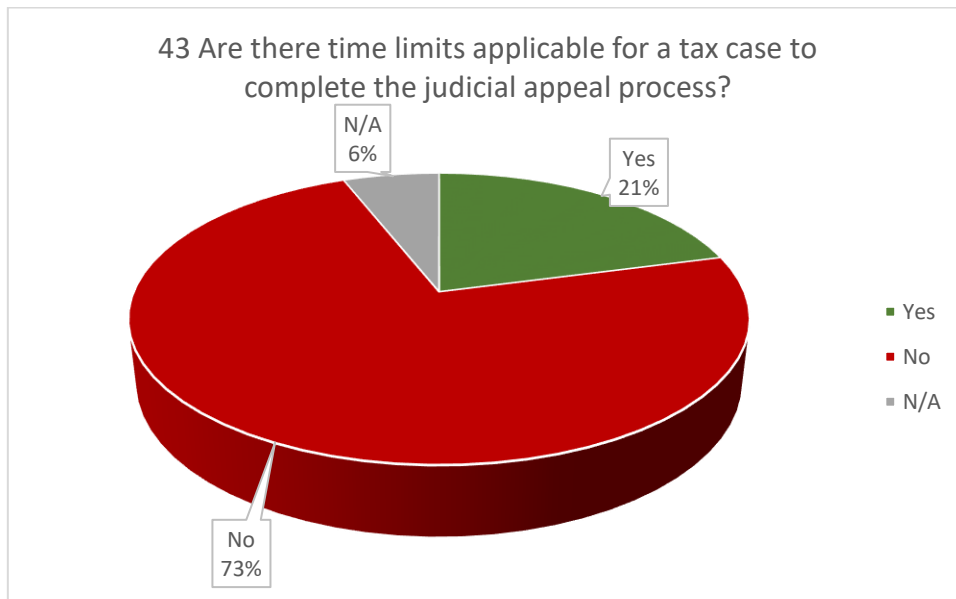
5.6.2 Length of procedure

Both efficiency and certainty in tax assessment and collection are involved in the length of reviews and appeals. Taxpayers have the right to certitude regarding their tax liabilities, and the effectiveness of the efforts in tax enforcement are linked straightforwardly to the swift collection of those taxes legally due. However, belatedness seems to be widely practised in most surveyed countries. In practice, there seem to be no time limits for cases to complete the judicial process in a vast majority of the surveyed countries, as depicted in the chart below.

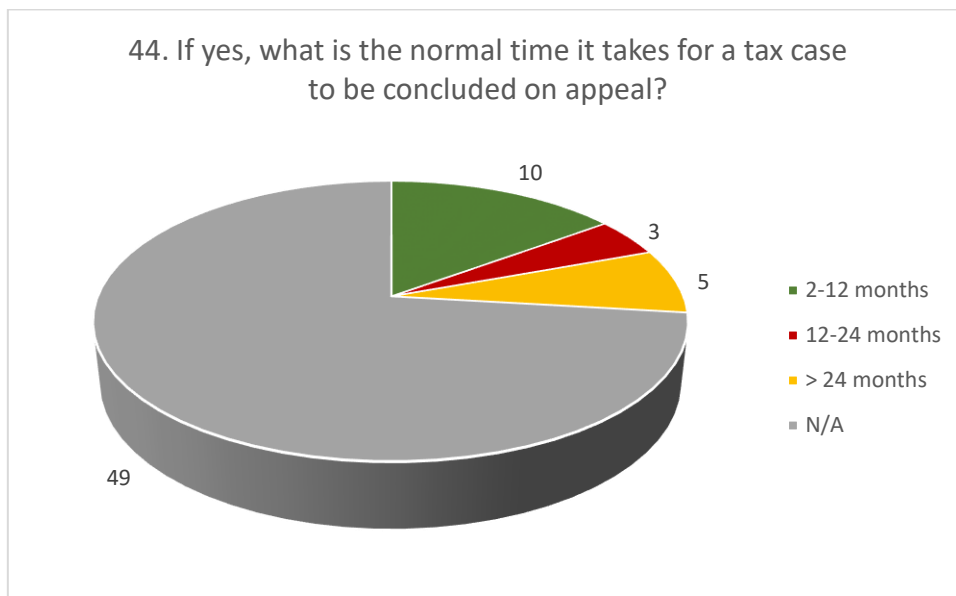
⁴³⁵ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 50 and 51.

⁴³⁶ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Questions 50 and 51.

⁴³⁷ See Sweden, Practitioner and Academic's joint report, Questionnaire # 2, Question 50.



Most of the reports do not dare to estimate the normal time it takes for a tax case to end on appeal. Fortunately, out of those reports that actually provide an approximation of the time a tax case takes to be decided, the majority set very short timeframes for delivering final decisions on appeals, with some as short as 2 months. This is naturally an excellent sign of progress, as shown in the chart below.⁴³⁸



However, national reporters identified some good practices as part of a major trend towards shortening the length of reviews and appeals. For instance, with regard to recommendations for providing the taxpayers with an administrative estimation in advance of

⁴³⁸ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

the timeframes of the appeals (based on the level of complexity of the issue at hand) new, simplified procedures for non-complex disputes were made in 2018, leaving room for optimism.

In the 2016 report by the AG of **Canada** on Income Tax Objections,⁴³⁹ the AG recommended that the CRA provide taxpayers with the timeframes within which it expects to resolve their objection, and these timeframes should be based on the objection's level of complexity. The AG also recommended that the CRA define what it considers a timely resolution of an objection. To assist in this determination, the AG recommended that the CRA look to other comparable organizations to help it determine what is reasonable. Since the AG's report, the CRA has taken steps to improve the timely processing of objections by introducing new service standards for resolving low-complexity objections within 180 days 80% of the time (the CRA indicates that this target has been met and surpassed) and medium-complexity objections within 365 days 80% of the time. As of 30 November 2018, the CRA met this standard for medium-complexity objections in only 74% of objections. It is important to note that, beginning in May 2017, the CRA changed its methodology for calculating resolution timeframes to include the entire time in which the dispute falls within the Government of Canada's control, but excludes the time in which the CRA has requested and is waiting on the receipt of documentation from taxpayers. Additionally, the CRA changed its process for addressing low-complexity and some medium-complexity objections to include taxpayer/representative contact within 30 days of receiving the objection. This expedites the process of requesting additional information or supporting documentation and improves service.⁴⁴⁰

In this regard, the **Canada** Taxpayers' Ombudsman Report entitled *Without Delay – An examination into service issues arising from delays in the Canada Revenue Agency's Taxpayer Relief Program*, dated September 2017, highlighted the delays in the CRA's review and appeals process. In part to respond to the findings of this Report, the CRA began setting out (on its website) average resolution times for low, medium and high-complexity income tax objections. For example, for income tax objections resolved in December 2018, low-complexity income tax objections were completed within an average of 91 days, and medium-complexity income tax objections were completed within an average of 248 days from the date on which the objection was submitted. High-complexity income tax objections may take over 690 days to resolve. The CRA hopes to maintain and better these service standards.⁴⁴¹

In **Canada**, when a taxpayer disagrees with a decision letter from the CPP/EI Rulings Division or a notice of assessment for payroll source deductions, they can file an appeal with the Minister of National Revenue. There is no service standard for the timeframe within which the appeal should be completed. Valid circumstances may exist when an objection or appeal takes longer than 2 years. In these cases, it is important for taxpayers to receive regular communication about the status of the objection or appeal.⁴⁴²

⁴³⁹ See http://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_02_e_41831.html

⁴⁴⁰ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 52.

⁴⁴¹ See Canada, Practitioner's report (2), Questionnaire # 2, Question 52.

⁴⁴² See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 52.

In **Colombia**, the average time for a final instance ruling is 6 years for the judicial stage, plus 2 years for the administrative stage. These times may increase with (i) the growth of the statute of limitations for the tax returns to become final from 2 to 3 years; (ii) requests for tax refunds; and (iii) the issuance of provisional tax assessments.⁴⁴³

In **Denmark**, as part of the current government's *Retssikkerhedspakke IV* (Fourth Package of Legal Protection), an agreement between all political parties represented in the Danish parliament was reached, granting additional resources for the Tax Appeals Agency directed at reducing the time spent handling appeals. From 1 January 2019, certain appeals particularly concerning natural persons not raising complex issues or questions of principle is to be decided within 12 months going forward.⁴⁴⁴

The dispute resolution system in **India** is hierarchical. Normally, the first appeal lies with the Commissioner of Income Tax (Appeals). Section 250(6A) of the ITA states that, when possible, such appeal should be disposed of within 1 year from the end of the financial year in which the appeal is filed. The next appeal goes to the Income Tax Appellate Tribunal. Here also, section 254(2A) of the ITA states that, when possible, the appeal should be decided within 4 years from the end of the financial year in which the appeal is filed. In the case of the Authority of Advance Ruling, it is laid down by section 245R that the ruling shall be given within 6 months of the receipt of the application. There is no time limit prescribed for the disposal of appeals by the High Courts and the Supreme Court.⁴⁴⁵ In **India** there were no time limits on the Revenue for proceeding against defaulters who have failed to comply with withholding obligations. Most Courts (barring the Allahabad High Court) have held that there can be no unlimited period and a reasonable period must be read in, beyond which the Order would not be valid.⁴⁴⁶

In **Peru**, it was previously common for administrative procedures to take more time, but for some years now, an effort has been made to streamline reviews and administrative appeals, including provisions in the tax code that suspend interests on tax liability after the time allowed for the administrative review or appeals has expired. Judicial appeals are also subject to these measures, but can be quite lengthy. The provision in the tax code that suspends interest on tax debt was established in 2006, but a ruling of the Constitutional Court in 2012 applied the same logic to the periods prior to that provision. In 2018, a new ruling of the Constitutional Court (STC-04532-2013-aa) clarified the application of the 2012 decision, stating explicitly that the ruling applies to all similar cases pending resolution.⁴⁴⁷

In **Slovenia**, on average, administrative appeals are processed within 9 months. The time limit can vary depending on the substance of the case. The vast majority of cases are

⁴⁴³ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 52.

⁴⁴⁴ See Denmark, Tax Administrator and Practitioner's joint report, Questionnaire # 2, Question 52.

⁴⁴⁵ See India, Academic's report, Questionnaire # 2, Question 52.

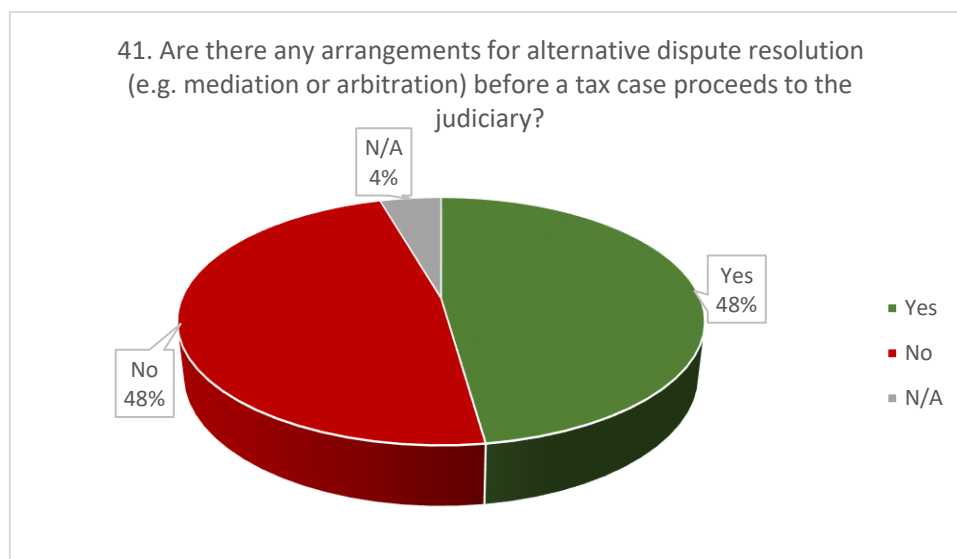
⁴⁴⁶ Relevant case laws are: (i) CIT Delhi v NKK Japan Broadcasting Corpn 305 ITR 137 (Del); (ii) DIT (IT) v Mahindra & Mahindra Ltd 365 ITR 560 (Bom); (iii) Mass Awash (P) Ltd v CIT (IT) 397 ITR 305 (All).

⁴⁴⁷ See Peru, Practitioner's report (3), Questionnaire # 2, Question 52.

resolved within 2 years. There is no information on time limits for judicial reviews of tax decisions.⁴⁴⁸

5.6.3 Alternative dispute resolution (ADR)

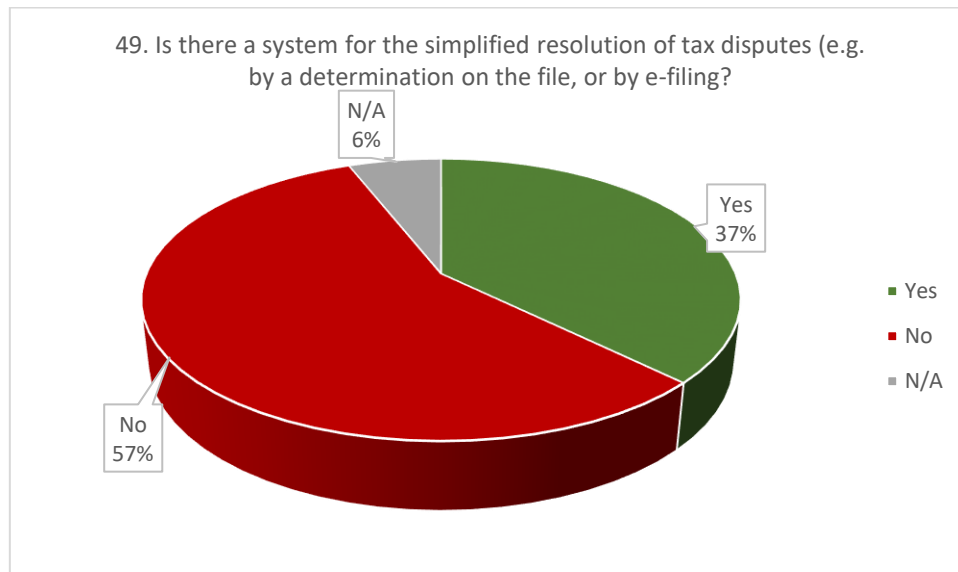
The right to good administration implies that good faith should govern the relationship between taxpayers and the tax authorities. Therefore, when conflict arises – mainly due to different opinions regarding the assessment of taxes – the use of alternative dispute resolution (ADR) mechanisms should be widely pursued. ADR ensures the fair resolution of conflicts in an efficient way, providing certainty for both parties and better results in terms of the proficiency of tax policies. According to the national reports,⁴⁴⁹ half of the surveyed jurisdictions have arranged for the adoption of ADR in practice, such as mediation or arbitration, before a tax case proceeds to the judiciary, as shown in the chart below.



However, only some of the surveyed jurisdictions have incorporated a system for the simplified resolution of tax disputes, according to the national reports.

⁴⁴⁸ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 52.

⁴⁴⁹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



In **Australia**, the ATO continues to rely heavily on seeking to settle complaints. As part of their Independent Assurance of Settlements programme, the ATO has engaged four former Federal Court judges and refer the largest and most significant decisions on disputes to them for review. During the 2017-2018 financial year, they reviewed 12 settlements and found that 11 provided a fair and reasonable outcome. The Australian National Audit Office also issued a favourable report on the ATO’s use of settlements.⁴⁵⁰

5.6.4 *Audi alteram partem* and the right to a fair trial

Recent Relevant Case Law

European Court of Human Rights

Cases decided in 2018:

- Wallace v. France* (5th Section, Application No. 9793/16, 20-11-2018):** This case concerns the applicant’s right of access to court and his double taxation in the United Kingdom and France. The applicant was an employee of a British company who worked also in France. French tax authorities considered that he exercised a self-employed professional activity in France and ordered him to pay income tax and VAT with penalties. The applicant’s complaints to the administrative courts were dismissed, based, inter alia, on the British tax authorities’ reply of 2012 that they had no information about his income received after 2003. The applicant then lodged an appeal to the *Conseil d’Etat*; he enclosed a new letter from the UK tax authorities from 2014, received after the trial. The letter confirmed that he was an employee of the British company and that his tax was deducted at source and paid in the United Kingdom. The *Conseil d’Etat* refused to admit this letter as new piece of evidence

⁴⁵⁰ See full report available here: <https://www.anao.gov.au/work/performance-audit/australian-taxation-office-use-settlements>. See also Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 58.

because it had not been examined by the lower courts. The applicant's appeal was thus rejected. The Court declared the case **inadmissible as manifestly ill-founded**. As for Article 6 § 1, the complaint that the applicant's right of access to court was restricted by the *Conseil d'Etat's* refusal to examine the letter of 2014, the Court restated that it is not its task to review the findings of domestic courts. It pointed out that the alleged error in the applicant's tax situation was attributable to the British rather than the French tax authorities. Turning to the AIP1 complaint about double taxation, the Court stated that it could not speculate whether the outcome of proceedings in the French courts would have been different if the letter of the UK tax authorities from 2014 was examined in due course. It further restated the importance of a domestic remedy that ensures the protection of the right to property as one of the factors to be taken into account when assessing whether the balance between the public interest and fundamental individual rights has been struck. However, in this case, the applicant had access to proceedings that met these requirements.

- See *Gohe v. France* (5th Section, Applications N° 65883/14, 21434/15, 48044/15 and 51477/15, 23-01-2018), at section 5.5.3.
- See *Homan and Others v. Belgium* (2nd Section, Applications N° 52961/09, 52975/09, 53054/09 and 53235/09, 23-01-2018), at section 5.7.

Cases communicated in 2018:

- *Rechul v. Poland* (Application N° 69143/12, 09-01-2018): Citing Article 6 § 1 of the Convention, the applicant complained of a violation of his right of access to a court on the ground that the district court would have refused to exempt him from the payment of the judicial fee required for the filing of an instrument instituting proceedings. He also alleged that his right of access to a court was not granted because of the obligation that would have been made in the judgment of the regional court to pay the lawyer's fees for the winning party, represented by the Office of the General Counsel of the state, while it would have been exonerated from the costs of justice because of its deprivation.
- *Baltic Master Ltd. v. Lithuania* (Application N° 55092/16, 16-05-2018): The applicant company complained, under Article 6 § 1, that the domestic courts' decision not to request a preliminary ruling from the ECJ lacked reasoning. The applicant company also complained, under Article P1-1, that it had to pay various taxes and had been deprived of a substantial amount of money.
- *Eksim International Trade JSC. v Turkey* (Application No. 38599/10, 25-11-2018): The applicant company initiated proceedings after having followed the procedure described in the customs authorities' payment notice and challenged the customs tax and penalty imposed on it. The case was dismissed by the Tax Court on the grounds that the applicant company had failed to comply with the required time limit, as he must have brought the case without having recourse to the remedies

pointed out by the customs authorities in the official notice. The applicant company complained of a violation of its rights under Article 6 § 1 of the Convention.

- ***Otiak CJSC v. Armenia (Application No. 2512/15, 06-04-2018)***: The applicant company paid VAT and profit tax for the amount of compensation received from the Government for the expropriation of its land. Later, the company initiated civil proceedings seeking to recover the amount of paid taxes because it was not liable to pay them. It also sought to have civil fines imposed on State authorities for the unlawful levying of taxes and unjust enrichment. The domestic courts held that the company was not liable to pay VAT and profit tax, but rejected the claim in part concerning civil fines for the lack of jurisdiction. The applicant company then initiated administrative proceedings seeking to recover the unlawfully levied taxes and requesting that civil fines be imposed. The administrative courts granted its claim with respect to the recovery of taxes but discontinued the claim concerning the imposition of civil fines. The applicant company complained, under Article 6 § 1 of the Convention, that its right of access to a court was breached, as it was deprived of the opportunity to have some of its claims determined by the domestic courts.
- See ***Pascal Genet v. France (Application No. 56225/16, 07-11-2018)***, at section 5.7.1.
- See ***PANEVA v. The Former Yugoslav Republic of Macedonia and 2 other applications (Application No. 17778/16, 20-06-2018)***, at section 5.10.2.

Court of Justice of the European Union

Cases decided in 2018:

- ***Donnellan – C 34/17 (26-04-2018)***: In 2002 the customs office of Patras issued a notice for the imposition on Mr. Donnellan of an administrative penalty of EUR 1,097,505 on the basis that cargo seized in July 2002 in a truck he was driving contained 171,800 packs of contraband cigarettes. By decision of 15 July 2009, by way of a follow-up to the notice of 27 April 2009, the customs office of Patras imposed a fine of EUR 1,097,505 on Mr. Donnellan. The same day, that fine was published in the Official Journal of the Hellenic Republic. On 14 November 2012, the Greek authorities sent to the Commissioners, in English, a request for recovery, within the meaning of Article 10 of Directive 2010/24, relating to that fine of EUR 1,097,505, increased by interest of EUR 384,126.76 and costs or penalties of EUR 26,340.12. Mr. Donnellan argued that he was deprived of his right to an effective remedy in Greece and that, in those circumstances, a positive response to that request for recovery could not be given by the Commissioners. According to the Court, Article 14(1) and (2) of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, read in light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding an authority of a Member State from refusing to enforce a request for recovery concerning a claim relating to

a fine imposed in another Member State, such as that at issue in the main proceedings, on the ground that the decision imposing that fine was not properly notified to the person concerned before the request for recovery was made to that authority pursuant to that directive.

- See *Fontana – C 648/16 (21-11-2018)*, at section 5.8.

Cases communicated in 2018:

- *Glencore – C 189/18 (OJ C 221, 25-6-2018, pp. 6-7)*: Request for a preliminary ruling from the *Fővárosi Közigazgatási és Munkaügyi Bíróság* (Hungary) lodged on **13 March 2018** (*Glencore Agriculture Hungary v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*). Various questions were raised regarding the rights of the other party to a transaction (the recipient of the invoice) in cases in which the tax authorities instigate proceedings against the first party to the transaction (the issuer of the invoices) during which a reclassification of the transaction takes place. It is understood that the recipient is no party to the procedures taking place concerning the issuer of the invoices.
- See *IN – C 469/18 (OJ C 427, 26-11-2018, p. 4)*, at section 5.4.1.
- See *Google Ireland – C 482/18 (OJ C 352, 1-10-2018, pp. 23–24)*, at section 5.7.

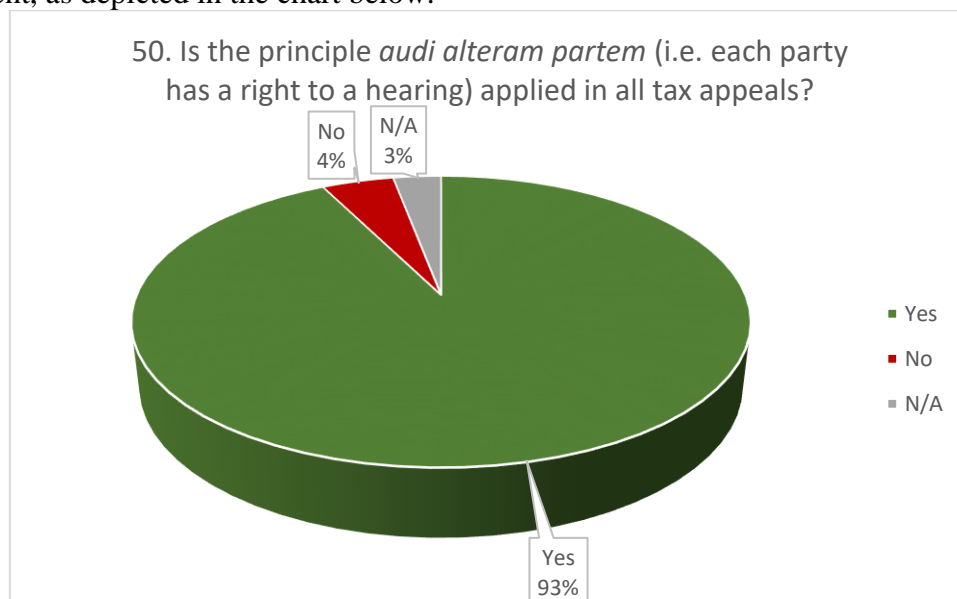
Inter-American Court of Human Rights

Decisions:

- *José María Cantos v. Argentina (Application No. 11.636, Serie C No. 85 and Serie C No. 97, 28-11-2002)*: In 1972, the Provincial Tax Office of Santiago del Estero (Argentina) committed irregularities at the time of auditing the companies owned by Mr. José María Cantos. Furthermore, Mr. Cantos was subjected to persecutions and harassments for more than 10 years. Therefore, Cantos filed (in 1986) a legal action claiming the payment of USD 2,780,000,000 (approximately). The Argentine Supreme Court not only rejected such a claim, but also required from Mr. Cantos the payment of a judicial tax (*tasa judicial*) for USD 83,400,000 (i.e. 3% of the claimed damages). As a result of not paying such an amount, the taxpayer (i.e. José María Cantos) received 2 penalties: (i) a fine of USD 41,700,000 (i.e. 50% of the accrued tax); and (ii) the prohibition of performing any business activity. The Inter-American Court on Human Rights found that the intention to collect such a tax amount was out of proportion. In consequence, the Argentine State violated Articles 8 and 25 of the American Convention on Human Rights, which respectively recognize the taxpayer's right to a fair trial and judicial protection. The Court ordered the State to (i) refrain from collecting the judicial tax and the corresponding fine imposed on Mr. Cantos; and (ii) suppress any other measures adopted to the detriment of his assets and businesses.

The principle of *audi alteram partem* is a cornerstone of legal systems governed by the rule of law. A corollary of human dignity, the principle means that everyone that is eventually subject to any kind of limitative measure from the state has the right to participate in the proceedings leading to the adoption of such measure, such as tax assessments.⁴⁵¹ This is a minimum standard of taxpayers' protection in their interaction with the tax authorities.⁴⁵²

This has been acknowledged by an overwhelming majority of the surveyed jurisdictions. 62 of 67 reports declare that *audi alteram partem* is a principle applied to all tax appeals in their countries, which is a very strong argument in favour of the universality of such a statement, as depicted in the chart below.



However, *audi alteram partem* can be easily distorted, formally allowing the taxpayer's participation in the proceedings without actually considering his arguments in the assessment, and therefore can be disregarded in practice.

In **Belgium**, it was revealed in 2018 that there was (is) an internal administrative instruction called "process 101", which obliges tax officials to reject every administrative appeal made by a taxpayer if the administrative appeal contains no new grievances or arguments in comparison with those made by the taxpayer in the assessment procedure.⁴⁵³

In **Canada**, taxpayers can be heard directly or through their representatives in the context of administrative reviews and judicial appeals. Taxpayers and their authorized representatives can submit supporting documents for consideration to the CRA before any final

⁴⁵¹ See C.E. Weffe, *supra* n. 11.

⁴⁵² See P. Baker and P. Pistone, *supra* n. 10, at p. 79.

⁴⁵³ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 53.

decision. This right to be heard is consistent with Article 4 of the Taxpayer Bill of Rights, which states that “you have the right to a formal review and a subsequent appeal”.⁴⁵⁴

In **Peru**, changes in the tax code (by Legislative Decree N° 1421) have limited the stages of administrative appeals in which a taxpayer can request a hearing before the tax court. Now, the taxpayer can only ask for a hearing once the appeal is filed.⁴⁵⁵ The Peruvian Tax Court has pending proceedings for which appeals were filed as far back as 2010.⁴⁵⁶

In **Slovenia**, in principle, tax officials are obliged to investigate information both in favour and to the detriment of a taxpayer. It is most common that documentary evidence is used in tax cases; the hearing of witnesses seldom occurs.⁴⁵⁷

5.6.5 *Solve et repete*

Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- ***Hüseyin ÇAVUŞ v. Turkey (Application No. 53009/09, 26-10-2018)***: The application concerns the applicant’s deprivation of his vehicle without having been paid any compensation in return. The applicant’s vehicle was seized by the customs authorities as a guaranty in order to secure the payment of his tax debts. Subsequently, the applicant paid the customs debt. However, his request to receive the vehicle back was rejected by the authorities, as it had already been sold to a third person in a public auction, on account of the applicant’s failure to reclaim the vehicle within 3 months from the date of the seizure. The applicant complained of a violation of his rights under Article 1 of Protocol No. 1 to the Convention.

It is also obvious that there shall be no obstacles for taxpayers to access judicial remedies. However, this principle entails the risk of letting taxpayers unduly exploit reviews and appeals to delay the payment of taxes that are undoubtedly due. On the other hand, taxpayers may be deterred from lodging a genuine appeal that gravely affects their rights. In this regard, proportionality demands that taxpayers should be allowed to file appeals in all cases, provided that judicial interim measures are taken to ensure the outcome of the process.⁴⁵⁸

⁴⁵⁴ See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 53.

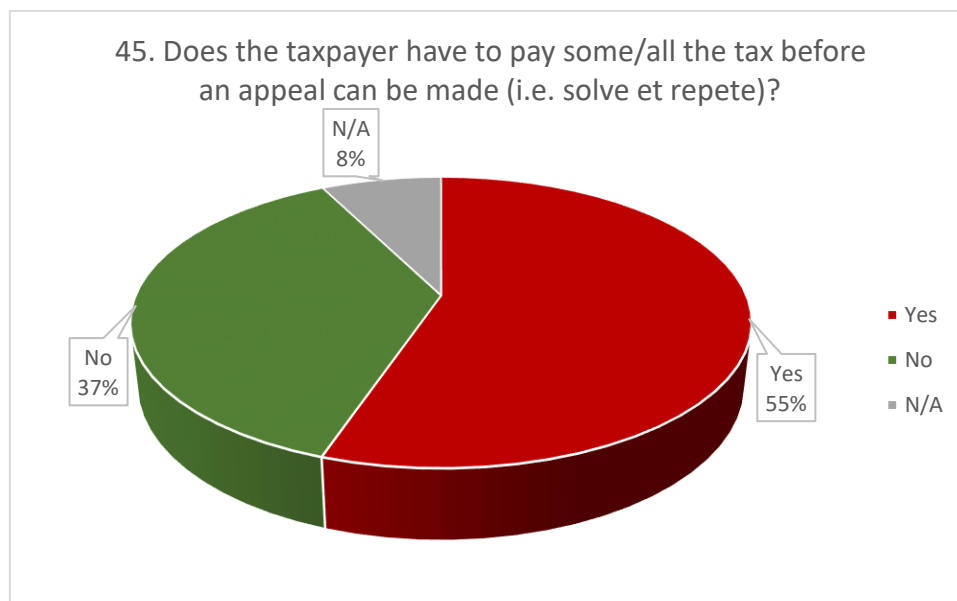
⁴⁵⁵ See Peru, Practitioner’s report (3), Questionnaire # 2, Question 53.

⁴⁵⁶ See Peru, Practitioner’s report (1), Questionnaire # 2, Question 52.

⁴⁵⁷ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 53.

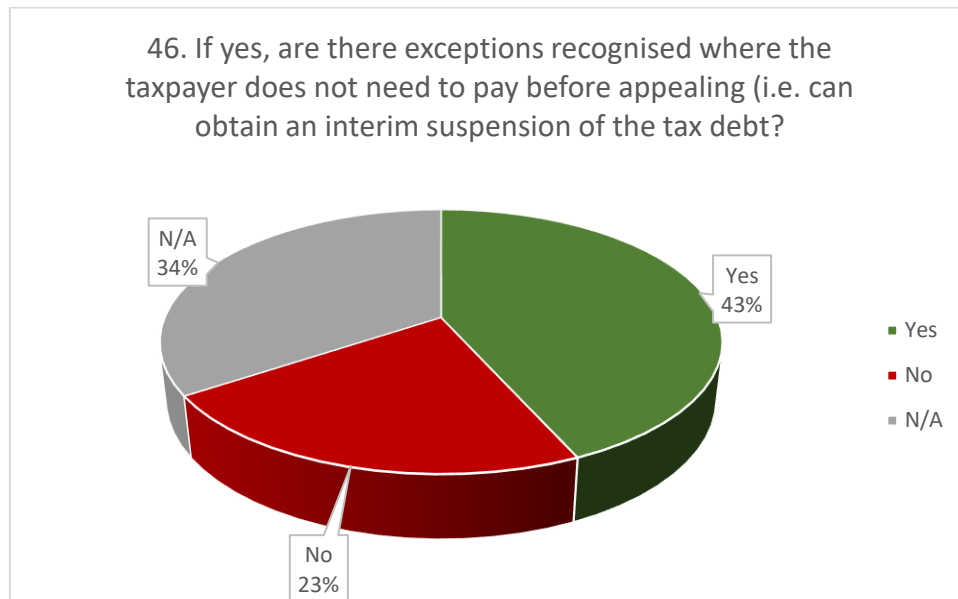
⁴⁵⁸ See P. Baker and P. Pistone, *supra* n. 10, at pp. 51-52.

However, country practice seems to go in a different direction.⁴⁵⁹ Out of 67 national reports, 37 state that the taxpayer is obliged to pay some or all the tax before an appeal can be made, therefore making the right to access to justice conditional on the payment of the tax theoretically due before any judicial review of the assessment is made by tax authorities, and 5 reports did not answer. Only 25 national reports affirm the prohibition of *solve et repete* as a feature of their tax systems, as shown in the chart below.



Given that situation, in general terms, there are exceptions recognized by the legal systems of the surveyed jurisdictions according to which the taxpayer does not need to pay before appealing, according to 29 reports. Surprisingly, 23 reports did not provide information in this regard, and 15 reports deny such measures, depicting a situation potentially harmful for taxpayers' rights. This situation is shown in the chart below.

⁴⁵⁹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



In this regard, in **Canada**, the Taxpayer Bill of Rights states that taxpayers “have the right, unless otherwise provided by law, not to pay income tax amounts in dispute before you have had an impartial review” (Article 7). However, interest charges still apply to an amount owing while it is in dispute. Taxpayers can choose to pay all or part of the amount in dispute to avoid paying more interest on the amount owed. Given the fact that interest continues to accrue while an amount is in dispute, it may not be in the taxpayer’s best interests to delay paying amounts owing until the end of the review or appeal process.⁴⁶⁰

In **Colombia**, an appeal does not require prior payment of tax as a requisite for legal standing.⁴⁶¹

Although there is no provision in the law, courts in **India** have held that any appellate forum has the inherent power to grant stay in appropriate cases.⁴⁶²

In **Peru**, the general rule is that filing a judicial appeal does not prevent the tax authorities from enforcing the payment of the tax assessment, but there is the possibility of asking the judge for a suspension.⁴⁶³ In this regard, Article 146 of the Tax Code establishes the right of the taxpayer to file the appeal without payment if the appeal is filed within 15 days of the notification of the Intendance Resolution.⁴⁶⁴

In **Slovenia**, in principle, the tax needs to be paid even if an appeal is filed. However, the Tax Procedure Act (Article 87) defines situations in which it is allowed to suspend the payment. This is possible on the ground that there is high probability that taxpayer’s appeal will

⁴⁶⁰ See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 54.

⁴⁶¹ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 54.

⁴⁶² See India, Academic’s report, Questionnaire # 2, Question 54.

⁴⁶³ See Peru, Practitioner’s report (3), Questionnaire # 2, Question 54.

⁴⁶⁴ See Peru, Practitioner’s report (1), Questionnaire # 2, Question 54.

be successful. In addition, special rules provide for the possibility to suspend the payment on the ground of the personal circumstances of a taxpayer (Articles 101 to 103).⁴⁶⁵

In **Spain**, concerning the provision of evidence in the review process, the judgment of the Supreme Court of 10 September 2018 implies a step further towards the protection of taxpayers' rights. The judgment indicates that it is possible to submit evidence in administrative reviews despite it not being submitted in the audit procedure, provided that they are relevant for the claim. There is one exception, i.e. that the attitude of the taxpayer was abusive and it is established in the file.⁴⁶⁶

In the **United Kingdom**, in the case of payments of tax when appeals by other taxpayers have failed, if an Accelerated Payment Notice (APN) is issued by the tax authorities, the tax becomes payable immediately without any right to appeal against the notice. APNs can be issued when (i) the tax authority, HMRC, believes that tax is payable and some form of defined tax avoidance is present; or, alternatively, (ii) a court case has been decided in favour of HMRC and HMRC believes that the particular taxpayer's case is similar to the decided case. In the latter case, HMRC may issue a Follower Notice (FN). These new powers, i.e. APNs and FNs, were introduced by Finance Act 2014 and the House of Lords Economics Affairs Committee in their report,⁴⁶⁷ recommending that "Accelerated Payment Notice/Follower Notice legislation be amended to include a right of appeal to the tax tribunal. Whenever a new power is introduced or an existing power significantly extended it should be accompanied by a right of appeal against the exercise of the power, not just against the underlying tax liability".⁴⁶⁸

5.6.6 Costs of proceedings

As stated by Baker and Pistone,⁴⁶⁹ all proceedings imply a cost for both the tax authorities and taxpayers. Some tax systems contain rules that oblige the party that loses the appeal to bear all costs related to the procedure. This rule corresponds with general practice in the legal systems of several countries around the world and reflects the principle that the winner receives compensation for all costs that he was obliged to incur throughout the entire procedure. This practice discourages parties from litigating and encourages them to find an agreement at an early stage of the dispute. That is the case for most of the surveyed jurisdictions, as depicted in the chart below.

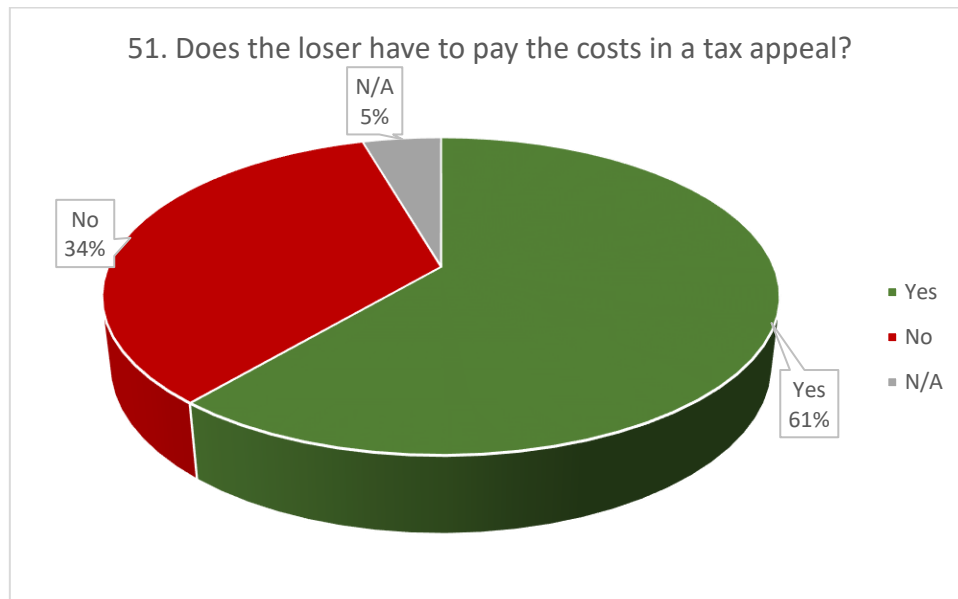
⁴⁶⁵ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 54.

⁴⁶⁶ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Question 53.

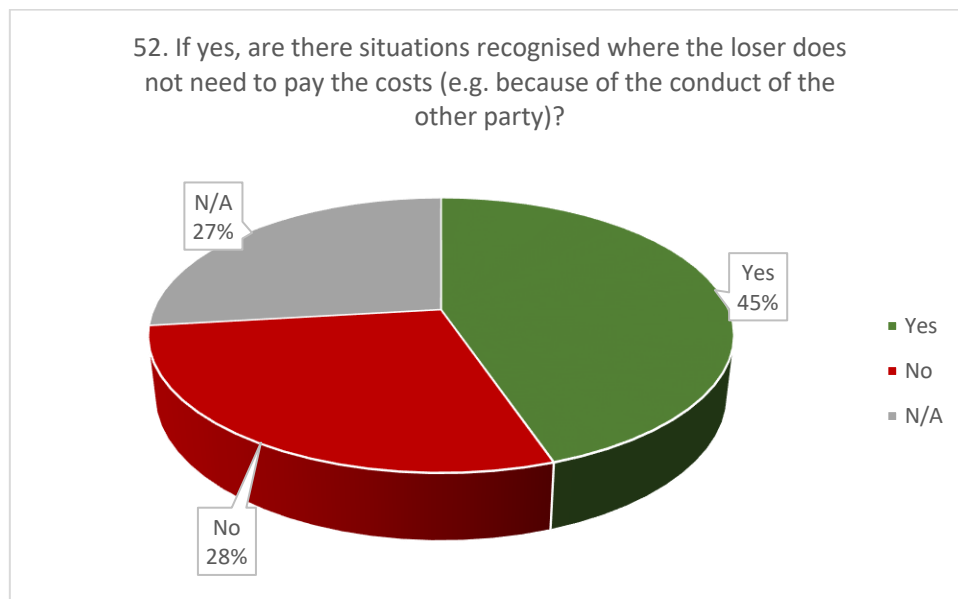
⁴⁶⁷ See House of Lords Economic Affairs Committee, *The implications of recent additions to HMRC powers and the shifting balance in the relationship with taxpayers* (2017), at: https://www.ifs.org.uk/uploads/TLRC_DP_13.pdf.

⁴⁶⁸ See United Kingdom, Practitioner's report, Questionnaire # 2, Question 54.

⁴⁶⁹ See P. Baker and P. Pistone, *supra* n. 10, at p. 52.



In parallel, it is acknowledged that there are situations in which the loser should not be obliged to pay the costs, such as because of the conduct of the other party or the legal reasonableness of his claim, even though not upheld by the deciding court. This situation is shown in the chart below.



The trends explained above are those mainly followed in 2018 in the surveyed jurisdictions, as the developments reported demonstrate.

In **Australia**, the ATO’s Dispute Assist programme aims to help “unrepresented taxpayers navigate the dispute process, and is also looking at ways to connect taxpayers with

independent experts from charities and law firms providing pro-bono services”.⁴⁷⁰ For its part, Curtin University has established the Curtin Tax Clinic (CTC), which aims to “assist unrepresented taxpayers in meeting or complying with their taxation affairs”. The CTC is the first clinic of its kind in Australia offering students, under the supervision of experienced tax practitioners, the opportunity to engage in case work directly relevant to their chosen career in taxation.⁴⁷¹

Also in **Australia**, the Government has announced its intention to establish “a Small Business Concierge Service within the Australian Small Business and Family Enterprise Ombudsman’s office to provide support and advice about the Administrative Appeals Tribunal (AAT) process before an application is made”.⁴⁷² The Prime Minister has discussed the Government’s intention to “establish 10 new tax clinics in partnership with major and regional universities to provide free assistance to small business with disputes with the ATO”.⁴⁷³

In **China**, the administrative litigation fee is very low, and if the taxpayer cannot afford it, he can apply for a reduction or exemption. There is no special legal aid for taxpayers as such. However, the general systems of legal aid and legal service are both available for taxpayers. Legal aid mainly applies to applications for government compensation. Local governments offer a free legal service hotline (12348) for their residents. In addition, there are legal service centres for free legal consultation and legal aid for residents. The Justice Ministry is carrying on a programme of a national wide public legal service platform, which aims to offer universal, non-profit and optional legal service for people.⁴⁷⁴

In **Mexico**, since the PRODECON was created in 2011, the Agency has provided almost 1 million services to taxpayers, all of them for free. The services rendered by the PRODECON include advisory, legal defence, tax mediation, complaints and systemic analysis. With respect to legal defence, the PRODECON can only render this service if the tax liability of the taxpayer does not exceed approximately USD 50,000.⁴⁷⁵

In **Slovenia**, the State bears the general costs of an appeal; specific costs are borne according to the outcome of the proceedings. No administrative fees are paid for filing an appeal in tax matters (in other administrative cases, a special fee needs to be paid as a condition for one’s appeal to be processed). Free legal assistance can be provided in judicial procedures

⁴⁷⁰ See the ATO Annual Report 2017-18, p 36 (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF). As well, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 56.

⁴⁷¹ See <https://businesslaw.curtin.edu.au/law/tax-clinic/>. Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 56.

⁴⁷² See <http://srr.ministers.treasury.gov.au/media-release/046-2018/>. Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 56.

⁴⁷³ See the Australian Prime Minister’s Address to the Australian Chamber of Commerce and Industry Annual Dinner (<https://www.pm.gov.au/media/australian-chamber-commerce-and-industry-annual-dinner>); and the Australian Assistant Treasurer Press Release (<http://srr.ministers.treasury.gov.au/media-release/046-2018/>). Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 56.

⁴⁷⁴ See China, Academic’s report, Questionnaire # 2, Question 56.

⁴⁷⁵ See Mexico, Tax Ombudsman’s report, Questionnaire # 2, Question 56.

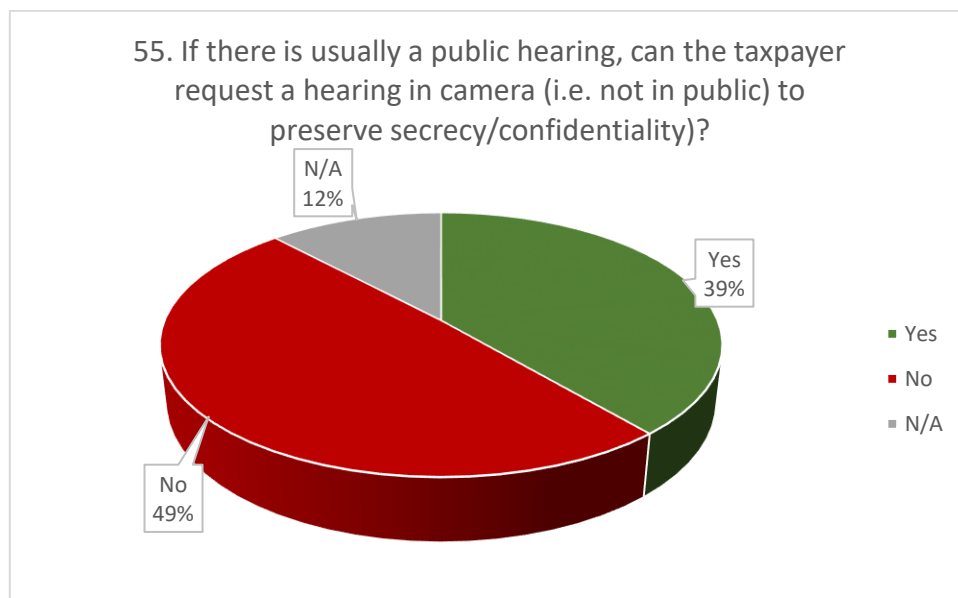
connected to tax assessment, but not in tax procedures of the tax administration. The legal basis for free legal assistance is the Legal Aid Act.⁴⁷⁶

In **Spain**, the appeal does not delay the execution of the administrative act unless the suspension of a payment is requested and guaranteed. However, the judgment of the Supreme Court of 27 February 2018 represents an improvement to the protection of taxpayers' rights, as it determines that the notification of the order for recovery (*providencia de apremio*) when the resolution for suspension is pending is contrary to the tax system.⁴⁷⁷

In **Switzerland**, as indicated as highly likely in the overview of 2017, plans to raise the costs to be borne by the party whose appeal has been declined have been introduced into the legislative process this year. This affects taxpayers as well.⁴⁷⁸

5.6.7 Public hearings

Tax matters are sensitive to taxpayers. By nature, the investigation of facts and circumstances relevant for tax purposes entails a significant invasion into the affairs of taxpayers that, if handled improperly, might affect the taxpayers' right to privacy, as well as their freedom of commerce, by the potential revelation of industrial secrets or commercially delicate information that might affect their competitive positions in their relevant markets. Therefore, the right to exclude the public from a hearing and the anonymization of decisions before publication in order to protect taxpayers' privacy shall be recognized as a minimum standard in tax matters.⁴⁷⁹ However, many countries do not follow this standard, as shown below.



⁴⁷⁶ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 55 and 56.

⁴⁷⁷ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Question 53.

⁴⁷⁸ See Switzerland, Judiciary's report, Questionnaire # 2, Question 55.

⁴⁷⁹ See P. Baker and P. Pistone, supra n. 10, at p. 79.

In **Bulgaria**, §55 of the Law for amendment and supplement of the Administrative Procedural Code of the 18 September 2019, which is enforced as from 1 January 2019, amends Article 217(2) of the Administrative Procedural Code. This specific change is connected to the hearing in the cassation proceeding in an appeal to a higher court of a decision of an administrative court on an administrative case, including tax cases. The amendment stipulates the following:

1. when a case is reviewed by a five-member Chamber of the Supreme Administrative Court (SAC) and when the cassation instance is the only judicial instance in which the hearing is carried out in an open court;
2. when a case is reviewed by a three-member Chamber of the SAC, that the hearings are carried out behind closed doors, except when the judge-rapporteur instructs the case to be heard in an open session or a party requests an open hearing no later than the time of the submission of the cassation appeal to the answer to the cassation appeal.

It is controversial whether this amendment will have a positive impact, as it is considered that it could restrict the right to a public hearing during a cassation proceeding in front of a three-member court, by turning the open court hearing from a standard procedure to an exception rule (as expressed by the President in his veto and his reasons for returning to the National Assembly for reconsideration of provisions of the Law for amendment and supplement of the Administrative Procedural Code, adopted by the 44th National Assembly on 25 July 2018). Nevertheless, in the context of the current section of the Questionnaire, the matter is regulated, and a right to request exclusion of the public from a tax appeal hearing, or at least the possibility for it, even if it is not according to the taxpayers wishes, is established. Therefore, it could be considered a shift towards a better practice than the minimum standard.⁴⁸⁰

In **India**, in the proceedings before the CITA and AAR, only the taxpayer or his representative and the departmental representative will be present. There have not been any instances of on-camera hearings before the Tribunal. As for the Courts, proceedings are normally held in open court in India, although in very exceptional cases, the court may allow an on-camera hearing. Theoretically, the taxpayer may make a request.⁴⁸¹

In **Slovenia**, usually no public hearing takes place in tax appeals. A public hearing would be possible only in judicial processes, but in practice, this possibility is usually not used.⁴⁸²

5.6.8 Publication of judgments and privacy

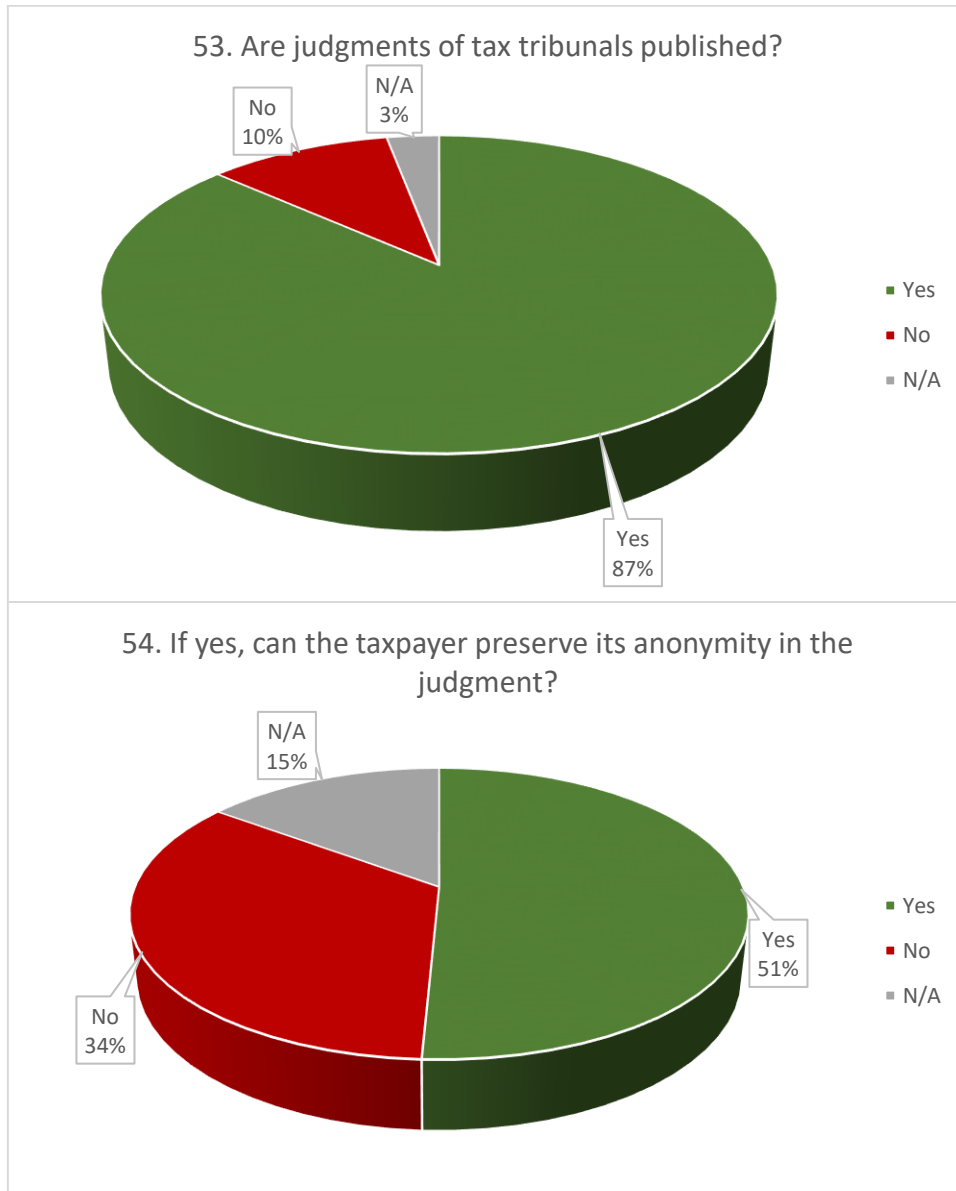
In turn, most surveyed jurisdictions publish the decisions of their tax courts in order to

⁴⁸⁰ See Bulgaria, Practitioner's report, Questionnaire # 2, Question 57.

⁴⁸¹ See India, Academic's report, Questionnaire # 2, Question 57.

⁴⁸² See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 57.

protect the right of taxpayers to certainty in the interpretation and application of tax law by the tax authorities and courts, protecting privacy through anonymization, as shown in the charts below.



This is the trend followed by most of the developments reported to the OPTR in 2018.

In **Canada**, court cases and decisions are published as a part of the public record. Legislation guides the appeals process, determining the court or tribunal in which the appeal is heard and the process followed. The CRA objections and appeals processes are the last step before appeal to the Federal Court, and all decisions taken with respect to specific objections or appeals are confidential taxpayer information and protected under section 241 of the Income

Tax Act. Taxpayer information held by the CRA is considered confidential until it is released publicly by the court.⁴⁸³

In **Colombia**, first and final instance rulings are published once they are notified to the taxpayer.⁴⁸⁴

In **India**, the Authority of Advance Ruling sometimes anonymizes the rulings if the taxpayer so requests.⁴⁸⁵

In **Italy**, by decision of the Director of the Tax Agency dated 7 August 2018 (Protocol No. 185630), since 1 September 2018 all types of rulings are to be published on the website of the Tax Agency anonymously in order to release the interpretation of the Tax Agency on the issues proposed by the taxpayer.⁴⁸⁶

In **Slovenia**, court tax judgments are anonymized and published. Decisions of the appeal board are not published.⁴⁸⁷

5.7 Criminal and administrative sanctions

Recent Relevant Case Law

European Court of Human Rights

Cases decided in 2018:

- ***Homan and Others v. Belgium (2nd Section, Applications N° 52961/09, 52975/09, 53054/09 and 53235/09, 23-01-2018)***: This case is about the solidary obligation of the applicants to pay the amounts of evaded tax as a result of a criminal conviction. The applicants were convicted for tax-related offences and sentenced to tax fines. They were also obliged to pay the evaded tax in the amount of EUR 1,853,000 in the first case and EUR 235,000 in the second case. The Court declared all applications **inadmissible as incompatible *ratione materiae*** with the Convention's provisions. The Court rejected the applicants' allegations that this solidary obligation to pay the evaded tax constituted a "penalty". It pointed out that this measure was limited to the payment of the tax evaded and was aimed at repairing the damage suffered by the State rather than punishing the applicants for unlawful behaviour.

Cases communicated in 2018:

⁴⁸³ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 58.

⁴⁸⁴ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 58.

⁴⁸⁵ See India, Academic's report, Questionnaire # 2, Question 58.

⁴⁸⁶ See Italy, Practitioner and Academic's report, Questionnaire # 2, Question 58.

⁴⁸⁷ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 58.

- ***S.C. Mic Petrochim Industrie SRL v. Romania (Application No. 74120/14, 06-04-2018)***: Has the applicant company been investigated and tried twice for the same offence within the meaning of Article 4 of Protocol No. 7 to the Convention?
- ***Pascal Genet v. France (Application No. 56225/16, 07-11-2018)***: The applicant, a former manager of a company, was convicted by the courts to 18 months' suspended imprisonment on the charge of tax evasion. Together with another codefendant and the company, he was held liable for the payment of the evaded tax and related penalties during his period of management. Meanwhile, the company was discharged from the payment of VAT. Before the Criminal Chamber of the Court of Cassation, the applicant, in an additional memorial, tried to argue that he could not be convicted of tax evasion while the company had been discharged from the payment of VAT and penalties. However, the Chamber considered that he had filed his additional memorial too late and declared it inadmissible without examining it on the merits. It further declared inadmissible, for the same reason, the priority question of constitutionality (QPC) relating to Article 1741 of the General Tax Code, which covers the tax fraud committed by the applicant.

Court of Justice of the European Union

Cases decided in 2018:

- See *Donnellan – C 34/17 (26-04-2018)*, at section 5.6.4.
- See *Scialdone – C 574/15 (Grand Chamber, 02-05-2018)*, at section 5.10.2.

Cases communicated in 2018:

- ***Google Ireland – C 482/18 (OJ C 352, 1-10-2018, pp. 23-24)***: Request for a preliminary ruling from the *Fővárosi Közigazgatási és Munkaügyi Bíróság* (Hungary) lodged on **24 July 2018** – *Google Ireland Limited v. Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vámigazgatósága*. In view of the right to good administration established in Article 41(1) of the Charter of Fundamental Rights, should Article 56 TFEU be interpreted as meaning that this obligation is not satisfied when the fine for failure to comply is imposed in the form of a daily fine, meaning that the amount of the fine is tripled while the service provider is still unaware of the earlier decision and is therefore unable to rectify its omission before the imposition of the next fine? Also, should Article 56 TFEU, as read with the right to good administration in Article 41(1) of the Charter, the right to be heard in Article 41(2)(a) of the Charter and the right to an effective remedy and to a fair trial in Article 47 of the Charter, be interpreted as meaning that these requirements are not satisfied when the decision cannot be contested in an administrative procedure and when, in the administrative court proceedings, only documentary evidence is admissible and the court cannot hold a hearing?

Inter-American Court of Human Rights

Admissibility Reports:

- ***Laureano Brizuela Wilde v. Mexico (Application No. 806-06, Admissibility Report No. 64/14, 25-07-2014)***: In 1989, the Mexican police arrested Mr Laureano Brizuela Wilde allegedly for tax fraud. After several weeks of being arrested, Brizuela Wilde would have been pressured by the Tax Office to sign a document acknowledging income tax debt in exchange for regaining his freedom. The local criminal court ruled in favour of the taxpayer, who was acquitted of the charge. Afterwards, Mr Brizuela Wilde filed several claims, looking for the corresponding reimbursement of the tax payments made in accordance with the aforementioned document. These claims were rejected. The Inter-American Commission on Human Rights found that the claim filed by the taxpayer was admissible, on account of potential violations of the taxpayer rights to consular assistance, presumption of innocence, proportionality and due process in the course of criminal proceedings in tax-related matters.

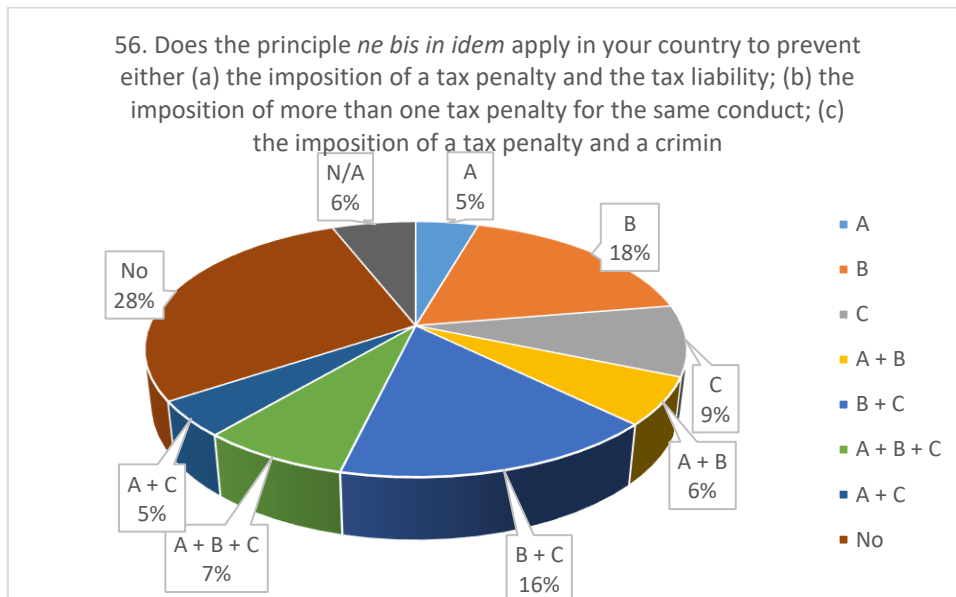
Regardless of the consideration given to the awareness of wrongdoing as a subjective element of tax offences, the OPTR believes there is consensus on the application of most constitutional principles applicable in criminal law to tax matters.⁴⁸⁸ As a minimum standard, the principles of proportionality and *ne bis in idem* should be entirely applicable to tax matters. In this regard, from a substantive standpoint, the *ne bis in idem* principle also implies a prohibition of a double sanction in respect of a certain event; as an expression of proportionality, it is best practice to exclude administrative sanctions when they concur with criminal penalties in respect of a single event.⁴⁸⁹

In this regard, in country practice, the principle of *ne bis in idem* does not apply at all in 18 cases, according to the national reports.⁴⁹⁰ In the systems in which the principle is upheld, following the information provided, it applies in different ways: (i) to prevent the imposition of a tax penalty and the tax liability (in 3 cases); (ii) to prevent the imposition of more than one tax penalty for the same conduct (in 12 cases); and (iii) to avert the imposition of a tax penalty and a criminal liability (in 6 cases). Additionally, there are some combinations drawn from these possibilities, of which the use of the prohibition of double jeopardy to prevent the imposition of more of one tax penalty, along with criminal liability, appears to be the most common. All of these trends are depicted in the chart below.

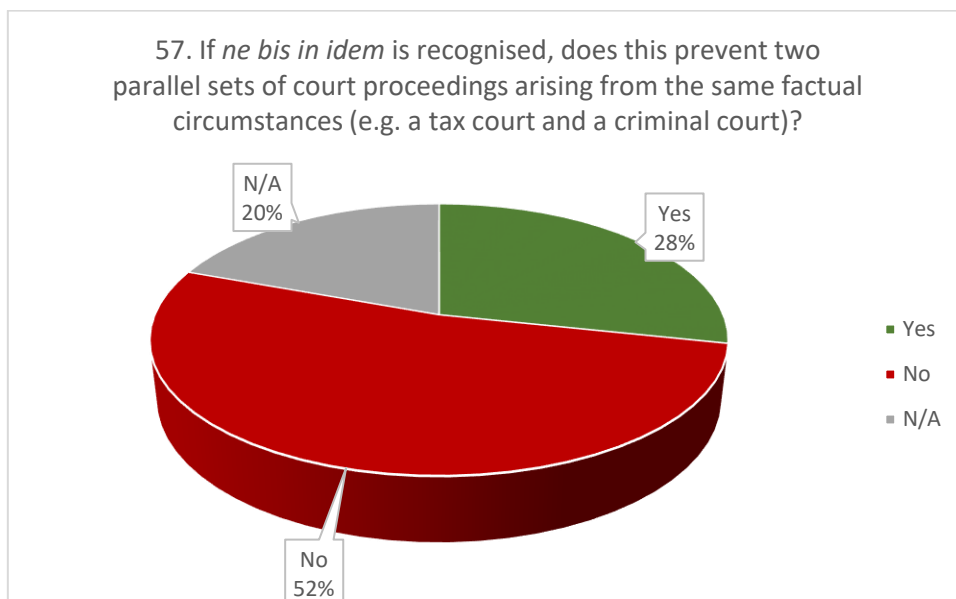
⁴⁸⁸ See C.E. Weffe, *supra* n. 11.

⁴⁸⁹ See P. Baker and P. Pistone, *supra* n. 10, at p. 79.

⁴⁹⁰ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

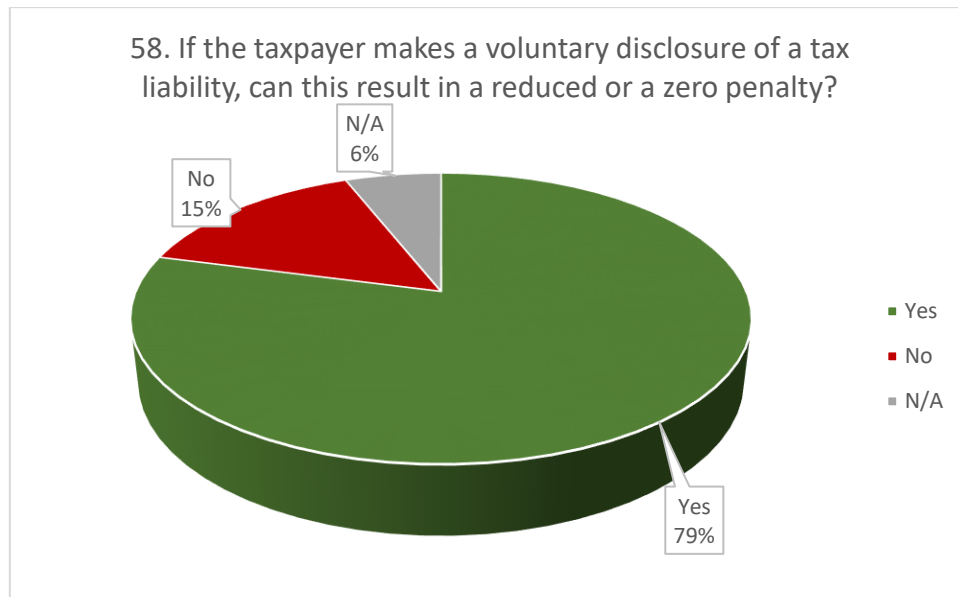


Consequently, the effectiveness of the lack of implementation of *ne bis in idem* in preserving proportionality is, at the very least, doubtful. On its procedural limb, it does not seem to prevent, in practice, two parallel sets of proceedings arising from the same factual circumstances, as shown in the chart below.



Moreover, considering that *ius puniendi* is the last resort of a legal system in order to prevent and sanction non-compliance with its rules, it is logical to adhere to some form of discretionary prosecution in tax matters. Similarly, voluntary disclosure should lead to a reduction of penalties, and sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures, since it would be neither proportionate nor adequate according to the *ultima ratio* idea that is the rationale of punitive law. This seems to be the trend, considering that a majority of reports affirm that voluntary disclosure leads to reduced or zero penalties in

the majority of surveyed jurisdictions.⁴⁹¹



5.7.1 The general framework

As in the previous report,⁴⁹² there have been important developments regarding criminal and administrative sanctions in tax matters during 2018.

In **Belgium**, the Minister of Finance issued an internal instruction that provides that no VAT penalties will be imposed for the first infringement of a taxpayer acting in good faith. The legal basis for this decision is the Minister’s right to provide mercy in administrative sanctions (Governor Order of 18 March 1831; Minister of Finance, Press release, 29 June 2018).⁴⁹³ According to Belgian reports, the courts apply the principle of proportionality and the *ne bis in idem* principle and take the EU case law (in particular, the case law of the ECtHR) into account. Following the path of the *Luca Menci* case (Case C-524/15 Luca Menci [2018] ECLI:EU:C:2018:197),⁴⁹⁴ the Court of Appeal of Antwerp decided, in two cases (Antwerp, 9 January 2018; Antwerp, 20 March 2018), that a VAT fine and a tax increase for income tax should be considered as “sufficiently close[ly] connected in substance and time”, and therefore, in these two cases, the Court decided that the *ne bis in idem* principle was not infringed.⁴⁹⁵

⁴⁹¹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

⁴⁹² See OPTR, *supra* n. 48, at pp. 62-64.

⁴⁹³ For the new penalty policy in Belgian VAT cases, see: <https://financien.belgium.be/nl/ondernemingen/btw/boeten#q5>. Also, see Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 59.

⁴⁹⁴ See OPTR, *supra* n. 48, at pp. 103-104.

⁴⁹⁵ See Belgium, Practitioner’s report, Questionnaire # 2, Question 59.

In **Canada**, the CRA imposes penalties according to the provisions of the Income Tax Act or Excise Tax Act, as applicable. There is no prohibition in the law against applying both civil and criminal penalties. Under the Income Tax Act, it is possible that a penalty under subsection 163(1) (applied to taxpayers who failed to report income of CAD 500 or more on their income tax returns) is applicable to a particular amount, while a penalty under subsection 163(2) (applied to taxpayers who made false statements or omissions on their income tax returns) is applicable to another amount in the same tax year. However, the CRA indicates that both subsections cannot be applied to the same amount.⁴⁹⁶

In **Colombia**, at the end of 2016, the application of the principle of proportionality for the graduation of sanctions was approved by the legislator. In 2018, the application of this principle was extended to decisions that were enforceable. Regarding *ne bis in idem*, the same conduct can simultaneously lead to criminal and administrative proceedings, within which sanctions can be imposed independently. Law 1943 of 2018 created the crime of omission of assets or declaration of non-existent liabilities. According to the regulation of this crime, the payment of the highest tax by the taxpayer does not end the criminal process when the omitted assets or non-existent liabilities are of high value.⁴⁹⁷

In **Cyprus**, following the ECJ's criterion in the *Menci* case,⁴⁹⁸ which recognized the possibility of limiting the non-double jeopardy rule in situations regarding VAT, it is unclear how this principle will be implemented.⁴⁹⁹

In **Italy**, the ICC recently reiterated the principle that tax penalties must be suitable to the circumstances of the specific case and fulfil the principle of proportionality (ICC, Section V, 28 September 2018, no. 23506). The ICC, adopting the long-standing case law set by the Court of Justice of the European Union, stated that penalties cannot be determined automatically on the basis of a tax increase according to a flat rate, but they must be graduated in relation to the specific features of the case. Additionally, the Italian Constitutional Court ruled on the *ne bis in idem* principle, (decision no. 43, 2 March 2018). The *Consulta* considered it correct to recall the consolidated principle of the “sufficiently close connection in substance and time”, as derived from the case law of the Large Chamber CEDU *A and B C v. Norway*, by which, where subsistence exists between the two administrative and criminal proceedings, the double track is made compliant with the EDU Convention and, in particular, with Article 4 Protocol.⁵⁰⁰ Hence, there is a “double track”: administrative and criminal procedure for the same fiscal fact.⁵⁰¹

In **Kenya**, under Section 38 of the Tax Procedures Act, late payment interest shall not, in aggregate, exceed the principal tax liability. Additionally, under Section 80 of the Tax

⁴⁹⁶ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 59.

⁴⁹⁷ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 59 and 60.

⁴⁹⁸ See OPTR, *supra* n. 48, at pp. 103-104.

⁴⁹⁹ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 60.

⁵⁰⁰ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 59.

⁵⁰¹ See art. 20 of Legislative Decree n. 74/2000 (relationship between the criminal procedure and administrative procedure). See also Italy, Practitioner's report, Questionnaire # 2, Question 60.

Procedures Act, a person shall not be subject to both the imposition of a penalty and the prosecution of an offence in respect of the same act or omission in relation to tax law.⁵⁰²

In **Luxembourg**, one of the big changes with regard to taxpayers' rights, brought about by the tax reform of 2017 (Law of 23 December 2016), was the introduction of *fraude fiscale aggravée* (aggravated tax fraud), which was sparked, inter alia, by the need to fight tax fraud. Under the previous legal framework, two categories of "tax crimes" existed, namely *fraude fiscale simple* and *escroquerie fiscale*, both falling under criminal law proceedings. The new law provides, upon the introduction of *fraude fiscale aggravée*, for three categories of tax crimes. *Fraude fiscale simple* now falls under the administrative courts' competence, whereas *fraude fiscale aggravée* and *escroquerie fiscale* fall under the criminal courts' competence. This how the *ne bis in idem* principle is somehow reinforced. In addition to that, the tax reform of 2017 provided, for the first time, that *fraude fiscale aggravée* and *escroquerie fiscale* are predicate offences that can trigger anti-money laundering legislation.⁵⁰³

In **Slovenia**, the range of tax penalties is defined by tax law and depends on the severity of the breach of tax law. In some instances, tax penalties are proportional to the amount of tax not paid by a taxpayer because of the tax offence. Also, *non bis in idem* is claimed to be respected.⁵⁰⁴

In the **United Kingdom**, two recent independent reports were both critical of the additional powers that the tax authority has taken on in recent years.⁵⁰⁵ In this regard, if the taxpayer wishes to appeal beyond a certain point in the GAAR process, they are at risk of a 60% penalty under the provisions of the Finance Act 2016. If taxpayers continue appeals after receiving a follower notice, they can face penalties of up to 50% of the tax if they are unsuccessful. In his evidence presented to the House of Lords Economic Affairs Committee, a former Lord Chief Justice of England and Wales said: "The imposition of penalties on those who wish to use the court system to establish that, contrary to the view of HMRC, there is no liability, fetters access to justice."⁵⁰⁶

5.7.2 Voluntary disclosure

In **Belgium**, tax law provides administrative sanctions in the case that no tax return has been filed. Before, case law considered that this also included late filing. Now, the Supreme Court has changed its point of view and has ruled that administrative sanctions are not applicable when the tax return has indeed been filed, but too late (Supreme Court, 15 March 2018, F.17.0004.N). Meanwhile, however, the law has been changed. Administrative sanctions are now also explicitly applicable in the event of late filing (Article 444 Income Tax Code). In

⁵⁰² See Kenya, Practitioner's report (2), Questionnaire # 2, Questions 59 and 60.

⁵⁰³ See Luxembourg, Academic's report, Questionnaire # 2, Question 59.

⁵⁰⁴ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 59 and 60.

⁵⁰⁵ See House of Lords Economic Affairs Committee, *The Powers of HMRC: Treating Taxpayers Fairly* (2018), at: <https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/242.pdf>, and IFS Tax Law Review Committee, *The implications of recent additions to HMRC powers and the shifting balance in the relationship with taxpayers* (2017), at: https://www.ifs.org.uk/uploads/TLRC_DP_13.pdf.

⁵⁰⁶ See United Kingdom, Practitioner's Report, Questionnaire # 2, Question 59.

a recent judgment, the Belgian Constitutional Court seemed to “overrule” the Supreme Court’s judgment of 15 March 2018 in deciding that the new law is only an “interpretative law” and that an administrative sanction (tax increase) in the case of late filing was also possible before the new law (Constitutional Court, 23 January 2019, no. 7/2019, §§ B.3.2, B.9.2 and B.12.1).⁵⁰⁷

Also in **Belgium**, the VAT authorities published an internal instruction regarding the remission of VAT penalties (in the case of good faith).⁵⁰⁸

In **Canada**, the CRA has a Voluntary Disclosure Program (VDP) to support a taxpayer’s ability to self-report and self-correct any lapse in compliance with the Canadian income tax system. For a disclosure to be valid, it must (i) be voluntary; (ii) be complete; (iii) involve the application or potential application of a penalty; (iv) include information that is at least 1 year past due; and (v) include the payment of the estimated taxes owing. If (i) the taxpayer is aware of or has knowledge of enforcement action(s) against themselves or a person associated or related to them; or (ii) the CRA already has knowledge of the information regarding the non-compliance, the request cannot be “voluntary”. For “complete” disclosure, the taxpayer must provide full information for all of the relevant tax years for which there was previously inaccurate or unreported information.⁵⁰⁹ As a result, the VDP has been regarded as “more restrictive”.⁵¹⁰

As of 1 March 2018, in **Canada**, the VDP has introduced two new tracks, namely the Limited Program and the General Program. For the most part, taxpayers accepted under the VDP are placed in the General Program track. In this track, taxpayers are not charged penalties and are not referred to criminal prosecution related to the disclosure. The CRA will also provide partial interest relief for years preceding the 3 most recent years of income tax returns needed to be filed. Generally, this interest relief will be 50% of the applicable interest for those periods. Full interest charges will be assessed for the 3 most recent years of income tax returns required to be filed. The Limited Program track is different and applies to situations in which the facts suggest an element of intentional conduct by the taxpayer or a closely related party. As such, while the taxpayer will not be referred to criminal prosecution related to the disclosure and will not be charged a gross negligence penalty, they will be charged other penalties and interest, as applicable.⁵¹¹

In **Colombia**, Law 1943 of 2018 created a standardization tax for the year 2019, paid by taxpayers who have omitted assets or declared non-existent liabilities in their tax declarations of national taxes in order to erode the tax base. The law allows the omitted assets to be included and non-existent liabilities to be excluded without generating tax sanctions or criminal charges.⁵¹²

⁵⁰⁷ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 61.

⁵⁰⁸ See Belgium, Practitioner’s report, Questionnaire # 2, Question 62.

⁵⁰⁹ See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 61.

⁵¹⁰ See Canada, Practitioner’s report (2), Questionnaire # 2, Question 61.

⁵¹¹ See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 61.

⁵¹² See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 60.

In 2017, **Cyprus** implemented a tax amnesty programme that was extended until June 2018. The **Cyprus Tax Amnesty** allows “qualifying applicants” to pay off their tax liabilities for prior years with up to a 95% reduction in the interest and penalties that otherwise would have been or have already been imposed by the **Cyprus** tax authorities.⁵¹³ Persons that do not participate in the voluntary programme will have to pay full surcharges and penalties.⁵¹⁴

In **Kenya**, on application under Section 37 of the Tax Procedures Act, the Commissioner may waive penalties accruing to the taxpayer. The Finance Act 2018 reduced a number of penalties accruing to the taxpayer for non-compliance.⁵¹⁵

In the **Netherlands**, since 1 January 2018, the voluntary disclosure scheme has been abolished in relation to savings/portfolio investments held outside the Netherlands by individual taxpayers. The voluntary disclosure scheme relating to other assets and/or taxes remains the same.⁵¹⁶

In **Peru**, Article 179 of the Tax Code established an Incentive Scheme for voluntary payment of administrative fines.⁵¹⁷

In **Slovenia**, the best practice is observed. Because of voluntary disclosure, no administrative penalties will apply. The legal basis is the Tax Procedure Act, Articles 396 and 399. Voluntary disclosure is encouraged through the exemption from penalties and lower interest for late payment of tax.⁵¹⁸

In **Sweden**, new time limits were introduced in 2018, which restrict the possibility of voluntary disclosure; see Chapter 48, Section 10 of the Tax Procedural Act (*Skatteförfarandelagen* (2011:1244)).⁵¹⁹

5.8 Enforcement of taxes

Recent Relevant Case Law

European Court of Human Rights

Cases decided in 2018:

- ***Cacciato v. Italy* (1st Section, Application N° 60633/16, 16-01-2018); and *Guiso and Consiglio v. Italy* (1st Section, Application N° 50821/06, 16-01-2018):** The

⁵¹³ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 61.

⁵¹⁴ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 62

⁵¹⁵ See Kenya, Practitioner's report (2), Questionnaire # 2, Questions 61 and 62.

⁵¹⁶ See Netherlands, Practitioner's report, Questionnaire # 2, Question 61.

⁵¹⁷ See Peru, Practitioner's report (1), Questionnaire # 2, Question 62.

⁵¹⁸ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 61 and 62.

⁵¹⁹ See Sweden, Practitioner and Academic's joint report, Questionnaire # 2, Question 61.

applicants complained about the expropriation of land by municipal authorities and, in particular, the tax of 20% that they had to pay on the compensation they received. They argued in particular that it meant that they had received less than the market value of the land. The Court declared the applicants' complaints about the tax **inadmissible** as being manifestly ill-founded. It found in particular that the tax had not upset the balance that had to be maintained between the applicants' rights and the public interest in collecting taxes, particularly given the room for manoeuvre ("margin of appreciation") that countries had in fiscal policy. The tax, including the rate and the means of enforcement, had been well within the area of the Italian legislature's discretionary judgment. A level of 20% was also not prohibitive. Furthermore, the tax had not led to the compensation awards being effectively nullified or undue financial hardship for the applicants.

- ***Euromak Metal Doo v. the former Yugoslav Republic of Macedonia (1st Section, Application No. 68039/14, 14-06-2018)***: This case concerned the applicant company's complaint about the State's failure to award the VAT deductions due to circumstances that were beyond the company's control. Following an audit by the Internal Revenues Office in 2009, the applicant company was informed that it made errors in calculating its VAT declaration on received goods because its suppliers had failed to declare or pay tax to the State. Therefore, the company could not benefit from VAT deductions as it had done in the past. The Court held that there had been a violation of Article 1 of Protocol no. 1 to the Convention. Relying on the reasoning in the case "*Bulves*" *AD v. Bulgaria* (no. 3991/03, § 71, 22 January 2009), the Court found that (i) the applicant company had fully complied with its VAT obligations; (ii) the domestic authorities had deprived it of the right to deduct VAT owing to the suppliers' failure to meet its tax obligations; and (iii) the applicant company did not have and could not have had knowledge of whether its suppliers had met their VAT obligations. The Court concluded that the applicant company had borne an excessive individual burden, which upset the fair balance between the general interest of the community and the requirements of the protection of the right to property.
- ***Lutsenko v. Russia (3rd Section, Application No. 40508/13, 25-09-2018)***: This case concerns the applicant's complaint about the court's order to pay the amount of income tax that had been withheld at source and that he never received. In 2011, the applicant, who was the head of the city administration at the time, received a bonus from the regional Government for the effective performance of his duties in 2010. The bonus was paid to his bank account with the deduction of 13% income tax withheld at source. In 2012, the courts granted the prosecutor's claim of unjust enrichment and ordered the applicant to repay this bonus in the full amount, including the income tax, to the municipal budget. The Court declared the case **inadmissible for non-exhaustion of domestic remedies**. It pointed out that the applicant should have applied for the recovery of the income tax to the tax authority in the terms of procedure provided for by the Tax Code. This procedure for the repayment of the improperly levied tax has a different purpose than the unjust enrichment procedure initiated by the prosecutor against the applicant. Moreover,

the 13% income tax was paid mainly to the regional budget, while the applicant had to return the full amount of the bonus to the municipality.

- See *Wallace v. France* (5th Section, Application No. 9793/16, 20-11-2018), at section 5.6.4.

Cases communicated in 2018:

- *Kung v. Switzerland* (Application No. 73307/17, 15-05-2018): The case concerns the imposition of a tax on a person who was dismissed from military service. The taxpayer complained of discrimination based on sex, since women are not liable to this tax when dismissed from military service.
- *Tulokas v. Finland* (Application No. 5854/18, 12-07-2018): An additional 6% tax was imposed on pensioners whose annual pension exceeded EUR 45,000 euros. At the same time, the additional tax on the employed taxpayers whose annual income exceeded EUR 100,000 euros was only 2%. The taxpayer complained that the imposition of a higher tax on retired taxpayers without any justification constitutes discrimination on the ground of age.
- *Taipale v. Finland* (Application No. 5855/18, 12-07-2018): An additional 6% tax was imposed on pensioners whose annual pension exceeded EUR 45,000 euros. At the same time, the additional tax on the employed taxpayers whose annual income exceeded EUR 100,000 euros was only 2%. The taxpayer complained that the imposition of a higher tax on retired taxpayers without any justification constitutes discrimination on the ground of age.
- *AVTO ATOM DOO KOCANI v. the Former Yugoslavian Republic of Macedonia* (Application No. 21954/16, 21-02-2018): The case concerns administrative proceedings in which the applicant company was ordered to pay VAT together with interest, which it had previously deducted from its tax obligation towards the State. It concerned VAT deductions based on invoices that it had obtained from a supplier that had expressed VAT on its invoices although it was not registered for VAT purposes. The administrative authorities and two levels of administrative courts dismissed the applicant company's arguments that it had not been aware of the supplier's VAT status and that it should not suffer financial consequences for errors on the part of the supplier.
- *IOFIL AE v. Greece* (Application No. 50598/13, 05-07-2018): The case concerns the imposition of a tax on the applicant company for selling and rebuying shares of a subsidiary company. Due to a mistake made by the accountant, the company reported the income as taxable income. The company submitted a corrected tax declaration, which was not accepted by the tax authority. The tax amounted to two thirds of the annual tax the applicant company had to pay.

- See *Baltic Master Ltd. v. Lithuania* (Application N° 55092/16, 16-05-2018), at section 5.6.4.
- See *Hüseyin ÇAVUŞ v. Turkey* (Application No. 53009/09, 26-10-2018), at section 5.6.5.

Court of Justice of the European Union

Cases decided in 2018:

- *Volkswagen – C-533/16 (21-03-2018)*: In 2012, the Slovak tax authority denied a refund of VAT related to the period from 2004 to 2006 due to the expiry of the limitation period of 5 years provided for by Slovak law. In this regard, it held that the entitlement to a refund of VAT arose on the date of delivery of the goods, namely the date on which the VAT had become due, with the result that the right to claim a refund for the period from 2004 to 2006 had expired by the time the application for a refund was submitted. Volkswagen questioned this decision and the national court referred the case to the Court for a preliminary ruling, asking, among others, whether the principles of legal certainty, legitimate expectations and the right to good administration under Article 41 of the Charter of Fundamental Rights of the European Union may be interpreted as precluding an interpretation of the national legislation under which, for the purposes of observance of the time limit for claiming a tax refund, the time of the decision of the administrative authority on the tax refund is decisive, and not the time at which the tax refund is claimed by the taxable person. According to the Court, EU law must be interpreted as meaning that it precludes the legislation of a Member State under which, in circumstances such as those at issue in the main proceedings in which the VAT was charged to the taxable person and paid by it several years after the delivery of the goods in question, the benefit of the right to claim a refund of VAT is denied on the grounds that the limitation period provided for by that legislation for the exercise of that right began to run from the date of supply and expired before the application for a refund was submitted.
- *Fontana – C 648/16 (21-11-2018)*: As a taxable person for the purpose of VAT, Ms Fontana was subject to a tax adjustment procedure for the 2010 tax year. During that procedure, Ms Fontana challenged the amount of the tax adjustment that was planned to be notified to her and which was determined based on the sector study relating to the category of accountants and tax consultants. After the issuance of an assessment, the taxpayer complained that the tax authorities had wrongly applied to her situation the sector study relating to accountants and tax consultants instead of the study relating to human resource management advisers, which the applicant in the main proceedings considered to be her main activity. She also argued that the amount of VAT had been assessed on the basis of a sector study that did not give a consistent image of the income generated by her company in terms of proportionality and consistency. According to the Court, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principles of

fiscal neutrality and proportionality must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, that authorizes the tax authorities, in the event of serious differences between declared revenue and revenue estimated on the basis of sector studies, to use extrapolation based on such sector studies in order to determine the amount of turnover achieved by a taxable person and, consequently, to carry out a tax adjustment requiring the payment of additional VAT, provided that that legislation and its application enable the taxable person, in compliance with the principles of fiscal neutrality, proportionality and the right of defence, to challenge the results obtained by that method on the basis of all of the evidence to the contrary available to him, and to exercise his right of deduction in accordance with the provisions in Title X of Directive 2006/2012, which is for the referring court to verify.

Cases communicated in 2018:

- **UNESA – C 80/18 (OJ C 182, 28-5-2018, pp. 2-3):** Request for a preliminary ruling from the *Tribunal Supremo* (Spain) lodged on 6 February 2018 – *Asociación Española de la Industria Eléctrica (UNESA) v. Administración General del Estado, Iberdrola Generación Nuclear, S.A.U.* Does the “polluter pays” principle in Article 191(2) of the TFEU outweigh the principles of equality and non-discrimination in Articles 20 and 21 of the European Charter of Fundamental Rights and Articles 3 and 5 of Directive 2005/89/EC in so far as they (i) seek to ensure “the proper functioning of the internal market for electricity”; (ii) call on Member States to ensure “that any measures adopted in accordance with this Directive are non-discriminatory and do not place an unreasonable burden on the market actors”; (iii) preclude a provision in national legislation that requires all electricity companies (other than generators of hydroelectricity, which is classified as renewable energy) to fund the tariff deficit, but impose a particularly heavy tax burden on nuclear generators (which are required to contribute more than other actors in the energy market, some of which are more polluting, but that do not have to pay these charges, the reasons given being grounds of environmental protection in view of the risks and uncertainties inherent in nuclear activities, without specifying the costs involved or stipulating that the revenue raised is to be used for environmental protection purposes (and given that waste management and storage are already covered by other levies, and nuclear generation companies assume civil liability), and that distorts the free competition required by the liberalised internal market by favouring other electricity generators that do not have to pay environmental taxes even when their sources of production are more highly polluting?

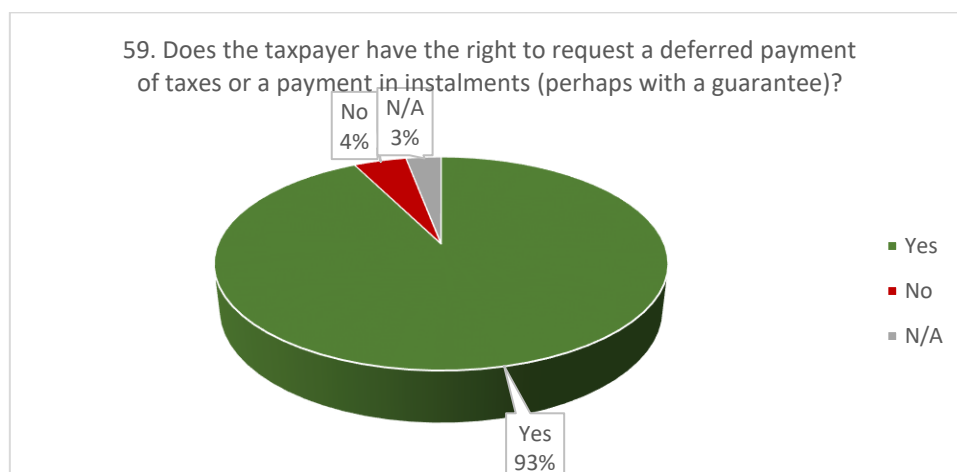
Inter-American Court of Human Rights

Decisions:

- Salvador Chiriboga v. Ecuador (Application No. 12.054, Serie C No. 179 and Serie C No. 230, 06-05-2011):** María and Julio Salvador Chiriboga were both siblings and owners of a real estate property within the Municipality of Quito. In 1991, the Municipal Council declared such a property to be of public utility, with the purpose of proceeding with its expropriation. The Ecuadorian Judicial Branch allowed the Municipal Government to take immediate possession of the property. As a consequence, the claimants, for more than 15 years, did not receive fair compensation. In addition, property taxes were assessed and collected from the claimants between 1991 and 2007. The Inter-American Court concluded that the State infringed the right of the claimants to property enshrined in Article 21 of the American Convention, in addition to Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), particularly with regard to property taxes, deemed as “*additional charges, which are considered excessive and out of proportion ... and which represent an aggravating circumstance in relation to the violation of the right to property*”.

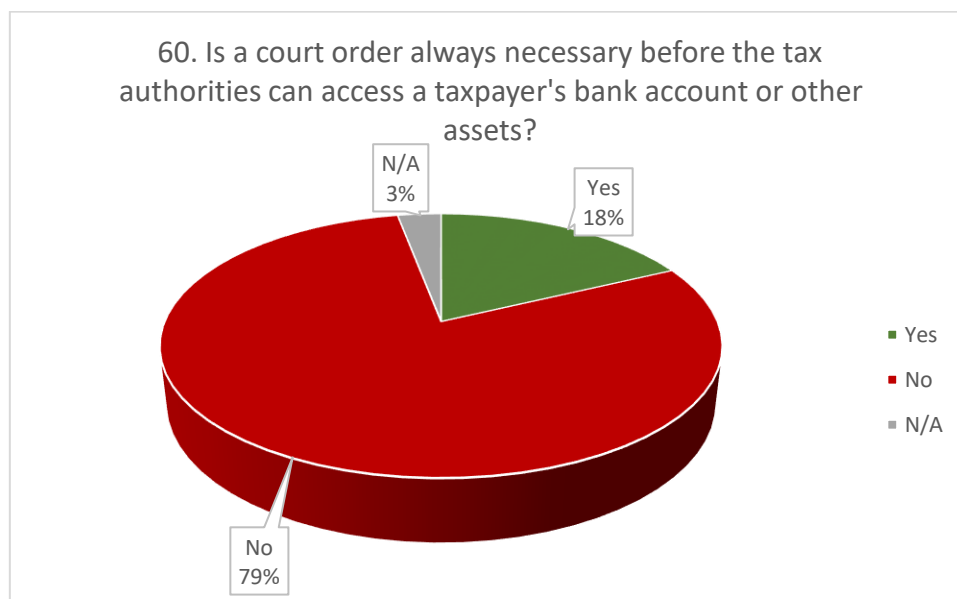
Tax enforcement entails greater powers for tax administrations. In this stage, taxes are unquestionably due, and therefore, the public interest plays a greater role. However, it is necessary to keep in mind that the greater the powers of the tax authorities, the more risks there are for practices to be potentially harmful for taxpayers, and therefore the stronger the safeguards for the latter should be.⁵²⁰

As it has been said many times in this report, human dignity sets strong limits on the possibilities of the tax authorities to perform their tasks. Tax collection is not *above* the right of the taxpayer to a dignified existence (*minimum vitalis*), nor does it allow the tax authorities to deny the taxpayer a reasonable possibility of payment deferral or payment in instalments while safeguarding the interest of the revenue by accruing interest and proper guarantees. In this last regard, most of the surveyed jurisdictions agree, as shown in the chart below.



⁵²⁰ See P. Baker and P. Pistone, *supra* n. 10, at p. 57.

Additionally, taking into account the broad powers that commonly are granted to the tax authorities in the context of the enforcement of taxes, it is advisable that the judiciary exercises control over the more invasive activities performed by tax administrations, such as seizures of bank accounts and other assets. While it is now considered a best practice,⁵²¹ court authorization of these activities should evolve into a minimum standard in the future. Regretfully, that is not the trend in practice. An overwhelming majority of reports indicate that there is no need for a court order for the tax authorities to access a taxpayer's bank account or other assets in their jurisdictions, as portrayed in the chart below.



In this regard, 2018 witnessed an increase in the efforts of many tax administrations to provide timely and easily accessible information on the programmes and opportunities for debt relief, as well as other options, such as garnishee notices, to help taxpayers comply with tax liabilities already due. Also, procedures for granting debt relief were regulated, making them easier to access for taxpayers and non-discretionary for the tax authorities. At the same time, procedures were subject to flexibilization in other countries in an effort to make tax collection easier for the tax authorities, and the lack of rule saying that there is authorization from the judiciary required in order to seize taxpayers' assets was upheld during the period.

In **Australia**, throughout 2018, the ATO (i) reviewed and updated the financial difficulty and serious hardship content on its website to improve clarity and accessibility for taxpayers;⁵²² (ii) commenced working on a brochure with external stakeholders, including tax agents, for taxpayers facing financial difficulty or serious hardship in an effort to promote greater awareness of debt relief options (the ATO aims to release the brochure in 2019); and (iii) commenced reviewing how it acts on applications for release in order to reduce the time

⁵²¹ See P. Baker and P. Pistone, *supra* n. 10, at p. 79.

⁵²² See <https://www.ato.gov.au/General/Financial-hardship/>. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 63.

between receiving an application and providing a response to the taxpayer (the ATO has indicated that the measures flowing from this review will be implemented in 2019).⁵²³ In addition, the ATO reviewed its use of garnishee notices, the result of which will be (i) revising garnishee learning products and procedures for better clarity and usability; (ii) revising the wording of garnishee notices; and (iii) pursuing a policy change to enable the refund of garnisheed funds in limited circumstances. The Inspector General of Taxation (IGT) also launched a review into the ATO's use of garnishee notices following concerns raised in the media.⁵²⁴

Also in **Australia**, as a general rule, taxpayers have the right to request delayed payment of arrears. The right itself has not specifically changed; however, changes have specifically been made to the access and availability of this through online tools to support payment plans for individuals' debts relating to superannuation guarantees, fringe benefits and costs and fines.⁵²⁵ In 2018, the ATO commissioned an independent external review of its insolvency decisions, which concluded that its collection practices do not prematurely lead to viable taxpayers being made insolvent, noting that its performance in progressing insolvencies tends to be conservative. It has also started including a copy of the Australian Financial Security Authority brochure entitled "Warning – you may be declared bankrupt" along with its bankruptcy notice. This brochure provides taxpayers with information about the bankruptcy process and the alternatives to bankruptcy.⁵²⁶

For much of 2018, significant parts of **Australia** were declared to be drought-affected. In response, the ATO (i) suspended stronger debt collection activities; and (ii) made staff aware of the drought and the need to consider taking a more flexible approach to debt recovery based on the circumstances of drought-affected taxpayers in line with internal guidelines. The ATO also raised awareness of the support available to those affected through a range of channels, such as its website, social media, third-party influencers, cold calls, media interviews, advertising campaigns and forums with Commonwealth, State and Local Government organizations. It also developed drought relief assistance kits, including a drought brochure (together with the Department of Agriculture and Water Resources), which were handed out at pop-ups and field day events.⁵²⁷

In **Belgium**, the Law of 26 November 2018 (Belgian Official Gazette, 4 December 2018) introduced a new procedure for the forced collection of unpaid VAT liabilities. Before this new procedure, the tax authorities were obliged to send, by registered mail, a warrant to the VAT payer. In the warrant, the tax authorities had to justify the facts and the legal motivation for the initiation of the forced collection of taxes (including seizing assets). Under the new procedure, the warrant is replaced by the registration of the unpaid VAT liability in a "collection register".

⁵²³ See Australia, Tax Ombudsman's report, Questionnaire # 2, Question 63.

⁵²⁴ See <http://igt.gov.au/publications/reports-of-reviews/use-of-garnishee-notices/>. Also, see Australia, Tax Ombudsman's report, Questionnaire # 2, Question 64.

⁵²⁵ See Australia, Tax Ombudsman's report, Questionnaire # 2, Question 65.

⁵²⁶ See Australia, Tax Ombudsman's report, Questionnaire # 2, Question 66.

⁵²⁷ See <https://www.ato.gov.au/General/Financial-hardship/In-detail/Help-for-drought-affected-taxpayers/?=redirected>. See also Australia, Tax Ombudsman's report, Questionnaire # 2, Question 67.

The tax authorities must notify the VAT payer of such registration. This new procedure, however, includes more uncertainties for the taxpayers. For instance, the notification must not be sent by registered mail, but by ordinary mail. Note that preliminary authorization by the judiciary to seize assets is not required under Belgian tax law.⁵²⁸

Also in **Belgium**, the assessment of a request for delayed payment was, before 2018, a discretionary power of the tax collector. This was considered no longer tenable. Therefore, a circular was issued, which lists the general conditions for granting a delayed payment plan (Circular 2018/C/69 dd. 1 June 2018 concerning the strategy for delayed payments). The delayed payment can also be requested digitally.⁵²⁹

In **Belgium**, the tax collector tries to collect the taxes due. Recently, the Belgian Ombudsman launched an appeal stating that the tax collectors were too stringent and imposed unreasonable conditions and periods for paying taxes via monthly instalments. In the case of outstanding tax debts, the tax authorities can withhold repayments to the taxpayer and impute these amounts on the tax debts. As of 1 January 2019, this principle also applies in the case of disputed tax debts as a conservatory measure (Law of 25 December 2017).⁵³⁰

In **Brazil**, the Federal Attorney Department published Ordinance 33/2018, allowing the seizure of assets or bank accounts without the authorization of the judiciary. Additionally, the Federal Attorney Department (FAD) published Ordinance 742/2018, establishing the so-called “civil tax procedure deal”, by which the entity may propose a plan to pay the debt according to its financial situation. If the FAD agrees, the payment plan will be implemented.⁵³¹ In addition, the national tax authorities have recently started to constrain administratively immovable property of taxpayers without the need for a court decision, pursuant to Law 13.606/2018.⁵³²

In late 2017, the Department of Finance of **Canada** announced that it would “consider situations where the application of late-filing penalties creates a disproportionate burden on low-income taxpayers”. The Department’s comments were made in response to a query regarding the disproportionate impact of late-filing penalties on middle-class individuals for the late filing of certain obligations.⁵³³

In **Canada**, taxpayers with collection status with CRA are provided the opportunity to report their income and expenses to the CRA with a financial questionnaire in an effort to identify a mutually agreeable payment arrangement to resolve their tax debt. The questionnaire (i) includes information on the essential nature of the taxpayer’s expenses; (ii) includes information on whether the arrangement will put the taxpayer into financial hardship; (iii) allows for reasonable expenses and costs for that taxpayer’s circumstances; (iv) asks taxpayers to restructure their finances to meet the payment expectations of the CRA; and (v) ensures that

⁵²⁸ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 64.

⁵²⁹ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 65.

⁵³⁰ See Belgium, Practitioner’s report, Questionnaire # 2, Questions 63 and 64.

⁵³¹ See Brazil, Practitioner’s report (1), Questionnaire #2, Questions 64 and 66.

⁵³² See Brazil, Practitioner’s report (2), Questionnaire #2, Question 64.

⁵³³ See Canada, Practitioner’s report (2), Questionnaire # 2, Question 63.

the taxpayer prioritizes their CRA debt over things such as loan payments on second vehicles and vacations. The CRA has the power to enforce the collection of debt through legal actions, such as statutory set-offs (using money owed to a taxpayer by any federal department or agency to apply to the taxpayer's debt), the garnishment of wages, certifying a debt with the Federal or Provincial Court (which has the same force and effect as a court judgment and renders the debt a matter of public record, which can be attached to an asset), seizing and selling assets and holding another party jointly and severally responsible for the debt. The Taxpayers' Ombudsman regularly receives complaints from taxpayers involved in the collection process regarding the fairness of this process. Research into the collection process indicates that in most cases, the CRA provides taxpayers with a legal warning, when required, prior to taking legal action to collect a debt. However, there is a lack of understanding by the taxpayers about the consequences. In the upcoming Taxpayers' Ombudsman's report entitled "Fair Warning", which will be available on its website in March 2019,⁵³⁴ it is shown that the CRA does not offer legal warnings if risk of non-payment is deemed too high, and it may choose to take legal action without first providing legal warning. The Taxpayers' Ombudsman also continues to hear of taxpayers stating that they have to declare bankruptcy as a result of their debts with the CRA. While it is generally the practice of the CRA to enter into payment arrangements with taxpayers based on their ability to pay while meeting the CRA's criteria for a binding payment arrangement, the CRA does not have to accept a payment arrangement, and this option may not always be offered to taxpayers. There is no specific law or policy requiring the use of a payment arrangement.⁵³⁵

Also in **Canada**, the CRA has the authority to take some legal collection actions, such as set-offs and garnishment, without authorization by the judiciary after providing notice to taxpayers through what is called a "legal warning". A legal warning is a statement, given either in writing or verbally, that advises the taxpayer that the CRA can take legal action if the amount is not paid in full or if a binding payment arrangement is not made with the CRA. Complaints received by the Taxpayers' Ombudsman indicate that taxpayers may not be fully aware that a legal warning is being issued to them, nor of the consequences. Legal warnings may not be given to taxpayers in all circumstances. For example, if the risk of non-payment is deemed to be too high, the CRA may choose to proceed with legal action and take debt collection action immediately.⁵³⁶

Furthermore, in **Canada**, the CRA allows taxpayers to enter into payment arrangements to facilitate the payment of tax debt in a more manageable manner. This arrangement must meet the parameters set out by the CRA, but it does take into consideration a taxpayer's financial circumstances. The CRA does not have to accept a payment arrangement, and this option may not always be offered to taxpayers. There is no specific law or policy requiring the use of a payment arrangement. The CRA's Information Circular IC98-1R7, Tax Collections Policies,⁵³⁷ indicates that if a taxpayer cannot make a payment on their debt due to circumstances beyond

⁵³⁴ See <https://www.canada.ca/en/taxpayers-ombudsman/programs/reports-publications/special-reports.html>

⁵³⁵ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 63.

⁵³⁶ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 64.

⁵³⁷ January 20, 2017. See <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic98-1r7/tax-collections-policies.html>

their control, the CRA may allow the taxpayer to postpone payment until their financial situation improves. However, during that time, any interest and penalties that apply will continue to accrue on the debt.⁵³⁸

In **Canada**, the CRA regularly invokes its Taxpayer Relief Provisions in cases of natural disasters, such as floods or fires. In such cases, the Minister of National Revenue has the authority, under the Income Tax Act, to (i) grant taxpayers relief from penalties and/or interest; (ii) accept certain late, amended or revoked income tax declarations; and (iii) in certain cases, refund or reduce the amount payable beyond the normal 3-year period. After a 2017 examination of the Taxpayer Relief Program by the Taxpayers' Ombudsman and subsequent publication of a systemic examination report entitled "Without Delay",⁵³⁹ the CRA implemented a 180-calendar-day processing standard for taxpayer requests for relief, to be met 85% of the time. It is the Canadian Tax Ombudsman's understanding, based on anecdotal information, that the CRA can also suspend collection action for individuals residing in areas affected by natural disasters. However, this is not confirmed in the information publicly available on CRA's website.⁵⁴⁰

In **Colombia**, the *minimum vitalis* principle is only followed strictly for VAT. Additionally, in the collection processes, for taxpayers, there are some assets and minimum amounts of money that cannot be seized. The law empowers the DIAN to clear bank accounts without the need for judicial authorization. These actions have become quite common in many municipalities, causing severe damage to business flows for taxpayers. On the other hand, taxpayers can request delayed payment of arrears, and the DIAN can grant it for a maximum period of 1 year, as long as they constitute guarantees. In bankruptcy proceedings conducted by an independent judge, it is possible to make structured plans for deferred payment with lower interest rates, although this only protects taxpayers under the scope of an expropriation clause in a bilateral investment treaty. Natural disasters are usually followed by an executive decree providing for temporary tax relief, depending on the severity of the disaster.⁵⁴¹

In **Germany**, regarding taxpayers' protection in the case of bankruptcy, it is worth noting the adoption of a legal basis for the exemption of taxes resulting from the cancellation of debts in the course of a debt restructuring (see § 3a *Einkommensteuergesetz* (Income Tax Act) and § 7b *Gewerbesteuer-gesetz* (Trade Tax Act)). Relevant provisions to be applied in the course of the tax assessment procedure, i.e. prior to the enforcement of taxes, should be noted.⁵⁴²

In **India**, CDBT regularly relaxes the time limit for filing returns of income in many situations including natural calamities, etc.

⁵³⁸ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 65.

⁵³⁹ See <https://www.canada.ca/en/taxpayers-ombudsman/programs/reports-publications/special-reports/without-delay.html>

⁵⁴⁰ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 67.

⁵⁴¹ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 63, 64, 65, 66 and 67.

⁵⁴² See Germany, Tax Administrator, Practitioner and Academic joint report, Questionnaire # 2, Question 66.

In **Italy**, the IC C (Decision no. 8266 of 4 April 2018) established that the Tax Agency can investigate current bank or postal accounts without providing any reasons and without the presence of any serious evidence. Law No. 136/2018 (*Decreto Fiscale 2019*) has also extended to the *Guardia di Finanza*, similarly to the Tax Agency, the right to access the Register of Financial Reports for the analysis of the risk of evasion.⁵⁴³ Furthermore, according to the new Italian Crisis and Insolvency Code (Article 48, paragraph 5), the judiciary will be able to ratify a restructuring agreement proposed by taxpayers even if the tax authority does not adhere to the proposed fiscal transaction, but only if the proposal is more profitable than the alternative liquidation.⁵⁴⁴

Also in **Italy**, for the municipalities of the Island of Ischia affected by the earthquake of 21 August 2017, the Law of 27 December 2017, No. 205 (*Legge di Stabilità 2018*) introduced measures more favourable for the fulfilment of taxes and duties.⁵⁴⁵

In **Mexico**, the tax administration does not need any judiciary authorization before seizing the assets or bank accounts of taxpayers, since the Mexican Federal Tax Code empowers the revenue authorities to perform seizures if the necessary legal requirements are met. This power of the tax authorities is commonly misused or used in excess. The PRODECON has handled hundreds of taxpayers' service requests with respect to the seizure of bank accounts, successfully assisting taxpayers in the revocation of seizures of their bank accounts.⁵⁴⁶

Also in **Mexico**, as was the case in September 2017 with the two earthquakes that hit Southern Mexico, on 28 November 2018, due to Hurricane Willa in the State of Nayarit, a decree was published in the Federal Official Gazette with several tax benefits. The most relevant are (i) suspension of the obligation to file monthly income tax payments for October, November and December 2018; (ii) immediate deduction of investments in fixed assets, as long as such assets are used in the areas affected by the hurricane (the Mexican Income Tax Law considers various goods fixed assets, and their depreciation rates vary from 3% to 35% annually); (iii) the option to pay the withheld income tax from salaries from October, November and December 2018 in two instalments during the first 3 months of 2019; and (iv) an expedited refund of the VAT-favourable balances requested during November 2018.⁵⁴⁷

In **Poland**, the head of the National Tax Administration has been granted the right to block an entrepreneur's account for 72 hours, with the possibility of extension of up to 3 months when there is a justified fear of the taxpayer's performance of the tax liability (Act of

⁵⁴³ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 64; and Italy, Practitioner's report, Questionnaire # 2, Question 64.

⁵⁴⁴ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 66.

⁵⁴⁵ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 67; and Italy, Practitioner's report, Questionnaire # 2, Question 67.

⁵⁴⁶ See Mexico, Tax Ombudsman's report, Questionnaire # 2, Question 64.

⁵⁴⁷ See Mexico, Tax Ombudsman's report, Questionnaire # 2, Question 67; and Mexico, Practitioner's report (1), Questionnaire # 2, Question 67.

24 November 2017 amending certain acts to counteract the use of the financial sector for tax fraud (Journal of Laws 2017.2491)).⁵⁴⁸

In **Portugal**, the 2019 Budget Law expands the circumstances under which the payment of additional tax assessments in instalments is possible before the enforcement proceedings are initiated. Moreover, when guarantees/securities are provided while the legality of the tax assessment is being discussed and an instalment plan is agreed, the amount of the guarantee/security to be provided no longer needs to include a 25% top-up.⁵⁴⁹

In **Slovenia**, according to the Tax Procedure Act, tax officials must observe limitations on the enforced collection of tax. Limitations apply to the regular income of a taxpayer, deposits on bank accounts, movable property, etc. (see Articles 159, 160, 166(2), 177 and 178). Authorization by the judiciary is needed before seizing immovable property or company shares. Seizing deposits on bank accounts is possible without judicial authorization. The taxpayers' right to request delayed payment of arrears is provided for in the Tax Procedure Act, Articles 101, 102 and 103. Payments can be delayed up to 24 months, depending on the personal circumstances of a taxpayer, if the conditions are met. If the taxpayer provides for a proper guarantee, conditions for deferred payment are not specifically checked. Individuals can be granted up to 3 monthly instalments for their personal taxes not linked to business activity. An additional possibility is provided for in the case of an appeal that is likely to succeed. Additionally, the tax administration can be an active partner in insolvency procedures and can be a partner in structured plans for deferred payments under the same conditions as other creditors of the taxpayer. Bankruptcy is an extreme measure, used only if there is no other solution. Regarding the suspension of tax collection due to natural disasters, no general provision is included in the tax legislation to provide for this kind of temporary suspension. The tax authority can apply general provisions for the temporary suspension of payment on the basis of the circumstances of an individual taxpayer. If major natural disasters occur, the question could be resolved by the law governing measures for recovery after a disaster.⁵⁵⁰

In the **United Kingdom**, new legislation⁵⁵¹ allows the tax authorities to directly recover debts from taxpayers' bank accounts without a prior court order. All that is required is that "HMRC is satisfied that the person is aware that the sum is due and payable ... (para 2(4) Schedule 8)". In this regard, there are various safeguards that are set out in an HMRC Briefing, published in August 2015,⁵⁵² which includes an HMRC guarantee "that every debtor will receive a face-to-face visit from HMRC agents before their debts are considered for recovery through DRD [direct recovery of debts]". That safeguard is not in the legislation. Additionally, a House

⁵⁴⁸ See Poland, Judiciary report, Questionnaire # 2, Question 64.

⁵⁴⁹ See Portugal, Practitioner's report, Questionnaire # 2, Question 63.

⁵⁵⁰ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 63, 64, 65, 66 and 67.

⁵⁵¹ UK: Provisions in Finance (No 2) Act 2015 (Schedule 8) – Enforcement by deduction from accounts.

⁵⁵² See <https://www.gov.uk/government/publications/issue-briefing-direct-recovery-of-debts--2/issue-briefing-direct-recovery-of-debts>.

of Commons Library Report, published in May 2018,⁵⁵³ indicates that the DRD statutory provisions have not, in practice, given rise to many complaints.⁵⁵⁴

In **Venezuela**, two decrees were published⁵⁵⁵ by the national constituent assembly, which established the temporary advance payment of VAT and income tax for special taxpayers. These payments now should be made based on the tax declared the week before. Therefore, there are more burdens imposed on taxpayers, and the real contributory capacity of the taxpayers was not considered. It is also important to highlight that the authority of the national constituent assembly is dubious because this was established without the fulfilment of constitutional requirements.⁵⁵⁶

5.9 Cross-border procedures

As stated in the OPTR report,⁵⁵⁷ and for a number of reasons, there continues to be a general weakening of the practical protection of taxpayers' rights in cross-border situations.⁵⁵⁸ The fact that most procedures dealing with cross-border issues in tax matters are carried out among states leaves no opportunities for taxpayers to participate in procedures of which the outcome certainly will affect their rights. This is wrong. Human dignity demands those affected by any kind of state measures to be *aware* of the possibility of state actions limiting his or her rights and be provided with appropriate mechanisms to defend themselves vis-à-vis such a claim.⁵⁵⁹

5.9.1 Exchange of information

5.9.1.1 EoIR: the right of the taxpayer to be informed and to challenge the EoI

From the previous assertion, it can be easily inferred that taxpayers, as human beings – and therefore, as holders of rights vis-à-vis any state – have the right to be informed of any intent of the states wanting to exercise their taxing powers in a cross-border situation involving such taxpayers so that they can properly defend themselves in that context, especially regarding exchange of information.⁵⁶⁰ Therefore, it is a minimum standard that 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 not be informed on the grounds that it would prejudice the investigation; in other words, the taxpayer should generally be informed that a cross-border request for information is to be made.

⁵⁵³ See <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07051>

⁵⁵⁴ See United Kingdom, Practitioner's Report, Questionnaire # 2, Question 64.

⁵⁵⁵ In the Venezuelan Official Gazette N° 6.396, 21 August 2018.

⁵⁵⁶ See Venezuela, Academic's report, Questionnaire # 2, Question 63.

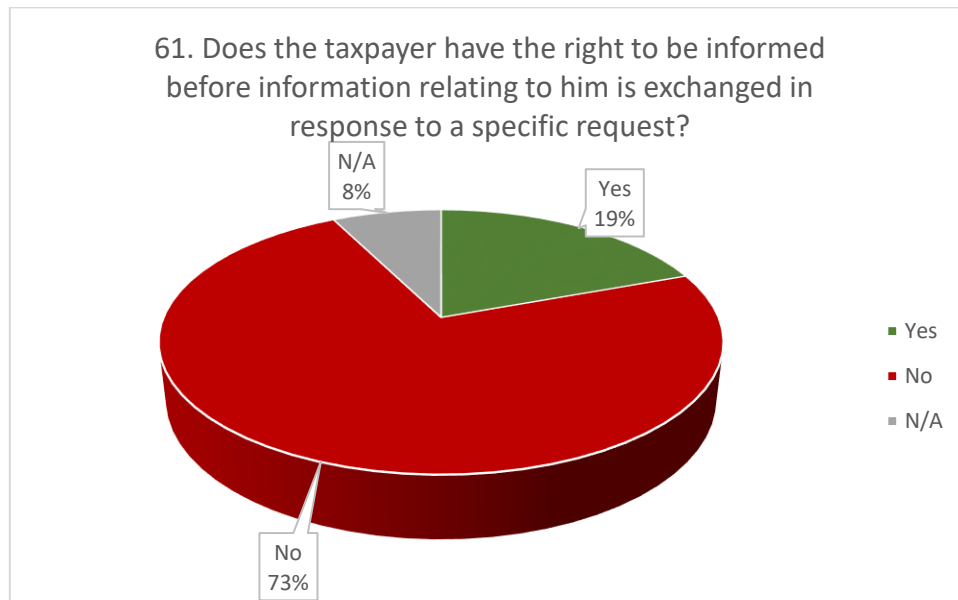
⁵⁵⁷ See OPTR, *supra* n. 48, at p. 66.

⁵⁵⁸ See P. Baker and P. Pistone, *supra* n. 10, at p. 58.

⁵⁵⁹ See C.E. Weffe, *supra* n. 11.

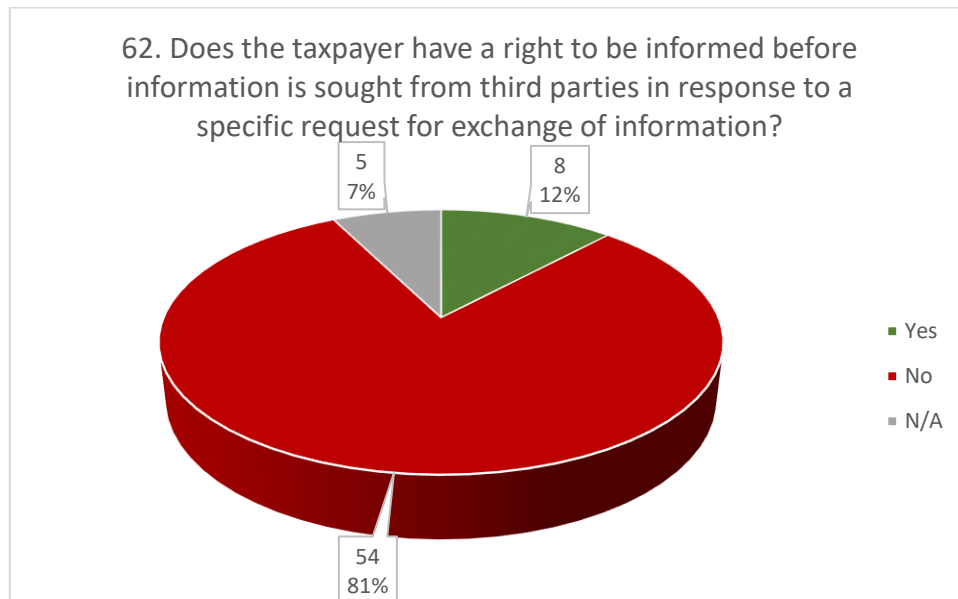
⁵⁶⁰ See C.E. Weffe, *supra* n. 11.

However, according to the national reports, that is not the case in many of the surveyed countries.⁵⁶¹ Out of 67 reports, 49 countries do not grant the taxpayer the right to be informed before information relating to him is exchanged in response to a specific request, as shown in the chart below.



The taxpayer also does not have the right to be informed before information is sought from third parties in response to a specific request for exchange of information. In this case, 54 out of 67 reports claimed there is no such right in their jurisdictions, as depicted in the chart below.

⁵⁶¹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



Nonetheless, there were some signs of development towards the practical implementation of the right to be informed in the context of exchange of information. Take the case of **Belgium**, for instance, where most tax treaties include provisions in this regard. As an example, the new tax treaty with Japan (signed on 12 October 2016 and entered into force on 19 January 2019) also includes an article regarding the conditions for exchange of information (Article 26).⁵⁶²

In **Canada**, the CRA is gaining easier access to information on Canadians’ overseas bank accounts. Canada made a commitment to the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes partners to participate in the Common Reporting Standard as part of a global effort to increase transparency. Under the Common Reporting Standard, dozens of countries will share information about bank accounts held by non-residents. **Canada** has joined **Australia**, the **Netherlands**, the **United Kingdom** and the **United States** in the Joint Chiefs of Global Tax Enforcement (J5) Group.⁵⁶³

The Constitutional Court of **Chile** declared unconstitutional an article of a bill that allowed not notifying the taxpayer on the grounds that it would prejudice the investigation or urgency of the matter (ROL 5540-2018).⁵⁶⁴

In **Colombia**, the taxpayer does not have access to information received by the requesting state, except if a tax audit is in progress.⁵⁶⁵

In **Germany**, the tax administration is currently evaluating the existing experiences with joint audits and direct cooperation (the presence of officials in foreign countries). An important

⁵⁶² See Belgium, Practitioner’s report, Questionnaire # 2, Question 70.

⁵⁶³ See Canada, Practitioner’s report, Questionnaire # 2, Question 68.

⁵⁶⁴ See Chile, Practitioner’s report, Questionnaire # 2, Question 68.

⁵⁶⁵ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 72.

point will be whether or not the hearing obligation, according to §117 (4) *Abgabenordnung* (German Fiscal Code), should be modified. One cannot foresee the outcome of the discussion. However, as other European countries do not have similar requirements, the national hearing obligation hampers international collaboration.⁵⁶⁶

In **Italy**, the ICC, by twin judgments, confirmed that the taxpayer has no right to be informed in any case, according to judgments N. 8605 and 8606/ 2015. Other judgments are in line with these decisions.⁵⁶⁷ The Italian fiscal system does not concede to the taxpayer the right to access the related information. He/she can become aware of that information solely through the notification of a formal tax act by the tax administration.⁵⁶⁸

In **Kenya**, taxpayers are not notified, as there is no legal requirement to do so. Judicial authorization is also not necessary for seeking information of the taxpayer from third parties in the context of EoI.⁵⁶⁹

After the *Berlioz* case decision of May 2017, the **Luxembourg** government submitted a new draft law in December 2017 to comply with the ECJ judgment regarding, notably, the right to an effective judicial remedy. The new Bill of Law (no. 7223) was introduced on 19 December 2017. It suggests three amendments to the contested law: (i) the verification of the “foreseeable relevance” by the direct tax authorities; (ii) the reintroduction of an action for annulment before administrative courts by the taxpayer (*recours en annulation*) against the request for information (which was abolished by the law of 25 November 2014); and (iii) the possibility of the judicial authorities to access the information request. Pursuant to section 4 of the law in force (Law of 25 November 2014), which the Bill (no. 7223) intends to retain, prior notification to the taxpayer would remain limited in cases in which the requesting tax authority, i.e. the foreign competent administration, explicitly requires that the request remain secret. However, in the absence of such a “confidentiality” request from the foreign authority, the current law does not specify the role of the Luxembourg administration with regard to the taxpayers on whom it has the information sought by the foreign authority. In the past, however, administrative practice would provide, on a case-by-case basis, prior notification of taxpayers subject to international control, despite the lack of an expressed legal basis.⁵⁷⁰

Peru has signed the Convention on Mutual Administrative Assistance in Tax Matters, in force as of September 2018, whereby it has recognized the legal framework arising from it, including the aspects related to the protection of taxpayers’ rights.⁵⁷¹ However, even though legislation adapting the tax system to the obligations of automatic exchange of information within the framework of the OECD was enacted in 2016,⁵⁷² no internal legislation has been

⁵⁶⁶ See Germany, Tax Administrator, Practitioner and Academic’s joint report, Questionnaire # 2, Question 68.

⁵⁶⁷ See Italy, Practitioner’s report, Questionnaire # 2, Question 68.

⁵⁶⁸ See Italy, Practitioner’s report, Questionnaire # 2, Question 72.

⁵⁶⁹ See Kenya, Tax Administrator’s report, Questionnaire # 2, Questions 68 and 71.

⁵⁷⁰ See Luxembourg, Academic’s report, Questionnaire # 2, Question 68.

⁵⁷¹ See Peru, Practitioner’s report (2), Questionnaire # 2, Question 68.

⁵⁷² See Peru, Practitioner’s report (3), Questionnaire # 2, Question 68.

implemented establishing that the taxpayer must be informed when a cross-border information request is made.⁵⁷³

In **Slovenia**, a taxpayer is informed of the information obtained from another tax administration in the course of a tax audit. There are different types of information obtained through exchange of information. If tax-relevant information is obtained through automatic exchange of information, the taxpayer will be invited to further explain the situation. Upon the exchange of explanations, the tax administration will decide if a formal assessment procedure will take place. In that procedure, all rights of a taxpayer are observed. If tax-relevant information is obtained on request, a tax assessment procedure probably already takes place and the taxpayer is informed about this information accordingly.⁵⁷⁴

In **South Africa**, the South African Revenue Service published the SARS Guide to the MAP process in July 2018, mainly stating the available procedures.⁵⁷⁵

In **Sweden**, when tax treaties are negotiated, there are always provisions on exchange of information.⁵⁷⁶

5.9.1.2 A disturbing development: the removal of the right of the taxpayer to be notified in certain states under international pressure

Back in 2015, Baker and Pistone criticized, as a quite negative development, the increasing pressure to remove or cut down existing procedures for notifying taxpayers about cross-border EoIR and the right of those taxpayers to challenge it, if appropriate, due to a threat drawn by the OECD Forum on Transparency and Exchange of Information, and as a result of a threat to give a lower peer review rating to the countries concerned.⁵⁷⁷

This dubious practice seems not to have stopped. Out of 67 national reports, 53 reported that their countries do *not* recognize the right of taxpayers to be informed prior to peer review by the Forum on Transparency and Exchange of Information, 13 did not provide an answer, and *one*, the **Netherlands**, stated that such right was granted *before* and was later *removed* due to the coercion exercised by said Forum.⁵⁷⁸

⁵⁷³ See Peru, Practitioner's report (2), Questionnaire # 2, Question 68.

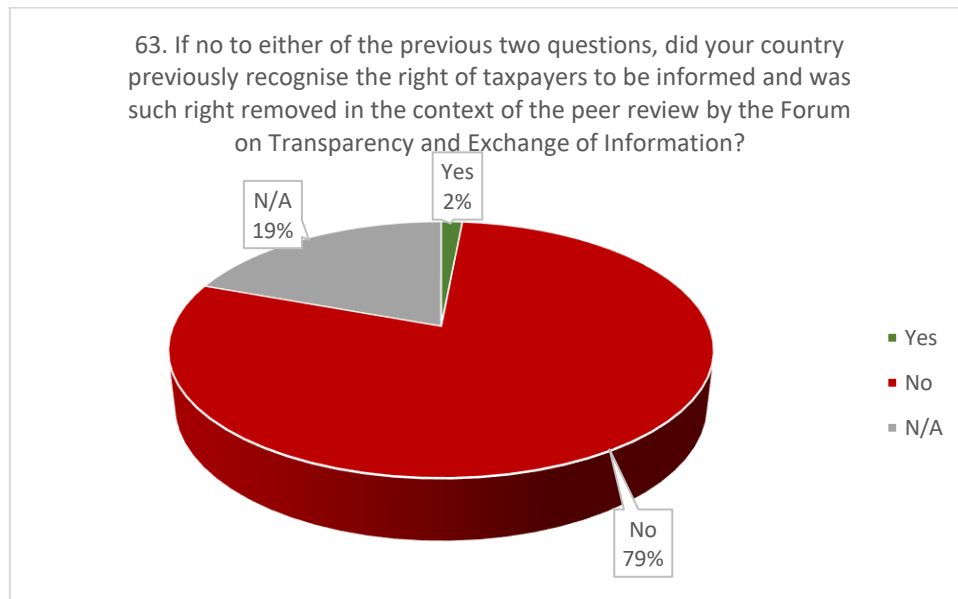
⁵⁷⁴ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 68.

⁵⁷⁵ See South Africa, Tax Ombudsman and Academic's report, Questionnaire # 2, Question 68.

⁵⁷⁶ See Sweden, Practitioner and Academic's joint report, Questionnaire # 2, Question 70.

⁵⁷⁷ See P. Baker and P. Pistone, *supra* n. 10, at pp. 62-63.

⁵⁷⁸ See Netherlands, Practitioner's report, Questionnaire # 1, question 63.



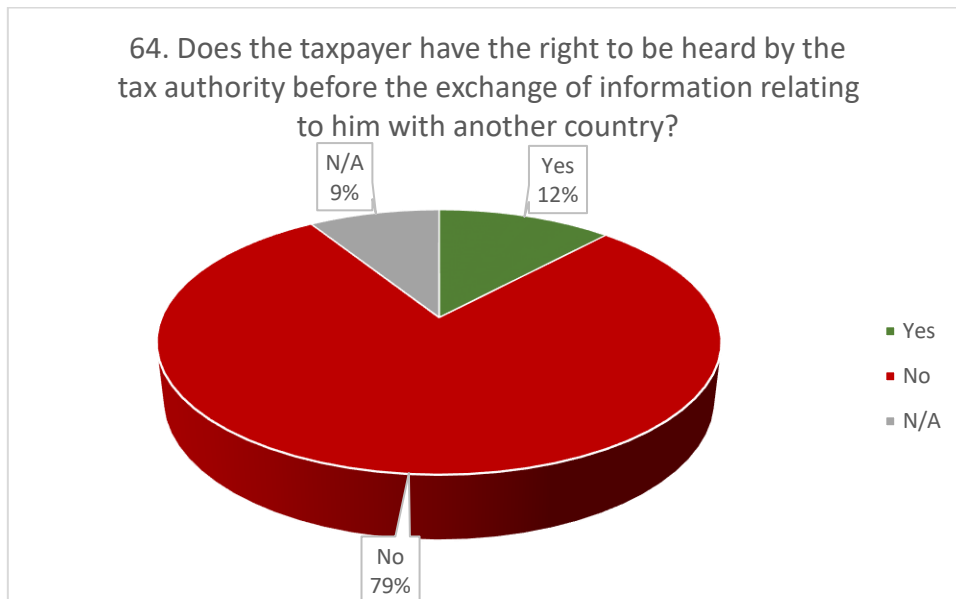
5.9.1.3 Additional safeguards in connection with EoIR

In addition to the right to be informed, the principles of equality of arms and equality of the parties in the tax relationship demand from the states participating in an exchange of information that the information-requesting powers are not used only to get information that harms the taxpayer’s position, but also information that assists in their defence.

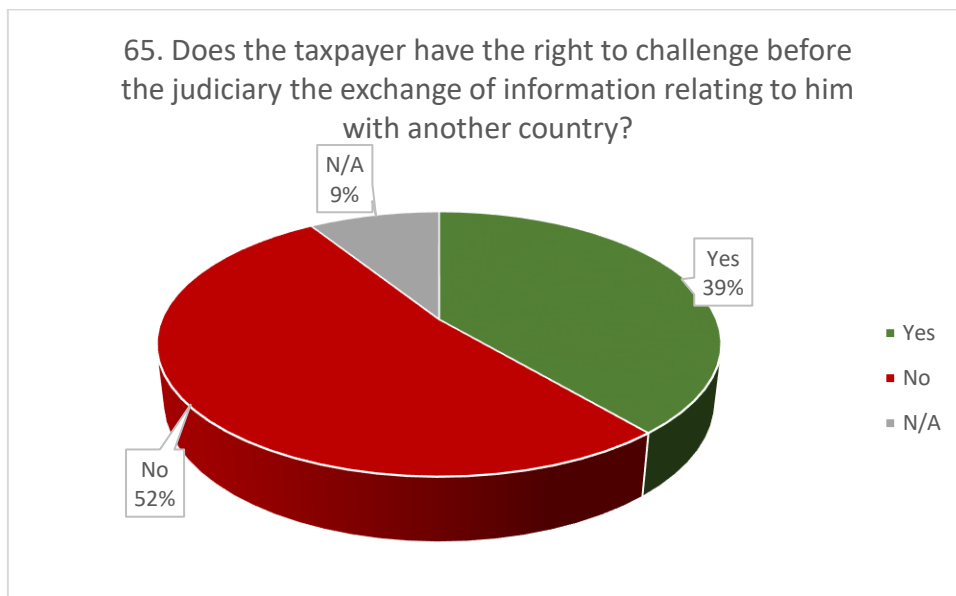
First of all, the taxpayer should be entitled to be heard by the tax authority before the exchange of information relating to him with another country. However, being heard implies *awareness* of a situation (i.e. the exchange of information) that might potentially alter the sphere of rights of the taxpayer. Considering that, according to the statistics just discussed above,⁵⁷⁹ most jurisdictions do not grant the taxpayer the right to be informed (i.e. to *know*) of the ongoing EoI, it is logical that the same number of reports – or *even more* (such as in this case) – do *not* recognize the taxpayer’s right to be heard before the EoI relating to him with another country takes place. This trend is shown in the chart below.⁵⁸⁰

⁵⁷⁹ See section 5.9.1.1. of this report.

⁵⁸⁰ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

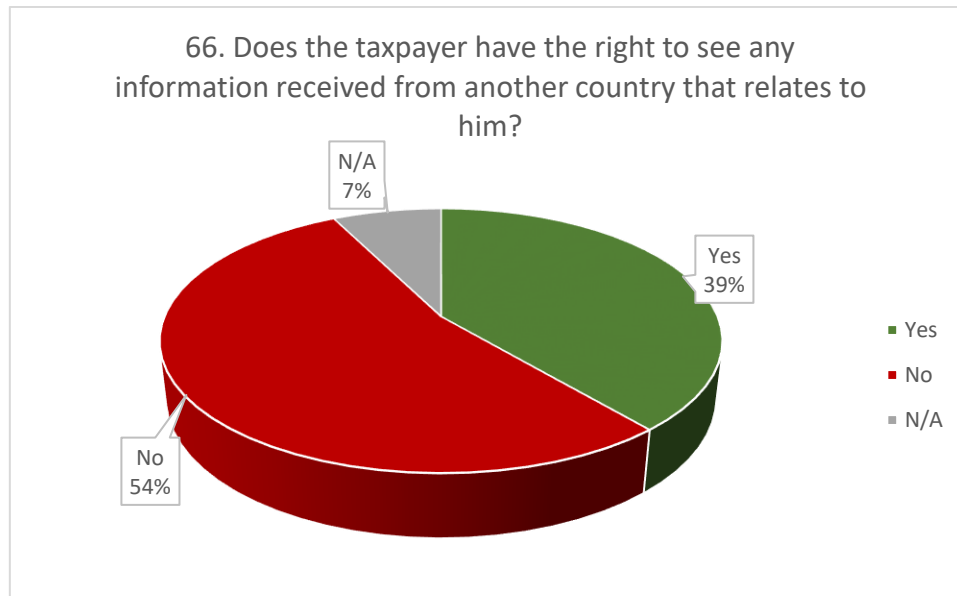


The situation improves slightly when considering the taxpayers’ right to challenge the EoI before the judiciary. However, a majority of reports *still* inform that their jurisdictions do *not* give the taxpayer the opportunity to challenge the EoI relating to him with another country, unless the information is used to issue a new assessment. These statistics are shown in the chart below.



This trend is maintained with regard to the right of the taxpayer to see the information related to him collected by the tax authorities via EoI. A majority of reports (36) convey that

the taxpayer does *not* have such right in the context of exchange of information, as the chart below summarizes.⁵⁸¹



In this regard, during 2018, **Colombia** made multiple requests for information and collaboration with JITSIC's special project on the so-called "Panama Papers". On the other hand, the DIAN relies on the OECD to evaluate the standards for data protection in other jurisdictions, and the timely notification of the taxpayer, providing him with sufficient time to exercise data protection rights for automatic exchange of financial information, was recognized in Law 1943 of 2018 and in the MAP Guide published in March 2019.⁵⁸²

Denmark bought data from the Panama Papers, and the tax administration has, based on this information, requested and received further information regarding specific taxpayers from foreign competent authorities. The tax administration stated that the information received was crucial to the audit of the specific taxpayers.⁵⁸³

The Court of Cassation of **Italy**, in twin judgments, held that the tax administration has the possibility to utilize the information obtained abroad through illegitimate means. The motivation, in brief, is the "superior Tax reason", as stated in judgment nr. 8605/2015 and nr. 8606/2015.⁵⁸⁴

⁵⁸¹ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

⁵⁸² See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 73, 75 and 76.

⁵⁸³ See Denmark, Tax Administrator and Practitioner's report, Questionnaire # 2, Question 73.

⁵⁸⁴ See Italy, Practitioner's report, Questionnaire # 2, Question 73.

In **Peru**, Article 102Bf) of the Tax Code allows the SUNAT (the Peruvian tax authority) to request information from the competent authority by request of the taxpayer.⁵⁸⁵ In addition, **Peru** has not made it mandatory that the requesting state meet high standards of data protection beyond the framework of the Convention.⁵⁸⁶

In **Slovenia**, the tax administration is obliged to investigate all circumstances of a case, and all facts in favour as well as to the detriment of a taxpayer should be duly examined. This is derived from one of the basic principles of tax procedure contained in Article 5 of the Tax Procedure Law. Slovenian tax treaties follow the Model Tax Convention prepared by the OECD. In this respect, the proposed framework for exchange of information on request is respected. As far as automatic exchange of information is concerned, the Multilateral Competent Authority Agreement defines the conditions for and scope of exchange. No judicial authorization is needed to obtain information from third parties within the country or from other tax authorities. This kind of information-gathering is possible on the basis of the provision of the Tax Procedure Law or on the basis of bilateral tax treaties or bilateral agreements on exchange of information. As well, the requesting state will inform a taxpayer according to their standard of providing information on the tax assessment. If Slovenia is the requesting state, the tax administration will inform the taxpayer of all the information received from a third country in the course of a tax assessment procedure. The Slovenian tax administration follows the principles of good practice, established among EU tax authorities, and safeguarding confidentiality is one of the prerequisites and cornerstones of exchange of information.⁵⁸⁷

In **Switzerland**, the Federal Supreme Court's respective jurisprudence is fairly friendly towards the requesting state. Even if stolen data lies at the origin, states other than the buying one receiving the information subsequently may use it to request assistance (for instance, India received data from France that had been "stolen" by Hervé Falciani (HSBC)). Additionally, since no state wishes to find itself on any kind of list, AIA agreements are concluded with states that currently guarantee data protection only "on paper".⁵⁸⁸

5.9.1.4 AEOI: the different issues of taxpayer protection

From an *a minori ad maius* approach, it is evident that minimum standards and best practices regarding the right to be informed are fully applicable to the automatic exchange of information. As previously stated, the greater the powers of the tax administration, the greater the protection of taxpayers' rights should be.⁵⁸⁹ Therefore, as a matter of principle, the taxpayer should be notified of the proposed automatic exchange of information regarding financial information in sufficient time in order to exercise data protection rights.

⁵⁸⁵ See Peru, Practitioner's report (1), Questionnaire # 2, Question 74, and Peru, Practitioner's report (2), Questionnaire # 2, Question 71.

⁵⁸⁶ See Peru, Practitioner's report (2), Questionnaire # 2, Question 75.

⁵⁸⁷ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 69, 70, 71, 72, 73 and 74.

⁵⁸⁸ See Switzerland, Judiciary's report, Questionnaire # 2, Questions 73 and 75.

⁵⁸⁹ See P. Baker and P. Pistone, *supra* n. 10, at p. 57, and section 5.8 of this report.

However, that seems not to be the case, following the general trend of obscurity of taxpayers' rights in the context of exchange of information. It becomes even worse in the context of AEOI, in which all information-gathering happens without any knowledge of the taxpayer, let alone any form of judicial review.

In this regard, in **Cyprus**, with the adoption of the OECD CRS, which requires the automatic exchange of financial account and taxpayer information between a large number of participating jurisdictions, in 2018, the country exchanged such reportable information with foreign authorities automatically, without the use of a court order.⁵⁹⁰

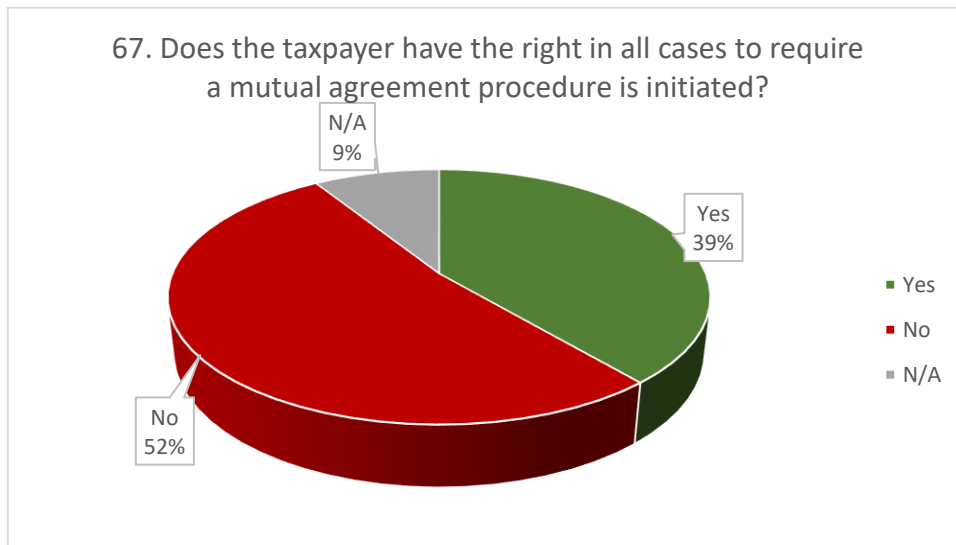
Slovenia is a member of the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes. At the same time, Slovenia is a member of the EU. The Global Forum and the EU have set standards for exchange of information for tax purposes, and one of basic standards is that states involved in exchanges of information should provide high standards of data protection. In Slovenian decisions on exchange of information, there is a reliance on the assessment of data protection in the course of peer reviews conducted by the Global Forum. Taxpayers are informed of automatic exchanges of financial information on the basis of legal provisions, defining timeframes as well as the scope and manner of automatic exchange of information. No special notification to individual taxpayers is made. The legal bases in Slovenia are the Tax Procedure Act and Multilateral Competent Authority Agreement on Automatic Exchange of Tax Information, which Slovenia ratified and published in the Official Journal.⁵⁹¹

5.9.2 Mutual agreement procedure (MAP)

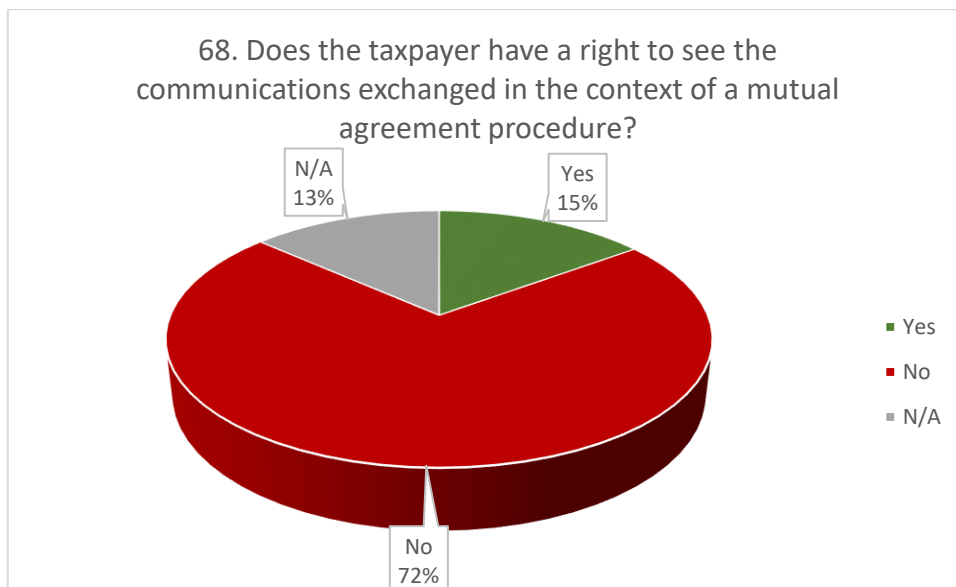
Taxpayers are also holders of rights in all states in MAPs, since said procedures are relevant to the application of double tax conventions and, therefore, to the assessment of taxpayers' tax liabilities in cross-border situations. Consequently, taxpayers are also entitled to request the initiation of a MAP in order to address issues of interpretation and application of double tax conventions that may harm their legal positions regarding taxes in cross-border situations.

⁵⁹⁰ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 71

⁵⁹¹ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 75 and 76.



However, the only right that is somehow recognized for the taxpayer in MAPs is that of *requesting* the initiation of said procedures, as depicted in the chart above. Even though these procedures are capable of directly affect taxpayer rights, the circumstance of them being carried out among states leaves taxpayers with no legal standing, and therefore no participation and no rights in practice.⁵⁹² An example is the possibility to see the communications exchanged in a MAP by the taxpayer, denied in 48 national reports,⁵⁹³ as shown in the chart below.



Nonetheless, there were some developments in 2018 that might help change the trend.

⁵⁹² See P. Baker and P. Pistone, *supra* n. 10, at p. 58.

⁵⁹³ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

In **Argentina**, Law 27.430, in force since January 2018, establishes a procedure for the participation of the taxpayer with regard to international treaties. There is not yet any practical experience.⁵⁹⁴

In **Australia**, the ATO has reviewed and updated MAP guidance to reflect both changes in legislation and recommendations made under framework of the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS).⁵⁹⁵

In **Belgium**, aside from the EU Arbitration Convention, the country is bound by Council Directive (EU) 2017/1852 of 10 October 2017. Both foresee the possibility to initiate a MAP. Currently, the Government is working on a project to implement the Directive in national law.⁵⁹⁶

In **Brazil**, Normative Instruction NI 1,846/18 now allows taxpayers access to the MAP, even if they have already had an issue decided on by an administrative or judicial court. In such circumstances, however, the MAP will be focused on trying to resolve the double taxation issue based on a bilateral solution, which will depend on the good will of the treaty partner, as the Brazilian tax authorities may be legally prevented from going against an existing decision.⁵⁹⁷

In **Colombia**, Law 1943 of 2018 provided that taxpayers may request assistance for the MAP regulated in tax treaties by filing a formal request with the DIAN. The MAP Guideline was published in March 2019. Additionally, according to Law 1943 of 2018, taxpayers can request assistance from the DIAN for the MAP. The procedure could allow the verbal presentation of the request by the taxpayer for unusual or complex cases, pursuant to the MAP Guideline. The agreement reached by the ACC and the Foreign Competent Authority will be notified to the taxpayer who requested the assistance.⁵⁹⁸

On 7 June 2017, **Cyprus** and 67 other jurisdictions signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). At the time of signature, **Cyprus** submitted a list of 61 tax treaties entered into by **Cyprus** and other jurisdictions that **Cyprus** would like to designate as Covered Tax Agreements (CTAs). Article 16 of the MLI requires countries to include, in their tax treaties, the provisions regarding the MAP of Article 25, paragraph 1 through paragraph 3 of the OECD Model Tax Convention, including certain modifications to those provisions. **Cyprus** has not made any reservations with respect to Article 16, and thus chooses to apply Article 16 in its entirety to all CTAs.⁵⁹⁹ Additionally, **Cyprus** has yet to issue guidelines on the implementation of the MAP, and the authorities appear to be ignorant of this process. Without guidelines, it is difficult to assess whether the process will be "behind closed doors" or whether the taxpayers will have access to the proceedings.⁶⁰⁰

⁵⁹⁴ See Argentina, Practitioner's report, Questionnaire # 2, Question 77.

⁵⁹⁵ For more information see here: <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Mutual-agreement-procedure/>. See also Australia, Academic's report, Questionnaire # 2, Question 77.

⁵⁹⁶ See Belgium, Practitioner's report, Questionnaire # 2, Question 77.

⁵⁹⁷ See Brazil, Practitioner's report (1), Questionnaire #2, Question 77.

⁵⁹⁸ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 77 and 78.

⁵⁹⁹ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 77.

⁶⁰⁰ See Cyprus, Practitioner-Academic's report, Questionnaire # 2, Question 78.

In **Denmark**, Act No. 1726 of 27 December 2018 implements the Directive on Double Taxation Dispute Resolution Mechanisms of the European Union (EU 2017/1852). As part of the transformation, it is now clearer that a taxpayer has a right to arbitration. The right is now more clearly recognized in the sense that access to arbitration is still lost if the matter is brought before an ordinary Danish court and the Danish court decides on the case, but the Ministry of Taxation now accepts that the matter may be brought before the ordinary court and the case postponed upon arbitration. In this way, the taxpayer does not forfeit the possibility of arbitration if the taxpayer, at the same time, wishes to retain the possibility of bringing the matter before a national court.⁶⁰¹

In **Mexico**, under the international tax treaties entered into by Mexico, taxpayers do have the right to request the initiation of the MAP. However, it is up to the SAT to accept or deny the MAP request. In April 2018, through its complaint procedure, the PRODECON was able to ensure a taxpayer's access to a MAP that was previously denied by the Mexican competent authority. As a consequence of the public Recommendation issued in that specific case, the PRODECON has received additional complaints against the denial by the Mexican competent authorities to access the MAP. The participation of taxpayers in the MAP is limited to the filing of the MAP request with the corresponding information. The PRODECON has been analysing and studying the possibility of assisting taxpayers with regard to the status of the MAP. No formal request or complaint has been filed by any taxpayer on this respect.⁶⁰²

In **Peru**, there are no regulations allowing the taxpayer to be heard and informed of the progress of the MAP.⁶⁰³

In **Slovenia**, taxpayers have the right to request the initiation of the MAP, and, in principle, they have the right to be heard and informed about the progress of the MAP.⁶⁰⁴

5.10 Legislation

5.10.1 The general framework

Human rights are spread throughout all aspects of taxation. This means that the practical protection of taxpayers also extends to substantive tax law as well, since the rightful assessment of taxpayers' ability to pay starts from a proper design of tax legislation in a democratic way, pursuant to the rule of law.⁶⁰⁵

⁶⁰¹ See Denmark, Tax Administrator and Practitioner's report, Questionnaire # 2, Question 77.

⁶⁰² See Mexico, Tax Ombudsman's report, Questionnaire # 2, Questions 77 and 78.

⁶⁰³ See Peru, Practitioner's report (2), Questionnaire # 2, Question 78.

⁶⁰⁴ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 77 and 78.

⁶⁰⁵ See P. Baker and P. Pistone, *supra* n. 10, at p. 66.

5.10.2 Constitutional limits on tax legislation: retrospective legislation

Recent Relevant Case Law

European Court of Human Rights

Cases communicated in 2018:

- ***PANEVA v. The Former Yugoslav Republic of Macedonia and 2 other applications* (Application No. 17778/16, 20-06-2018):** The case concerns the imposition of a 70% income tax (higher than the general tax rate) for undeclared and untaxed revenue that the applicants had obtained while in office. Since the tax applied also to taxed revenue obtained before the date on which the law became operable, is this retroactive application contrary to Article 7 of the European Convention on Human Rights?
- ***S.C. Totalgaz Industrie SRL v. Romania* (Application No. 61022/10, 21-02-2018):** The applicant company complained that the lack of foreseeable legislation was a breach of Article P1-1 of the European Convention on Human Rights.

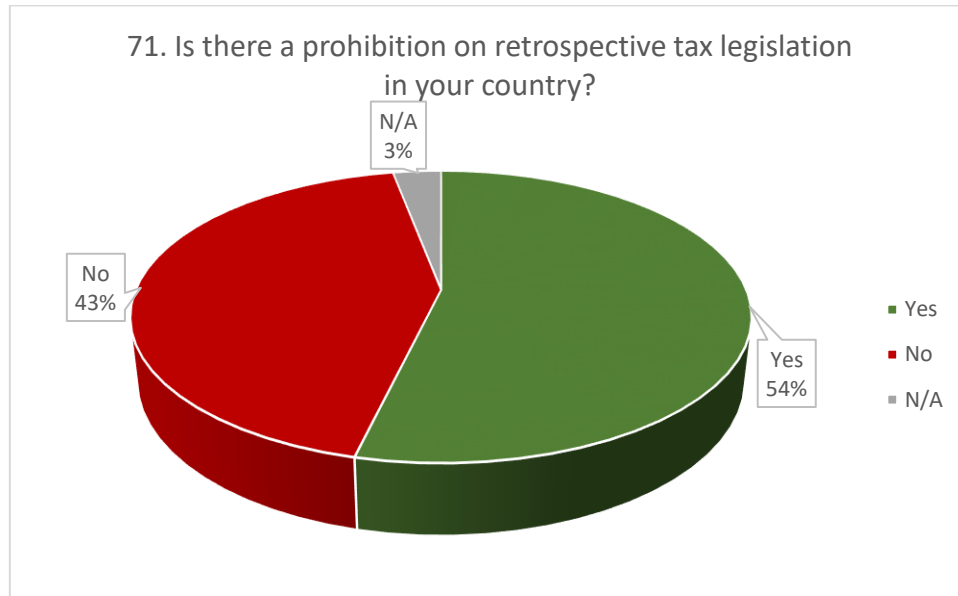
Court of Justice of the European Union

Cases decided in 2018:

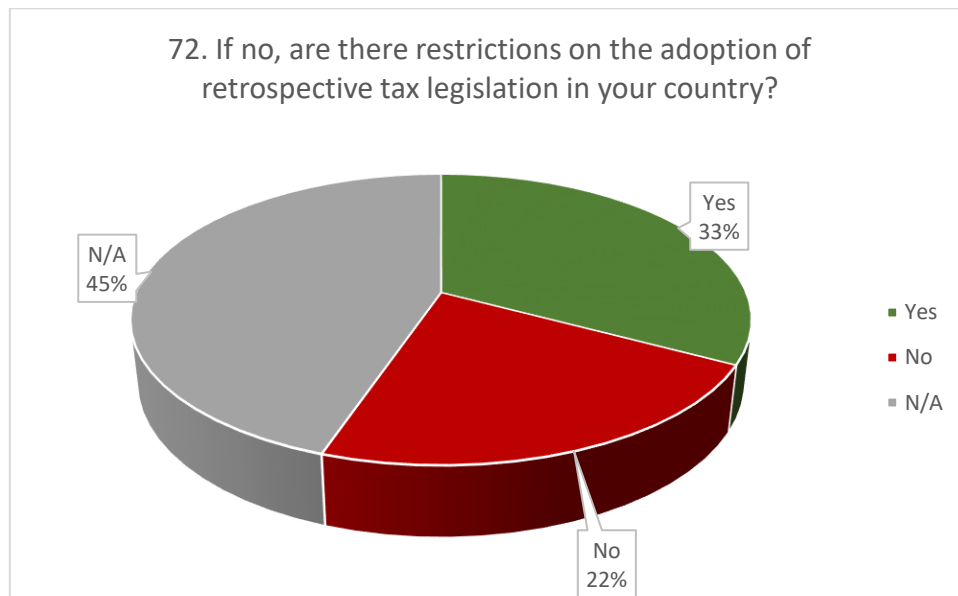
- ***Scialdone – C 574/15 (Grand Chamber, 02-05-2018):*** The imposition of a criminal fine on the sole director and legal representative of a company that was sanctioned with an administrative penalty for underreporting VAT. After the imposition of the criminal penalty on Mr. Scialdone, the legislation changed and more lenient rules were adopted, which led to the extinction of criminal liability for cases such as that of Mr. Scialdone. According to the Court, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 4(3) TFEU, as well as Article 325(1) TFEU must be interpreted as not precluding national legislation which provides that the failure to pay, within the time limit prescribed by law, the VAT resulting from the annual tax return for a given financial year constitutes a criminal offence punishable by a custodial sentence only when the amount of unpaid VAT exceeds a criminalization threshold of EUR 250,000, whereas a criminalization threshold of EUR 150,000 is laid down for the offence of failing to pay withholding income tax. The judgment does not contain any reference to the Charter. The Opinion of Advocate General Bobek delivered on 13 July 2017 extensively discusses Article 49 of the Charter, which sets out the principles of legality and proportionality of criminal offences and penalties.

On one hand, taxpayers' rights demand that retrospective tax legislation be completely banned, or at least only permitted in limited circumstances, spelled out in detail. In this regard,

there is a prohibition on retrospective tax legislation in a majority of surveyed jurisdictions, as shown in the chart below.



Interestingly, 15 out of 67 national reports say that there are no restrictions on the adoption of retrospective tax legislation, while 22 other reports (fortunately) declare other restrictions on the adoption of retrospective tax legislation in the case that there is no global prohibition of such practice in their legal systems. All other reports (30) do not provide an answer. These proportions are shown in the chart below.



During 2018, there were some significant developments regarding the prohibition of retrospective legislation. Regrettably, most of them were steps away from this minimum

standard of protection of taxpayers' rights, as summarized below based on the information kindly provided by national reporters.

In **Belgium**, the Court of First Instance of Antwerp ruled that the GAAR that was introduced with effect as from assessment year 2013 is also applicable to a series of acts whereby at least the last act occurred after the entry into force of the GAAR. The fact that the first acts took place before that date does not hinder the application of the rule (Court of First Instance of Antwerp, 29 October 2018, no. 17/2635/A). This decision is a subject of discussion in Belgian literature. According to some scholars, this decision entails a forbidden retroactive application of the law. According to others, since, in Belgian tax law, the GAAR is considered a mere procedural rule, retroactivity is not an issue. Procedural rules are immediately applicable.⁶⁰⁶

In **Colombia**, Financing Law 1943 of 2018 modified the tax treatment of dividends and shares in profits received by national and foreign companies, as well as resident and non-resident individuals. Therefore, it established a transition regime that maintains the treatment prior to the entry into force of that law only for dividends decreed until 31 December 2018, therefore applying retroactively. Moreover, this regulation ignores the transition regime of Law 1819 of 2016, according to which the treatment of dividends established in **Colombia** only would be applicable to dividends that were repaid with charges on profits generated from the taxable year 2017.⁶⁰⁷

In **Kenya**, through the Provisional Collection of Taxes and Duties Act, the Revenue Authority collected taxes provisionally prior to the Finance Bill becoming an Act. However, in the case *Okiya Omtatah Okoiti v. Cabinet Secretary, National Treasury & 3 others [2018] eKLR*, the court held that the Provisional Collection of Taxes and Duties Act was unconstitutional, as it purported to allow for the collection of taxes retrospectively, that is, the period before the Finance Bill became an Act.⁶⁰⁸

In **Mexico**, Article 69-B-bis was added to the Tax Code. The text establishes criteria for denying the use of tax losses if the beneficiary was involved in a corporate restructuring. The current position of the tax authorities is that such criteria apply to any taxpayer involved in such reorganizations, even if they were executed before the enactment of this article.⁶⁰⁹

In **Slovenia**, in principle, retrospective tax legislation is not permitted, according to the Slovenian Constitution. Only when it is in the public interest and no rights of taxpayers are affected can a law have retroactive effect.⁶¹⁰

⁶⁰⁶ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 79.

⁶⁰⁷ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 79.

⁶⁰⁸ See Kenya, Practitioner's report (2), Questionnaire # 2, Question 79.

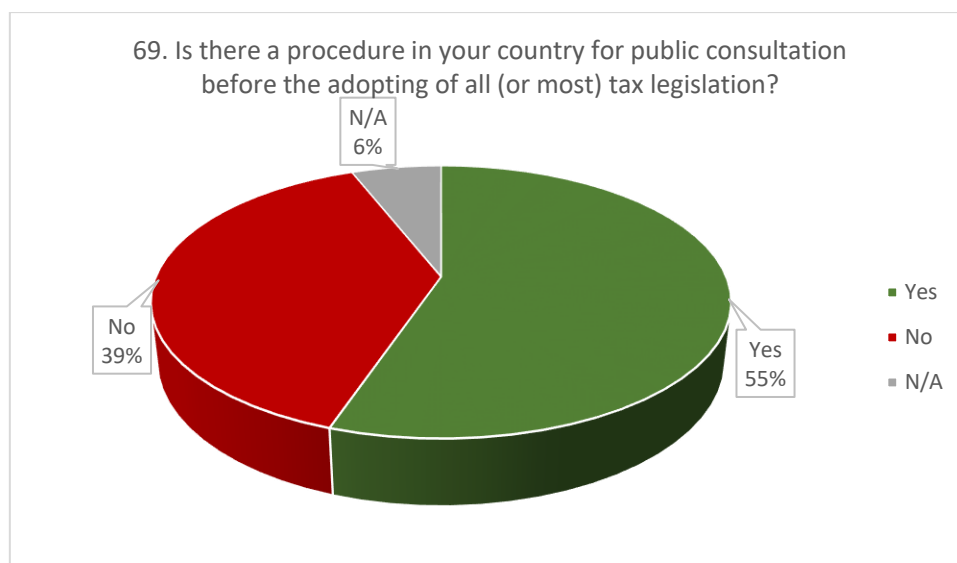
⁶⁰⁹ See Mexico, Practitioner's (3) report, Questionnaire # 2, Question 79.

⁶¹⁰ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 79.

In **Switzerland**, recent tax legislation – usually as a reaction to an unappreciated Supreme Court decision – has enacted retrospective legislation in the field of withholding tax.⁶¹¹

5.10.3 Public consultation and involvement in the making of tax policy and law

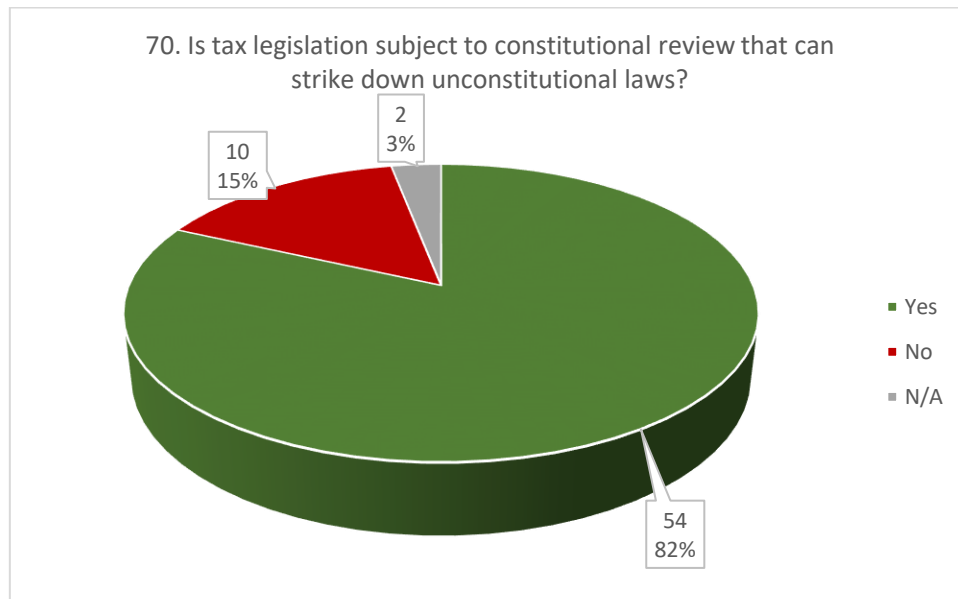
On the other hand, the configuration of a democratic society under the rule of law compels public consultation preceding the making of tax policy and tax law. According to the national reports,⁶¹² a significant number of surveyed jurisdictions provide for public consultation before the adoption of tax legislation. This information is summarized in the chart below.



As an additional reinforced guarantee, constitutional mechanisms of judicial review seem to be applicable to tax legislation, including the possibility of striking down tax laws due to reasons of unconstitutionality in an important number of surveyed jurisdictions, although there is also an important amount of national reports that indicate that no such method of control of constitutionality has been implemented in their countries, as shown in the chart below:

⁶¹¹ See Switzerland, Judiciary's report, Questionnaire # 2, Question 79.

⁶¹² For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.



In this regard, some developments during 2018 are worth mentioning. First of all, the government of **Argentina** published a draft regulation for income tax law in advance and opened the possibility of receiving criticism. However, there are no rules that force the government to put this procedure into practice.⁶¹³

In **Brazil**, recently, the federal tax authorities have been holding public consultations prior to the enactment of new tax regulations.⁶¹⁴

In **China**, the law has explicitly regulated that the drafting procedure should conduct demonstration and consultation. Comments may be requested by holding forums, demonstration meetings and hearings, as well as in other various forms. Furthermore, in the Ordinance concerning the Procedures for Formulation of Administrative Regulations, it regulates that when (i) the focal or difficult issue that attracts wide public attention or any prominent conflict encountered in economic and social development is involved; (ii) the rights of citizens, legal persons and other organizations are impaired or their obligations are increased; (iii) there is a significant impact on the public; and (iv) other major interest adjustment matters are involved, demonstration and consultation shall be conducted.⁶¹⁵

In **Colombia**, regulations and guidelines are published for comment before approval. In addition, they are issued expeditiously after the enactment of the law they develop.⁶¹⁶

In **India**, most of the changes in tax law are effected through the budget. A Finance Bill is prepared, which is then debated in the Parliament. There is a time gap between the presentation of the Finance Bill and its final passing by the Parliament, during which the public

⁶¹³ See Argentina, Practitioner's report, Questionnaire # 2, Question 80.

⁶¹⁴ See Brazil, Practitioner's report (2), Questionnaire # 2, Question 80.

⁶¹⁵ See China, Academic's report, Questionnaire # 2, Question 80.

⁶¹⁶ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 80.

can express their grievances, if any. In that sense, there is public consultation. Aside from this, the government often releases consultation documents before finalizing guidelines and the like on important issues.⁶¹⁷

In **Italy**, the Department of Finance submits new hypotheses of regulations or revisions of existing regulations for public consultation.⁶¹⁸ The aim is to obtain observations and comments from citizens, economic operators, trade associations, professional associations and experts in the field to enable active participation in the decision-making process and stimulate an open and constructive dialogue with all stakeholders directly interested in the legislative proposals.⁶¹⁹

In **Kenya**, as a result of public outcry, VAT on fuel was reduced from 16% to 8%, pursuant to the 2018 Finance Bill.⁶²⁰

It has been reported that in the **Netherlands**, the government uses public consultation more and more.⁶²¹

In **Slovenia**, every draft law or draft implementing regulation is subject to public consultation. It should ideally last for 60 days. In practice, consultations on draft tax legislation lasts between 14 and 30 days.⁶²²

In **Spain**, it is interesting that Article 133 of Law 39/2015 regulates the citizens' participation in establishing internal rules. In some aspects, this provision has been declared contrary to the distribution of competences between the state and the autonomous communities by the Constitutional Court judgment 55/2018 of 24 May so that it is not applicable to the autonomous communities' standards. According to Article 133 of Law 39/2015, two types of citizen participation are possible: (i) public consultation, to obtain the opinion of citizens, organizations and associations before the normative project; and (ii) public information, to obtain the opinion of citizens affected by a normative project, directly or through their representative associations, as well as to obtain additional contributions from other persons or entities.⁶²³

5.11 Revenue practice and guidance

5.11.1 The general framework

Tax matters are governed by the principle of legality, whereby all governing rules should be contained in laws issued by the legislative power, or at least with its authorization (e.g. Law Decrees

⁶¹⁷ See India, Academic's report, Questionnaire # 2, Question 80.

⁶¹⁸ See <http://www.finanze.gov.it/opencms/it/consultazioni/>

⁶¹⁹ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 80.

⁶²⁰ See Kenya, Practitioner's report (1), Questionnaire # 2, Question 80.

⁶²¹ See Netherlands, Practitioner's report, Questionnaire # 2, Question 80.

⁶²² See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 80.

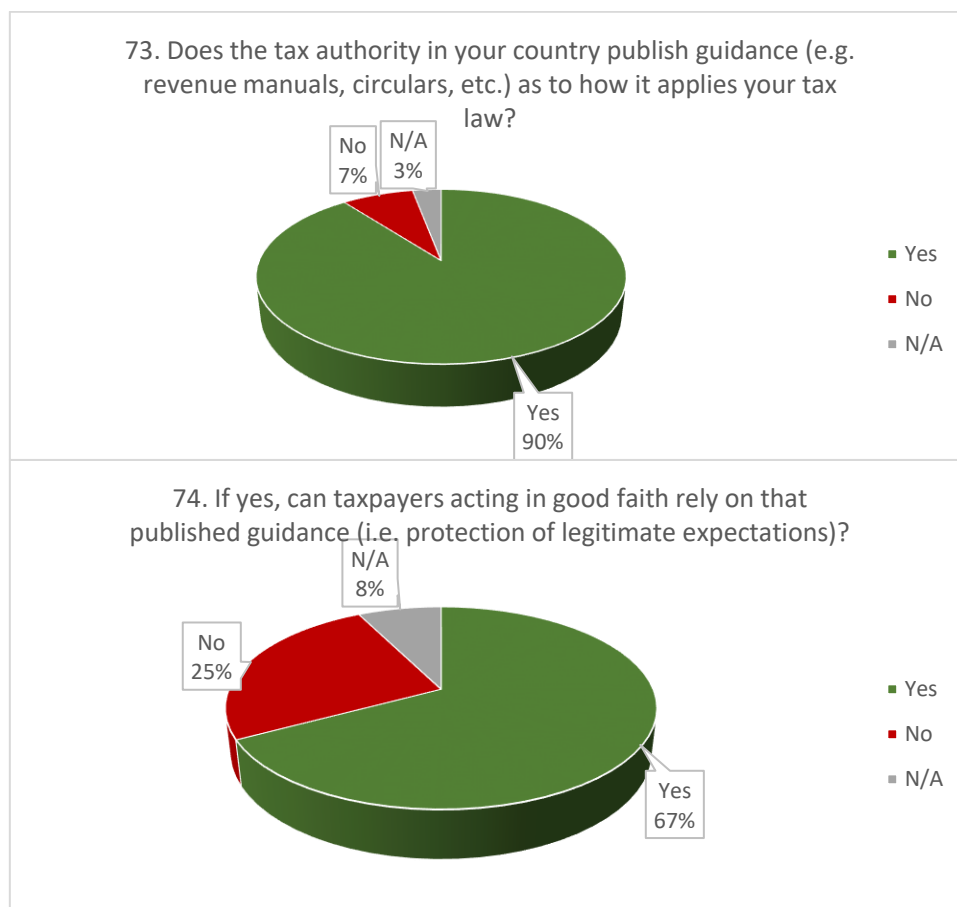
⁶²³ See Spain, Tax Ombudsman, Judiciary and Academic's joint report, Questionnaire # 2, Question 80.

issued by the National Executive Officer). Other tax provisions different from those aimed at creating taxes may be issued by the tax administration or other officers. However, all rules must be public and widely communicated among taxpayers. This is especially necessary in tax matters, which is a very specialized area of knowledge without global understanding. Therefore, the tax administration must enable the necessary mechanisms that facilitate the dissemination of the existing legal system, with special attention on the rights and duties of taxpayers.

Similarly, the tax administration should make public its interpretations on rules and specific cases submitted for its consideration, which might constitute a valid precedent to allow taxpayers to foresee the consequences of their activities. Based on the principle of legitimate expectation, the tax administration should also assume responsibility for its errors in interpreting rules and transactions under its consideration. Therefore, any change in criteria can only be applied prospectively.

5.11.2 The publication of all legally relevant material

According to national reports,⁶²⁴ most countries publish guidance about the application of tax law. According to 69.23% of the reports submitted, the principle of legitimate expectations is also protected, as shown in the charts below.



⁶²⁴ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

In 2018, the widespread good practice among tax authorities regarding the publication of guides and practices was maintained.⁶²⁵

In **Australia**, the ATO has released a new Multicultural Access and Equity Action Plan, setting out its commitments to vulnerable taxpayers.⁶²⁶

In **Belgium**, as of the beginning of 2018, the official legal and tax database of the FPS, containing legislation, jurisprudence, circulars, instructions, etc. (Fisconet plus), has been made more difficult to access. It is no longer freely accessible, but only with a Microsoft profile and password (which must therefore be created if one does not already have this). This increases the threshold for accessing relevant legal material.⁶²⁷

In **Canada**, according to the Taxpayer Bill of Rights, Article 6, taxpayers “have the right to complete, accurate, clear, and timely information.” The CRA publishes many forms, guides, pamphlets, information circulars and interpretation bulletins to assist taxpayers in complying with their tax obligations. In Canada, all legislation is available on the website of the Department of Justice. Not all CRA manuals are available to the public. The CRA maintains a forms website, where the public can search for and select publications, which can be ordered online through the website or by phone. Taxpayers are encouraged to contact the CRA to request the relevant form or publication through its website.⁶²⁸

In this regard, on 5 June 2017, the Federal Taxpayers’ Ombudsman of **Canada** released a report entitled Rights and Rulings: Understanding the Decision.⁶²⁹ In the report, the Ombudsman made recommendations to improve transparency associated with the CRA’s ruling letters in respect of the determination of whether a worker is an employee or is self-employed and whether a worker’s employment is pensionable under the Canada Pension Plan or insurable for employment insurance purposes.⁶³⁰

In **Canada**, the CRA also provides income tax technical interpretations, advance income tax rulings (rulings) and consultations in advance of a ruling request (pre-ruling consultations). A technical interpretation is generic in nature and provides the CRA’s interpretation of specific provisions of Canadian income tax law; however, it may not extend to all situations and is not determinative of the tax treatment of a specific taxpayer’s situation. No fee is charged for a technical interpretation. A ruling is a written statement confirming how the CRA’s interpretation of specific provisions of Canadian income tax law applies to a definite

⁶²⁵ See P. Baker and P. Pistone, *supra* n. 10, at p. 69.

⁶²⁶ See the Action Plan document at: https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/multicultural-access-and-equity-action-plan_2018.pdf. Also, see Australia, Academic’s report, Questionnaire # 2, Question 82.

⁶²⁷ See Belgium, Practitioner and Academic’s Joint Report, Questionnaire # 2, Question 81. Also see Belgium, Practitioner’s report, Questionnaire # 2, Question 81.

⁶²⁸ See <https://www.canada.ca/en/revenue-agency/services/forms-publications.html>. Also, see Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 81.

⁶²⁹ See <https://www.canada.ca/content/dam/oto-boc/migration/rprts/spcl/cppei-report-eng.pdf>.

⁶³⁰ See Canada, Practitioner’s report (2), Questionnaire # 2, Question 81.

transaction or transactions that a taxpayer is contemplating. Rulings are generally requested by tax professionals on behalf of their clients. A fee is charged for a ruling (CAD 100 plus the applicable tax for each of the first 10 hours, or part of an hour, and CAD 155 for each hour, or part of an hour, thereafter). Some rulings are distributed through various publishers of tax information (some information is separated or anonymized to protect the identity/confidentiality of the taxpayer).⁶³¹ Also, taxpayers can call the CRA to request that a printed copy of any material published by the CRA be mailed to them, or they can place an order through the online ordering system for a printed copy of the material to be delivered to them. Alternate formats of forms and publications are also available in braille, e-text, large print or MP3 format. E-text, or electronic text documents, are text files for individuals with visual impairments to receive instructions on how to complete a specific form. As the CRA does not publish court decisions, they do not provide printed copies of such legal materials.⁶³²

Also in **Canada**, tax assessments are subject to reassessment if they are found to contain inaccuracies according to the parameters laid out in the Income Tax Act, regardless of the source of the error, and the resulting taxes owed as a result of a reassessment are payable by the taxpayer. This applies both prospectively and retroactively. The CRA will consider waiving or cancelling penalties and/or interest, in some situations, in accordance with the Taxpayer Relief Provisions (Information Circular IC07-1R1, Taxpayer Relief Provisions, paragraph 26),⁶³³ when penalties and/or interest result mainly because of (i) actions of the CRA, such as errors in CRA material, which led a taxpayer to file an income tax return or make a payment based on incorrect information; (ii) incorrect information provided to a taxpayer by the CRA; (iii) errors in processing; or (iv) delays in providing information resulting in taxpayers not being able to meet their tax obligations in a timely manner. Income tax rulings issued by the CRA are binding with respect to the specific situation that is considered in the ruling, to the extent that there is no material omission or misrepresentation of the relevant facts or the proposed transaction by the taxpayer. The CRA is not bound to a ruling if any supplementary information provided by the taxpayer or their representative after the ruling was issued results in a change. If legislation is amended after a ruling is issued and the ruling ceases to be supported by legislation due to the amendment(s), the CRA is no longer bound by the ruling as of the effective date of the amendment(s).⁶³⁴

In **Colombia**, Circular 001 of 2019, which regulates the personal data treatment policy, was published and widely disseminated by the DIAN. Furthermore, the tendency is that all legal material is available primarily on the internet and less and less in physical media. However, in the case that taxpayers have difficulties accessing digital legal material, they can request it directly from the DIAN, which will provide a physical copy.⁶³⁵

⁶³¹ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 81.

⁶³² See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 82.

⁶³³ See <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic07-1r1/taxpayer-relief-provisions-1r1.html>

⁶³⁴ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 84.

⁶³⁵ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Questions 81 and 82.

In **Denmark**, Act No. 1726 of 27 December 2018 implements the GAAR of the Anti-Tax Avoidance Directive (EU 2016/1164). As part of the transposition into Danish law, the Tax Assessment Act, section 3(4) was amended, so the application of the GAAR in the first instance now requires the acceptance of the National Tax Board. This part of the transformation may strengthen the uniform application of the GAAR, as well as ensure public access to rulings on the GAAR, since all the National Tax Board's decisions are published in anonymized form.⁶³⁶

In **India**, the tax administration has the authority to give advance rulings. The possibility of obtaining such rulings is open to all non-residents on all issues, except when valuation issues are involved. The tax administration can also give rulings on the applicability of a GAAR to both residents and non-residents. In some cases of transactions of very high value, even residents have been allowed to approach the Indian Tax Authority.⁶³⁷

In **Mexico**, in August 2018, the OECD released the MAP Peer Review Report, Mexico (Stage 1). It included several recommendations with respect to the information that the SAT should provide to taxpayers with respect to the MAP. The most relevant were that (i) the SAT should publish guidance indicating whether a MAP will be accepted in transfer pricing cases, anti-abuse clauses, multilateral disputes and unilateral transfer pricing adjustments; (ii) the SAT should provide guidance to clarify whether a MAP resolution can be applied to future years if it is a recurring problem; (iii) the SAT should clearly indicate whether the filing of a MAP suspends tax collection procedures; (iv) the tax treatment of interest and penalties during the MAP should be clarified by the SAT; and (v) the SAT should publish guidance explaining the phases of the MAP and indicate the participation, if any, of the taxpayer during the procedure.⁶³⁸

In **Peru**, since 2017, access to the online database of all Peruvian laws and regulations is free.⁶³⁹

In **Portugal**, a significant increase in the number of rulings has been made available to the public on the tax authority's website, pursuant to guidelines already issued in previous years.⁶⁴⁰

In **Slovenia**, all information material is accessible on the website of the tax administration, and laws and implementing regulations are published on the website of the Ministry of Finance. Also, the tax administration provides information in written form, such as handouts, leaflets and brochures, as well as oral information on tax obligations and the like.⁶⁴¹

⁶³⁶ See Denmark, Tax Administrator and Practitioner's report, Questionnaire # 2, Question 81.

⁶³⁷ See India, Academic's report, Questionnaire # 2, Question 81.

⁶³⁸ See Mexico, Tax Ombudsman's report, Questionnaire # 2, Question 81.

⁶³⁹ See Peru, Practitioner's report (3), Questionnaire # 2, Question 81.

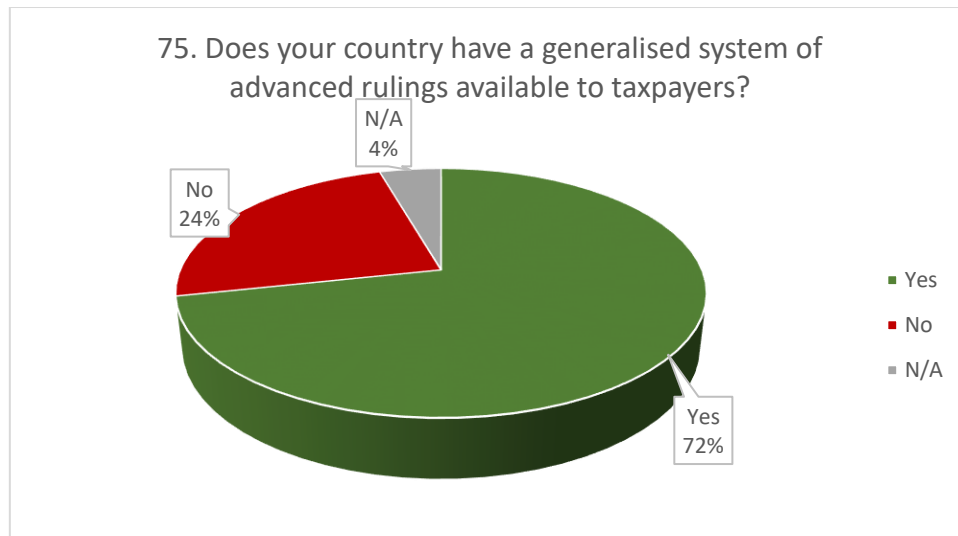
⁶⁴⁰ See Portugal, Practitioner's report, Questionnaire # 2, Question 81.

⁶⁴¹ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 81 and 82.

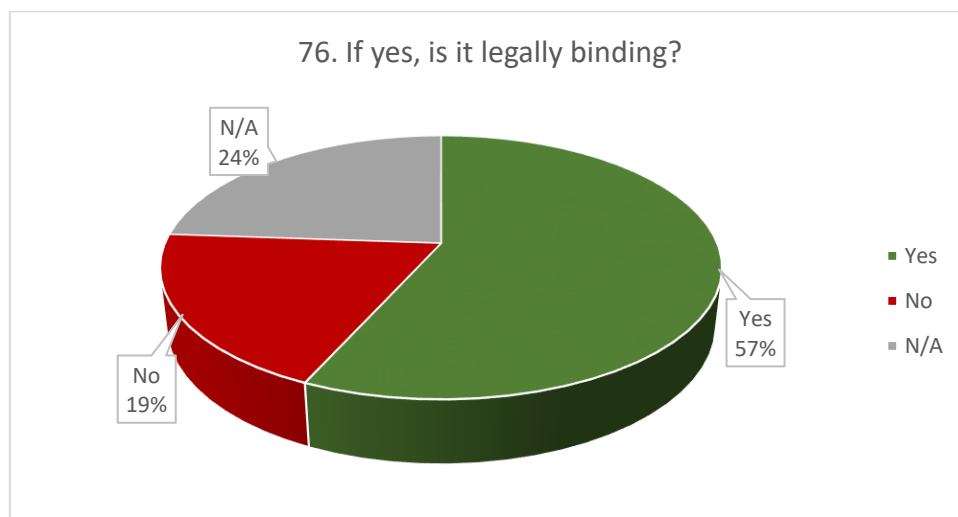
In **Sweden**, since 1 May 2018, the laws are no longer printed, but are only available on the internet, unless one purchases a printed book of laws.⁶⁴²

5.11.3 Binding rulings

According to the national reports,⁶⁴³ a majority of countries have a general system of advance rulings available to taxpayers, as shown in the chart below.



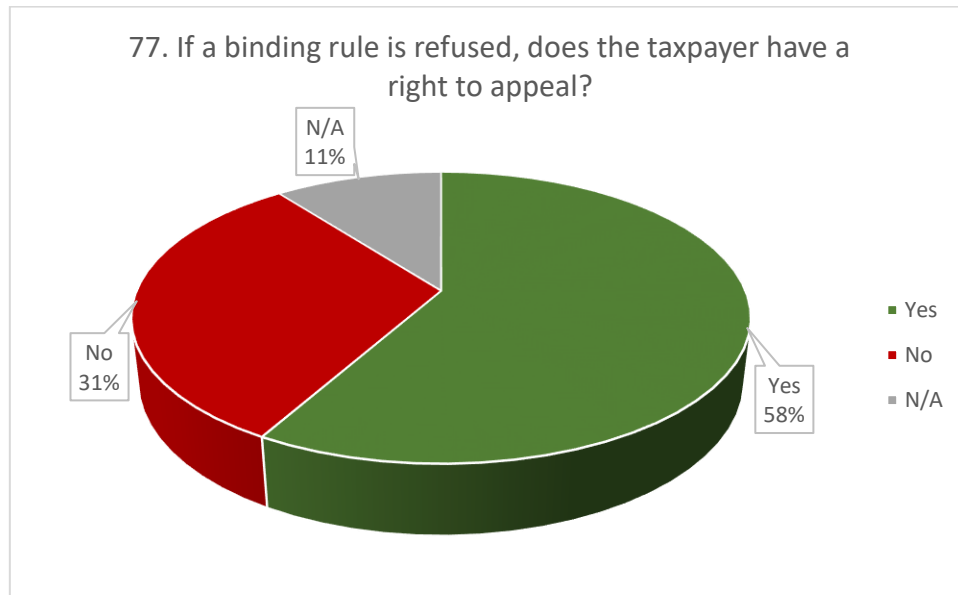
In most cases, these rulings are legally binding for the tax authorities. That is the case in 38 national reports, whereas 13 jurisdictions do not recognize binding effects to the rulings of the tax authorities and 16 provided no answer, as depicted below.



⁶⁴² See Sweden, Practitioner and Academic's joint report, Questionnaire # 2, Question 82.

⁶⁴³ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report.

In the case that the ruling is legally binding on the tax authorities, it appears logical that the taxpayer has the right to appeal, considering the potential harm to his rights that the interpretation of tax laws applied by the tax authorities in his case might pose. This right is recognized by many surveyed countries, as shown in the chart below.



Not many developments were produced in this regard in 2018. In **Italy**, by a decision of the Director of the Tax Agency dated 7 August 2018 (prot. No. 185630), since 1 September 2018, all types of rulings are to be published on the website of the tax agency anonymously in order to release the interpretation of the tax agency on the issues proposed by the taxpayer.⁶⁴⁴

In **Slovenia**, the standard of publishing binding rulings only in anonymized form is applied if and when the ruling is published.⁶⁴⁵

5.11.4 Non-binding guidance

In **Belgium**, the principle of legitimate expectations applies. This means that when the position of the tax authorities creates legitimate expectations on behalf of the taxpayer, the tax authorities must respect these expectations. Any changes can only apply in the future. However, it is currently unclear whether the principle of legitimate expectations also applies when the taxpayer relies on a position that was *contra legem*. The case law of the Supreme Court is ambiguous. In the case of VAT, the Supreme Court ruled that the principle of legitimate expectations also applies, even when these expectations are *contra legem*. However, with regard to direct taxes, the Supreme Court also ruled in the opposite way. The case law of the Courts of Appeal is divided (cf. the decision of the Court of Appeal of Ghent, 25 September 2018).⁶⁴⁶

⁶⁴⁴ See Italy, Practitioner and Academic's joint report, Questionnaire # 2, Question 83.

⁶⁴⁵ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 83.

⁶⁴⁶ See Belgium, Practitioner's report, Questionnaire # 2, Question 84.

In **Colombia**, In accordance with Financing Law 1943 of 2018, the DIAN’s guidance is mandatory for the tax authorities, but the actions of taxpayers in the administrative and judicial stages can only be based on the law. Therefore, as of the law’s entry into force, the taxpayers’ actions will not be covered by the provisions of a guideline.⁶⁴⁷

In **Slovenia**, no binding legislative provision relates to the application of inaccurate published guidance, but in practice, the tax authorities only apply changes prospectively.⁶⁴⁸

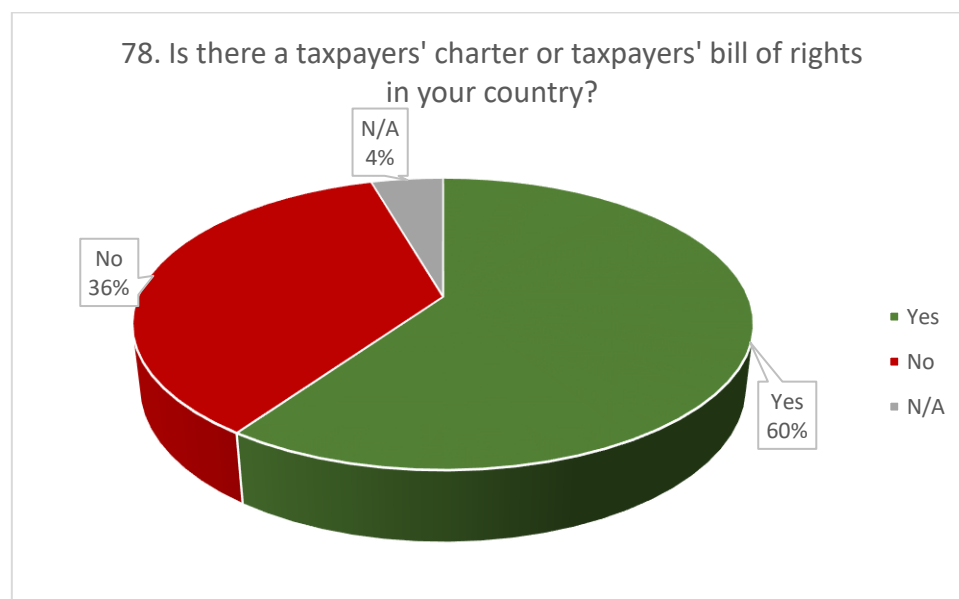
5.12 Institutional framework for protecting taxpayers’ rights

5.12.1 The general framework

The practical protection of taxpayers’ rights requires the enactment of a taxpayers’ charter of rights, as well as the forming of institutions whose aim is to conduct practical activities to ensure the enjoyment of the taxpayers’ guaranteed rights. Several countries have organized formal structures of taxpayers’ advocates or ombudsmen to scrutinize the activities conducted by the tax administration and intervene in appropriate cases. Such entities may be part of the tax administration, but shall remain independent from the normal operations of that authority.

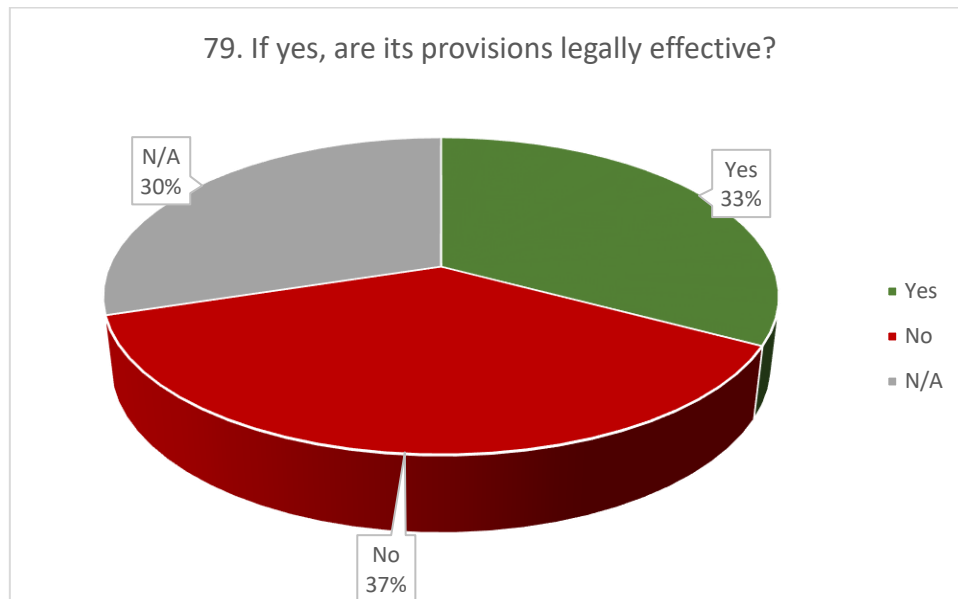
5.12.2 Statements of taxpayers’ rights: charters, service charters, and taxpayers’ bills of rights

In practice, many countries have implemented taxpayers’ bills of rights. In the case of the surveyed jurisdictions, 40 reporters stated that there was such a charter of rights in their countries. However, only in 33% of those reports were the bills of rights legally effective, as shown in the charts below.



⁶⁴⁷ See Colombia, Tax Ombudsman’s report, Questionnaire # 2, Question 84.

⁶⁴⁸ See Slovenia, Tax Administrator’s report, Questionnaire # 2, Question 84.



In **Australia**, following a recommendation made in the Inspector General of Taxation’s 2016 review of the Taxpayers’ Charter and Taxpayer Protections and after an extensive and corroborative consultation process, the ATO issued a refreshed version of its Taxpayers’ Charter in November 2018.⁶⁴⁹ This includes a one-page overview of taxpayer rights and obligations,⁶⁵⁰ as well as a dedicated publication informing taxpayers of their rights when they are subject to an ATO review or audit.⁶⁵¹

The Taxpayer Bill of Rights was introduced by in **Canada** by the CRA in 2007. It defined 15 administrative and service rights and described the treatment to which taxpayers are entitled when dealing with the CRA. It also set out the CRA’s commitment to small businesses. In 2013, a 16th right was added, at the request of the Taxpayers’ Ombudsman, to protect taxpayers’ right to lodge a service complaint and request a formal review without fear of reprisal. The Taxpayers’ Ombudsman is responsible for upholding eight of the 16 rights in the Taxpayer Bill of Rights, being the rights deemed to be specifically related to service. There is no separate statement of taxpayers’ rights under audit. The rights outlined in the Taxpayer Bill of Rights apply to taxpayers with respect to all of their interactions with the CRA, including audits. The CRA does not provide taxpayers with a statement of their rights during an audit. The Taxpayers’ Ombudsman is currently conducting a systemic examination of whether and how the CRA integrates the rights outlined in the Taxpayer Bill of Rights as the foundation of its daily activities, as well as its accountability to report against upholding these rights. The Canadian Taxpayer Bill of Rights is not legislated. There is no specified repercussion, recourse or remedy if the rights in the Taxpayer Bill of Rights are not respected, other than (i) filing a service complaint with the CRA; (ii) filing a service complaint with the Taxpayers’

⁶⁴⁹ See <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--charter/>

⁶⁵⁰ See <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/Taxpayers--Charter--essentials/>.

⁶⁵¹ See <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers--Charter/Taxpayers--Charter--if-you-re-subject-to-review-or-audit/>. Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 85.

Ombudsman; (iii) filing a complaint with the Privacy Commissioner regarding a breach of privacy or confidentiality; (iv) filing a complaint with the Information Commissioner regarding a problem with obtaining information; and (v) filing a complaint with the Commissioner for Official Languages regarding the failure of the CRA to provide service in one's official language of choice.⁶⁵²

In this regard, during 2018, the Taxpayers' Ombudsman of **Canada** launched an examination to determine whether the CRA is effectively integrating the rights and values of the Taxpayer Bill of Rights in its activities, as well as on the CRA's accountability and reporting regarding the integration of these rights in its services to taxpayers. The CRA appointed a Chief Service Officer, who is responsible for leading the CRA's service transformation to be trusted, fair and helpful by putting people first. The CRA also announced the composition of an external advisory panel on service. The panel, which is comprised of senior leaders and experts from the public, private and not-for-profit sectors, will provide the CRA with advice on emerging trends and practices in service design and delivery, as well as on client expectations related to services.⁶⁵³

The 2017 Auditor General's report in **Canada** examined the CRA's call centres and found that even though call centre agents were courteous, professional and attentive to questions, they provided incorrect information to callers almost 30% of the time overall, and 36% of the time when call centre agents were asked questions about filing personal taxes. The CRA agreed with these findings and committed to providing accurate information to callers. In late 2017, the CRA launched a three-pronged improvement plan to address the current issues in this area, namely to (i) launch a new approach to training and evaluating agents on their technical knowledge; (ii) update the telephone platform's monitoring tools; and (iii) establish a new national quality-monitoring team to supplement existing local quality practices.⁶⁵⁴

Mexico has a Federal Law of Taxpayers' Rights since 2005. Additionally, it has a Letter of Taxpayer's Rights, issued by the Tax Ombudsman, and a Letter of the Audited Taxpayer, issued by the tax administration, which is delivered to the taxpayer during audits.⁶⁵⁵

Shifting away from the standards, in 2018, in the **Netherlands**, the State Secretary of Finance reacted to a news item regarding a taxpayers' charter, saying that he does not see the relevance of this. In his view, the taxpayers' rights are sufficiently recorded in various tax laws.⁶⁵⁶

In **Slovenia**, taxpayers' rights are not specifically published. In principle, they are defined together with the obligations of taxpayers as "major tax principles", included in the Tax Procedure Act, Articles 4 to 10.⁶⁵⁷

⁶⁵² See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 85.

⁶⁵³ See Canada, Practitioner's report (2), Questionnaire # 2, Question 85.

⁶⁵⁴ See Canada, Practitioner's report (2), Questionnaire # 2, Question 85.

⁶⁵⁵ See Mexico, Tax Ombudsman's report, Questionnaire # 2, Question 85.

⁶⁵⁶ See Netherlands, Practitioner's report, Questionnaire # 2, Question 85.

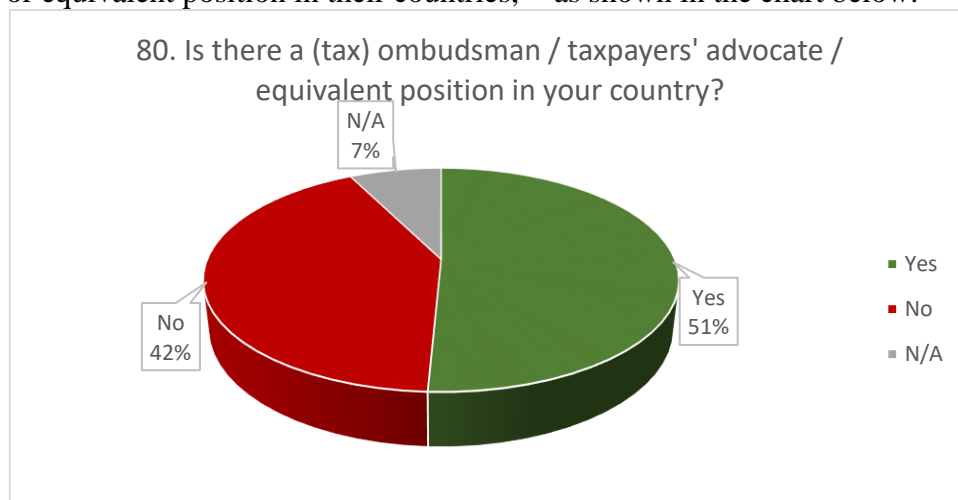
⁶⁵⁷ See Slovenia, Tax Administrator's report, Questionnaire # 2, Question 85.

In **South Africa**, the SARS Service Charter was only released on 1 July 2018.⁶⁵⁸

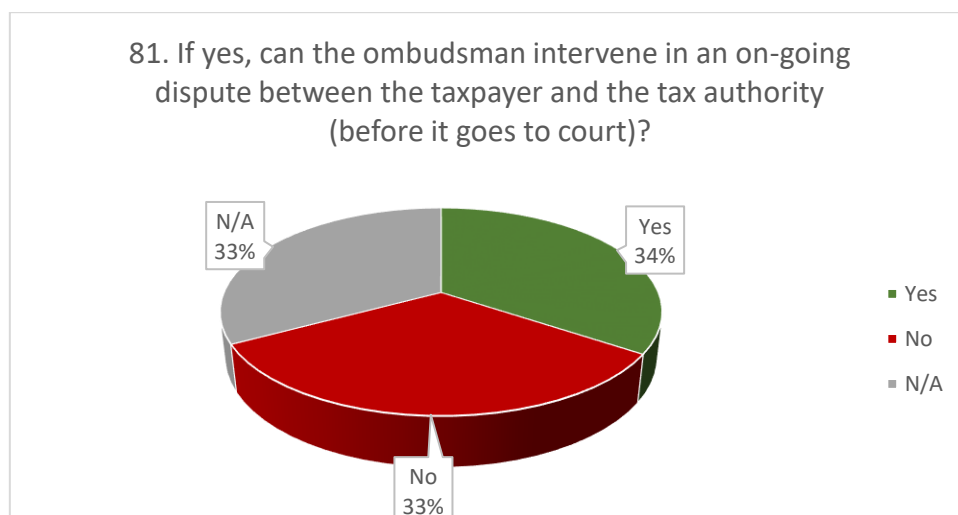
Taiwan has an effective Taxpayer’s Right Protection Act (TRPA) since 2017.⁶⁵⁹

5.12.3 Organizational structures for protecting taxpayers’ rights

A slight majority of reports declare the existence of a (tax) ombudsman, taxpayers’ advocate or equivalent position in their countries,⁶⁶⁰ as shown in the chart below.



In one third of the cases (34%), the taxpayers’ ombudsman is allowed to intervene in an ongoing dispute between the taxpayer and the tax authority before it goes to court, as depicted in the chart below.

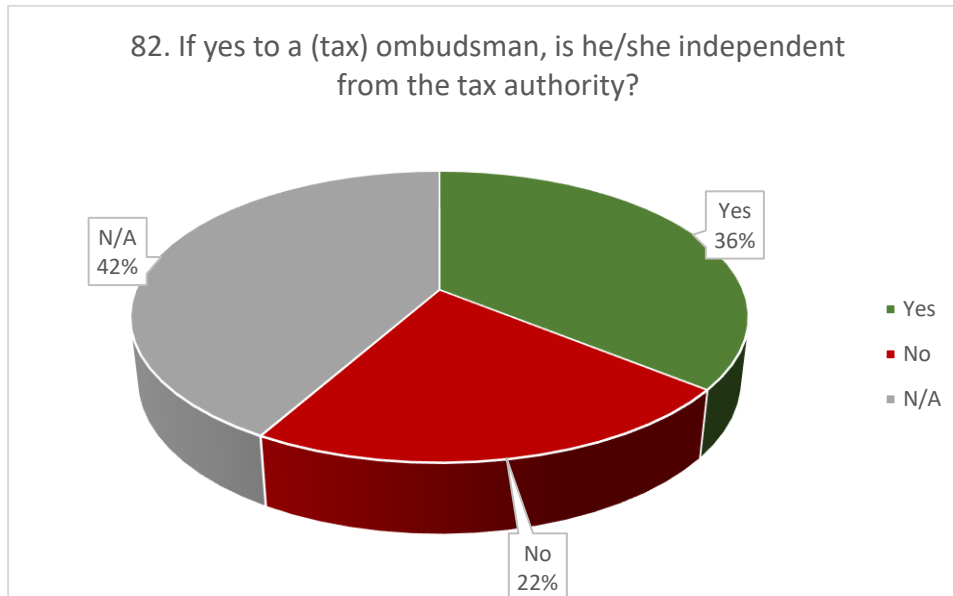


⁶⁵⁸ See South Africa, Tax Ombudsman and Academic’s joint report, Questionnaire # 2, Question 85.

⁶⁵⁹ See Taiwan, Academic’s report, Questionnaire # 2, Question 85.

⁶⁶⁰ For the situation in each surveyed country, see national reports, Questionnaire # 1, and Appendix «C» of this report

Also in slightly over one third of the cases (36%), the ombudsman is independent from the tax authority, as shown below.



In this regard, on 7 December 2017, in **Australia**, the Senate referred the Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017 to the Senate Legal and Constitutional Affairs Committee. The legislation requires the Attorney-General to (i) issue directions applying generally to Commonwealth legal work that contain requirements for Commonwealth litigants to act as model litigants (model litigant obligations); and (ii) enable a court to order a stay of proceedings or make orders in relation to contraventions of model litigant obligations. The Ombudsman Act 1976 requires the Commonwealth Ombudsman to investigate complaints in relation to contraventions of model litigant obligations and provides for annual reporting requirements.⁶⁶¹ Also in 2018, the IGT undertook a rebranding exercise to incorporate the Taxation Ombudsman’s name on the internet, social media and corporate assets to ensure that taxpayers can more easily identify the office and the service.⁶⁶²

In **Belgium**, the Law of 29 March 2018 (Belgian Official Gazette, 13 April 2018) extended the competences of the Ombudsman (*Fiscale Bemiddelingsdienst*). First, based on the Governor Order of 18 March 1831, the Minister of Finance has the right to provide mercy in administrative sanctions. With respect to income taxes, the law has transferred this right to a new unit of the *Fiscale Bemiddelingsdienst*. Second, under the new rules, access to the *Fiscale Bemiddelingsdienst* in respect of litigations with regard to cadastral income has been simplified. The procedure no longer requires the intervention of the tax authorities. Third, the tax authorities also collect non-tax liabilities of the taxpayers (e.g. criminal sanctions or the

⁶⁶¹ See Australia, Academic’s report, Questionnaire # 2, Question 86.

⁶⁶² See <http://igt.gov.au/>. Also, see Australia, Tax Ombudsman’s report, Questionnaire # 2, Question 86.

recovery of unjustified pension payments). The competence of the *Fiscale Bemiddelingsdienst* has been extended to these procedures.⁶⁶³

In **Canada**, the Order in Council P.C. 2007-0828⁶⁶⁴ created the position of the Taxpayers' Ombudsman in Canada and outlines the mandate, limitations and accountability of the Taxpayers' Ombudsman. The Taxpayers' Ombudsman reports directly to the Minister of National Revenue (an elected official responsible for the CRA), issues an annual report to the Parliament of Canada, examines complaints about the CRA's service and makes recommendations to the Minister of National Revenue on the corrective actions needed in order to improve the services delivered to taxpayers by the CRA. The Taxpayers' Ombudsman is responsible for upholding eight of the 16 rights in the Taxpayer Bill of Rights, being the rights deemed to be specifically related to service. The Taxpayers' Ombudsman, being an objective third party, is neither an advocate for taxpayers nor a defender of the CRA. The Taxpayers' Ombudsman assists in levelling the imbalance of power between the individual taxpayer or benefit recipient and the CRA. The Taxpayers' Ombudsman operates under the following guiding principles: independence, objectivity, fairness and confidentiality. The Taxpayers' Ombudsman makes decisions on how service-related issues should be resolved; however, those decisions and any recommendations are not binding on the CRA. The Order in Council does not permit the Taxpayers' Ombudsman to review (i) the provision of an administrative interpretation by the CRA of a provision set out in the programme legislation; (ii) any decision of, proceeding in or matter before a court; (iii) legal advice provided to the government of Canada; or (iv) confidences of the Queen's Privy Council for Canada.⁶⁶⁵

Also in **Canada**, the Taxpayers' Ombudsman is mandated to address service-related issues with the CRA. Eight of the rights in the Taxpayer Bill of Rights are specifically under the mandate of the Taxpayers' Ombudsman. The work of the Office of the Taxpayers' Ombudsman (OTO) is centralized in Ottawa, Ontario, but services are available to anyone who interacts with the CRA. Part of the mandate of the Taxpayers' Ombudsman is to raise awareness of the role of the Taxpayers' Ombudsman and that of the OTO. Therefore, the OTO conducts outreach activities across Canada, reaching out to taxpayers, tax professionals, vulnerable populations, community support organizations and employees and management within the regional and headquarter offices of the CRA to raise awareness and learn about service issues being experienced by these stakeholders. In doing so, the OTO is able to identify trends in CRA service issues affecting taxpayers across the country.⁶⁶⁶

In this regard, recent reports from the Office of the **Canada** Taxpayers' Ombudsman have included (i) "Rights and Rulings: An examination into the sufficiency of information in ruling letters from the CPP/EI Rulings Division of the Canada Revenue Agency";⁶⁶⁷ (ii) "Without Delay: An examination into service issues arising from delays in the Canada Revenue

⁶⁶³ See Belgium, Practitioner and Academic's Joint Report, Questionnaire # 2, Question 86.

⁶⁶⁴ See <https://www.canada.ca/en/taxpayers-ombudsman/corporate/about-us/order-council.html>.

⁶⁶⁵ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 86.

⁶⁶⁶ See Canada, Tax Ombudsman's report, Questionnaire # 2, Question 87.

⁶⁶⁷ See <http://www.publications.gc.ca/site/eng/9.831935/publication.html>.

Agency’s Taxpayer Relief Program”;⁶⁶⁸ and (iii) “Benefits Unsheltered: An examination into the Canada Revenue Agency’s communication and outreach efforts to shelters and other support organizations about benefits and credits administered by the Canada Revenue Agency”.⁶⁶⁹ In 2018, the CRA responded to these reports by implementing (or committing to implement) most of the recommendations contained therein. In addition, in August 2018, the Taxpayers’ Ombudsman announced that her office was launching an examination to determine whether the CRA is effectively integrating the rights and values of the Taxpayer Bill of Rights in its activities, as well as on the CRA’s accountability and reporting regarding the integration of these rights in its service to taxpayers.⁶⁷⁰

For the taxpayer right relating to confidentiality, in **Canada**, there is a federal Privacy Commissioner, as well as Privacy Commissioners at the provincial and territorial levels. For the taxpayer right relating to access to information, there is a federal Information Commissioner, as well as Information Commissioners at the provincial and territorial levels. For the taxpayer right relating to service in both official languages, there is a federal Commissioner of Official Languages, and two provinces have similar positions.⁶⁷¹

There are two levels of income or revenue taxes in **Canada**: federal and provincial/territorial. In all cases, except for in the province of Québec, the CRA administers both the federal and the provincial/territorial taxes. In the province of Québec, *Revenu Québec* administers the provincial income or revenue taxes. The Taxpayer Bill of Rights applies to all interactions with the CRA. *Revenu Québec* also has the Charter of Taxpayers’ and Mandataries’ Rights (not legislated). In Québec, the *Bureau de la protection des droits de la clientèle* (within *Revenu Québec*) deals with complaints by taxpayers about *Revenu Québec*. The mandate of the *Protecteur du Citoyen* (the Ombudsman for the province of Québec) includes handling complaints about *Revenu Québec*.⁶⁷²

In **Chile**, a draft bill on Tax Modernization⁶⁷³ (*Ley de Modernización Tributaria*) would create a taxpayer’s defence agency (*Defensoría de Derechos del Contribuyente*, or DEDECON) that would observe and protect taxpayers’ rights. The DEDECON would have the following powers: (i) watching for the protection of taxpayers’ legal and constitutional rights; (ii) initiating investigative actions to assess infringements of taxpayers’ rights; (iii) denouncing facts that may give rise to administrative liability by the Internal Revenue Service (IRS) officers; (iv) receiving administrative complaints that taxpayers may file against IRS officers; and (v) intervening with the administrative procedure.⁶⁷⁴

⁶⁶⁸ See <https://www.canada.ca/content/dam/oto-boc/special-reports/trp-dlys-rprt-en.pdf/>

⁶⁶⁹ See <http://publications.gc.ca/site/eng/9.849540/publication.html>

⁶⁷⁰ See Canada, Practitioner’s report (2), Questionnaire # 2, Question 86.

⁶⁷¹ See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 87.

⁶⁷² See Canada, Tax Ombudsman’s report, Questionnaire # 2, Question 87.

⁶⁷³ See <https://www.camara.cl/pdf.aspx?prmTIPO=DOCUMENTOCOMUNICACIONCUENTA&prmID=76426>

⁶⁷⁴ See Chile, Practitioner’s report, Questionnaire # 2, Question 86.

In **Colombia**, the National Taxpayer Advocate has jurisdiction over matters related to national taxes. For local taxes, local taxpayers' offices have been created in some municipalities, but this is not the general rule.⁶⁷⁵

In **Cyprus**, a Tax Council is being established that examines objections of a specific nature.⁶⁷⁶

In **Denmark**, the dedicated tax office established with the Danish Parliamentary Ombudsman as part of *Retssikkerhedspakke II* (Second Package on Legal Protection) has, in practice, significantly increased the number and scope of investigations of the Ombudsman in the tax field. Particularly, investigations of the Ombudsman's own initiative have increased significantly. These investigations typically have a broader scope with a view to enhance compliance in a broader sense, thus having effect for not only one taxpayer, but for many taxpayers. For example, investigations have been made into the use of the Panama Papers and the conduct of oral hearings at the National Tax Tribunal.⁶⁷⁷

An Income Tax Ombudsman has been instituted in **India**. The website of the tax department has not shown any significant changes.⁶⁷⁸ However, over the last few years, there have been no new appointments of Ombudsmen.⁶⁷⁹

In **Mexico**, the PRODECON has been operating for more than 7 years and was established precisely to scrutinize the operations of the tax authority, handle complaints and provide a tax mediation service. The PRODECON's independence goes further than that indicated in best practice. The PRODECON is not only independent from the tax authorities from a physical perspective; it also has budgetary autonomy and self-governance ability. It is independent from the Ministry of Finance, and the Tax Ombudsman is appointed by the Mexican Senate. All of these characteristics provide substantial independence to the institution from the tax authorities, allowing the PRODECON to serve as a true independent Tax Ombudsman. The Organic Law of the PRODECON grants jurisdiction to the institution to deal only with federal tax matters. The PRODECON can only deal with local tax authorities whenever they audit or collect federal taxes pursuant to the Federal Law of Fiscal Coordination (*Ley de Coordinación Fiscal*). However, there have been two developments on the protection of taxpayers' rights on a local level: (i) on May 2017, Coahuila (a state in Northern Mexico) created the Advocacy for the Protection and Promotion of Taxpayers' Rights (*Defensoría para la Protección y Promoción de los Derechos de los Contribuyentes*, or DEPRODECO) to defend taxpayers in their dealings with the local tax authorities; and (ii) as of 1 January 2018, the Local Tax Code of Mexico City enables local tax authorities to provide a tax mediation procedure that allows taxpayers and the tax authorities to settle controversies (this mediation procedure is

⁶⁷⁵ See Colombia, Tax Ombudsman's report, Questionnaire # 2, Question 87.

⁶⁷⁶ See Cyprus, Tax Administrator's report, Questionnaire # 2, Question 86.

⁶⁷⁷ See Denmark, Tax Administrator and Practitioner's report, Questionnaire # 2, Question 86.

⁶⁷⁸ See <https://www.incometaxindia.gov.in/Pages/ombudsman.aspx>.

⁶⁷⁹ See India, Academic's report, Questionnaire # 2, Question 83.

identical to the one created by the PRODECON, with the exception that it is handled by the tax administration of Mexico City, which is not a best practice, due to the lack of impartiality).⁶⁸⁰

In **Slovenia**, a taxpayers' advocate or ombudsman is not established in tax practice. A general ombudsman deals with taxpayers' rights in the context of the protection of human rights. The most common violation of taxpayers' rights refers to the length of the process needed for the resolution of a tax dispute. There are no special organizational structures for the protection of taxpayers' rights within the tax administration.⁶⁸¹

In **Taiwan**, the taxpayers' advocate is selected among the tax officials by the local tax authority, and there is no tax advocate in the Ministry of Finance.⁶⁸²

6. Conclusions

As explained in previous sections of this report,⁶⁸³ the OPTR identified some trends towards and away from the practical protection of taxpayers' rights until 31 December 2018, based on the non-judgmental information kindly provided by the national and regional reporters of 42 countries⁶⁸⁴ and the minimum standards and best practices for the practical protection of taxpayers' rights identified by Baker and Pistone in Basel in 2015.⁶⁸⁵

Our goal is to continue increasing the number of participants in this project as much as possible, giving a voice to all parties who feel affected by the delimitation of taxpayers' rights. We appreciate the work of the national reporters who agreed to grant us part of their time for the collection of information, from which it has been possible to acquire up-to-date information on the following general remarks, which do not intend to exhaust all of the considerations made in the main text of this document.

6.1 Identifying taxpayers, issuing tax returns and communicating with taxpayers⁶⁸⁶

The trend of the rise in the use of online tools for the communication between tax authorities and taxpayers, registered from 2015, continues. This is also the case for means of cooperative compliance and identification of taxpayers, for which various countries have reported an increase in the use of online tools to identify taxpayers and prevent breaches and illegal activity. The entry into force of the European GDPR has been a significant initiative towards the protection of data in the hands of third parties, such as withholding agents. It has driven many countries to take further measures to restrict the access to private information of the taxpayer that may be in the possession of the tax authorities themselves or such third parties,

⁶⁸⁰ See Mexico, Tax Ombudsman's report, Questionnaire # 2, Questions 86 and 87.

⁶⁸¹ See Slovenia, Tax Administrator's report, Questionnaire # 2, Questions 86 and 87.

⁶⁸² See Taiwan, Academic's report, Questionnaire # 2, Questions 86 and 87.

⁶⁸³ See sections 2.1, 2.5 and 4.1. of this report.

⁶⁸⁴ See section 4.2 of this report.

⁶⁸⁵ See P. Baker and P. Pistone, *supra* n. 10, at pp. 74-82.

⁶⁸⁶ See OPTR, *supra* n. 48, pp. 13-22.

advancing the necessary work on expediting the procedures and increasing the protection of taxpayers' data. Additionally, many countries have taken measures to ensure taxpayers' right to *habeas data*, i.e. towards the effective protection of the right to access and correct information held by the tax authorities. However, a close look into the case law authorizing the use of stolen data as a basis of a tax assessment is still necessary.

6.2 The issue of tax assessment⁶⁸⁷

Many countries took measures – many of them online, such as pre-populated returns – to simplify tax assessments, making it easier for taxpayers to understand and reply to them, further promoting voluntary disclosure. Additionally, a significant number of jurisdictions have engaged in providing taxpayers with more assistance and services in the context of an assessment through officials devoted to the resolution of service-related issues with the tax authorities, new offices in remote locations and policies that make the relationship between the parties more horizontal, keeping an open door in engagement with taxpayers. However, there are reports of some forms of delays and misinformation from the tax authorities, as well as the inability of taxpayer participation in the assessment to change, in practice, the position of the tax authorities.

6.3 Confidentiality⁶⁸⁸

A trend towards the adoption of technical measures to protect confidential information has been identified as a positive step, although the largest employee-initiated breach ever discovered in one of the surveyed countries happened during the examined period. As stated earlier, the entry into force of the European GDPR has been a significant influence on the protection of data in general, as reported by most European surveyed countries, and an inclination followed by some other non-European countries with regard to the encryption, control and auditing of access and administrative measures to ensure confidentiality. There were steps taken in the direction of the best practice regarding official responsibility for data confidentiality, such as the appointment of data protection officers in many surveyed countries, following the path taken by the surveyed countries since 2015.

In addition, the illegal disclosure of confidential information by tax officers is punished in most of the countries reported. Naming and shaming is a possible exception of confidentiality in some countries, under specific circumstances and after the administrative or judicial decision is final. However, other countries allow the tax administration to publicly reveal information on tax duties without judicial authorization. Some countries developed practices in 2018 in the direction of balancing taxpayer confidentiality and the freedom-of-information legislation, making taxpayers' information exceptionally available in cases in which the interest in making the information public prevails over the confidentiality, even though there were cases in which measures were taken to make information about service providers public in order to fight VAT fraud. Most surveyed countries anonymize the rulings and tax judgments that are published, and measures were taken in this regard. However, there were movements away from

⁶⁸⁷ See OPTR, *supra* n. 48, pp. 22-27.

⁶⁸⁸ See OPTR, *supra* n. 48, pp. 27-38.

professional privilege, by both limiting it to lawyers and expanding the scope of exceptions to it.

6.4 Normal audits⁶⁸⁹

There were measures taken towards the practical enforcement of the minimum standard in order to enforce proportionality and *audi alteram partem* in tax audits. There are reports to the contrary, particularly regarding the right of the taxpayers to fully participate in tax administrative procedures and the overburdening of taxpayers through multiple requests for information already in the power of the tax authorities. On the other hand, there seem to be trends against *ne bis in idem* and *nemo tenetur*. For *ne bis in idem*, it works by means of (i) allowing double jeopardy to fight VAT fraud through the standard of a “sufficiently close connection in substance and time” between the criminal and the administrative procedures. For *nemo tenetur*, it implies more invasive procedures, allowing the tax authorities to witness every single transaction being carried out by the taxpayer within a given timeframe or requesting and obtaining information without judicial control. The latter entails assessing tax liabilities by operation of the *silence* of the taxpayer in the proceedings and the like. Therefore, a close analysis of case law providing for the validity of the postponed exercise of defence and the non-applicability of the presumption-of-innocence principle is still required.

Additionally, many surveyed countries endeavoured to provide timely information to taxpayers regarding the structure and content of tax audits.⁶⁹⁰ In some countries, taxpayers are not entitled to request the start of an audit or to obtain finality. The time for conducting audits is limited according to the legislation of various surveyed countries, even though many countries still do not enforce such limits or bring no nullity to the proceedings carried out in excess of said time limits. Technical assistance and the involvement of independent entities was encouraged in a few jurisdictions. As a development, many surveyed countries reported that taxpayers have the right to be notified of tax audit reports, under penalty of annulment of the procedure.

6.5 More intensive audits⁶⁹¹

There were significant efforts towards the proper identification of risk groups for conducting more intensive audits. As reported earlier, there is a trend against *nemo tenetur* by not granting the taxpayer to refuse the submission of potentially incriminating bookkeeping and accounting information, even in cases in which tax crimes were under dispute. There is a practice *towards* the minimum standard in this regard, not allowing the tax administration to use information illegally obtained in a criminal investigation to issue an assessment. Some reports indicated that their legislation provides for court authorization for specific search and seizure, including inspections on the taxpayers’ place of work and premises. Nevertheless, in some cases, the tax administration can access information without judicial authorization.

⁶⁸⁹ See OPTR, *supra* n. 48, pp. 38-49.

⁶⁹⁰ See OPTR, *supra* n. 48, pp. 45-47.

⁶⁹¹ See OPTR, *supra* n. 48, pp. 49-52.

6.6 Reviews and appeals⁶⁹²

Most of the surveyed countries encourage the use of electronic means for filing reviews and appeals. However, many of them require the exhaustion of internal administrative reviews before an appeal can be filed. Once this step has been fulfilled, most jurisdictions allow the taxpayer to freely appeal against the tax assessment. Generally, legislations provide for the right to be heard and to produce evidence against the tax objection, but there are reports of automatic dismissal of administrative reviews if no grievances other than those argued during the assessment are filed. Measures have been taken to reduce the length of the procedures, although they remain quite long in a substantial number of countries. Free legal assistance and cooperation in bearing the costs of proceedings are offered to taxpayers that lack the means to conduct appeals against tax assessments, with encouraging results. In addition, some legislations allow the collection of taxes while a decision on the filed appeal is pending, while others provide for the suspension of the collection, under specific conditions. As a positive trend, most surveyed countries took measures to ensure privacy regarding hearings, court decisions and rulings by both allowing hearings to be held on camera and by anonymization, while granting access to the majority of rulings and decisions.

6.7 Criminal and administrative sanctions⁶⁹³

As previously stated, and based on the developments on the matter by the European Court of Human Rights, the *public interest* involved in VAT collection has been regarded as sufficient for allowing double jeopardy for administrative and criminal sanctions, provided that there is a “*sufficiently close connection in substance and time*” between the criminal and administrative procedures in some surveyed jurisdictions.⁶⁹⁴ There were legislative changes in other countries, introducing new descriptions of felonies and, by operation of them, preventing *ne bis in idem* to happen regarding those behaviours. On the other hand, there have been statements in legislation and by tax authorities striving to achieve more proportionality in imposing

⁶⁹² See OPTR, *supra* n. 48, pp. 52-60.

⁶⁹³ See OPTR, *supra* n. 48, pp. 60-64.

⁶⁹⁴ According to the previous understanding of the ECtHR, multiple concurrent proceedings are allowed, pursuant to Article 4 of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, as stated in ECtHR, *Glantz v. Finland*, § 59, at <http://hudoc.echr.coe.int/eng?i=001-144114>. However, once one of those proceedings has become final, the second set of proceedings shall be discontinued. Otherwise, there is a violation of *ne bis in idem*, as stated in ECtHR, *Muslija v. Bosnia and Herzegovina*, § 59, at <http://hudoc.echr.coe.int/eng?i=001-139988>, provided there is an integrated scheme of sanctions imposed in respect to the same wrongdoing. However, in its *A & B v. Norway* decision, the ECtHR overturned this interpretation. According to this decision, Member States can apply multiple and parallel sanctions as long as they offer an integrated, proportionate system, closely connected in substance and in time. For this criterion to be satisfied, the following requisites should be fulfilled: (i) the different procedures should pursue complementary purposes; (ii) the duality of the proceedings is a foreseeable consequence of the same conduct; (iii) the relevant proceedings are conducted in a way that avoids any duplication of collection and assessment of evidence; and (iv) the sanction imposed in the procedure that becomes final first is taken into account for establishing the proportionality of the decision in the second procedure. So, as *Johannesson v. Iceland* established, even when more than one proceedings is allowed under Article 4 of the Protocol No. 7, they should work in harmony in order to avoid violating the *ne bis in idem*. See ECtHR, *Johannesson and others v. Iceland*, § 49, at <http://hudoc.echr.coe.int/eng?i=001-173498>. See also B. Bahçeci & S. Ovalıoğlu, *The Controversial Application of the ne bis in idem Rule by the European Court of Human Rights in Respect of Tax Penalties*, 58 Eur. Taxn. 9 (2018), Journals IBFD.

administrative sanctions. A trend towards the implementation of voluntary disclosure programmes has been identified.

6.8 Enforcement of taxes

The trend towards the establishment of special programmes for allowing the delayed payment of taxes or the payment of taxes in instalments has been maintained since 2015, as reported previously in the OPTR. It aims to prevent bankruptcies, ensuring the protection of the family home and the *minimum vitalis* principle. However, there is a noteworthy increase in the powers granted to the tax authorities to seize assets and enforce collection without authorization by the judiciary through measures such as garnishments, blocking entrepreneurial accounts or authorizations, seizing deposits and bank accounts, etc.

6.9 Cross-border procedures⁶⁹⁵

The right of taxpayers to be notified of an exchange of information on request (EoIR), in order to oppose to the submission of data about themselves and request the amendment of wrongful information was considered in some way in several legislations, marking a slight trend towards the minimum standards in this area. Some legislations reinforced the standard of “foreseeable relevance” for all inquiries of information of the tax authorities, and guidance for taxpayers has been published in several countries regarding MAPs. A trend can be identified towards allowing the taxpayer to participate in MAPs, allowing the taxpayer to initiate them and making this possibility more flexible. There is a relevant case in practice in which the institutional framework for protecting taxpayers’ rights help allow the taxpayer to access a MAP, setting forth a method that might be regarded as a best practice.

However, most countries still deny taxpayers the possibility to participate and control the information exchanged in the context of cross-border procedures. This denial has been upheld by the judiciary, who has also endorsed the exchange of information illegally obtained at origin. Additionally, there are reports of countries accepting to exchange information without making sure the requesting state is compliant with measures to ensure confidentiality of the taxpayers’ information.

6.10 Legislation⁶⁹⁶

The trend towards contradiction regarding the protection of taxpayers through the prohibition of retroactivity, previously reported in the OPTR, remains. While in some cases, the judiciary held the unconstitutionality of such practices, others considered it valid that norms could be applied retroactively. On the other hand, there is a development towards public consultation of tax law, as evidenced by the incorporation of procedures to ensure taxpayers’ participation in the drafting and enactment of laws and regulations in tax matters on both the legislative and administrative levels.

⁶⁹⁵ See OPTR, *supra* n. 48, pp. 66-73.

⁶⁹⁶ See OPTR, *supra* n. 48, pp. 73-76.

6.11 Revenue practice and guidance⁶⁹⁷

According to the practice of several countries, public rulings, relevant court decisions and guidelines have been made available to taxpayers, even in a greater extension than that previously reported in the OPTR. In general, practice is leaning towards the publication of anonymized rulings and the upholding of the principle of legitimate expectations to exclude the responsibility of taxpayers that, in good faith, follow the legal interpretations provided by the tax authorities through rulings.

6.12 Institutional framework for protecting taxpayers' rights⁶⁹⁸

Efforts towards the drafting and release of new taxpayers' charters were made during the examined period, although there is a case in which such practice was regarded as unnecessary. Additionally, existing taxpayers' bills of rights were under examination to determine whether the tax authority is effectively integrating the rights and values enshrined in the charter into its practices. These audits not only included the formal structure of proceedings, but also the manner in which tax officials addressed taxpayers, and provided effective and accurate guidance on their matters with the tax authorities. Existing tax ombudsmen's offices strengthen their capacities to provide better and wider assistance to taxpayers, and there were projects for the creation of new and revamped organizational structures for protecting taxpayers' rights in additional surveyed jurisdictions.

⁶⁹⁷ See OPTR, *supra* n. 48, pp. 76-78.

⁶⁹⁸ See OPTR, *supra* n. 48, pp. 78-81.

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Appendices

Appendix «A»: The practical protection of taxpayers’ rights in a nutshell (2018).

The following is a summary of the contents explained in detail in the main text of this General Report. Accordingly, it is not advisable to interpret the content expressed in this table separately of the explanation carried out in the abovementioned text.

Taxpayers’ right.	Shift towards	Shift away
1.- Identifying taxpayers, issuing tax returns and communicating with taxpayers		
Identification of taxpayers	<ul style="list-style-type: none"> • Australia has announced reforms to address illegal phoenix activity, including the introduction of a unique lifelong Director Identification Number (DIN). • Australia is developing <i>GovPass</i>, allowing individuals to securely and easily identify themselves, connect with government digital services and authorise people to act on their behalf. • Australia Tax Administration has clear obligations to report eligible data breaches. • Colombia, personal access codes to the DIAN (tax authority) server has been implemented in order to avoid impersonation. Even, independent keys are assigned to the legal representative of a company and its fiscal auditor. The digital signature continue working efficiently. • Cyprus, taxpayers need to be physically present when registering in the <i>taxisnet</i> portal, for the issuance of a unique authorisation code. • India, Supreme Court upheld the Right to Privacy as a fundamental right. launched an ambitious biometric identity card called <i>Aadhaar</i>. By another landmark Constitutional Bench the validity of the project was upheld in a limited way and by excluding the right of private agencies to obtain such data. The Hon’ble Supreme Court however upheld the requirements of connecting <i>Aadhaar</i> with the income identification number called PAN (Permanent Account Number), being the Income tax identification number. 	<ul style="list-style-type: none"> • United States, Tax Cuts and Jobs Act (TCJA) which amended IRC § 24 (the Child Tax Credit provision (CTC)) required that a Social Security Number (SSN) be provided for each dependent for whom the credit was being claimed, disqualifying certain taxpayers who are members of a religious group, most notably the Amish, from claiming the CTC, because they often do not claim SSNs for their children due to their deeply held religious beliefs. Despite agreement to the contrary with the National Taxpayer Advocate, on February 6, 2019, the IRS issued guidance instructing the suspension of amended returns where the Child Tax Credit was claimed, and no SSN was provided for the dependent(s) due to the taxpayer's religious beliefs. After considering this issue further, the IRS Chief Counsel issued advice on April 4, 2019 concluding that "... <i>the Service need not provide administrative relief for these taxpayers</i>"

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Kenya has unique Personal Identification Number for all taxpayers, although it does not take account of religious sensitivities. • Slovenia, safeguards to prevent impersonation when issuing unique identification number have been implemented. • Slovenia taxpayer identification system is based on non-discrimination on the basis of gender, race, religion affiliation etc. • Taiwan, the tax number of natural and legal person can be easily acquired. • United States, in the IRS Taxpayer Protection Program (TPP), if a return is selected by identity theft filters, the taxpayer must go through authentication procedures which involve either providing certain information online or visiting a walk-in center and presenting photo identification. In 2018, the IRS created an exception and alternate authentication procedures for taxpayers who do not have photo identification due to religious beliefs. 	
Information supplied by third parties, and withholding obligations	<ul style="list-style-type: none"> • Italy, the Court of Cassation acknowledged the existence of a judicial disagreement concerning taxes withheld by third parties and their following obligations. • Kenya, legislation drafted on data protection with potential impact on taxpayers and those withholding taxes, the Privacy and Data Protection Bill, discussed in 2018. The law is yet to be enacted. • Kenya, Tax Procedures Act imposes a strict obligation to confidentiality on all third parties who get access to a taxpayer's information. • Peru, Tax Code impose confidentiality about the tax information delivered to SUNAT (Peruvian tax authority), 	<ul style="list-style-type: none"> • Belgium, the taxpayer is not always discharged from tax liabilities because of withholding. • Colombia, non-for-profit regime demands the publication of information about donors (name, amount of donations and destiny given to them). Tax authorities are working on implementing data mining regarding the digital movements of people in the near future.

Taxpayers' right.	Shift towards	Shift away
	<p>but excluded the exchange of information regulated in tax treaties.</p> <ul style="list-style-type: none"> • Russia, the tax secrecy regime has been extended to information of members of consolidated groups of taxpayers. • Slovenia, third parties are bound to the same duties regarding confidentiality as tax officials must protect tax secrecy. • Slovenia, where third parties withhold taxes, the tax obligation lies with the person who is obliged by the law to withhold tax. • Taiwan, third parties are allowed to have the information by application in accordance with the legal conditions. The taxpayer is regarded as the guarantor of the tax liabilities in case of tax withholding. 	
<p>The right to access (and correct) information held by tax authorities</p>	<ul style="list-style-type: none"> • Australia, the Data Matching Protocol was amended to include data matching using pre-populated information from State and Territory motor vehicle authorities, including information from the Department of Home Affairs. • Australia, Legislation has been introduced to facilitate collection of Tax File Number information when applying for work visas. • Australia, The <i>Taxpayers' Charter – accessing information under the Freedom of Information Act 1982</i> requires the tax administration to publish documents used in making decisions, gives taxpayers the right to access other documents the tax administration holds, including documents that contain information about them. Taxpayers can ask to correct information held about them if it is incomplete, incorrect, outdated or misleading. • Austria, the EU "GDPR" has been incorporated in the Austrian Tax Code. 	<ul style="list-style-type: none"> • Canada, the Taxpayers' Ombudsman heard that difficulty in clearing security questions posed by CRA agents is a barrier to obtaining access to information, particularly with respect to more vulnerable segments of the population. • Canada, ongoing lack of access to reliable internet service in some regions of Canada, affects access to e-services and information.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Belgium, the law of 5 September 2018 provides rules with respect to data protection and processing of data by the tax authorities, in line with the EU GDPR. • Canada, the Access to Information Act and Privacy Act (ATIP) give taxpayers the right to access personal and other information collected and used by the government. • Canada, on the basis of the Taxpayers' Ombudsman's recommendations, the CRA has taken steps to: process its backlog of ATIP requests, initiate actions to promote the use of informal disclosure within the tax authorities, increase training to employees, and provide more complete information publicly to taxpayers about informal requests for information through its website, publications, and telephone enquiry lines. • Canada, the CRA's electronic services (e-services), which include portals for individuals, businesses, and their authorized representatives to access tax information, offer taxpayers a self-service option to view or update their personal information. • Colombia, tax authority working on implementing pre / populated returns, expected to be operational by 2020. • Colombia, permanent campaigns to avoid impersonation of its communications. In rural areas, DIAN has focused on virtual management and visits to conduct personalized attention campaigns for users, awareness and tax culture. • Cyprus, such rights have been recognised to taxpayers in direct effect from the GDPR. Pre-populated returns allow taxpayers to make corrections before submissions. • Denmark, the right to access follows from general Danish tax and administrative law, as well as from the GDPR and the Danish Personal Data Protection Act, covering all tax authorities. 	

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Germany, situation improved due to GDPR. • India, Government launched procedures to match taxes deducted at source with the person entitled to receive the tax credit. Deductors were required to fill Form 26 AF which then enabled the recipient to receive the credit. There were however many cases of mismatch requiring Courts' intervention to obtain proper credit. In India only the Assessing Officer has the power to correct the information on the website of the centralised processing centre (CPC) • Italy, situation improved due to GDPR. • Kenya, iTax portal allow taxpayers to access and amend the prepopulated information prior to filing. • Mexico, on November 12, 2018, the Mexican Tax Administration Service announced that it had released a tax return simulator on its webpage, allowing taxpayers to review the information the tax authorities will consider for their 2018 annual tax return. If there is any mistake, taxpayers are able to correct it. • Peru, Tax Code provides the right of taxpayers to correct their tax returns. • Slovenia, prepopulated personal income tax returns are sent to taxpayers as "<i>information on tax obligation</i>". Taxpayer may change data in the pre-populated return. If data are changed, the tax authorities will issue a new tax return. • Slovenia, legal rules and administrative practice allow access and corrections of information contained in official records of tax administration on each individual taxpayer. • South Africa, pre/populated returns might be corrected by taxpayers. However changing a prepopulated form always leads to subsequent verification and maybe audit. 	

Taxpayers' right.	Shift towards	Shift away
<p>Communication with taxpayers</p>	<ul style="list-style-type: none"> • Australia, the availability of application programming interfaces (APIs) has increased the number of third-party digital service providers with access to taxpayers' data and the array of services they provide on behalf of the tax authorities. • China implemented a system in order to prevent impersonation or interception of tax-related electronic data, and to limit the access to the tax-related information, to reduce the risk of leakage of tax-related information during electronic transmission. • Cyprus issued guidelines to prevent unauthorised access to personal data, but have not yet been implemented. • Cyprus, implemented a system in place for identification of both physical and legal persons, with the use of ID and certificate of incorporation. • India, Revenue is increasingly using the ability to send Notices by email for which there is legislative sanction in section 282 read with rule 127 of the rules. • Italy, tax authority is entitled to the treatment of personal data, supported by <i>Sogei</i> (an IT company wholly controlled by Ministry of Economy), thus authorized as "<i>Responsible for the Treatment</i>" according to GDPR. • Kenya, the Revenue Service has installed <i>iTax</i>, an electronic portal that protects and facilitates electronic communication with taxpayers. <i>iTax</i> accounts have passwords to prevent interception by unauthorised persons. • Netherlands, introduction of <i>eHerkenning</i> for logging into governmental institutions for entrepreneurs, safeguards the identity of the entrepreneur, and prevents hijacking the identity. <i>eHerkenning</i> will be aligned with the European eIDAS-regulation. 	

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Slovenia, the IT system safety standards assessed by third parties, rated as A+. • Sweden, very strong increase in the number of taxpayers registering to electronic communication service, and number of digital ID's issued. • Turkey, on 28 February 2018, the Ministry of Finance published <i>Communiqué</i> No.492 granting taxpayers online access to identification information, returns, notifications, debt, credit or penalty information and seizure applications etc. • United States, taxpayers have the right to request information about themselves under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et. seq. The IRS has also instructed its agents to provide taxpayers information about open cases upon request (i.e., without making a formal FOIA request). • United States, as the IRS focuses more on delivering taxpayer services online, it continually updates its e-authentication procedures. Specifically, over the last year, the IRS is updating its procedures to comply with the new guidelines issued by the National Institute of Standards and Technology (NIST). 	
Cooperative compliance	<ul style="list-style-type: none"> • Australia, Commissioner of Taxation's remedial power introduced, to give the Commissioner limited powers to modify the operation of tax law in circumstances where entities will benefit, or at least be no worse off, because of the modification. • Austria, a system of cooperative compliance has been introduced to the Austrian Tax Code, in force since 2019. • Belgium recently initiated a pilot project installing a system of cooperative compliance. 	<ul style="list-style-type: none"> • Canada, the September 18, 2018 Auditor General's audit report concluded that the CRA extended favourable treatment to some taxpayers but not others.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Brazil, the State of São Paulo enacted a conformity program ("Nos Conformes"), which provides for objective criteria the taxpayer must adhere to in order to have an easier relationship with the tax administration. • Canada released a revised version of Information Circular IC00-1R6, Voluntary Disclosures Program. The CRA administers the discretionary authority of the Minister of National Revenue to grant relief from interest and penalties arising from errors and omissions relating to income tax, source deductions and other amounts. • China tax authorities and enterprise groups can sign a Tax Compliance Cooperation Agreement (TCCA), based on the principles of voluntariness, equality, and mutual openness and trustworthiness. • Cyprus, taxpayers are invited by the Tax Administration to correct any errors in their returns. • India has had a scheme for consolidation of assessments of large taxpayers in one jurisdiction. • Slovenia, there is legal basis for a cooperative compliance system in the Law on Financial Administration. • Spain, project for the implementation of the so-called "Norma UNE 19602" (UNE standard) for the management system of tax compliance submitted to public consultation. 	
Assistance with compliance obligations	<ul style="list-style-type: none"> • Australia, assistance provided through <i>Tax Help</i> program to facilitate lodgement for taxpayers either unable or unwilling to lodge electronically in remote areas, assists taxpayers with disabilities. • Australia, balancing community conversations initiative developed, to understand current community beliefs, attitudes and norms about tax, and improve education to new entrants such as youth and migrants. 	<ul style="list-style-type: none"> • Canada, barriers to service remain an issue for many people as a result of issues such as: inability to get through to a CRA agent via telephone; inconsistent and incorrect information provided by CRA agents through telephone lines; difficulty in obtaining paper forms and guides; not meeting the criteria for assistance services. • Canada, Taxpayers' Ombudsman's report finds a lack of clarity of information on the part of the CRA regarding when a legal warning is given, what it means, and what

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Australia, support for small business through the <i>Let's Talk</i> website that offers free workshops and webinars on a variety of tax topics provided. • Belgium, certain categories of taxpayers exempt from filing a personal income tax declaration, changed for a "proposal of simplified declaration". Scope of the measure widened in 2018. • Bulgaria, service for video gesture translation for people with hearing impairment, available through and online platform for providing equal access to the tax authority services for hearing-impaired citizens implemented. • Canada, many initiatives aiming to provide assistance to those who face difficulties in meeting compliance obligations implemented, particularly granting online access in remote areas. • Canada, Disability Advisory Committee reinstated. • Canada, automated telephone filing service called <i>File my Return</i>, allowing eligible taxpayers with low or fixed income to file their income tax and benefit return by answering a series of short questions through a dedicated, automated phone service implemented. • China, steps to enhance the transparency of the tax agencies and the interpreting work of tax policy taken. • Cyprus, seminars throughout the country organised, and taxpayers' service desks in all district offices established. • India, a service of income tax return preparers (TRP) help taxpayers prepare and file their returns against a nominal fee. • Italy, more favorable measures for the fulfilment of the taxes and duties to pay for regions affected by the 21 August 2017 earthquake. 	<p>duration it covers; when payments arrangements are binding; and the consequences of defaulting on a payment when a binding payment arrangement has been made.</p> <ul style="list-style-type: none"> • China, tax law does not yet provide any special provisions for the assistance of special populations such as the disabled. • United States, the IRS has further consolidated the number of Taxpayer Assistance Centers (sites where taxpayers can go in person to receive assistance) and moved these sites to an appointment only system. While the IRS has made some investigation into using virtual services, it has not invested in the technology or a robust system to make this program successful. The IRS continues to attempt to shift taxpayers to electronic only communications, including by limiting when and what topics a taxpayer can call the IRS about.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Italy, system of assistance for the management of electronic invoicing implemented. • Kenya, Revenue Authority Camps within the Country to sensitize the public on tax issues. In addition, customer care line available to taxpayers for assistance with filing returns and other tax related issues. • Portugal, scope of taxpayers required to receive notifications only in electronic form expanded. • Slovenia, local tax offices bound to assist taxpayers and to provide necessary information. Leaflets and brochures on different tax topics available at tax offices and tax administration's web pages. • Sweden, many services provided updated, living up to modern standards of accessibility. • United Kingdom, the largest businesses are required to be part of the HMRC cooperative compliance arrangements, dealt with by the HMRC Large Business Directorate. Cooperative compliance not available to other, smaller, businesses. 	
2.- The issue of tax assessment		
	<ul style="list-style-type: none"> • Australia, ATO aims to provide pre-emptive advice to inform people about issues before they emerge and continue to publish law companion rulings with specific and early guidance on significant new law. • Australia, ATO offered self-preparers with simple tax affairs, the option of an automated or 'push' assessment, aiming to streamline the lodgement process for taxpayers with straightforward affairs, making it easier for people to meet their tax obligations on time. • Belgium, judiciary declared a binding obligation for the tax authorities to send the taxpayer a notification indicating 	<ul style="list-style-type: none"> • Canada, among the highest volume of complaints received by Taxpayers' Ombudsman is the accuracy and clarity of information provided by agents of the CRA's individual tax enquiries telephone line to taxpayers with respect to the processing of individual income tax and benefit returns and adjustments. • Canada, large volume of complaints received by the Taxpayers' Ombudsman regarding delays in the processing of individual income tax and benefit returns and adjustment requests for individual income tax, exceeding the CRA's published service standards.

Taxpayers' right.	Shift towards	Shift away
	<p>which remarks/comments made by the taxpayer are 'not' taken into account and the motives justifying this decision.</p> <ul style="list-style-type: none"> • Bulgaria, tax authorities broaden e-services, simplifying tax self-assessment. • Canada, taxpayers can contact the Canada Revenue Agency (CRA) to request an explanation of their tax assessment or file a notice of objection if they dispute the assessment. • Canada, Taxpayers' Ombudsman facilitates the resolution of service related issues with tax authorities and lessens the power imbalance between taxpayers and the tax administration. • Canada, tax authorities offer a free Liaison Officer Service for unincorporated small businesses, to help them better understand their tax obligations. • Canada, new offices in remote locations supporting Indigenous communities and other Canadians. • Chile, regulations issued with new instructions regarding the administrative review procedure, considering the taxpayer in a more horizontal relationship, aiming to recognize good faith as a normal standard of taxpayer behaviour. • Colombia, proximity to the citizen formulated as pillar of new Integrated Planning and Management Model. • Cyprus, tax returns starting from 2018 to be submitted online. • India, electronic processing of returns in certain cases introduced. Tax authorities will also conduct electronic scrutiny of all cases during the year 2018-19, except in search and seizure cases. The CBDT in India has launched an ambitious scheme for faceless assessments which are carried out without requiring the presence of the Assessee. 	<ul style="list-style-type: none"> • Mexico, amendment to Tax Code provides tax losses to be deemed as illegally transferred in cases where the taxpayer was part of a reorganization, a merger or a spin-off. • Peru, taxpayer participation in tax procedure does not change, in practice, the position of the tax authorities. • Russia, tax authorities are entitled to request information about taxpayer from audit organizations that provide accounting, tax, legal or management advice to the taxpayer. Tax authorities have broad powers to suspend operations on taxpayers' bank accounts. • Italy, judiciary confirmed a disparity/unequal protection, upholding the validity of the verification that does not evaluate the brief submitted by the taxpayer.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Kenya, <i>iTax</i> allow taxpayers to use e-filing to speed up assessments and correction of errors. • Kenya, Revenue Authority has put in place an Alternative Dispute Resolution (ADR) process to resolve disputes and at all times maintains an open door policy in engagement with taxpayers. • Kenya, taxpayers are afforded an opportunity to explain information provided during a revenue authority audit or to give additional information prior to a final tax assessment being issued by the Commissioner. • Mexico, items that make up the electronic declarations are becoming more accurate and practically all the fiscal information of the taxpayer is pre-filled. • Portugal, circumstances where elements in tax returns are "pre-populated" according to elements available to the Tax Authority from other parties (e.g., banks and employers) expanded. • Slovenia, regular meetings with taxpayers' representatives and business community held. Electronic filing and electronic communication is obligatory for all business taxpayers and is encouraged for individuals. • Spain, there is a constant trend towards the increase of electronic means to submit assessments and to correct errors. Regulations broaden the scope for the rectification of self-assessments by electronic means. • Sweden, e-filing of tax returns is one of the main focus areas of the Swedish Tax Agency. • Turkey, the Ministry of Finance widened the electronic services provided online. Thus electronic checking introduced. Taxpayers may electronically provide explanations. 	

Taxpayers' right.	Shift towards	Shift away
3.- Confidentiality		
General issues	<ul style="list-style-type: none"> • Belgium, in certain specific cases taxpayers may agree with the tax authorities the encryption of the data and reinforced access procedures. • Bulgaria, officials illegally disseminating tax information sanctioned more often during 2018. • Canada privacy governmental agency conducts investigations and audits of personal information handling practices to ensure compliance with the laws and adequate management of personal information. • Colombia, Information Security Office created, unit responsible for protecting information and information systems, access, use, disclosure, disruption and unauthorized destruction. • Colombia, Personal Data Treatment Policy issued by DIAN. Tax authority guarantees that all persons involved in the processing of personal data are obliged to ensure the confidentiality of information. • Italy, since May 25, 2018 the Tax Agency has applied GDPR on the protection of individuals with regard to the processing of personal data. • Kenya, law requires tax officials to maintain confidentiality of taxpayer's information. Officials provided with credentials to access taxpayer's information. Those who fail to do so commit an offence punishable by law. • Netherlands, tax authority has undertaken measures to restrict access to personal data by their employees. 	<ul style="list-style-type: none"> • Belgium, judiciary ruled that the additional tax imposed because of an unannounced audit and access to professional premises whereby the tax authorities, accompanied by a film crew and bodycams for the purpose of reality television, was not contrary to the law and could not be annulled.
Guarantees of privacy in the law	<ul style="list-style-type: none"> • Belgium, following the implementation of the GDPR, there are currently specific legal rules that govern the right to access of (personal) data, including that of taxpayers. • Colombia, tax authority implemented measures, firewalls, use restricted to specific IP addresses included, to ensure 	<ul style="list-style-type: none"> • Canada, the largest employee-initiated breach ever discovered occurred in March 2018, when a worker briefly assessed the files of 11,745 taxpayers

Taxpayers' right.	Shift towards	Shift away
	<p>that only authorized officials can access the information they require for the fulfilment of their duties. DIAN has put into operation effective mechanisms to guarantee the integrity, availability and confidentiality of the information exchanged with other jurisdictions.</p> <ul style="list-style-type: none"> • Colombia, audit of active authorizations was carried out in 2018, in order to maintain strict control of the officials of each unit with access to information, according to their functions. Audits are possible only when an investigation into unauthorized access to confidential information is in progress. No audit has been carried out so far. • Cyprus, Commissioner of Data Protection issued guidelines to prevent unauthorized access to personal data. They have not been implemented. • Cyprus, Ministry of Finance issued a Circular specifying that all documents that contain personal data should only be accessed by officials that are authorised to access such documents for the purpose of fulfilling their duties, and explaining the process to be followed for the identification of such officials. • Denmark, GDPR led to a higher degree of focus on practical restrictions on access to data within the tax authorities. Compartmentalization of access to data and the control of user rights to access to data strengthened. • Italy, GDPR applied to the protection of individuals with regard to the processing of personal data. Privacy-obligation of infringement to the Ombudsman of the Privacy if there are privacy violations. • Slovenia, basic rules on confidentiality are included in the Tax Procedures Act. Sanctions for violating the rules defined in the Tax Procedure Act. Violation of confidentiality 	

Taxpayers' right.	Shift towards	Shift away
	<p>on the side of tax officials is considered as a major violation of working obligations and sanctioned accordingly.</p> <ul style="list-style-type: none"> • Slovenia, best practice is respected as well. Tax IT system evaluated for safety standards, ranked as A+ • Slovenia, Access to data is restricted according to the legal provisions only to officials in need of information because of their tasks. Use of data is restricted in accordance with legal provisions. 	
Encryption – control of access	<ul style="list-style-type: none"> • Austria, the taxpayers have the right to correct an assessment, based on a pre/populated return, for 5 years. • Kenya, taxpayers are able to amend assessments and any other information on their <i>iTax</i> profile. 	
Auditing of access	<ul style="list-style-type: none"> • Slovenia, data access is audited regularly by internal audit unit of the tax administration. This information can be audited also externally (Court of Auditors) but this is not done on a regular basis. 	
Administrative measures to ensure confidentiality	<ul style="list-style-type: none"> • Australia, the Government's Notifiable Data Breaches Scheme came into force on 22 February 2018. All government agencies were required to implement the Australian Government Agencies Privacy Code on 1 July 2018. • Canada, the tax authority completed in March 2017 a \$10.2 million technology project known as the "Enterprise Fraud Management Solution", to track and deter any unauthorized access to taxpayer information by CRA employees. • Kenya, an officer that fails to follow the provisions for confidentiality commits an offence. • Netherlands, tax authority has undertaken measures to restrict access to personal data by their employees. • Slovenia, legal rules define administrative measures: every document should be marked as tax secrecy; all premises where tax data are kept should be clearly marked; special 	

Taxpayers' right.	Shift towards	Shift away
	<p>security measures are applied to all premises where tax data are kept, processed or where meetings with taxpayers take place. In this regard, tax administration has a special Data Protection Policy in place to provide for high standard of protection of data and privacy. It is an obligation of every employee to follow this policy.</p> <ul style="list-style-type: none"> • Slovenia, breaches will be investigated internally by the tax administration. This cases can eventually be brought before a court. If breach of confidentiality involves misuse of personal data, further investigation and sanctioning is possible from Personal Data Protection Commission. 	
Official responsibility for data confidentiality	<ul style="list-style-type: none"> • Belgium, the Data Protection Officer shall periodically monitor access and attempts of access to detect security incidents. A Service for Information Security and Protection of Privacy set up within the Federal Public Service Finance and placed directly under the authority of the Chairman of the Management Committee of the Federal Public Service Finance. This service assists the Data Protection Officer in the execution of his tasks as defined in the GDPR. • Colombia, culture of information security in public servants was strengthened through training courses in 2018. Information security and privacy policies have been generated and included in the DIAN's good governance code, updated in 2019. In case of breach of confidentiality, DIAN officials report the conduct before the competent judicial authority. • Cyprus, Data Protection Officer to be appointed by the Tax Department. Task currently undertaken by the Legal Service. • Denmark, central tax authority has appointed a central DPO and a central DPO-team cooperating with appointed personal data coordinators at the different tax authorities. 	

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Greece, a Data Protection Officer was appointed at senior level, according to EU Regulation 2016/679. • Italy, tax authority has applied GDPR. Privacy-obligation of infringement to the Ombudsman of the Privacy if there are privacy violations. • Sweden, tax authority to appoint a data protection officer. 	
Breaches of confidentiality - investigations	<ul style="list-style-type: none"> • Australia, no officers were found guilty of any confidentiality related offences in financial year ended 30 June 2018. • China, illegal disclosure of taxpayer's tax related confidential information punishable by law. There was a new special supervisory system created during 2018 that applies to tax administration. • Colombia, felonies regarding violation of personal data, by both regular citizens and public officials, were typified by Law 1273 of 2009, which amended the Criminal Code. Regarding disciplinary offenses, Law 1581 of 2012, established the disciplinary responsibility of public authorities for the breach of protection of personal data. Accordingly, the new Disciplinary General Code approved in January, 2019, maintained the general duty of confidentiality of State officials. • Cyprus, Tax Department is obliged to investigate data breaches due to GDPR. No specific guidelines have been published to that effect. • Kenya, an officer that fails to follow the provisions for confidentiality commits an offence. • Slovenia, breach of confidentiality is major violation of working obligations and sanctioned accordingly. In severe cases, tax officials can be prosecuted for a criminal offence (abuse of official position or official rights). 	

Taxpayers' right.	Shift towards	Shift away
<p>Exceptions to confidentiality – the general principle</p>	<ul style="list-style-type: none"> • Colombia Law 1581 of 2012 regulates exceptions to confidentiality expressly and exhaustively. • Poland, information about settlements with tax authorities (in 2012-2018) of companies whose annual revenues exceed EUR 50 million and 60 tax groups operating in Poland is made public. The information will be published every year until the end of September and updated every quarter. • Slovenia, exceptions are limited to those especially defined by Tax Procedures Act. • Spain, "<i>recurso de amparo</i>" (action for protection) that was submitted by S.D.C in regard of the <i>Falciani case</i> (Judgment of the Supreme Court of 23 Feb. 2017) was accepted by the Constitutional Court in Oct. 2017, remains unresolved. 	<ul style="list-style-type: none"> • United States, as an exception to the confidentiality rules under Section 6103, the IRS may contact third parties in connection with certain tax enforcement actions under Section 6702, provided it gives the taxpayer advanced notice of the contact. However, the generic advanced notice it provides on IRS Publication 1, which it sends to every taxpayer at the beginning of most enforcement actions, is inadequate because it does not give the taxpayer a reasonable opportunity to provide the information and avoid the contact. Judiciary held that IRS Publication 1 did not provide the taxpayer with "reasonable notice in advance" of third party contacts, as required by IRC § 7602(c)(1)
<p>Exceptions to confidentiality – naming and shaming</p>	<ul style="list-style-type: none"> • Australia, measures taken allowing tax authorities to disclose details of business tax debts to credit reporting bureaus where those taxpayers have not effectively engaged with the ATO to address the debt. As part of the safeguarding measures, the ATO is required to consult with the Inspector-General of Taxation prior to making any disclosures. • Brazil, tax authorities will disclose information about taxpayers prosecuted by alleged tax crimes. A previous judicial authorization is required for such disclosure. • China, "naming and shaming" employed either (i) when the Tax Inspection Bureau has made written decisions of tax disposal or tax administrative penalty, and the taxpayers neither applied for administrative review nor filed administrative litigation during the statutory period, or (ii) when there is remedial procedure followed, the final decisions have gotten without judicial authorization. 	<ul style="list-style-type: none"> • India, a list of top tax defaulters has been publicised since 2016. This does not give other details like the facts or the modes employed by the taxpayers. • Poland, amendments to the VAT Act will enable the head of the National Tax Administration to keep a black list of active VAT taxpayers, i.e. removed from the register and taxpayers restored to it. • Slovenia, "naming and shaming" is employed since 2012. It applies to taxpayers with outstanding tax debt of 5000 Euro or more with payment delay of more than 90 days and to taxpayers who do not file withholding tax returns to tax administration (so called non-fillers). The latter is especially important for social security withholding returns.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Kenya, no naming and shaming applied. • Peru, "naming and shaming" is not a practice of tax authorities. However, in practice the media, in certain renowned cases, produce a similar effect. 	
<p>Exceptions to confidentiality – disclosure in the public interest: combating fraud</p>	<ul style="list-style-type: none"> • Australia, Tax Debt Information Disclosure Declaration 2018 proposes allowing tax authorities to report to credit reporting agencies the tax debt information of businesses that do not "effectively engage" to manage those debts. • Belgium, legal rules compliant with GDPR provide certain restrictions to the taxpayers' rights, but these restrictions are subject to strict conditions, for instance, the law provides the tax authorities the right to use datamining and provides restrictions to the taxpayers' right to access personal data. • Kenya, law lists the persons that can access a taxpayer's information. However, all these persons are subject to similar confidentiality requirements as the tax officials. Politicians are not part of this list. 	
<p>Exceptions to confidentiality – supply to other governmental departments</p>	<ul style="list-style-type: none"> • Colombia, the President invited high-level public authorities of the Executive Branch to publish their tax return, in order to give the government greater transparency. • Cyprus, taxpayers' information is disclosed in Parliament only when required for control purposes. • Kenya, any data sent to parties like Parliament on general matters is anonymised protecting taxpayers' identity. For supervisory purposes, the data requested by parliament is subject to confidentiality obligations. • Slovenia, Parliamentary supervision is restricted to summarised data on tax collection and tax debt. Parliament can access to confidential taxpayer information only if 	

Taxpayers' right.	Shift towards	Shift away
	<p>needed for carrying out obligations of the Parliament defined by law. In this case anyone reading or using this information must observe confidentiality.</p>	
<p>The interplay between taxpayer confidentiality and freedom of information legislation</p>	<ul style="list-style-type: none"> • Colombia, reform approved in December 2018 established that information and procedures administered by DIAN Risk Management System are confidential, even for the taxpayer. • Colombia, regarding the exchange of information, the taxpayer's access to information about himself is not allowed, unless there is an investigation against him. A confidential document can only be disclosed with judicial authorization. • Kenya, third party access of taxpayer is not allowed and the court is yet to order that this be granted. • Luxembourg, law does not contain any specific provisions allowing taxpayers' to access their personal tax file, confirmed by the judiciary. Taxpayers granted access only for protecting their right to defence in the context of an assessment. It may not be excluded that in practice tax offices provide on a voluntary basis copies of information requested by the taxpayer. • Mexico, Tax Ombudsman Agency issued a non-binding criteria stating that the Mexican National Institute of Access to Information must provide an opportunity to all parties involved in an information request to argue against the disclosure of their information, regardless if such information is marked as "public". • Slovenia, law provides for an exemption as far as confidential tax information is concerned. As a principle, this information should not be disclosed. However, tax information is disclosed in exceptional cases where interest 	<ul style="list-style-type: none"> • Mexico, in order to prevent VAT avoidance through outsourcing, tax authorities enacted a rule that provides that contracting companies are required to request information from the services providers to fill an electronic questionnaire. No special rule about confidentiality was enacted.

Taxpayers' right.	Shift towards	Shift away
	<p>to make the information public prevails over the confidentiality. The test of public interest can be appealed against at the Office of the Information Commissioner. A judicial procedure is provided for against a decision of the Office of the Information Commissioner.</p>	
<p>Anonymised judgments and rulings</p>	<ul style="list-style-type: none"> • Bulgaria, published tax rulings/judgments are strictly anonymised. There is no date allowing identification of the taxpayer. • Italy, all types of rulings are to be published on the website of the Tax Agency anonymously. • Kenya, Tribunals shall take measures to prevent disclosure of trade secrets or other confidential information, when publishing their decisions. • Slovenia, individual tax rulings are not published by tax administration. Rulings of courts in tax matters are published but anonymised. • United States, a taxpayer has the right to participate in the redaction of certain rulings published under Title 26, Section 6110. 	
<p>Legal professional privilege.</p>	<ul style="list-style-type: none"> • Bulgaria, law firm searched and documents were seized, as well as accounting office providing services to the law firm and its clients, based on decision of an Specialized Criminal Court. • Colombia, legal professional privilege applies to lawyers and accountants when they provide tax advice. • Peru, law establishes that lawyers, accountants, financial advisers and public notaries intervening in companies or investment vehicles as shareholders, directors, trustees or similar must inform the tax administration the beneficial owner of said companies or investment vehicles. 	<ul style="list-style-type: none"> • Belgium, judiciary ruled that information obtained from a lawyer in breach of the client attorney privilege could be used by the tax authorities to assess taxes. • Canada, judiciary held that a due diligence report prepared by an accounting firm was not protected by solicitor-client privilege. The Court also held that tax accrual working papers, if prepared by a non-lawyer (and not at the direction of a lawyer) and requested by the CRA in the context of an active audit of particular issues, is not subject to solicitor-client privilege.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Slovenia, professional privilege applies to lawyers but not to tax advisors. The profession of tax advisors is not regulated in the country. If tax officials enter premises or conduct a search, independent witnesses must be present. No special arrangements how to deal with privileged material are defined in general guidance on tax audit/investigation. • United States, communications with tax advisors might be privileged in general under Title 26, Section 7525, unless they concern a transaction that has a significant purpose the avoidance. In addition, the attorney-client privilege may apply to communications with an accountant if the communications are "<i>made in confidence for the purpose of obtaining legal advice from the lawyer.</i>" 	<ul style="list-style-type: none"> • Kenya, law grants tax officials access taxpayer's information despite any law relating to privilege or contractual duty of confidentiality. • Portugal, law requires lawyers to report certain transactions carried out by their clients in such ample terms that it may affect legal privilege and even the balance of the burden of proof, inspired in anti-money laundering measures. • United Kingdom, judiciary confirmed that the legal professional privilege does not apply to tax advice provided by chartered accountants and other advisors. Chartered accountants do have litigation privilege which applies to advice given in anticipation, or in relation to, cases which are going to appear before the courts.
4.- Normal audits		
Tax audit and its foundation principles	<ul style="list-style-type: none"> • Australia, recent initiatives by tax authorities have aimed to take a more proportional approach to the imposition of penalties, by qualifying causes of innocence. Penalty relief is available for individual taxpayers, small business, self-managed superannuation funds, strata bodies, not-for-profit organisations and cooperatives. • Australia, initiatives implemented for assisting taxpayers in filing their returns help reducing the need for individual assessments, and enables the ATO to identify those taxpayers may be non-compliant. • Australia, tax authorities aiming to reach one-audit-per-year best practice in certain areas of compliance. • Belgium, judiciary upheld that notification before a final assessment is a substantial formality, the non-compliance of which by the tax authorities leads to the annulment of the tax assessment. 	<ul style="list-style-type: none"> • Belgium, judiciary ruled that the obligation to submit the books and documents which the law requires a taxpayer to keep, is not subject to the right to remain silent, since they already exist independently of the will of the taxpayer, even though the taxpayer was informed of being suspected of having committed tax fraud. • Belgium, since 2015 the Supreme Court has repeatedly confirmed that evidence illegally obtained by the tax authorities must not necessarily be excluded from a court litigation as evidence. • Belgium, the principle of <i>ne bis in idem</i> is not enacted in the law. Therefore, a taxpayer may be subject to double jeopardy (e.g. VAT and direct taxes) and a double sanction.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Belgium, general requests of information from third parties regarded as “fishing expeditions” by the judiciary. • Belgium, judiciary regarded an investigation with payment service providers where the tax authorities requested all the transaction data of payments made with foreign debit and credit cards during multiple years too broad, and concluded to the illegality of this request. • Canada, it is possible that taxpayers could be subject to an audit, review or verification, for a previously audited/reviewed/verified issue or period, when taxpayer has multiple accounts or when new information about an issue becomes available to the CRA after the completion of an audit/review/verification. • Canada, judiciary reversed a lower court decision that had the effect of generally granting the CRA unrestricted access to the tax accrual working papers of a taxpayer. • Canada, judiciary made a strong statement against an interpretation of the CRA's audit powers that would allow virtually unlimited invasions of taxpayer privacy. The decision dealt with CRA's power to compel production of information and documents about unnamed taxpayers from third parties. • China, by regulations, tax authorities shall clarify their duty and enforcement applicable range, standardise the enforcement protocol, alleviate the burden of taxpayers, improve enforcement procedures, standardize the discretionary power, strengthen enforcement supervision, and protect lawful rights and interests of the taxpayers. Tax authorities have made progress in this regard, compared to 2017. 	<ul style="list-style-type: none"> • Bulgaria, if taxpayer remains silent in case of ongoing tax audit, the tax authorities may determine the tax base, upon their discretion. • Canada, tax authorities requesting repeatedly documents already in power of tax officials, inconsistent with Article 10 of <i>Taxpayer Bill of Rights</i>. • Canada, judiciary allowed appeal of taxpayer from an order allowing the request for internal accounting documents, generally referred to as tax accrual working papers (TAWPs). The Canadian Ombudsman is of the view that the documents ordered to be produced, given the purpose for which they were sought, are beyond the reach of the Minister, and that the Federal Court judge committed a number of legal and factual errors in ordering their production. • Canada, practical implementation of procedural safeguards during an audit (mainly, right to representation, as well as the information provided by taxpayers being taken into account by tax authorities) unclear. • Colombia, procedure for issuing provisional tax assessment and simplified tax assessment does not contemplate the issuance of a prior act. Taxpayers have no right to be heard before such decisions are made. However, taxpayers have the right to provide factual information and submit their views once an provisional tax assessment and simplified tax assessment are notified. • Colombia, Law 1819 of 2016 modified the regulation of provisional tax assessment which as of that moment do not allow the taxpayer to be heard before the decision is made. Law 1943 of 2018 created the simplified tax assessment that is also issued without the taxpayer

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Cyprus judiciary enforced proportionality in the application of GDPR. Not all the principles are respected, although steps are taken regarding all of them. • Denmark, legal measures improve the structure and the transparency regarding the rules on tax control and reporting, explicitly referring to proportionality as a requirement for the application of provisions on the obligation of third parties to provide information to the Tax Administration. • Italy, judiciary upheld that tax penalties must be suitable to the circumstances of the specific case and fulfil the principle of proportionality. • Italy, judiciary upheld that penalties cannot be determined automatically on the basis of a tax increase according to a flat rate, but they must be graduated in relation to the specific features of the case. • Italy, regarding <i>audi alteram partem</i>, the safeguard of the right to be heard before any decision is claimed to be taken, applies to all investigations involving access to the taxpayer's premises, even if it is only aimed to the acquisition of documents. • Mexico, binding Tax Court ruling issued, upholding that tax assessments issued in response to refund requests are illegal, due to procedural reasons linked to the right to be heard. • Peru, Tax Code allows two tax audits related to each tax period, one partial and one definitive. Partial assessment is in practice part of the final assessment. • Slovenia, proportionality, <i>ne bis in idem</i> and <i>audi alteram partem</i> are fully respected. One of the basic principles of tax procedure is that tax administration has to examine all 	<p>having the right to be previously heard. In both cases, the silence of the taxpayer on these tax assessments generate their acceptance.</p> <ul style="list-style-type: none"> • Colombia, right not to provide documents in hands of the tax authority recognized to taxpayers by Law 1607 of 2012. In practice, DIAN requires information that is even in its possession and any information refused by the taxpayer in the course of an audit may be interpreted as prejudicial by appeals and the courts. • Colombia, in audits, DIAN respects the taxpayer's right to remain silent, without prejudice to the powers it has to make decisions with the evidence in the file. When a taxpayer does not respond to a request for information, it is interpreted as a reluctance that can lead to adverse decisions. • Italy, taxpayers' right to participate fully in tax administrative procedural phase has been claimed to be not generally recognised. • Italy, judiciary considered correct to recall the standard of the "<i>sufficiently close connection in substance and time</i>", between administrative and criminal proceedings, the double track is allowed. • Italy, judiciary upheld that if taxpayer does not reply to a requirement of information made by tax authorities, he/she may hold no defence against the assessment produced. This tendency recently established by the Court of Cassation [Cass. ord. no. 4001/2018 of February 19, 2018.], certainly turns out to heavily penalize the right of defence. • Mexico, new type of audit procedure added to the Tax Code, allowing the tax authorities to visit taxpayers at their

Taxpayers' right.	Shift towards	Shift away
	<p>circumstances and facts of a case and should examine facts in favour as well as to the detriment of a taxpayer.</p> <ul style="list-style-type: none"> • Spain, possibility that verification has been carried out by two different bodies ("Gestión-Inspección"). • Spain, judiciary annulled the use of a data verification procedure when a limited checking should have been used. 	<p>offices, tax domiciles to verify personally the transactions being carried by the taxpayer. This kind of auditing process clearly is disproportionate to the taxpayers' commercial activity as the tax authorities are being intrusive in their domiciles and transactions.</p> <ul style="list-style-type: none"> • Portugal, 2018 Budget Law introduced the possibility of a second audit for the "<i>mere review or collection of documents</i>". There is not yet sufficient clarity as to how the Tax Authority will interpret this concept. • United States, under section 7602 of the Internal Revenue Code (IRC), the IRS has the authority to examine any books, papers, records, or other data that may be relevant to ascertain the correctness of any return. These types of examinations, which can occur through correspondence, at the taxpayer's home or business, or at an IRS office, are "real" or traditional audits. However, the IRS has several other types of compliance contacts with taxpayers that it does not consider to be "real" audits, including math error corrections, Automated Underreporter (AUR) (a document matching program), which constitute the majority of IRS compliance contacts. More importantly, "unreal" audits lack taxpayer protections typically found in "real" audits, such as the opportunity to generally seek an administrative review with the IRS Office of Appeals (Appeals) or the statutory prohibition against repeat examinations.
<p>The structure and content of tax audits</p>	<ul style="list-style-type: none"> • Canada tax authority issued a Large Business Audit Manual and a Income Tax Audit Manual, available online, to explain the general criteria and rules of procedure followed to conduct an audit. 	<ul style="list-style-type: none"> • Canada taxpayers are not entitled to request the start of an audit or to obtain audit finality from the Canada Revenue Agency (CRA). Taxpayers can request advance income tax rulings or a pre-ruling consultation to confirm how the CRA will interpret specific provisions of Canadian income tax law

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Italy, new '<i>Operational handbook on combating tax evasion and fraud</i>' enacted, containing updated operational guidelines concerning the execution of audits, fiscal controls and economic-financial police investigations aimed at combating tax evasion, circumvention and fiscal fraud. • Kenya, Taxpayer's Charter of 2007 provides for a guideline on the audit process. • Slovenia, basic pattern of tax audits defined by Tax Procedure Law, generally compliant with basic standards. • Slovenia, since the introduction of voluntary disclosure procedure taxpayers do not request tax audits. If a request is made, there is no legal obstacle for the tax administration to follow this request. • Slovenia, if information obtained from third parties is used in the course of audit, taxpayer is informed of all the information used in assessment of tax obligation, regardless of the source of information. If information is gathered by tax administration in preliminary investigation process, this information is not shared with the taxpayer. • Spain, general guidance of the 2018 Annual Audit Plan for Taxes and Customs approved. 	<p>as they apply to a definite transaction or transactions that the taxpayer is contemplating.</p> <ul style="list-style-type: none"> • Colombia, guidelines have a limited scope, since it is impossible to regulate each of the situations that may arise in an audit. • Colombia, the law does not allow taxpayers to request an audit with the purpose of correcting tax returns. Special summons writ must be notified to taxpayers when tax authorities decides to start an audit. However, since 2016 it is allowed to issue provisional tax assessments without there being a prior approach between the DIAN and the taxpayers. The same applies to the simplified tax assessments created by Law 1943 of 2018. • Italy, judiciary allowed tax inspections even if tax authorities did not inform the taxpayer of the reason for the access. • United States, as an exception to the confidentiality rules under Section 6103, the IRS may contact third parties in connection with certain tax enforcement actions under Section 6702, provided it gives the taxpayer advanced notice of the contact. However, the generic advanced notice it provides on IRS Publication 1, which it sends to every taxpayer at the beginning of most enforcement actions, is inadequate because it does not give the taxpayer a reasonable opportunity to provide the information and avoid the contact.
Time limits for tax audits	<ul style="list-style-type: none"> • Belgium, the law does not foresee a time limit to conduct audits, but the tax authorities are still bound by the statutes of limitations. Moreover, when the tax authorities have the intention to apply a penalty or tax increase, the taxpayer can invoke the protection of art. 6 ECHR. 	<ul style="list-style-type: none"> • Canada, Auditor General reported that tax authority did not consistently apply tax rules when it audited or reviewed taxpayers' files, even though the <i>Taxpayer Bill of Rights</i> includes the right to have the law applied consistently, particularly regarding time limits. CRA agreed with the recommendation and committed to "set timelines for

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Canada, Taxpayers' Ombudsman agrees that reasonable time limits should be established for audit, verification and review processes, while acknowledging the importance of collaboration on the part of the taxpayer to ensure audits, verifications and reviews are conducted in a timely manner. • Cyprus, only on very occasional cases taxpayer can request the start of a tax audit. • Portugal, the 2018 Budget Law clarified that the suspension of a tax audit for more than 6 months (for reasons not attributable to the taxpayer) renders such period irrelevant for purposes of the otherwise applicable suspension of the 4-year statute of limitation to issue additional tax assessments. • Russia, deadline for the tax audit of the VAT return was reduced from three months to two months in 2018. However, the tax authority has the right to extend the established two-month period for another month without notifying the taxpayer. • Slovenia, law establishes a limit of 6 months for tax audits. Only in especially defined cases this time limit can be extended for additional 3 months. However, no legal consequences occur if time is exceeded. • South Africa, reasonable time limits for the conduct of audits are stated in the SARS Service Charter. • Spain, judiciary admitted a cassation appeal to determine if the audit can be initiated with a request for information to the taxpayer or should be deemed as initiated with the notice of the beginning as a consequence of the information provided to the Tax Administration. • Spain, judiciary established that in a particular complex case in which the Inspection could foresee that it was impossible to meet the deadline, it had to request the term 	<p>information to be provided, criteria for extensions, and more formal deadlines, past which the [CRA] would move to the courts to compel cooperation, by March 2020.</p>

Taxpayers' right.	Shift towards	Shift away
	<p>extension and not try to justify the failure to comply with the time with delays not attributable to taxpayers.</p> <ul style="list-style-type: none"> • Turkey, Effective from 1 January 2019, the VAT refund audits must be completed within three months. A two months extension may be provided. The usual audit time period was set as one year for full audits and six months for partial audits. 	
<p>Technical assistance (representation) and the involvement of independent entities</p>	<ul style="list-style-type: none"> • Canada, <i>Taxpayer Bill of Rights</i> includes the right to be represented by a person of your choice (Article 15). The cost of representation or technical assistance is borne solely by the taxpayer. This cost may be prohibitive for the taxpayer and could be contrary to Article 10 in the TBR, "to have the costs of compliance taken into account when [the CRA administers] tax legislation". • Slovenia, the taxpayer has the right to participate to the audit by himself or appoint a representative: a tax advisor, a lawyer or any other person he selects. 	
<p>Tax audit report</p>	<ul style="list-style-type: none"> • Canada Revenue Agency sends a final letter to the taxpayer indicating the result of the audit upon completion. Prior to this final letter, the auditor sends a proposal letter to the taxpayer with details of the adjustments necessary to resolve the issues identified. Taxpayers are given a prescribed period of time to respond to the letter and may request an extension to respond. • Canada, 2016 report by Auditor General on Income Tax Objections found that taxpayers objecting to their reassessments post-audit had the reassessment overturned in 66.1% of cases. For reviews and verifications of a claim in an income tax return, there is no report but the CRA may issue a notice of assessment or reassessment based upon information already held by the CRA, without input from the taxpayer; or may issue a notice of 	<ul style="list-style-type: none"> • Peru, report following an audit is not always issued, despite legal provision to the contrary. However, it is usual that the taxpayer obtains a final assessment that reflects the lack of adjustments. The assessment does not always have the full information about the tax audit: this information is completed in the appeal, through the so-called "Intendance Resolution".

Taxpayers' right.	Shift towards	Shift away
	<p>assessment or reassessment based upon the supporting documentation submitted by the taxpayer at the CRA's request. As well, a taxpayer is issued a letter upon completion of an audit even when the audit does not result in an adjustment.</p> <ul style="list-style-type: none"> • Canada Tax Ombudsman made recommendations to improve transparency associated with the CRA ruling letters in respect of determination of whether a worker is an employee or is self-employed. The CRA was expected to complete implementation of the report's recommendations by the end of 2018. • China the tax authorities should make a "tax audit report" to report the situation after the tax audit. Even the absence of illegal facts should also be described in the report. • Colombia, only minutes of inspections and visits may be read and approved by the taxpayer before it is finalized. The final audit report is carried out by the official in charge, without the participation of the taxpayer. Based on this, a special summon or a closure notice is issued, duly motivated. • Russia, in case of additional tax control measures, tax authorities should make addition to final report notifying the taxpayer of such additions, and relevant materials. • Slovenia, when the tax audit is finalised and before the decision is issued, a record of the tax audit is prepared by tax auditor and presented to the taxpayer. The taxpayer has 20 days to make comments or propose corrections and tax authority has to respond to all comments and proposals. Before a formal decision is issued, a record of the tax audit is prepared by tax auditor and presented to the taxpayer. The taxpayer has 20 days to make comments of propose corrections and tax authority has to respond to all comments and proposals. 	

Taxpayers' right.	Shift towards	Shift away
5.- More intensive audits		
The general framework	<ul style="list-style-type: none"> • Canada Revenue Agency confirmed that it is directing more audit resources towards wealthy families and large businesses in part through the CRA's "related party initiative" and "risk based audits" programs. • China, tax authorities focused on fighting fraud of sham enterprises with no substantial business and carousel fraud on export tax refunds. • Denmark, as mentioned above, the new Tax Control Act appears to have a stronger focus on proportionality. • Russia, in case of submission by the taxpayer of specified tax return in which smaller amount of the tax is specified in comparison with amount stated earlier, tax authorities have the right to conduct repeated field tax audit. The subject of such a repeated field tax audit is limited only to the correctness of the calculation of the tax on the basis of the amended figures of specified tax return. 	
The implications of the <i>nemo tenetur</i> principle in connection with subsequent criminal proceedings	<ul style="list-style-type: none"> • Denmark, Data Protection Agency published on 17 May 2018 an anonymised decision ordering the Tax Administration to delete information on a taxpayer illegally obtained in a criminal investigation (correspondence, phone conversations of the taxpayer with his lawyer), later used by tax authorities to issue an assessment. • Slovenia, a process of determination of tax obligation is administrative procedure and separate from possible criminal charges. Criminal offense investigation will be conducted by criminal investigation authorities and not by tax administration, so both procedures can run in parallel. 	<ul style="list-style-type: none"> • Belgium, judiciary did not allow the taxpayer to rely on <i>nemo tenetur</i> for not submitting his bookkeeping and accounting information. It should be noted that the taxpayer in this case had already been notified by the tax authorities that he was being suspected of having committed tax fraud. •

Taxpayers' right.	Shift towards	Shift away
<p>Court authorization or notification</p>	<ul style="list-style-type: none"> • Belgium, judiciary studying the compatibility of the tax authorities entering private dwellings with the right to privacy based on an authorisation from a Police Judge, who decides based on a request that is not in the least substantiated on the basis of concrete facts. • Colombia, the tax authority (DIAN) is authorized to order the registration of premises. The interception of communications is not a practice of the tax administration. • Colombia, tax authority (DIAN) does not have the power to make emergency decisions, subject to subsequent ratification. However, it can be foreseen that the minimum standard will be impacted with the creation of the tax and crime office in 2019. • Colombia, DIAN's registration power does not authorize the entry into the taxpayers' homes, for which a search warrant issued by a judicial authority is required. The best practice is not applied, the search warrant is known by the taxpayer when the diligence is going to be carried out. • Kenya, there are no instances where search of a taxpayer's premises will be conducted without a court order. Also, as a rule the Kenyan Revenue Authority does not intercept taxpayers' telephone communications. • Slovenia, tax administration has no authority to intercept communications of taxpayers. This measure can be used only in criminal cases by criminal investigators. • Slovenia, tax officials can enter all premises where business activity of a taxpayer is carried out. They can enter private home of taxpayer only if a taxpayer conducts business activity therein or has identified his home as a seat of his business activity. Authorisation by the judiciary is always needed, except if there is evidence that taxpayer 	<ul style="list-style-type: none"> • Belgium, judiciary upheld the right of tax authorities to access the garden of a house that is also the address of a company, in order to look into the house through the window at the back of the house. • Cyprus, where tax authorities intend to search the taxpayer's premises, the taxpayer is not given the right to appear before judicial authority (by statute). • Italy, the "new" Fiscal Agency has the power to seize banks account without judiciary authorization, pursuant to Law 225/2016 and Budget Law 2017. • Kenya, whilst the reason for seizure of documents –when practiced- is given, no timeframe for return of the documents seized is set or communicated. • Peru, financial institutions to disclose substantial financial information to the tax authorities legally enforced, related to Eol. • Portugal, 2019 Budget Law requires financial institutions to communicate to the Tax Authority transfer of funds to tax privileged jurisdictions irrespective of any indication of tax wrongdoing.

Taxpayers' right.	Shift towards	Shift away
Treatment of privileged information	<p>conducts business activity or has identified his home as a seat of his business activities.</p> <ul style="list-style-type: none"> • Belgium, judiciary allowed tax officials to observe, unnoticed and from the public road, the professional activities of a taxpayer, as well as the professional transactions he carries out with other taxpayers, in order to determine tax liabilities, even if these observations take place repeatedly. It is up to the judge to determine the legitimacy of the observations and, in particular, whether they are not of such nature that they constitute a violation of the right to privacy of those involved. • Slovenia, Tax administration has no authority to intercept communications of taxpayers. This measure can be used only in criminal cases by criminal investigators and Criminal Procedure Act must be respected. • Slovenia, seizures of documents limited to 30 days, in exceptional cases to 90 days. Backup is always made in the presence of taxpayer or his authorised representative and independent witnesses. 	<ul style="list-style-type: none"> • Colombia, the implementation of the Common Reporting Standard (CRS) made bank information available without any need for a judicial order. Tax authority has more and more access to banking information via digital channels. • Mexico, new type of audit added to the Tax Code, allows tax authorities to visit taxpayers at their offices, tax domiciles to verify the transactions being carried by the taxpayer. The time duration of this type of audit is up to the discretion of the tax authorities which makes it a really invasive procedure. • Russia, in practice the tax authorities seize original computer hard drives and laptops, apparently without copying the information, let alone in the presence of the taxpayer, as there is no special rules about seizure of computer hard drives and laptops. • Slovenia, Tax officials are granted access to bank information without judicial authorisation. Bank information is automatically exchanged between financial institutions and tax administration regularly.
6.- Reviews and appeals		
The remedies and their function	<ul style="list-style-type: none"> • Belgium a protest letter can be filed online. Moreover, in case of a court procedure, legal briefs can be also deposited online. • Bulgaria, new e-services of the National Revenue Authority to speed up and make reviews easier and cost-friendly on the taxpayer, can be noticed. • Canada Revenue Agency's (CRA) "Register My Formal Dispute" service, available online, allows taxpayers to file electronically a request for internal review, as well as 	<ul style="list-style-type: none"> • Belgium, in income tax cases the exhaustion of a prior administrative review is mandatory before an appeal can be made before the tax court. Many judicial appeals found inadmissible on the grounds that prior administrative review had not been exhausted. This is perhaps even more remarkable as it was "revealed" in 2018 that there is (was) an internal administrative instruction called "process 101" which obliges tax officials to reject every

Taxpayers' right.	Shift towards	Shift away
	<p>electronic submission of documentation to support the request for review. Complaints about service provided by the CRA can also be submitted electronically.</p> <ul style="list-style-type: none"> • China, current law and practice allow e-filing of review application. Beijing, Zhejiang, Jiangxi and other local governments opened on-line administrative review service platforms on their official website. • India, although there is no appeal against the AAR ruling, the taxpayers can and do challenge the rulings before the Court under the Court's writ jurisdiction. However, writs are not the same as appeals. For regular audits India has a well-established independent judicial system to challenge findings and determinations made by the Revenue. • Kenya, Tax portal provides a platform for taxpayers to file their objections. • Mexico, all administrative appeals have to be filed electronically. • Mexico, a new tax trial on the grounds created, aimed at solving the substantive controversy presented to Court, regardless of the formal issues surrounding the controversy. Both procedures, the digital administrative appeal and the so-called "substance trial" have had significant progress during 2018 and are being increasingly used by taxpayers. • Slovenia, e-filing is becoming the most common way of communication between tax administration and taxpayers. Tax administration encourages use of e-filing. • Spain, notifications will be made by electronic means in the cases in which it is obligatory to engage with the Administration in this way. • Spain, judiciary established that in some cases administrative review is not mandatory to submit a judicial 	<p>administrative appeal made by a taxpayer if the administrative appeal contains no new grievances or arguments in comparison with the ones made by the taxpayer in the assessment procedure.</p> <ul style="list-style-type: none"> • Canada, appeal a decision in Federal Court without prior exhaustion of administrative reviews not allowed. • Colombia, a stage of administrative reviews must be exhausted before exercising the right to appeal. • Slovenia, only if the case is not solved on administrative level, a lawsuit can be filed at administrative court. • Spain, prior exhaustion of the available administrative reviews is a condition to submit a judicial appeal. • United States, there is no such e-filing of requests for internal review to ensure the effective and speedy handling of the review process, as suggested by the best practice. As well, lower-level (Examination function) can withhold right to administrative appeal or bypass that right.

Taxpayers' right.	Shift towards	Shift away
	<p>appeal, when the administrative review is only based on the illegality or unconstitutionality of the law and administrative courts have no jurisdiction. Even the judgment only concerns the local area, it could be applied in others areas.</p> <ul style="list-style-type: none"> • Sweden, new administrative procedure act is neutral in relation to technology. E-filing is in general allowed, which also corresponds to the reality at the authorities. 	
Length of the procedure	<ul style="list-style-type: none"> • Canada, Auditor General recommended to provide taxpayers with the timeframes in which it expects to resolve their objection and these timeframes should be based on the objection's level of complexity. CRA has taken steps to improve the timely processing of objections by introducing new service standards for resolving low-complexity objections within 180 days. This target has been met and surpassed) and medium-complexity objections with 365 days, 80% of the time. • Canada, CRA changed its process for addressing low-complexity and some medium-complexity objections to include taxpayer/representative contact within 30 days of receiving the objection. This expedites the process of requesting additional information or supporting documentation and improves service. • Canada Taxpayers' Ombudsman Report <i>Without Delay - An examination into service issues arising from delays in the Canada Revenue Agency's Taxpayer Relief Program</i> highlighted the delays in the CRA's review and appeals process. CRA began setting out (on its website) average resolution times for low (91 days), medium (248 days) and high (690 days) income tax objections. • Canada, no service standard for the timeframe within which the appeal should be completed for payroll source deductions. Valid circumstances may exist where an 	<ul style="list-style-type: none"> • Colombia, the average time for a final instance ruling is 6 years for the judicial stage plus two years of the administrative stage. These times may increase with the increase of the statute of limitations for the firmness of the tax returns from 2 to 3 years, requests for tax refunds and issuance of provisional tax assessments. • India, first appeal should be disposed of within one year from the end of the financial year in which the appeal is filed. Second appeal should be decided within four years from the end of the financial year in which the appeal is filed. Advanced rulings shall be given within 6 months of the receipt of the application. There is no time limit prescribed for the disposal of appeals by the High Courts and the Supreme Court. • United States, • Inclusion of Counsel and Compliance can delay administrative appeals outcome. https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17_Volume1_MSP_18_AppealsCounsel.pdf •

Taxpayers' right.	Shift towards	Shift away
	<p>objection or appeal takes longer than two years. In these cases, it is important for taxpayers to receive regular communication about the status of the objection or appeal.</p> <ul style="list-style-type: none"> • Denmark, agreement between all political parties represented in the Danish parliament reached, granting additional resources for Tax Appeals Agency directed at reducing the time spent handling appeals. • Denmark, from 1 January 2019 certain appeals concerning particularly natural persons not raising complex issues or questions of principle is to be decided within 12 months going forward. • India, there were no time limits on the Revenue for proceeding against defaulters who have failed to comply with withholding obligations. Most Courts (barring the Allahabad High Court) have held that there can be no unlimited period and a reasonable period must be read in, beyond which the Order would not be valid. • Peru, efforts made to streamline reviews and administrative appeals, including provisions suspending interests on tax liability after the time allowed for the administrative review or appeals has expired. • Slovenia, on average administrative appeals are processed within 9 months; time limit can vary depending on the substance of the case. Vast majority of cases are resolved within two years period. There is no information on time limits for judicial review of tax decisions. 	
Alternate dispute resolution (ADR)	<ul style="list-style-type: none"> • Australia, tax authority continues to rely heavily on seeking to settle complaints. As part of their Independent Assurance of Settlements program, the ATO have engaged four former Federal Court judges and refer the largest and most significant decisions on disputes to them for review. The 	

Taxpayers' right.	Shift towards	Shift away
	<p>Australian National Audit Office also issued favourable report on the Australian Taxation Office use of settlements.</p>	
<p><i>Audi alteram partem</i> and the right to a fair trial</p>	<ul style="list-style-type: none"> • Canada, taxpayers can be heard directly or through their representatives in the context of administrative reviews and judicial appeals. Taxpayers and their authorized representative can submit supporting documents for consideration to the Canada Revenue Agency before any final decision. This right to be heard is consistent with Article 4 of the <i>Taxpayer Bill of Rights</i> which states that "you have the right to a formal review and a subsequent appeal". • Peru, legal changes limited the stages of administrative appeals in which a taxpayer can request a hearing before the tax court. Now the taxpayer can ask for a hearing once the appeal is filed only. • Slovenia, tax officials are obliged to investigate information in favour and in detriment of a taxpayer. It is most common that documentary evidence is used in tax cases, hearing of witnesses seldom occurs. • United States, the right to in-person participation in administrative appeals conferences has expanded. However, in <i>Facebook, Inc. v. IRS</i>, the U.S. District Court for the Northern District of California held that Facebook had no enforceable right to take its case to the IRS Office of Appeals and the court had no authority to review the IRS's unexplained decision. <i>Facebook, Inc. & Subsidiaries v. IRS</i>, 2018-1 U.S.T.C. (CCH) ¶150,248 (N.D. Cal. 2018). 	<ul style="list-style-type: none"> • Belgium, an internal administrative instruction called "process 101" revealed, that forced tax officials to reject every administrative appeal made if no new grievances or arguments in comparison with the ones made by the taxpayer in the assessment procedure were put forward.
<p><i>Solve et repete</i></p>	<ul style="list-style-type: none"> • Canada, <i>Taxpayer Bill of Rights</i> states that taxpayers "have the right, unless otherwise provided by law, not to pay 	<ul style="list-style-type: none"> • Canada, interest charges still apply to an amount owing while it is in dispute. Taxpayers can choose to pay all or part of the amount in dispute to avoid paying more interest

Taxpayers' right.	Shift towards	Shift away
	<p><i>income tax amounts in dispute before you have had an impartial review</i>" (Article 7).</p> <ul style="list-style-type: none"> • Colombia, an appeal does not require prior payment of tax. • India, judiciary upheld that any appellate forum has the inherent power to grant stay in appropriate cases, although there is no legal provision. • Peru, filing a judicial appeal does not prevent the tax authorities from enforcing the payment of the tax assessment, but there is the possibility of asking the judge for a suspension. • Slovenia, tax needs to be paid even if an appeal is filed. However, suspension of payment is legally possible, on the ground that there is high probability that taxpayer's appeal will be successful, as well as personal circumstances of the taxpayer. • Spain, judiciary takes steps further towards the protection of taxpayers' rights. It is possible to submit evidences in administrative reviews despite not being submitted in the audit procedure, provided that they are relevant for the claim. There is one exception: that the attitude of the taxpayer was abusive and it is established in the file. • Spain, appeal does not delay the execution of the administrative act, unless the suspension of a payment is requested and guaranteed. Judiciary improved protection of taxpayers' rights, by declaring the notification of the order for recovery (providencia de apremio) when the resolution for suspension is pending contrary to the tax system. • United States, payment of tax is generally not required for administrative appeal within the IRS. However, it may be required for an independent judicial review in certain situations. In <i>Larson v. United States</i>, the U.S. Court of Appeals for the Second Circuit held that it lacked 	<p>on the amount owed. Given the fact that interest continues to accrue while an amount is in dispute, it may not be in the taxpayer's best interests to delay paying amounts owing until the end of the review or appeal process.</p>

Taxpayers' right.	Shift towards	Shift away
	<p>jurisdiction to review assessable penalties under 28 U.S.C. § 1346(a) because the taxpayer had not fully paid them, as required under the Flora rule, and also lacked jurisdiction under the Administrative Procedure Act (APA).</p>	
<p>Cost of proceedings</p>	<ul style="list-style-type: none"> • Australia, ATO's Dispute Assist program and Curtin University's Tax Clinic aim to help unrepresented taxpayers deal with their tax affairs. • Australia, Government announced intention to establish "a <i>Small Business Concierge Service within the Australian Small Business and Family Enterprise Ombudsman's office to provide support and advice about the Administrative Appeals Tribunal (AAT) process before an application is made</i>". • China, very low administrative litigation fee. If taxpayer cannot afford it, he can apply for reduction or exemption. • China, general system of legal aid and legal service are both available for taxpayers. Legal aid mainly apply to the application for government compensation. Local governments offer a free legal service hot-line for residences. • China, justice ministry carrying on program of a nationwide public legal service platform, aimed to offer universal, non-profit, and optional legal service for people. • Mexico, Tax Ombudsman's office provided almost 1 million services to taxpayers, all of them for free since 2011. With respect to legal defense, PRODECON can only render this service if the tax liability of the taxpayer does not exceed approximately U.S. \$50,000.00. • Slovenia, State bears general costs of an appeal; specific costs are born according to the outcome of the proceedings. No administrative fees are paid for filing an 	<ul style="list-style-type: none"> • Switzerland, plans to rise the costs to be borne by the party whose appeal has been declined have been introduced into the legislative process, affecting taxpayers as well. • United States, costs for administrative and judicial appeals generally rest with the respective parties. Low income tax clinics exist, but can serve relatively few taxpayers on account of limited funding.

Taxpayers' right.	Shift towards	Shift away
	<p>appeal in tax matters. Charge-free legal assistance can be provided in judicial procedure connected to tax assessment but not in tax procedure at tax administration. Legal basis for charge-free legal assistance is Legal Aid Act.</p>	
Public hearing	<ul style="list-style-type: none"> • Bulgaria, law states that hearings are carried behind closed doors in cases reviewed by a three-member Chamber of the Supreme Administrative Court, except when the judge-rapporteur instructs the case to be heard in an open session or a party requests an open hearing not later than with the submission of the cassation appeal to the answer to the cassation appeal. • India, in the proceedings before the CITA and AAR only the taxpayer or his representative and the departmental representative will be present. No cases reported of in camera hearing before the Tribunal. As for the Courts, proceedings are normally held in open court in India although in very exceptional cases, the court may allow in camera hearing. Theoretically, the taxpayer may make a request. • Slovenia, usually no public hearing takes place in tax appeals. Public hearing would be possible only in judicial process but in practice, this possibility is usually not used. 	
Publication of judgments and privacy	<ul style="list-style-type: none"> • Canada, court cases and decisions are published as a part of the public record. All decisions taken with respect to specific objections or appeals are confidential taxpayer information and legally protected. Taxpayer information held by the CRA is considered confidential until it is released publicly by the court. • Colombia, first and final instance rulings are published once they are notified to the taxpayer. 	

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • India, the Authority of Advance ruling at times anonymise the rulings by taxpayer requests. • Italy, all types of rulings are to be anonymised and published on the website of the Tax Agency. • Slovenia, Court tax judgements are anonymized and published. Decisions of the appeal board are not published. • United States, taxpayer privacy is maintained during administrative proceedings but typically forfeited during judicial proceedings. 	
7.- Criminal and administrative sanctions		
The general framework	<ul style="list-style-type: none"> • Belgium, Minister of Finance issued internal instruction, provides no VAT-penalties will be imposed for the first infringement of a taxpayer acting in good faith. • Belgium, courts apply the principle of proportionality and the <i>ne bis in idem</i> principle and take the EU case law (in particular the case law of the ECtHR) into account. • Canada, no prohibition in the law against applying both civil and criminal penalties. • Colombia, by end of 2016, the application of the principle of proportionality for the graduation of sanctions was approved by the legislator. In 2018, the application of this principle was extended to decisions that were enforceable. • Italy, judiciary reiterated that tax penalties must be suitable to the circumstances of the specific case and fulfill the principle of proportionality. Penalties cannot be determined automatically on the basis of a tax increase according to a flat rate, but they must be graduated in relation to the specific features of the case. • Kenya, late payment interest shall not, in aggregate exceed the principal tax liability. As well, under Section 80 of the Tax Procedures Act, a person shall not be subject to both 	<ul style="list-style-type: none"> • Belgium, judiciary decided in two cases that a VAT-fine and a tax increase for income tax should be considered as 'sufficiently close connected in substance and time' and therefore, in these two cases, the Court decided that the <i>ne bis in idem</i> principle was not infringed. • Colombia, the same conduct can simultaneously lead to criminal and administrative proceedings, within which sanctions can be imposed independently. Law 1943 of 2018 created the crime of omission of assets or declaration of non-existent liabilities. According to the regulation of this crime, the payment of the highest tax by the taxpayer does not end the criminal process when the omitted assets or non-existent liabilities are of high value. • Cyprus, following the CJEU's criterion in the Menci case, which recognised the possibility of limiting the non-double jeopardy rule in situations regarding VAT, it is unclear how <i>ne bis in idem</i> be implemented. • Italy, on the <i>ne bis in idem</i> principle, Italian Constitutional Court considered correct to recall the consolidated principle of the "<i>sufficiently close connection in substance</i>

Taxpayers' right.	Shift towards	Shift away
	<p>the imposition of a penalty and the prosecution of an offence in respect of the same act or omission in relation to a tax law.</p> <ul style="list-style-type: none"> • Luxembourg, aggravated tax fraud introduced in legislation, reinforcing the validity of <i>ne bis in idem</i>. In addition to that, the tax reform of 2017 provided for the first time that '<i>fraude fiscale aggravée</i>' and the '<i>escroquerie fiscale</i>' are predicate offenses that can trigger the anti-money laundering legislation. • Slovenia, range of tax penalties defined by tax law, depending on severity of the breach of tax law. Also, <i>non bis in idem</i> is claimed to be respected. 	<p><i>and time</i>", so no double jeopardy where subsistence exists between the two administrative and criminal proceedings.</p> <ul style="list-style-type: none"> • United Kingdom, 2 recent, independent, reports have been critical of the additional powers that the tax authority has taken on in recent years. Further appeals in the GAAR process and follower notice entails risk of additional penalties if unsuccessful. • United States, penalties for negligence are generally proportionate and subject to exceptions for reasonable cause under Section 6662. Penalties applicable to information reporting failures, such as the failure to report a tax shelter under Section 6707A or a foreign account under 31 U.S.C. § 5321.
Voluntary disclose	<ul style="list-style-type: none"> • Belgium, Supreme Court ruled that the administrative sanctions are not applicable when the tax return has been filed but too late. • Belgium, the VAT authorities published an internal instruction regarding remission of VAT penalties (in case of good faith). • Canada, Voluntary Disclosure Program (VDP) to support a taxpayer's ability to self-report and self-correct any lapse in compliance with the Canadian income tax system. For a "complete" disclosure, the taxpayer must provide full information for all of the relevant tax years for which there was previously inaccurate or unreported information. As a result, the VDP has been regarded as "<i>more restrictive</i>". • Canada, the VDP introduced two new tracks, the Limited Program and the General Program. In General Program, taxpayers are not charged penalties and are not referred for criminal prosecution related to the disclosure. The CRA will also provide partial interest relief for years preceding the 	<ul style="list-style-type: none"> • Belgium, according to legal change, administrative sanctions are now also explicitly applicable in the event of late filing. Also, Belgian Constitutional Court seems to overrule the Supreme Court's judgment, deciding that the new law is only an 'interpretative law' and that an administrative sanction in case of 'late filing' was also possible 'before' the new law. • Sweden, new time-limits were introduced in 2018, restrict the possibility of voluntary disclosure. • United States, in general voluntary disclosures can lead to a reduction in penalties. For example, a criminal can sometimes avoid being referred for prosecution under the IRS's voluntary disclosure practice. As another example, those who have negligently failed to report income can sometimes avoid negligence penalties by filing a qualified amended return before noncompliance is detected by the IRS. In addition, the IRS has programs to waive penalties for those who file delinquent information returns. However, the IRS has recently added civil penalty framework to its

Taxpayers' right.	Shift towards	Shift away
	<p>three most recent years of income tax returns needed to be filed. Full interest charges will be assessed for the three most recent years of income tax returns required to be filed. Limited Program applies to those situations where the facts suggest an element of intentional conduct by the taxpayer or a closely related party. As such, while the taxpayer will not be referred for criminal prosecution related to the disclosure and will not be charged a gross negligence penalty, they will be charged other penalties and interest as applicable.</p> <ul style="list-style-type: none"> • Colombia, Law 1943 of 2018 created a standardization tax for the year 2019, paid by taxpayers who have omitted assets omitted or declared non-existent liabilities in their tax declarations of national taxes, in order to erode the tax base. The law allows the omitted assets to be included and non-existent liabilities to be excluded, without generating tax sanctions or criminal offenses. • Cyprus, tax amnesty programme extended until June 2018. It allows "qualifying applicants" to pay off their tax liabilities for prior years with up to 95% reduction in the interest and penalties that otherwise would have been or have already been imposed by the tax authorities. • Kenya, Commissioner may waive penalties accruing to the taxpayer. The Finance Act 2018 reduced a number of penalties accruing to the taxpayer for non-compliance. • Netherlands, voluntary disclosure scheme abolished in relation to savings/portfolio investments held outside the Netherlands by individual taxpayers. No shift towards nor away from the minimum standard. • Peru, Tax Code establishes Incentive Scheme for voluntary payment of administrative fines. 	<p>longstanding voluntary disclosure practice, which could increase the penalties applicable to applicants who are not criminals.</p>

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Slovenia, because of voluntary disclosure no administrative penalties will apply. Voluntary disclosure is encouraged by exemption from penalties and lower interests for late payment of tax. Best practice claimed to be observed. 	
8.- Enforcement of taxes		
	<ul style="list-style-type: none"> • Australia, tax authorities took measures to improve clarity and accessibility of taxpayers to information on financial difficulty and serious hardship for paying taxes, promoting greater awareness or debt relief options. • Australia, measures taken to reduce time in answering an application for debt relief. • Australia, garnishee notices policy reviewed, for better wording, more clarity and usability. IGT launched review into ATO's use of garnishee notices following concerns raised in the media. • Australia, changes made to procedures of delayed payment and arrears to access and availability through online tools to support payment plans for individuals debts relating to superannuation guarantee, fringe benefits and costs and fines. ATO commissioned an independent external review of its insolvency decisions which concluded that its collection practices do not prematurely lead to viable taxpayers being made insolvent, noting its performance in progressing insolvencies tends to be conservative. • Australia, started including a copy of the Australian Financial Security Authority brochure 'Warning—you may be declared bankrupt' with its bankruptcy notice. This brochure provides taxpayers with information about the bankruptcy process and the alternatives to bankruptcy. • Australia, ATO: (i) suspended stronger debt collection activities; and (ii) made staff aware and the need to 	<ul style="list-style-type: none"> • Belgium, new procedure for the forced collection of unpaid VAT liabilities introduced. New procedure claimed to include more uncertainties for the taxpayers. Preliminary authorisation by the judiciary to seize assets is not required. • Brazil, Federal Attorney Department allowed seizing assets or bank accounts without the authorization by the judiciary. • Brazil, national tax authorities started to constrain administratively immovable property of taxpayers without the need for a court decision. • Canada, Taxpayers' Ombudsman regularly receives complaints from taxpayers involved in the collections process, regarding its fairness. There is a lack of understanding by taxpayers about the consequences. CRA does not offer legal warnings if risk of non-payment is deemed too high and it may choose to take legal action without first providing legal warning. • Canada, Taxpayers' Ombudsman continues to hear of taxpayers stating they have to declare bankruptcy as a result of their debts with the CRA. The CRA does not have to accept a payment arrangement, and this option may not always be offered to taxpayers. There is no specific law or policy requiring the use of a payment arrangement.

Taxpayers' right.	Shift towards	Shift away
	<p>consider taking a more flexible approach to debt recovery based on the circumstances of drought-affected taxpayers in line with internal guidelines. Raised awareness of the support available to those affected through a range of channels such its website, social media, third party influencers, cold calls, media interviews, advertising campaigns and forums with Commonwealth, State and Local government organisations.</p> <ul style="list-style-type: none"> • Australia, ATO developed drought relief assistance kits, including a drought brochure, with the Department of Agriculture and Water Resources which were handed out at the pop-ups and field day events. • Belgium, the assessment of a request for delayed payment no longer considered a discretionary power of the tax collector. Circular issued listing the general conditions for granting a delayed payment plan. The delayed payment can also be requested digitally. • Belgium, in case of outstanding tax debts, tax authorities can withhold repayments to the taxpayer and impute these amounts on the tax debts. As of 1 January 2019, this principle also applies in case of disputed tax debts as a conservatory measure (law of 25 December 2017). • Brazil, Federal Attorney Department established the so-called "civil tax procedure deal", by which the entity may propose a plan to pay the debt according its financial situation. If the FAD agrees, the payment plan will be implemented. • Canada, authorities announced they would "<i>consider situations where the application of late-filing penalties creates a disproportionate burden on low-income taxpayers</i>". 	<ul style="list-style-type: none"> • Canada, tax authority allowed to take some legal collections actions, such as set-off and garnishment, without authorization by the judiciary, after providing notice to taxpayers through what is called a legal warning. • Italy, judiciary allowed tax authorities to investigate bank or postal current accounts without providing any reasons and without the presence of any serious evidence. Law has also extended to <i>Guardia di Finanza</i>, similarly to the Tax Agency, the right to access the Register of Financial Reports for the analysis of the risk of evasion. • Mexico, Federal Tax Code empowers the revenue authorities to perform seizures if the necessary legal requirements are met without judicial authorization. This power of the tax authorities is commonly misused or is used in excess. • Poland, head of the National Tax Administration has been granted the right to block entrepreneurs' account for 72 hours, with the possibility of extending up to 3 months when there is a justified fear of taxpayers' non-compliance of the tax liability, aiming counteract the use of the financial sector for tax frauds. • Slovenia, seizing of deposits on bank accounts is possible without judicial authorisation. • Slovenia, no general provision is included in tax legislation to provide for temporary suspension in case of natural disasters. • United Kingdom, new legislation allows tax authorities to recover directly debts from taxpayers' bank accounts without a prior court order, only requiring the taxpayer is aware that the sum is due and payable. HMRC Briefing establishes guarantee "<i>that every debtor will receive a</i>

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Canada, taxpayers are provided the opportunity to report their income and expenses to the CRA on a financial questionnaire in an effort to identify a mutually agreeable payment arrangement to resolve their tax debt. • Canada, tax authority has the power to enforce the collection of debts through statutory set-offs (using money owed to a taxpayer by any federal department or agency to apply to the taxpayer's debt), garnishment of wages, certifying a debt with the Federal or Provincial Court, seizing and selling assets, and holding another party jointly and severally responsible for the debt. • Canada, tax authority regularly invokes its Taxpayer Relief Provisions in cases of natural disaster, such as flood or fire. CRA implemented a 180 calendar day processing standard for taxpayer requests for relief, to be met 85% of the time. It is the Canadian Tax Ombudsman's understanding, based on anecdotal information, that the CRA can also suspend collection actions for individuals residing in areas affected by natural disasters. However, this is not confirmed in the information publicly available on CRA's website. • Colombia, the <i>minimum vitalis</i> principle is only followed strictly for VAT. In the collection processes for taxpayers there are some assets and minimum amounts of money that cannot be seized. • Colombia, taxpayers can request delay payment of arrears and DIAN can grant it for a maximum period of one year, as long as they constitute guarantees. • Colombia, in bankruptcy proceedings conducted by an independent judge, it is possible to make structured plans for deferred payment with lower interest rates, although this only protects taxpayers under the scope of an expropriation clause in a bilateral investment treaty. 	<p><i>face-to-face visit from HMRC agents before their debts are considered for recovery through DRD [direct recovery of debts]</i>". A House of Commons Library report published in May 2018 indicates that the provisions that the DRD statutory provisions have not, in practice, given rise to many complaints.</p> <ul style="list-style-type: none"> • United States, in fiscal year 2018, 40 percent of taxpayers who entered into a streamlined payment plan with the IRS's Automated Collection System had income at or below their average living expenses. The IRS does not have a system in place to detect if collection action will deprive taxpayers of their minimum necessary for living. As a result, it is up to the taxpayer to prove or the IRS to investigate. In some instances collection action occurs when the taxpayer is otherwise living below their means. In those instances, it is possible to stop the collection activity. • Venezuela, the so-called "national constituent assembly" established temporary advance payment of VAT and Income Tax for special taxpayers' regime. These payments now should be done weekly, based on the tax declared the week before. Tax compliance is more burdensome, ability to pay not considered. Authority of the so-called "national constituent assembly" is dubious because this was established without the accomplishment of constitutional requirements.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Colombia, natural disasters are usually followed by an executive decree providing for a temporary tax relief depending on the severity of the disaster. • Germany, adoption of legal basis for the exemption of taxes resulting from the cancellation of debts in the course of a debt restructuring, in cases of bankruptcy. • India, CBDT regularly relaxes the time limit for filing returns of income in many situations including natural calamities, etc. • Italy, new law enables the judiciary to ratify a restructuring agreement proposed by taxpayers even if the tax authority does not adhere to the proposed fiscal transaction, but only if the proposal is more profitable than the alternative liquidation. • Italy, for the municipalities of the Island of Ischia affected by the earthquake of August 21, 2017, legal measures more favourable for the fulfilment of taxes and duties. • Mexico, Tax Ombudsman has handled hundreds of taxpayers' service requests with respect to the seizure of bank accounts, successfully assisting taxpayers in the revocation of seizures on their bank accounts. • Mexico, after two earthquakes of 2017 and 2018, several tax benefits granted for affected areas. • Portugal, 2019 Budget Law expands the circumstances where payment of additional tax assessments in instalments is possible before enforcement proceedings are initiated. Moreover, where guarantees / security is provided while the legality of the tax assessment is being discussed and an instalment plan is agreed, the amount of the guarantee / security to be provided no longer needs to include a 25% top-up. 	

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Slovenia, tax officials must observe legal limitations to enforced collection of tax. Authorisation by the judiciary is needed before seizing immovable property or company shares. • Slovenia, taxpayers' right to request delayed payment or arrears is provided for by law. Payments can be delayed up to 24 months depending on personal circumstances of a taxpayer if the conditions are met. 	
9.- Cross-border procedures		
<p>EoIR: the right of the taxpayer to be informed and to challenge the EoI.</p>	<ul style="list-style-type: none"> • Belgium, most tax treaties include provisions granting the right to be informed. • Canada, tax authority gained easier access to information on Canadians' overseas' bank accounts. Canada committed to participate in the Common Reporting Standard as part of a global effort to increase transparency. • Canada has joined Australia, the Netherlands, the United Kingdom and the United States in the Joint Chiefs of Global Tax Enforcement (J5) Group. • Chile declared unconstitutional an article of a bill that allowed not to notify the taxpayer on the grounds that it would prejudice the investigation or the urgency of the matter. • Colombia, the timely notification of the taxpayer, providing him with time sufficient to exercise data protection rights for automatic exchange of financial information, was recognized in Law 1943 of 2018 and in the MAP Guide published in March 2019. • Luxembourg, after <i>Berlioz</i>, new draft law in December 2017 to comply with the CJEU judgment regarding: a) the verification of the 'foreseeable relevance' by the direct tax authorities; b) the reintroduction of an action for annulment 	<ul style="list-style-type: none"> • Colombia, the taxpayer does not have access to information received by the requesting state, except if a tax audit is in progress. • Germany, Tax Administration evaluating the existing experiences with joint audits and direct cooperation. Hearing-obligation according to law under discussion. One can not foresee the outcome of the discussion. However, as other European countries do not have similar requirements, the national hearing-obligation hampers the international collaboration. • Italy, judiciary declared taxpayer has no right to be informed in any case. Taxpayer has no right to access to the related information. He/she can become aware of that information solely through the notification of a formal tax act from the Tax Administration. • Kenya, taxpayers are not notified as there is no legal requirement to do so. Neither is judicial authorisation necessary for seeking information of the taxpayer from third parties, in the context of EoI.

Taxpayers' right.	Shift towards	Shift away
	<p>before administrative courts by the taxpayer (<i>recours en annulation</i>) against the request for information; and c) the possibility of the judicial authorities to access the information request. Prior notification to the taxpayer would remain limited for cases in which the requesting tax authority, the foreign competent administration, explicitly requires that the request remains secret.</p> <ul style="list-style-type: none"> • Peru, signed the <i>Convention on Mutual Administrative Assistance in Tax Matters</i>, in force as of September 2018, whereby it has recognized the legal framework arising from it, included the aspects related to the protection of taxpayers' rights. • Slovenia, taxpayer is informed of the information obtained from another tax administration in the course of tax audit. • South Africa, the South African Revenue Service published the SARS Guide to the MAP process in July 2018, mainly stating the available procedures. • Sweden, when tax treaties are negotiated there is always provisions on exchange of information. 	<ul style="list-style-type: none"> • Peru, no internal legislation has been implemented establishing that the taxpayer must be informed whether a cross-border information request is made.
Additional safeguards in connection with EoIR	<ul style="list-style-type: none"> • Slovenia, tax administration obliged to investigate all circumstances of a case. All facts in favour as well as to the detriment of a taxpayer should be duly examined. • Slovenia, OECD proposed framework for exchange of information on request is respected. • Slovenia, Requesting state will inform a taxpayer according to their standard of providing information on the tax assessment. If Slovenia is requesting state, tax administration would inform taxpayer of all the information received from a third country in the course of a tax assessment procedure. 	<ul style="list-style-type: none"> • Colombia made multiple requests for information and collaboration to JITSIC's special project on the <i>Panama Papers</i>. • Denmark bought data from the <i>Panama Papers</i> and the Tax Administration has requested and received further information regarding specific taxpayers from foreign competent authorities. The Tax Administration has informed that the information received has been crucial to the audit of the specific taxpayers. • Italy, judgments held that Tax Administration has the possibility to utilize the information obtained abroad in illegitimate way due to a "<i>superior Tax reason</i>".

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Slovenia, tax administration follows the principles of good practice, established among EU tax authorities, and safeguarding confidentiality is one of prerequisites and cornerstones of exchange of information. 	<ul style="list-style-type: none"> • Peru, Tax Code releases tax authorities to request information from the competent authority by request of the taxpayer. • Peru, requirement of the requesting state meet high standards of data protection beyond the framework of the Convention not established as mandatory. • Slovenia, No judicial authorisation is needed to obtain information from third parties within the country or from other tax authorities. • Switzerland, Federal Supreme Court's respective jurisprudence is fairly friendly towards the requesting state. Even if stolen data lies at the origin, states other than the buying one receiving the information subsequently may use them to request assistance. • Switzerland, AIA-agreements are concluded with States that currently do guarantee data protection only "on paper".
<p>AEol: the different issues of taxpayer protection.</p>	<ul style="list-style-type: none"> • Slovenia, in decisions on providing AEol tax authorities rely on assessment of peer reviewed conducted by Global Forum. Taxpayers are informed of automatic exchange of financial information on the basis of legal provisions, defining timeframes, scope and manner of automatic exchange of information. 	<ul style="list-style-type: none"> • Cyprus adopted OECD Common Reporting Standard ("CRS"), exchanged in 2018 reportable information to foreign authorities automatically, without the use of a court order. • Slovenia, no special notification to individual taxpayer is made.
<p>Mutual agreement procedure</p>	<ul style="list-style-type: none"> • Argentina, Law 27.430, in force since January 2018, establishes a procedure for the participation of the taxpayer with regard to international treaties. There is not practical experience, yet. • Australia, the Australian Taxation Office have reviewed and updated a mutual agreement procedure (MAP) guidance to reflect both changes to legislation and 	<ul style="list-style-type: none"> • Cyprus, yet to issue Guidelines on the implementation of MAP and their authorities appear to be ignorant of this process. • Peru, no regulations allowing the taxpayer to be heard and informed on the progress of the MAP. • United States, a U.S. resident for purposes of a U.S. income tax treaty can request assistance from the U.S.

Taxpayers' right.	Shift towards	Shift away
	<p>recommendations made under the OECD's Action Plan on BEPS framework.</p> <ul style="list-style-type: none"> • Belgium, EU legislation foresee the possibility of taxpayers to initiate a MAP. Currently the Government is working on a project to implement the EU Directive in domestic law. • Brazil, regulations now allow taxpayers access to the MAP, even if they have already had an issue decided by an administrative or judicial court. MAP will be focused on trying to resolve the double taxation issue based on a bilateral solution, which will depend on the good will of the treaty partner, as the Brazilian tax authorities may be legally prevented from going against an existing decision. • Colombia, Law 1943 of 2018 provided that taxpayers may request assistance for the MAP regulated in tax treaties, by filing a formal request with DIAN. MAP Guideline was published in March 2019. • Colombia, according to Law 1943 of 2018, taxpayers can request DIAN assistance for the MAP. ACC could allow the oral presentation of the request by the taxpayer for unusual or complex cases, pursuant to MAP guidelines. The agreement reached by the ACC and the Foreign Competent Authority will be notified to the taxpayer who requested the assistance. • Cyprus, signed the MLI, not made any reservations with respect to Article 16 (MAP) and thus chooses to apply Article 16 in its entirety to all CTAs. • Denmark, EU Directive on Double Taxation Dispute Resolution Mechanisms in the EU implemented. Now clearer that a taxpayer has a right to arbitration. 	<p>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.⁶⁹⁹ In 2018, the IRS entered into competent authority agreements with Austria, Cayman Islands, Croatia, Estonia, Gibraltar, Greece, Hungary, Indonesia, Japan, Lichtenstein, Mauritius, and Slovenia.</p>

⁶⁹⁹ See Revenue Procedure 2015-40, 2015-35 I.R.B 236.

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Mexico, on April 2018, through its Complaint procedure, Taxpayers' Ombudsman was able to ensure a taxpayer access to a MAP that was previously denied by the Mexican competent authority. As a consequence, PRODECON received additional Complaints against the denial of the Mexican competent authorities to access the MAP. • Mexico, participation of taxpayers in MAP is limited to the filing of the request with the corresponding information. PRODECON has been analyzing and studying the possibility of assisting taxpayers on the status of the MAP procedure. No formal request or complaint has been filed by any taxpayer on this respect. • Slovenia, taxpayers have the right to request initiation of MAP, and –in principle- they have the right to be heard and be informed about the progress of MAP procedure. 	
10.- Legislation		
<p>Constitutional limits on tax legislation: retrospective laws.</p>	<ul style="list-style-type: none"> • Kenya, judiciary held that provisional collection of taxes and duties before entry into force of Finance Bill was unconstitutional, as it purported to allow for the collection of taxes retrospectively. • Slovenia, in principle, retrospective tax legislation is not permitted according to Constitution. Only when it is in public interest and no rights of taxpayers are affected, a law can have a retroactive effect. 	<ul style="list-style-type: none"> • Belgium, judiciary ruled that the general anti-avoidance rule that was introduced with effect as from assessment year 2013, is also applicable to a series of acts whereby at least the last act occurred after the entry into force of the general anti-avoidance rule. The fact that the first acts took place before that date, does not hinder the application of the rule. Further discussion in Belgian literature. • Colombia, Financing Law 1943 of 2018 retroactively modified tax treatment of dividends and shares in profits. Regulation ignores the transition regime of Law 1819 of 2016, according to which the treatment dividends established there only would be applicable to dividends that were repaid with charge to profits generated from the taxable year 2017.

Taxpayers' right.	Shift towards	Shift away
		<ul style="list-style-type: none"> • Mexico, legal rule establishing criteria to deny the use of tax losses if the beneficiary was involved in a corporate restructure, even if executed before the enactment of said rule. • Switzerland, Recent tax legislation - usually as a reaction to a Supreme Court decision not appreciated - has enacted restropective legislation in the field of withholding tax.
<p>Public consultation and involvement in the making of tax policy and law.</p>	<ul style="list-style-type: none"> • Argentina, government published a draft regulation for the income tax law in advance, and opened the possibility of receiving criticism. However, there are not rules that force the government to put in practice this procedure. • Brazil, Federal Tax authorities have been making public consultations prior to the enactment of new tax regulations. • China, by law, drafting procedure should conduct demonstration and consultation. Comments may be requested by holding forums, demonstration meetings and hearings and in other various forms. Where the focal or difficult issue that attracts wide public attention or any prominent conflict encountered in economic and social development is involved, the rights of citizens, legal persons and other organizations are impaired, or their obligations are increased, significant impact is caused on the public, and other major interest adjustment matters are involved, demonstration and consultation shall be conducted. • Colombia, Regulations and guidelines are published for comments before approval. In addition, they are issued expeditiously after the enactment of the law they develop. • India, most of the changes in the tax law are effected through the budget. While discussing in Parliament, the public can and do air their grievances, if any. In that sense 	

Taxpayers' right.	Shift towards	Shift away
	<p>there is a public consultation. Besides, the government often releases consultation documents before finalising guidelines etc. on important issues.</p> <ul style="list-style-type: none"> • Italy, Department of Finance submits to public consultation new hypotheses of regulation or revision of existing regulations, to open participation and dialogue with stakeholders. • Kenya, through public outcry VAT on fuel was reduced from 16% to 8% pursuant to the 2018 Finance Bill. • Netherlands, increasing use of public consultation by the government. • Slovenia, every draft law or draft implementing regulation is subject to public consultation. It should ideally last for 60 days. In practice consultation on draft tax legislation lasts between 14 and 30 days. • Spain, according to national law, two types of citizen participation are possible: (i) public consultation; (ii) public information. Judiciary declared the rule incompatible with autonomous communities' self-rule. 	
11.- Revenue practice and guidance		
<p>The publication of all legally relevant material</p>	<ul style="list-style-type: none"> • Australia, the Australian Taxation Office has released a new Multicultural Access and Equity Action Plan setting out commitment to vulnerable taxpayers. • Canada, Revenue Agency publishes many forms, guides, pamphlets, information circulars and interpretation bulletins to assist taxpayers in complying with their tax obligations. All legislation is available on the website of the Department of Justice. The CRA maintains a forms website where the public can search for and select publications which can be ordered online through the website or by phone. • Canada, Taxpayers' Ombudsman made recommendations to improve transparency associated with the CRA ruling 	<ul style="list-style-type: none"> • Belgium, official legal and tax database of the FPS Finance, containing legislation, jurisprudence, circulars, instructions, etc. (<i>Fisconet plus</i>) has been made more difficult to access. • United States, under the Freedom of Information Act (FOIA) all instructions to staff that affect the public are required to be posted on the agency's website. It is also required to disclose certain legal advice to employees. However, the IRS has not always implemented these rules in a way that provides maximum transparency.

Taxpayers' right.	Shift towards	Shift away
	<p>letters in respect of determination of whether a worker is an employee or is self-employed and whether a worker's employment is pensionable under the Canada Pension Plan or insurable for Employment Insurance purposes.</p> <ul style="list-style-type: none"> • Canada, tax authorities provide income tax technical interpretations, advance income tax rulings, and consultations in advance of a Ruling request A fee is charged for a Ruling (\$100 plus applicable tax for each of the first 10 hours, or part of an hour, and \$155 for each hour, or part of an hour, thereafter). Some Rulings are distributed through various publishers of tax information (some information is severed or anonymized to protect the identity/confidentiality of the taxpayer). • Canada, alternate formats of forms and publications are also available in braille, e-text, large print, or MP3 format. E-text, or electronic text documents, are text files for individuals with visual impairments to receive instruction on how to complete a specific form. • Canada, tax authority will consider waiving or cancelling penalties and/or interest, in some situations, in accordance with the Taxpayer Relief Provisions, protecting the legitimate expectation of the taxpayer. CRA is not bound to a ruling if any supplemental information provided by the taxpayer or their representative after the ruling was issued results in a change. If legislation is amended after a ruling is issued, and the ruling ceases to be supported by legislation due to the amendment(s), the CRA is no longer bound by the ruling, on the effective date of the amendment(s). • Colombia, Circular 001 of 2019, which regulates the personal data treatment policy, published and widely disseminated. The tendency is that all legal material is available primarily on the internet and less and less in physical media. However, in case taxpayers have difficulty 	

Taxpayers' right.	Shift towards	Shift away
	<p>accessing digital legal material, they can request it directly from DIAN who will provide a physical copy.</p> <ul style="list-style-type: none"> • Denmark, implementation of the ATAD, now the application of the GAAR in the first instance requires the acceptance of the National Tax Board, all National Tax Boards decisions are published in anonymized form. • India has an authority of advance ruling who can give rulings in advance. It is open to all non-residents on all issues except where valuation issues are involved. It can also give a ruling on the applicability of GAAR to both residents and non-residents. In some cases of transactions of very high value, even residents have been allowed to approach it. • Mexico, OECD made recommendations on further guidance to taxpayers in the context of MAPs. • Peru, since 2017, access to online database of laws and regulations is free. • Portugal, a significant increase of number of rulings made available to the public in Tax Authority website (pursuant to guidelines already issued in previous years). • Slovenia, all information material, laws and regulations are accessible online. Also, the Tax Administration provides information in written form, provides handouts, leaflets, brochures and oral information on tax obligations etc. • Sweden, since 1 May 2018 the laws are not anymore printed, but only available on internet. 	
Binding rulings	<ul style="list-style-type: none"> • Italy, all types of rulings are to be published on the website of the Tax Agency anonymously, in order to release the interpretation of the Tax Agency on the issues proposed by the taxpayer. 	

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Slovenia, not all rulings are published. Those who do, are anonymised. 	
Non-binding guidance	<ul style="list-style-type: none"> • Belgium, principle of legitimate expectations applies. However, it is currently unclear whether the principle of the legitimate expectations also applies when the taxpayer relied on a position that was <i>contra legem</i>. The case law of the Supreme Court is ambiguous. • Slovenia, no binding legislative provision relates to the application of inaccurate published guidance, but in practice the Tax Authorities would apply changes only prospectively. 	<ul style="list-style-type: none"> • Colombia, In accordance with the financing law 1943 of 2018, DIAN's guidance are mandatory for the tax authorities, but actions of taxpayers in administrative and judicial stage can only be based on the law. Therefore, as of its entry into force, the taxpayers' actions will not be covered by the provisions of a guideline.
12.- Institutional framework for protecting taxpayers' rights		
Statement of taxpayers' rights: charters, service charters, and taxpayer's bills of rights.	<ul style="list-style-type: none"> • Australia, Tax Office issued a refreshed version of its Taxpayers' Charter in November 2018. Includes a one-page overview of taxpayer rights and obligations, and a dedicated publication informing taxpayers of their rights when they are subject to an ATO review or audit. • Canada, Taxpayers' Ombudsman launched an examination to determine whether the tax authority is effectively integrating the rights and values of the <i>Taxpayer Bill of Rights</i> in its activities, and on the tax authority accountability and reporting regarding the integration of these rights in its services to taxpayers. • Canada, Auditor General examined CRA's call centres and found that even though call centre agents were courteous, professional and attentive to questions, they provided incorrect information to callers almost 30 percent of the time overall, and 36 percent of the time when call centre agents were asked questions about filing personal taxes. The CRA agreed with these findings and committed to provide accurate information to callers. In late 2017, the CRA 	<ul style="list-style-type: none"> • Netherlands, the State Secretary of Finance reacted on a news item regarding a taxpayers' charter that he does not see the relevance of this. In his view, the taxpayers' rights are sufficient recorded in various tax laws.

Taxpayers' right.	Shift towards	Shift away
	<p>launched a three-pronged improvement plan to address the current issues in this area.</p> <ul style="list-style-type: none"> • Mexico has a Federal Law of Taxpayers' Rights since 2005. Additionally, it has a Letter of Taxpayer's Rights issued by the Tax Ombudsman and a Letter of the Audited Taxpayer issued by the Tax Administration that is delivered to the taxpayer during the practice of audits. • Slovenia, taxpayer's rights are not especially published. In principle, they are defined together with obligations of taxpayers as "major tax principles", included in the Tax Procedure Act, Articles 4 to 10. • South Africa, the SARS Service Charter was released on 1 July 2018. • Taiwan has an effective Taxpayer's Right Protection Act (TRPA) since 2017. 	
<p>Organisational structures for protecting taxpayers' rights</p>	<ul style="list-style-type: none"> • Australia, legislation requires the Ombudsman Act 1976 to: require the Commonwealth Ombudsman to investigate complaints in relation to contraventions of model litigant obligations; and (iv) provide for annual reporting requirements. Also, In 2018, the Inspector General of Taxation undertook a rebranding exercise to incorporate the Taxation Ombudsman name on website, social media and corporate assets to ensure that taxpayers more easily identified the office and the service. • Belgium, the law of 29 March 2018 extended the competences of the "ombudsman", to intervene in procedures regarding administrative sanctions, cadastral income, criminal sanctions or recovery of unjustified pension payments. • Canada, Taxpayers' Ombudsman reports directly to the Minister of National Revenue (an elected official responsible for the Canada Revenue Agency (CRA)), 	<ul style="list-style-type: none"> • Slovenia, no special organisational structures for the protection of taxpayers' rights within the tax administration.

Taxpayers' right.	Shift towards	Shift away
	<p>issues an annual report tabled in the Parliament of Canada, examines complaints about the CRA's service, and makes recommendations to the Minister of National Revenue on the corrective actions needed to improve the services delivered to taxpayers by the CRA.</p> <ul style="list-style-type: none"> • Canada, Taxpayers' Ombudsman is responsible for upholding eight of the sixteen rights in the <i>Taxpayer Bill of Rights</i> (TBR), being the rights deemed to be specifically related to service. The Taxpayers' Ombudsman, being an objective third party, is neither an advocate for taxpayers nor a defender of the CRA. The Taxpayers' Ombudsman assists in levelling the imbalance of power between the individual taxpayer or benefit recipient and the CRA. The Taxpayers' Ombudsman operates under the following guiding principles: independence, objectivity, fairness, and confidentiality. The Taxpayers' Ombudsman makes decisions on how service-related issues should be resolved; however, those decisions and any recommendations are not binding upon the CRA. The Order in Council does not permit the Taxpayers' Ombudsman to review: (i) the provision of an administrative interpretation by the CRA of a provision set out in the program legislation; (ii) any decision of, proceeding in, or matter before a court; (iii) legal advice provided to the Government of Canada; and (iv) confidences of the Queen's Privy Council for Canada. • Canada, Taxpayers' Ombudsman is mandated to address service-related issues with the Canada Revenue Agency (CRA). Services are available to anyone who interacts with the CRA. • Canada, there is a federal Privacy Commissioner as well as Privacy Commissioners at the provincial and territorial levels for taxpayers' confidentiality. For the taxpayer right 	

Taxpayers' right.	Shift towards	Shift away
	<p>relating to access to information, there is a federal Information Commissioner as well as Information Commissioners at the provincial and territorial levels. For the taxpayer right relating to service in both official languages, there is a federal Commissioner of Official Languages and two provinces have similar positions.</p> <ul style="list-style-type: none"> • Canada, <i>Revenu Québec</i> also has the Charter of Taxpayers' and Mandataries' Rights (not legislated). In Québec, the <i>Bureau de la protection des droits de la clientèle</i> (within <i>Revenu Québec</i>) deals with complaints by taxpayers about <i>Revenu Québec</i>. The mandate of the <i>Protecteur du Citoyen</i> (the ombudsman for the province of Québec) includes handling complaints about <i>Revenu Québec</i>. • Chile, a draft bill on Tax Modernisation would create a taxpayer's defense agency that would observe and protect taxpayers' rights. • Colombia, the National Taxpayer Advocate has jurisdiction over matters related to national taxes. For local taxes, local taxpayers' offices have been created in some municipalities, but this is not the general rule. • Cyprus, a Tax Council is being established and examines objections of an specific nature. • Denmark, the dedicated tax office established with the Danish Parliamentary Ombudsman significantly increased the number and scope of investigations of the Ombudsman in the tax field. Particularly investigations on the Ombudsman's own initiative has increased significantly. • India. There was an Income Tax Ombudsman. However, it is learnt that over the last few years there have been no fresh appointments of Ombudsmen. 	

Taxpayers' right.	Shift towards	Shift away
	<ul style="list-style-type: none"> • Mexico, the Federal Tax Ombudsman's Office (PRODECON), has been operating for many years, to scrutinise the operations of the tax authority, handle complaints and provide a tax mediation service. • Mexico, PRODECON's independence goes further than the one indicated in the best practice, not only from a physical perspective from the tax authorities, but also has budgetary autonomy and self-governance ability. It is independent from the Ministry of Finance and the Tax Ombudsman is appointed by the Mexican Senate. • Mexico, two developments on the protection of taxpayers' rights at a local level: 1) On May 2017 Coahuila (a State in Northern Mexico) created DEPRODECO (<i>Defensoría para la Protección y Promoción de los Derechos de los Contribuyentes</i>) to defend taxpayers in their dealings with the local tax authorities; and 2) As of January 1, 2018, the Local Tax Code of Mexico City enables local tax authorities to provide a tax mediation procedure that allows taxpayers and tax authorities to settle controversies. • Slovenia, general ombudsman deals with taxpayer's rights in the context of protection of human rights. The most common violation of taxpayer's rights refers to the length of the process needed for resolution of a tax dispute. • Taiwan, taxpayers' advocate selected by the local tax authority among the tax officials, and there is no tax advocator in the Ministry of Finance. • United States, The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps address problems that taxpayers experience as a result of the way in which the IRS is applying the law and to propose administrative and legislative solutions to those problems, 	



Taxpayers' right.	Shift towards	Shift away
	as described in Sections 7803(c) and 7811. The TAS has offices in each State.	

Appendix «B»: The protection of taxpayers’ rights in practice (2018).

The following is a summary of the trends followed by the 42 surveyed countries regarding the effective implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers’ rights in 82 specific situations, as identified in Questionnaire # 1, and explained in detail in the main text of this General Report. Accordingly, it is not advisable to interpret the content expressed in these charts separately of the explanation carried out in the abovementioned text.

B.1 Identification of taxpayers, issuance of tax returns and communication with taxpayers

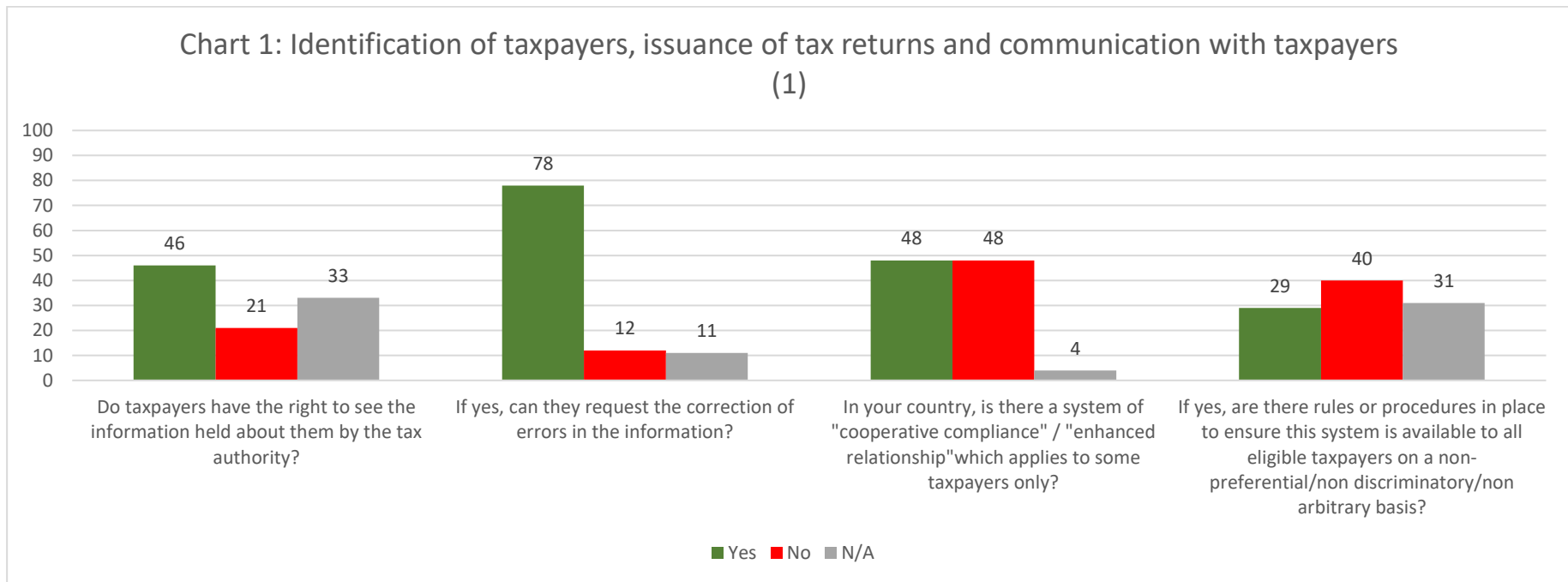
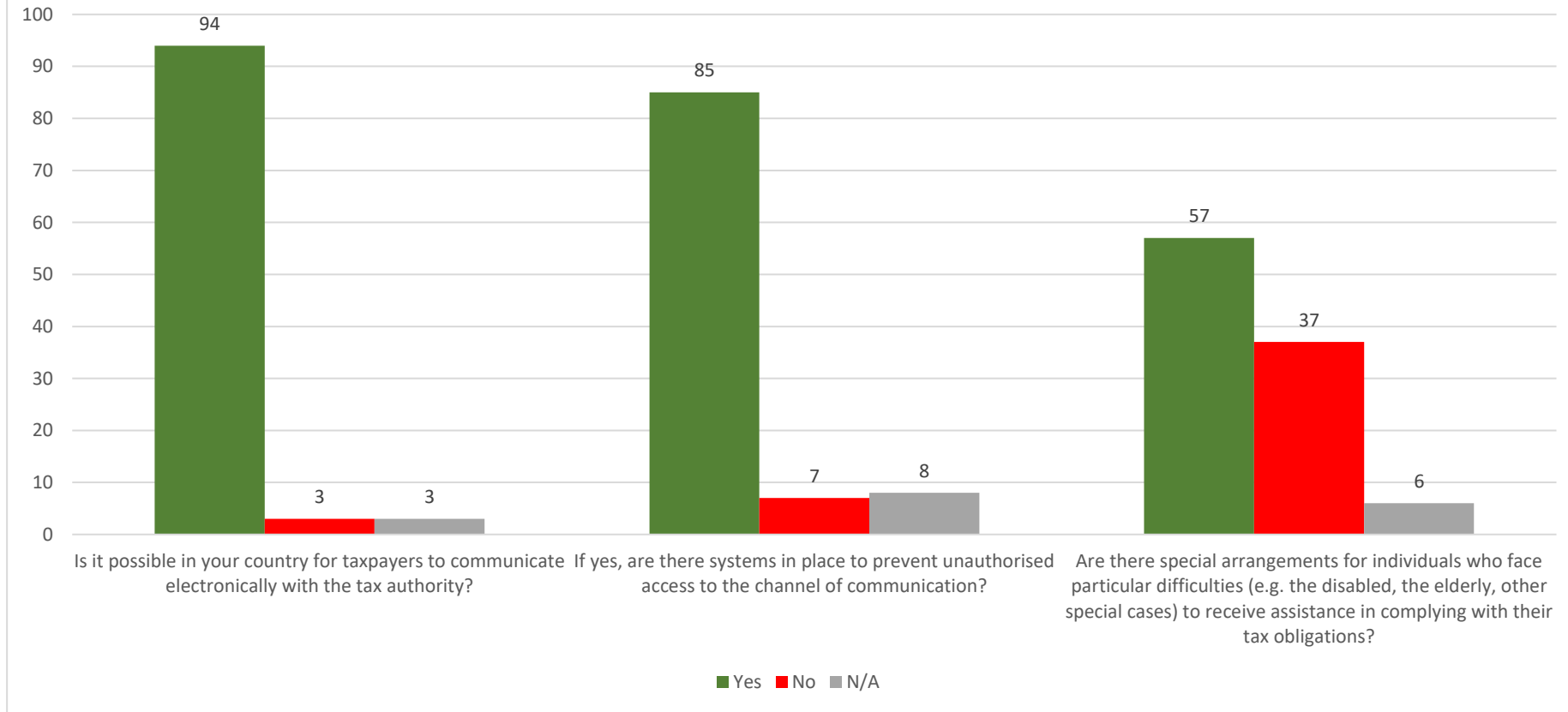
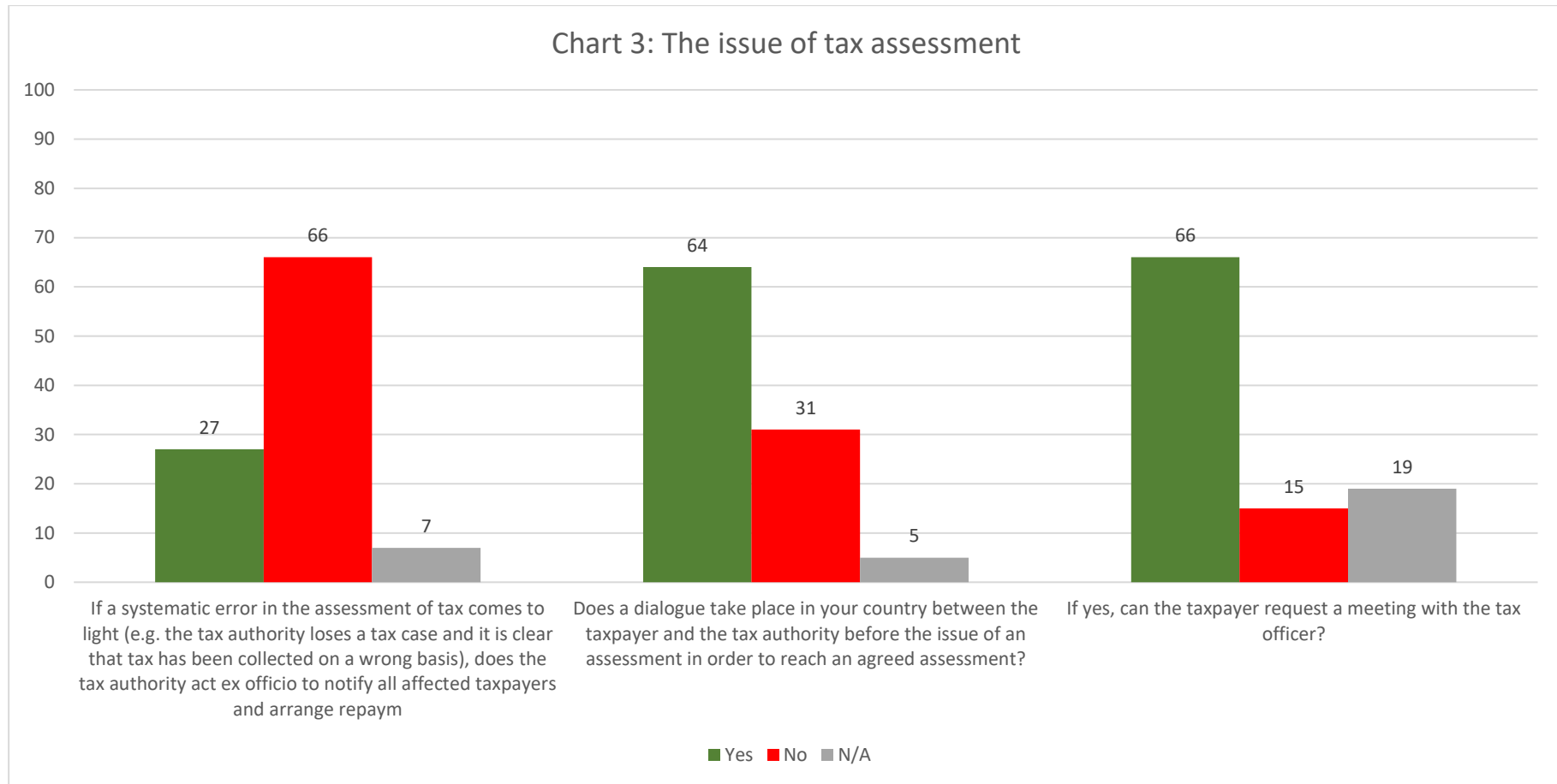


Chart 2: Identification of taxpayers, issuance of tax returns and communication with taxpayers
(2)



B.2 The issue of tax assessments



B.3 Confidentiality

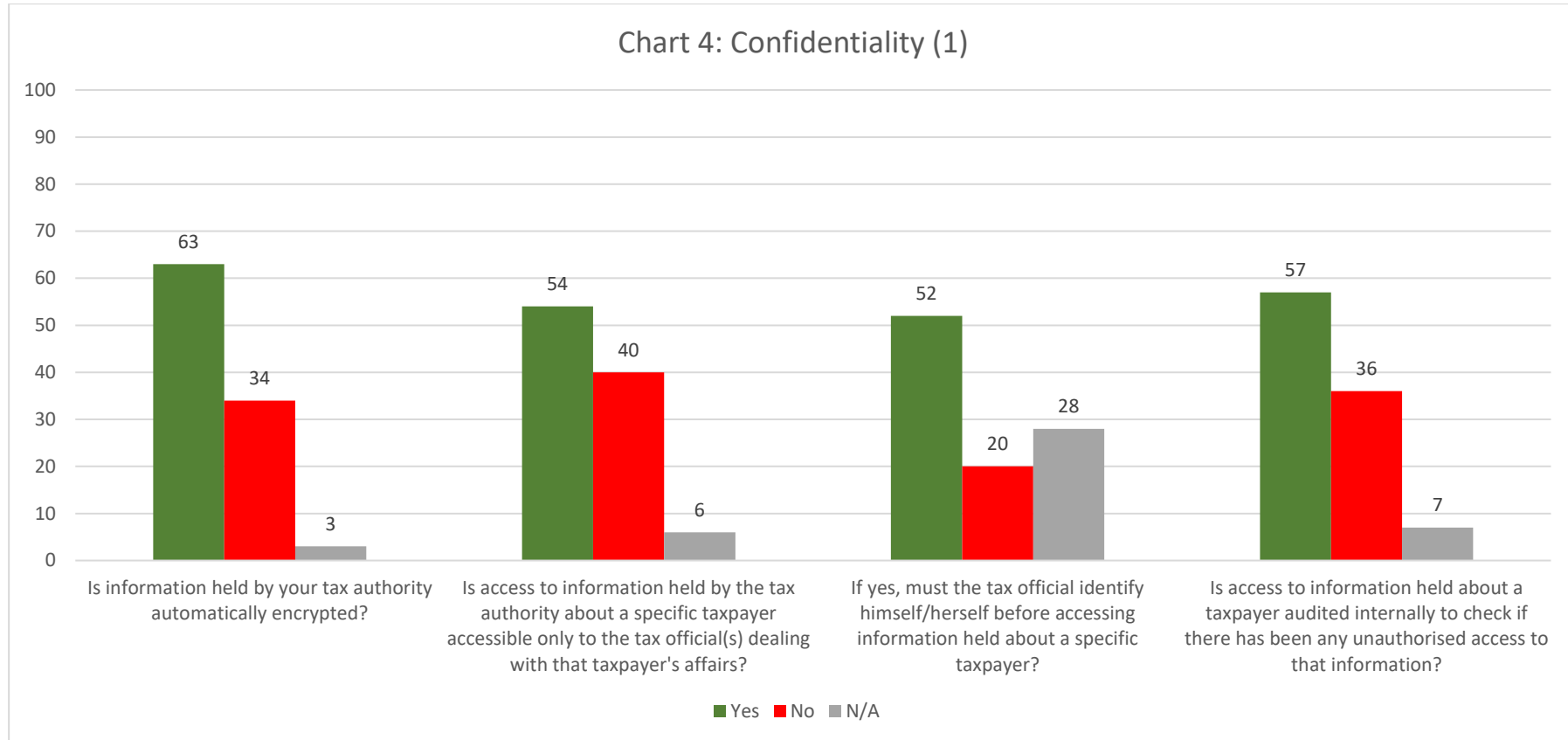


Chart 5: Confidentiality (2)

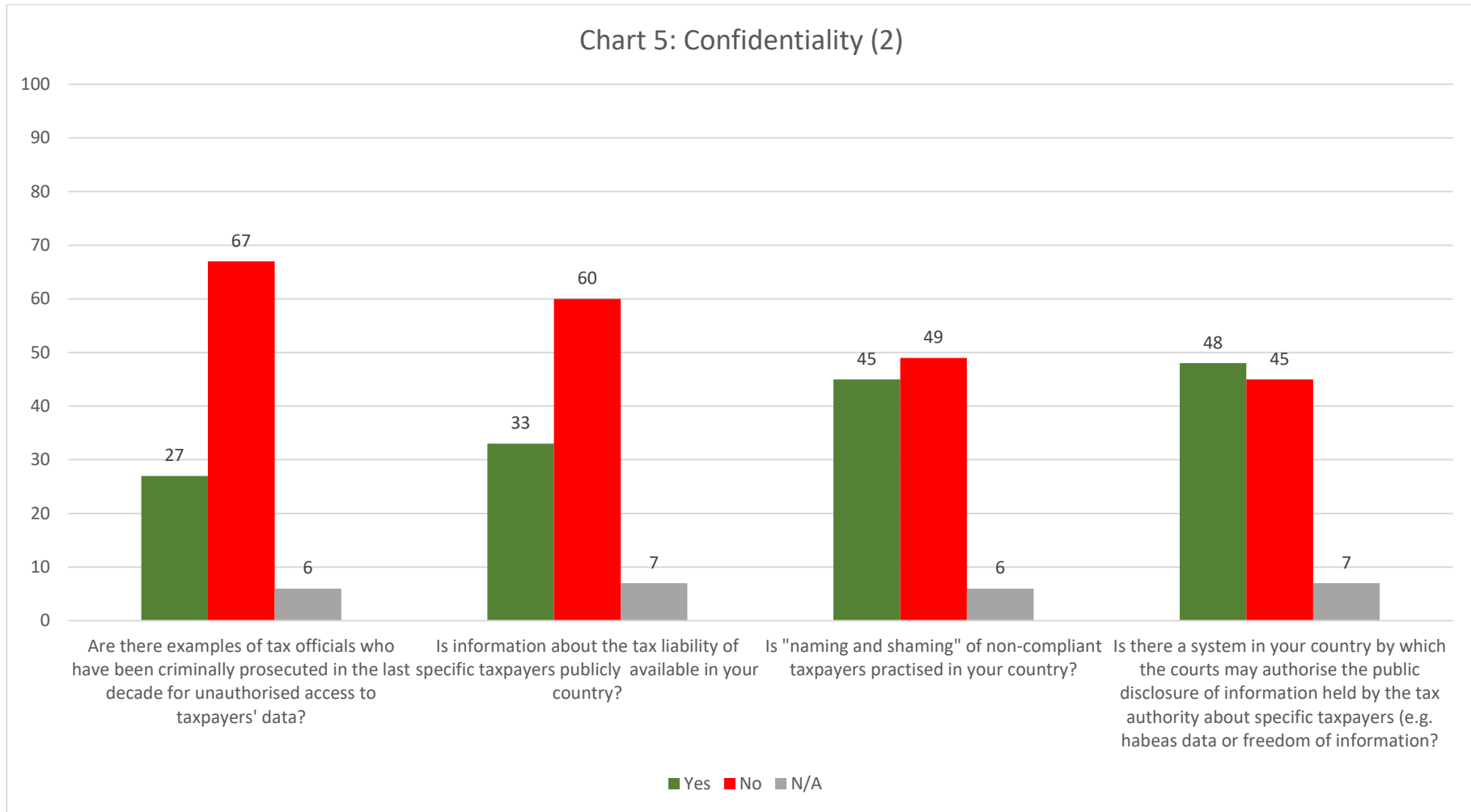
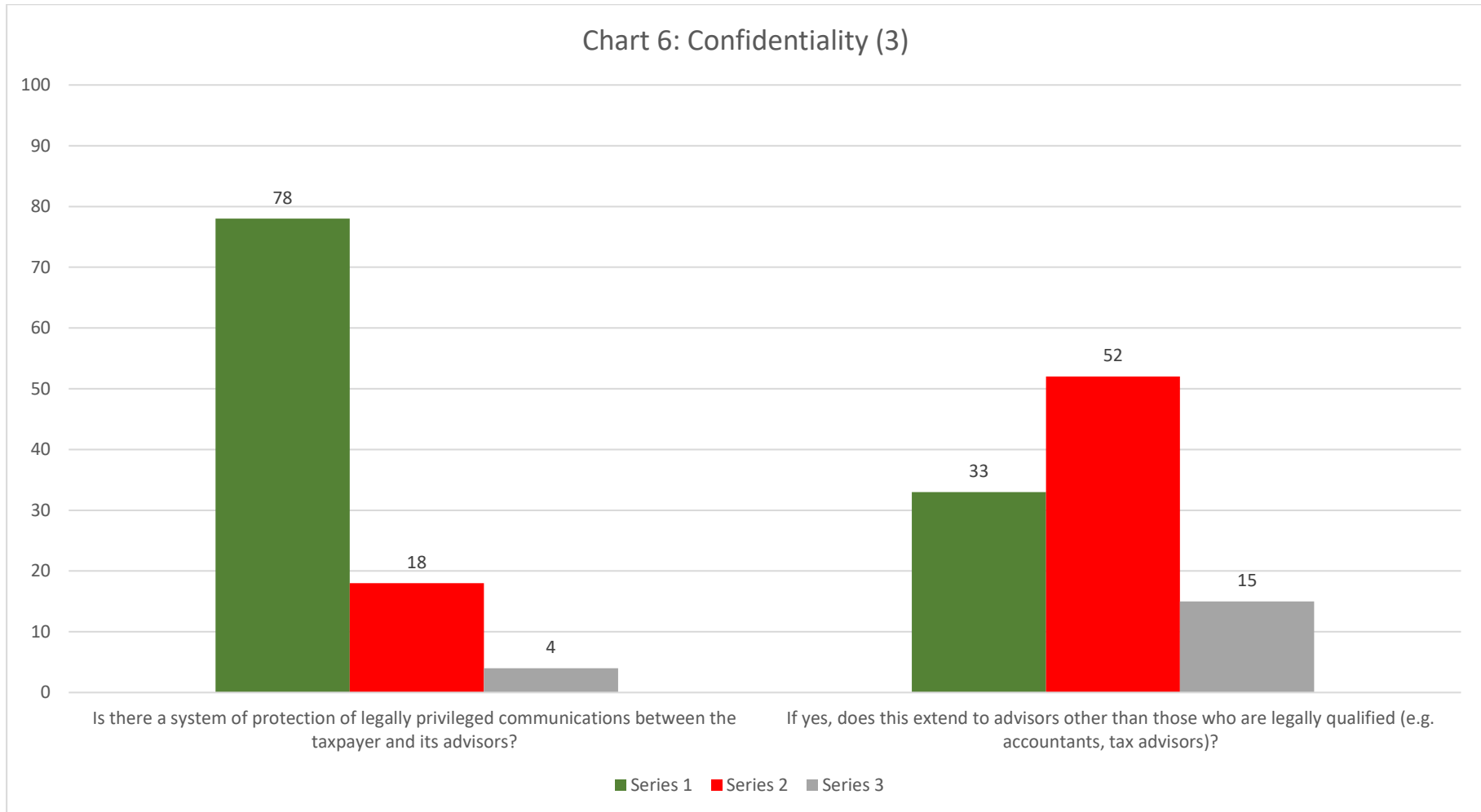
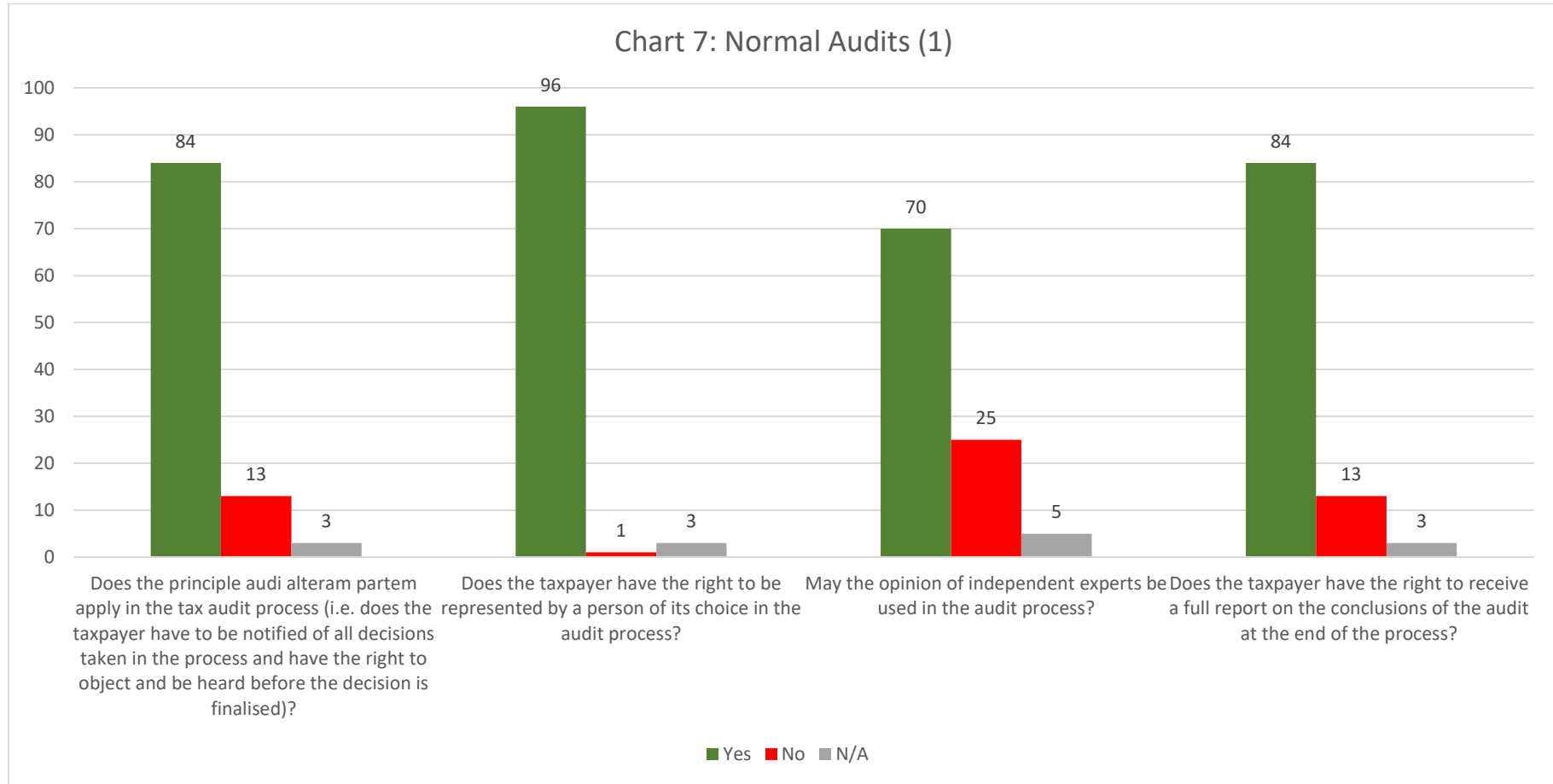
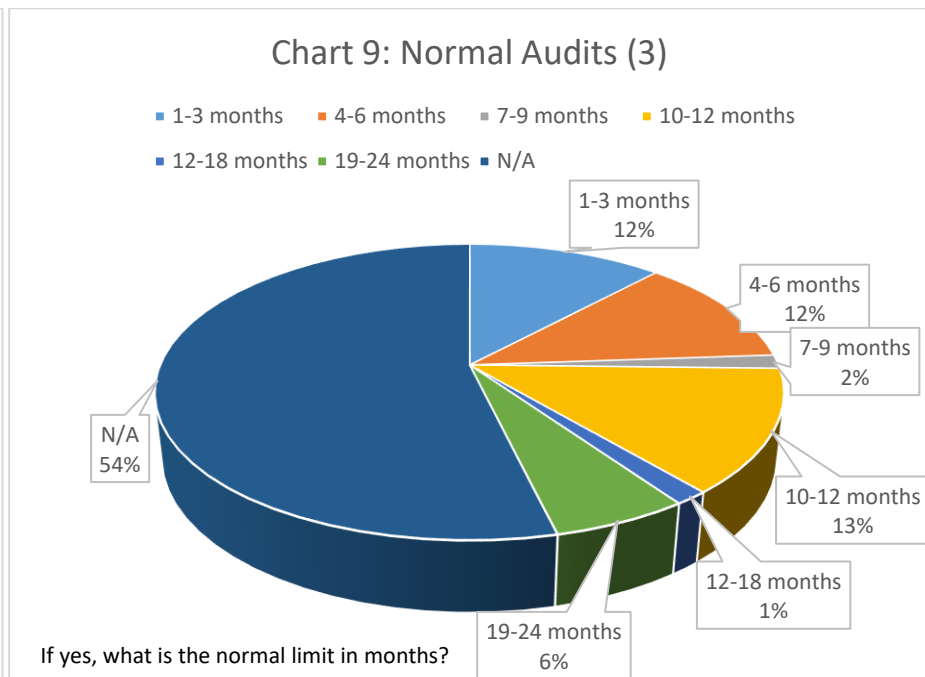
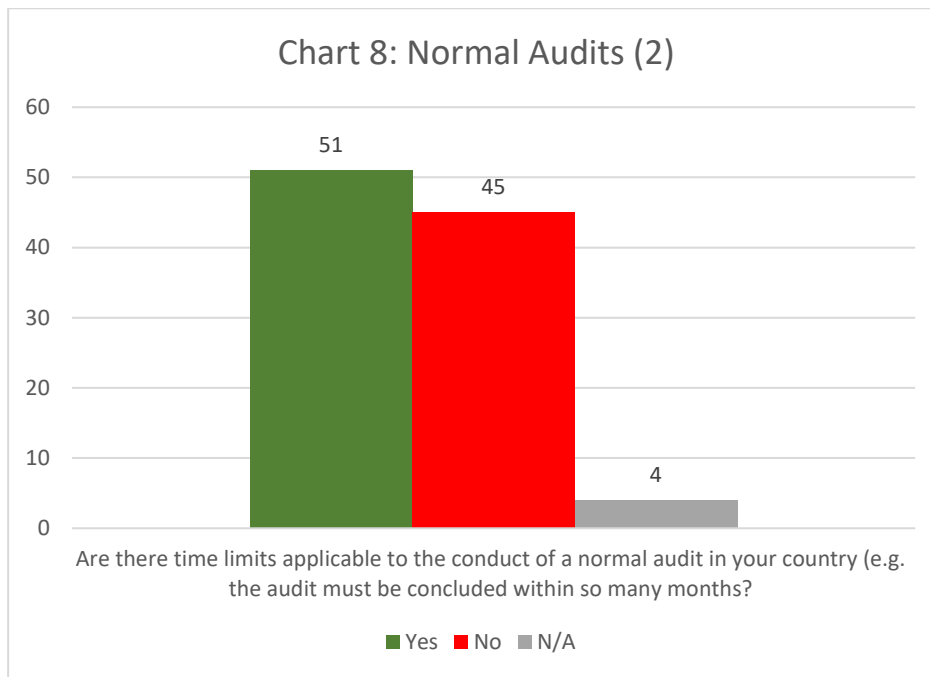


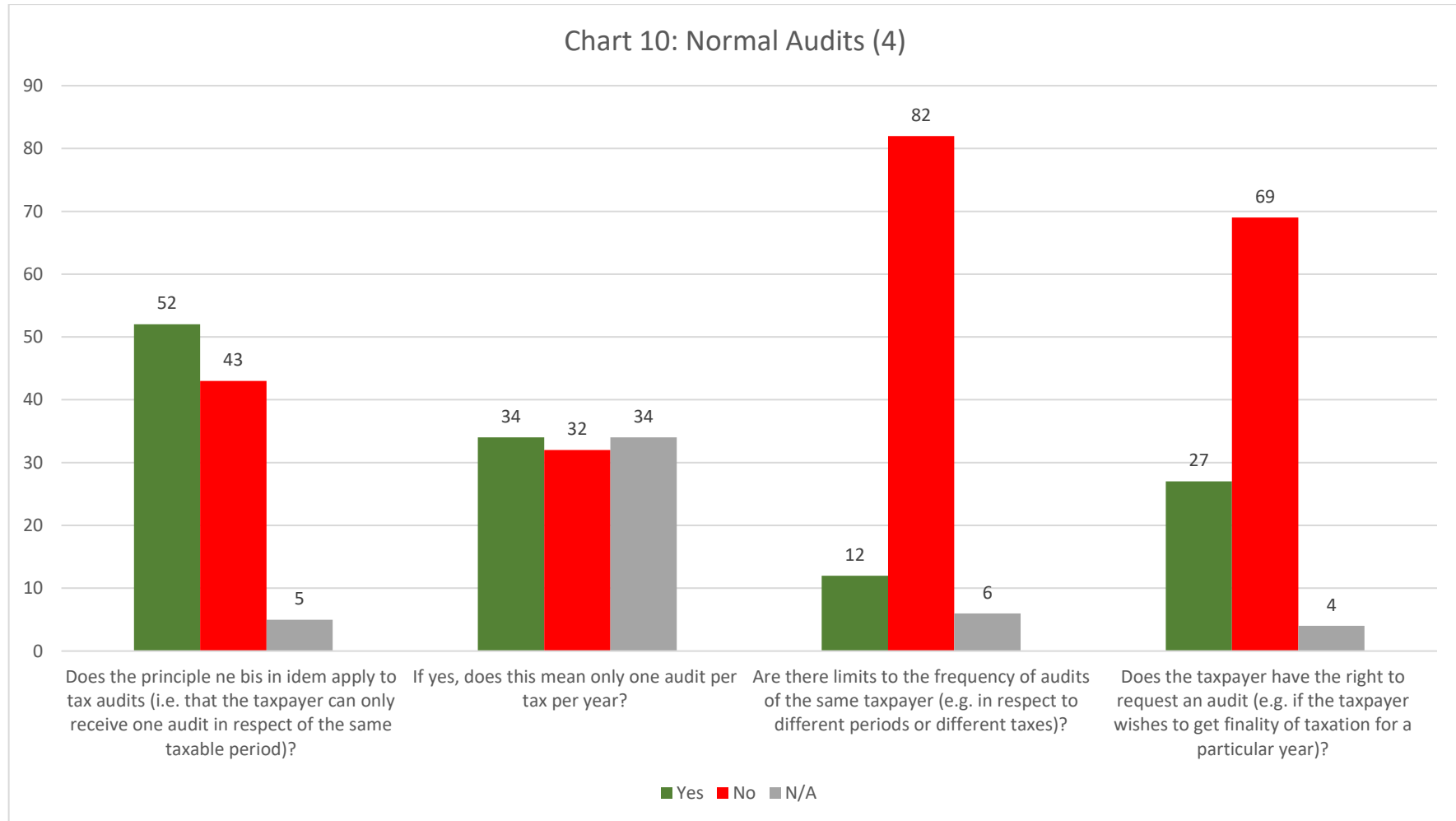
Chart 6: Confidentiality (3)



B.4 Normal audits







B.5 More intensive audits

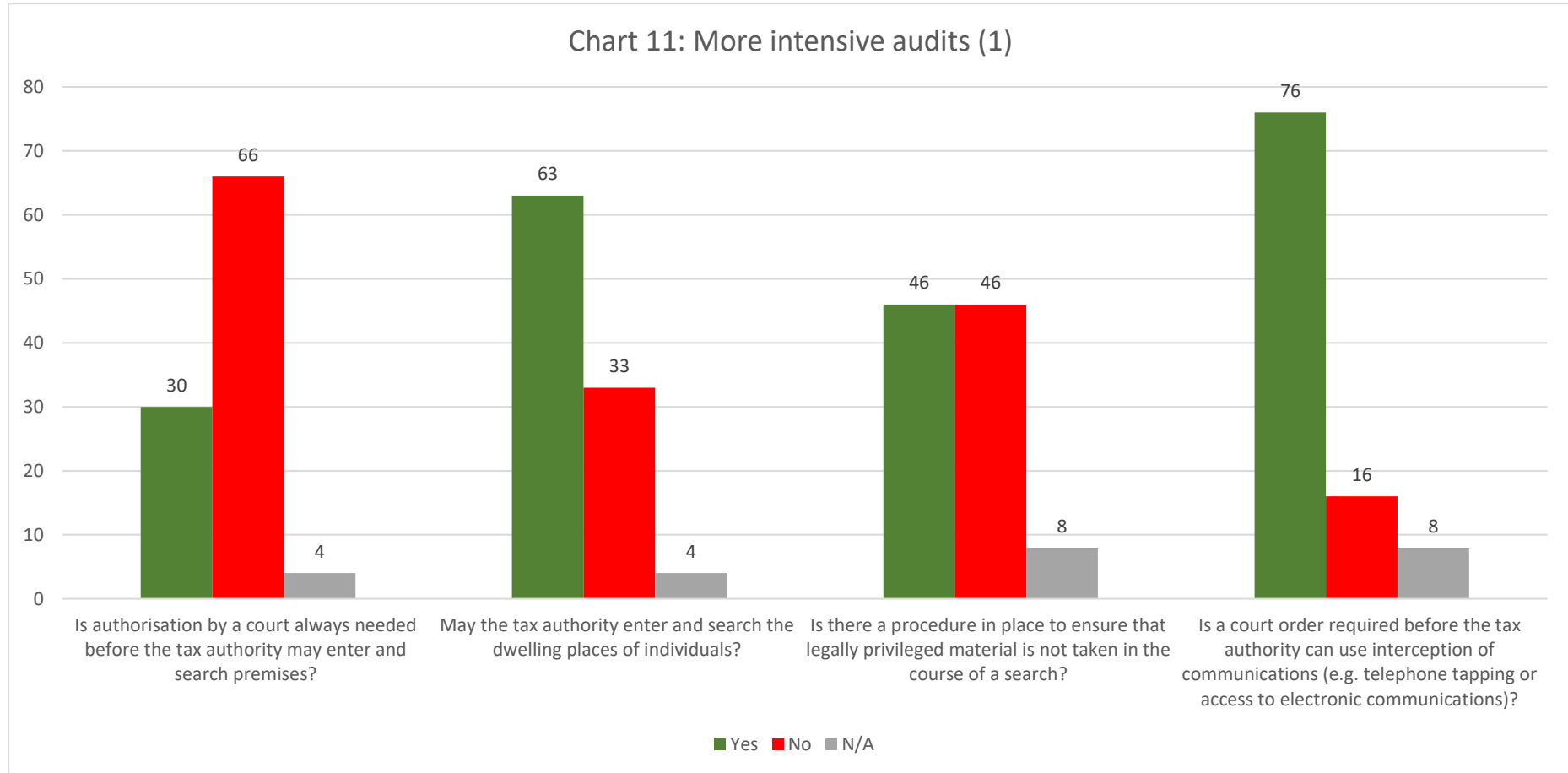
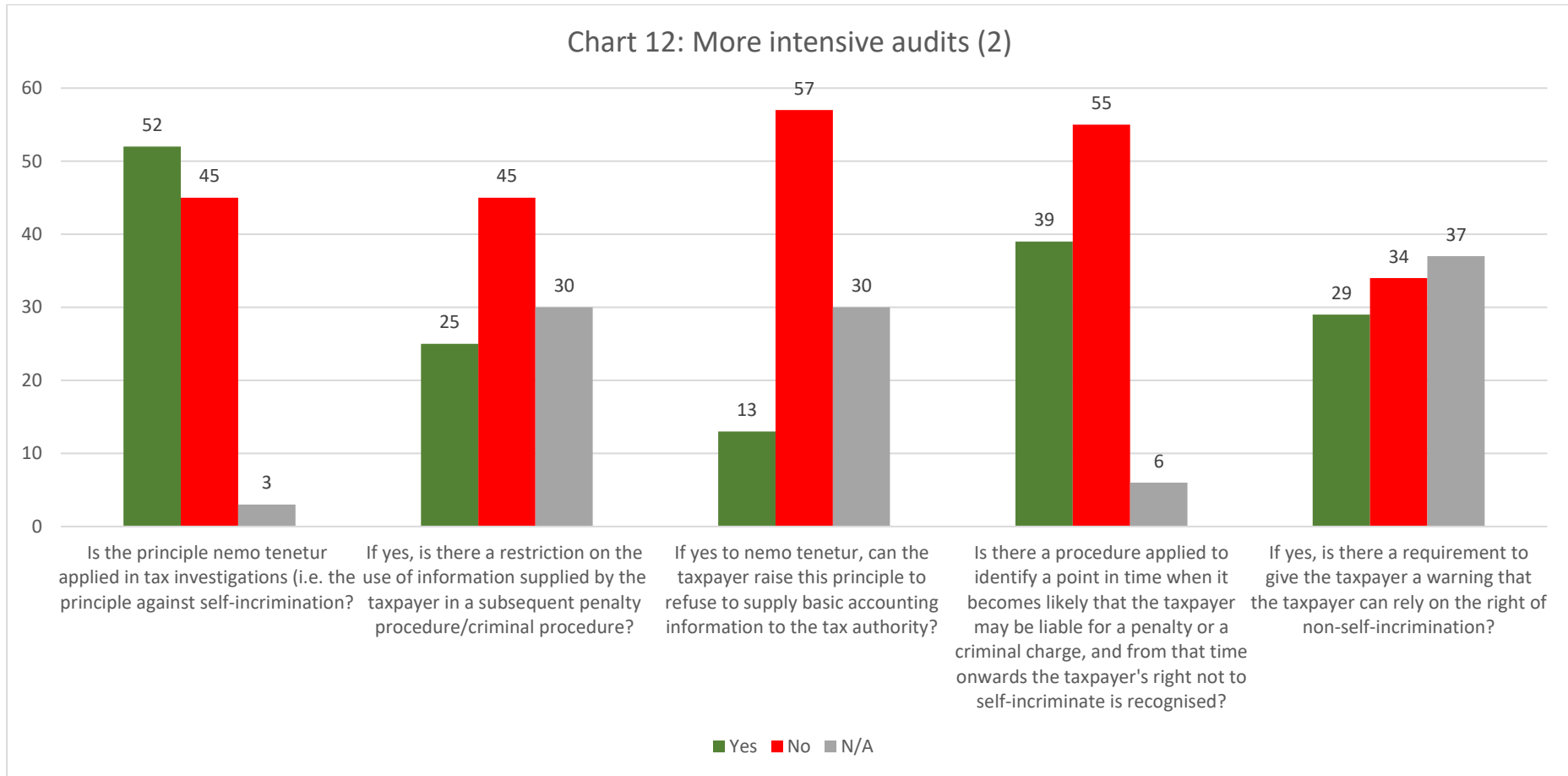


Chart 12: More intensive audits (2)



B.6 Reviews and appeals

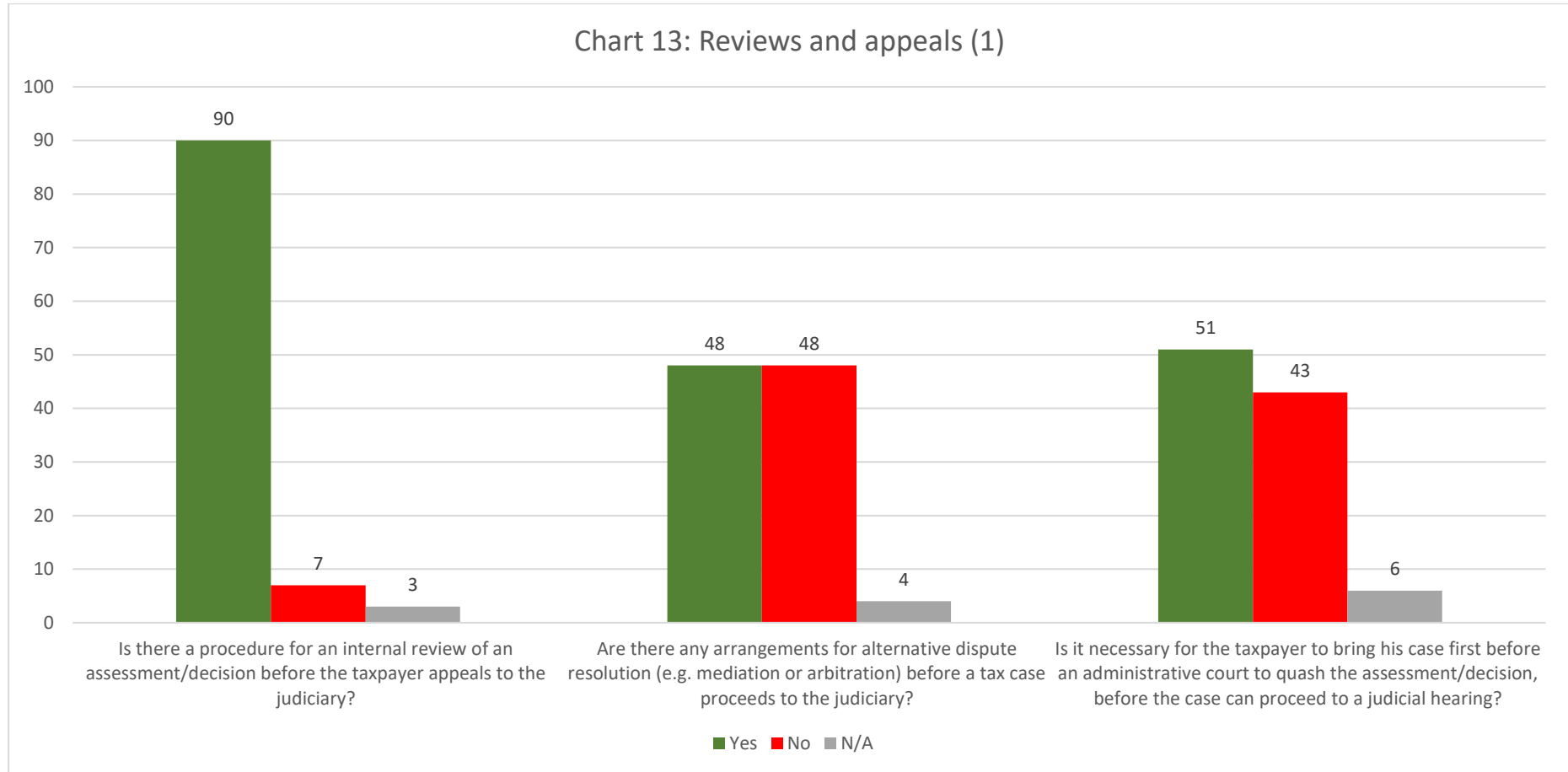


Chart 14: Reviews and appeals (2)

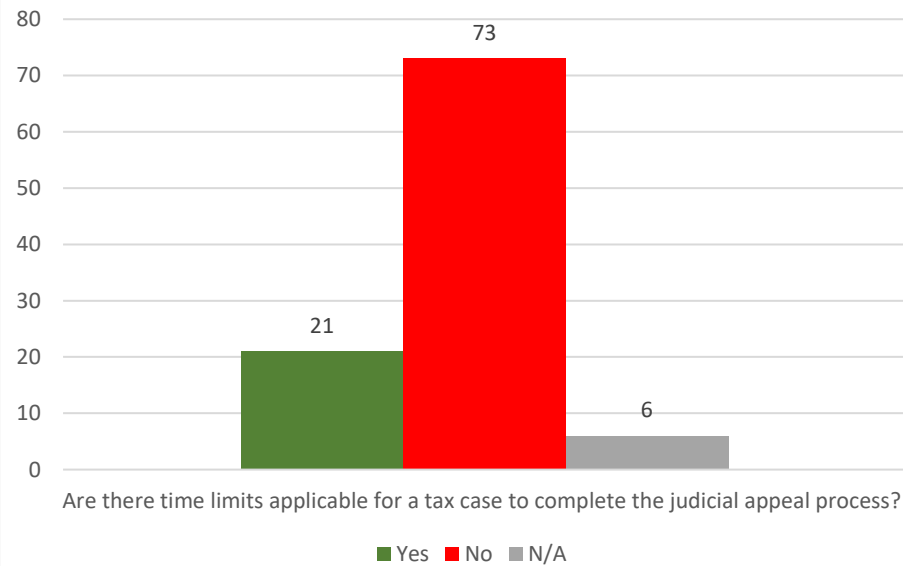
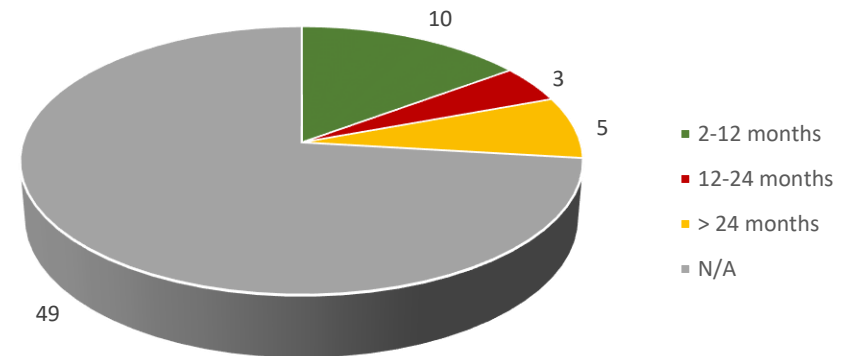
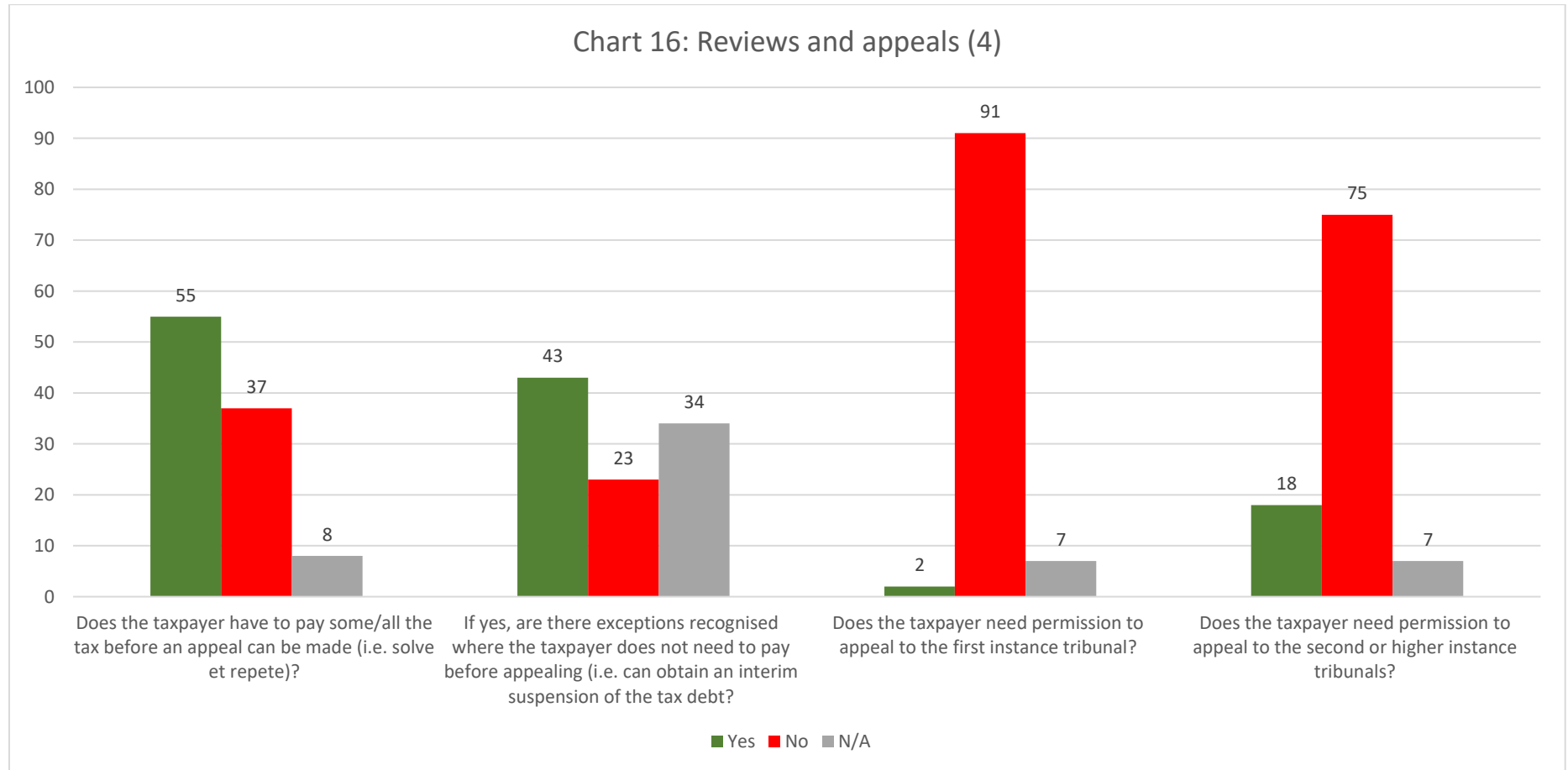


Chart 15: Reviews and appeals (3)



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



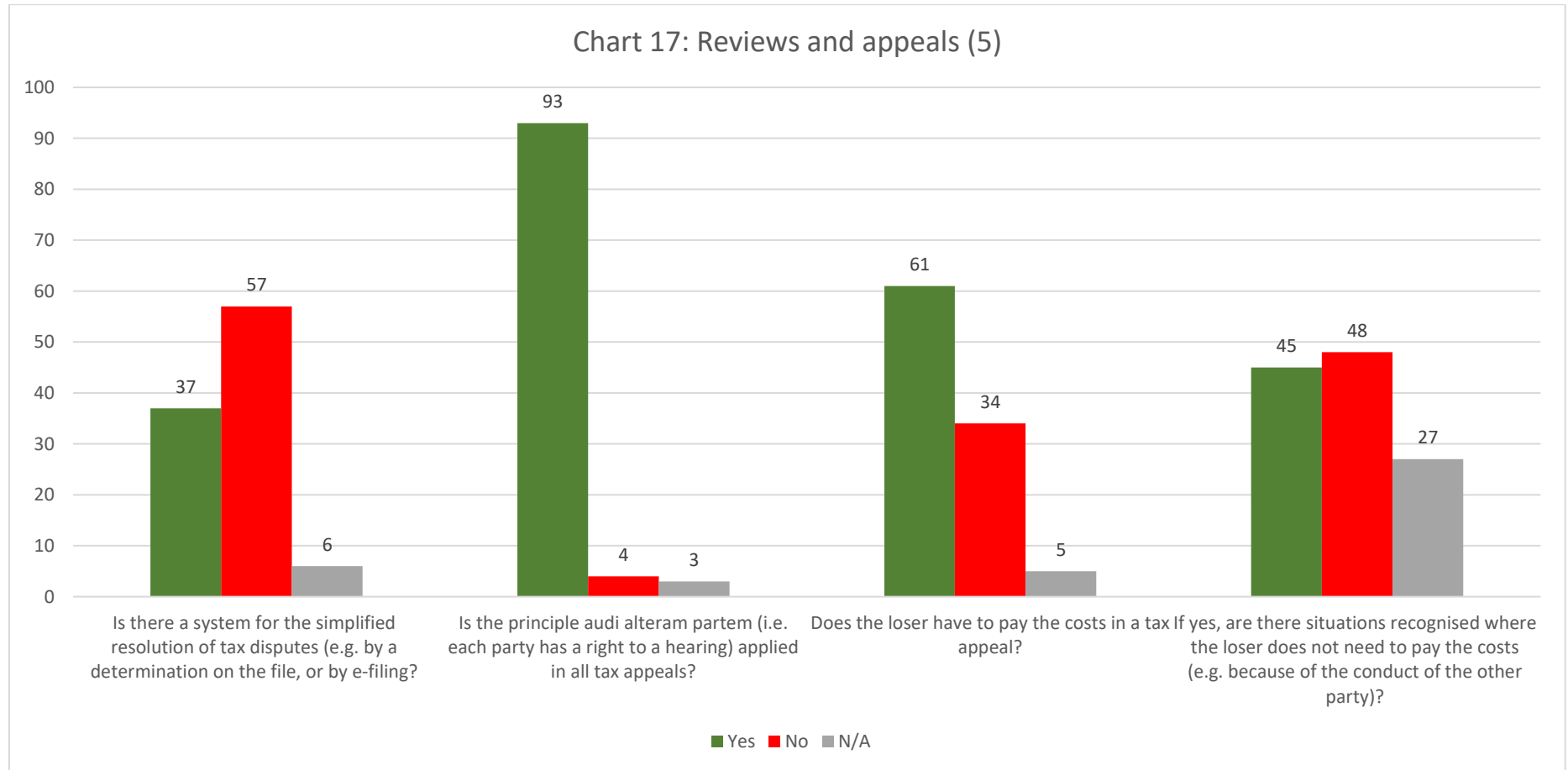
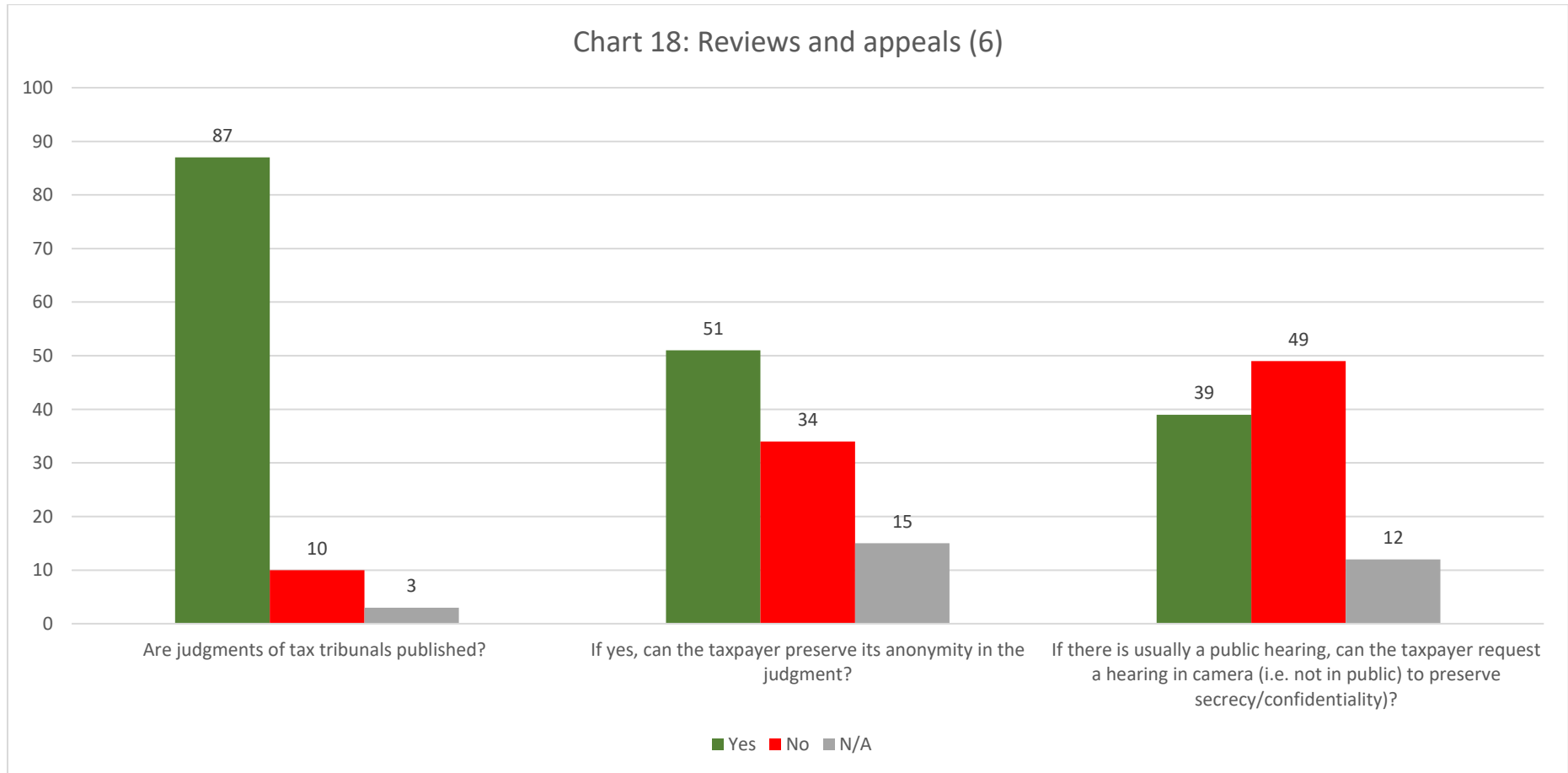
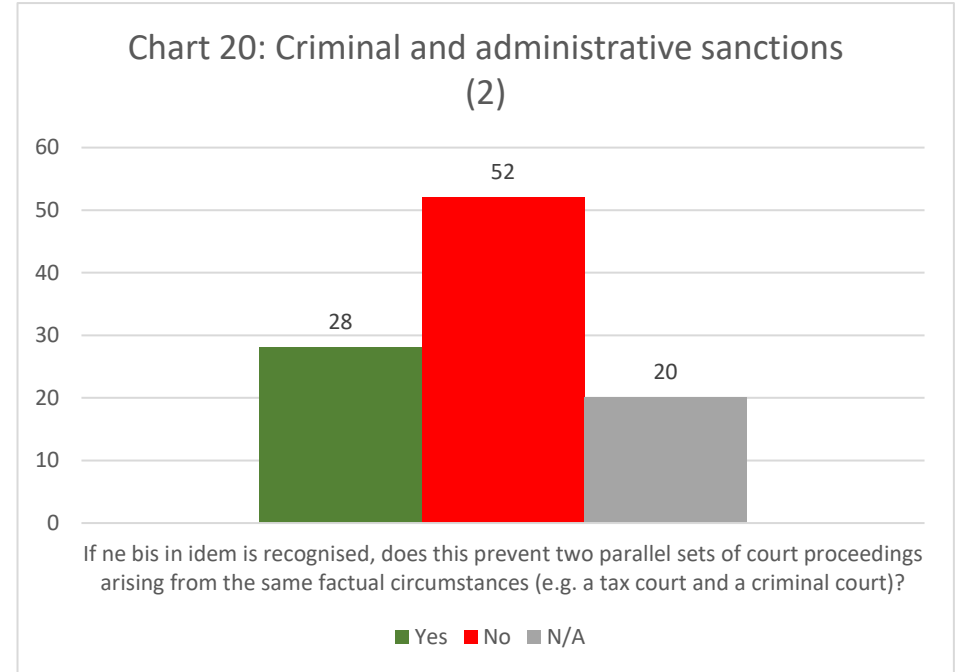
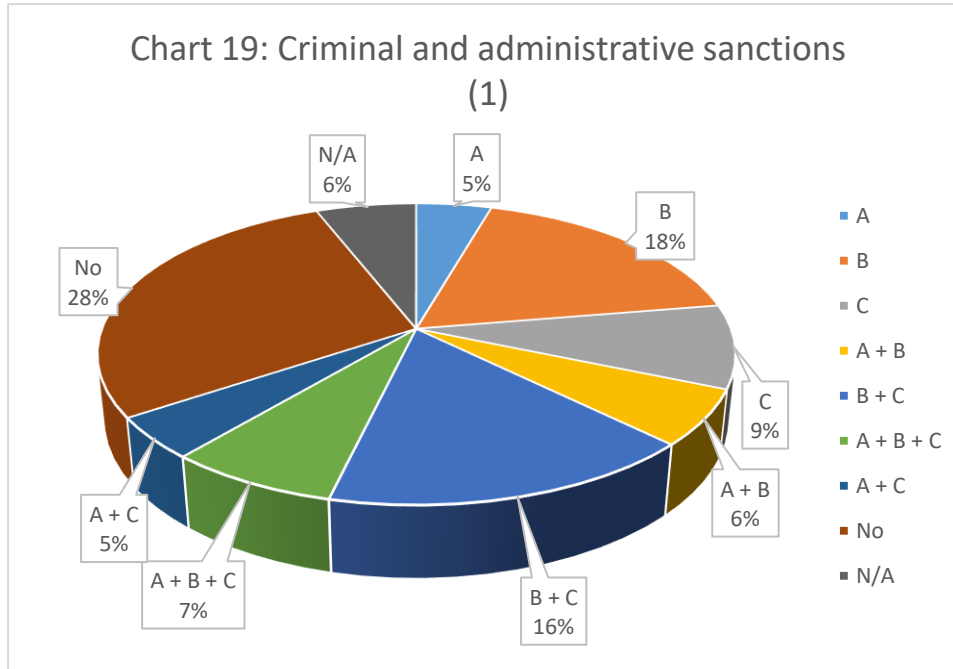


Chart 18: Reviews and appeals (6)

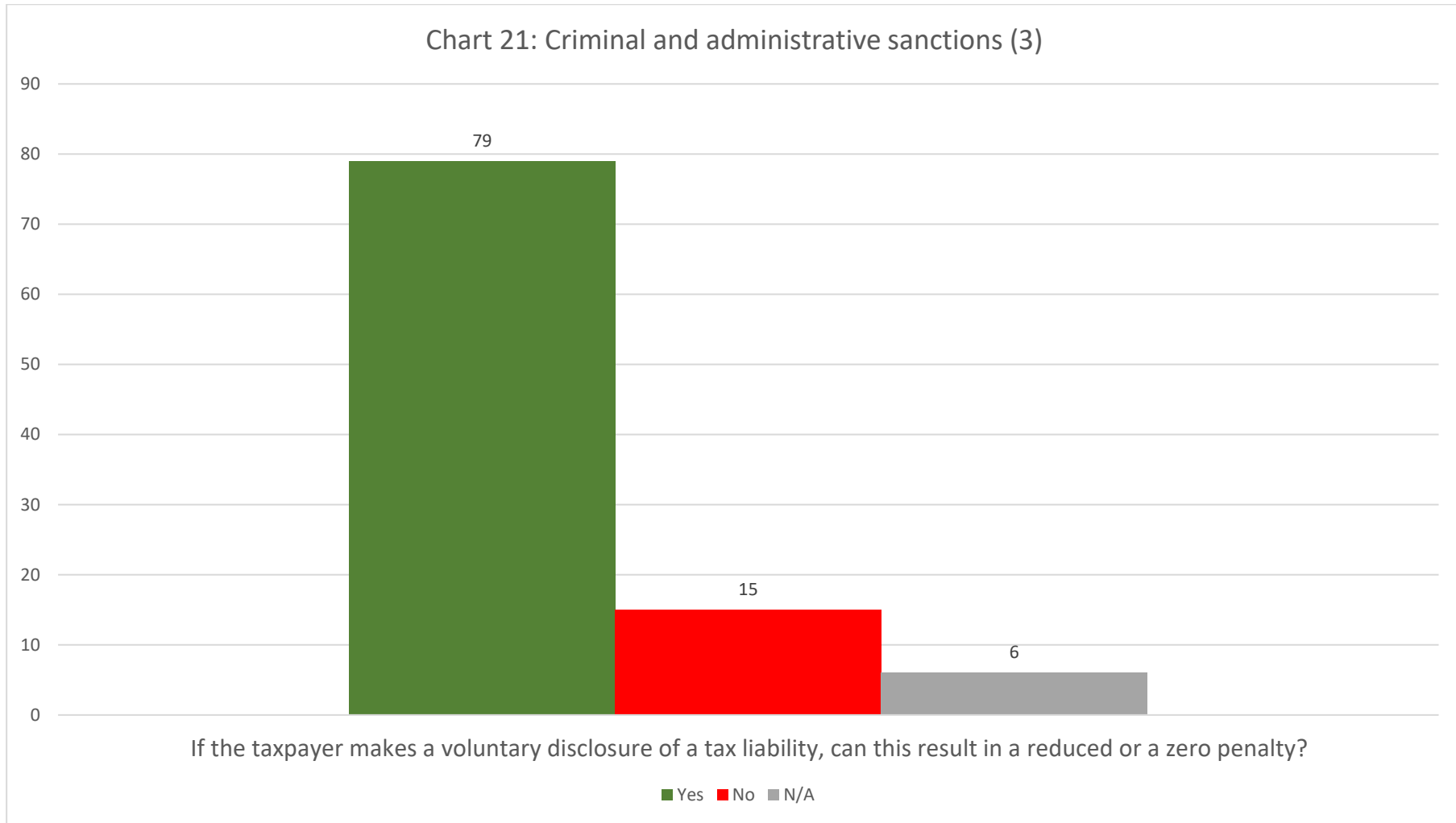


B.7 Criminal and administrative sanctions

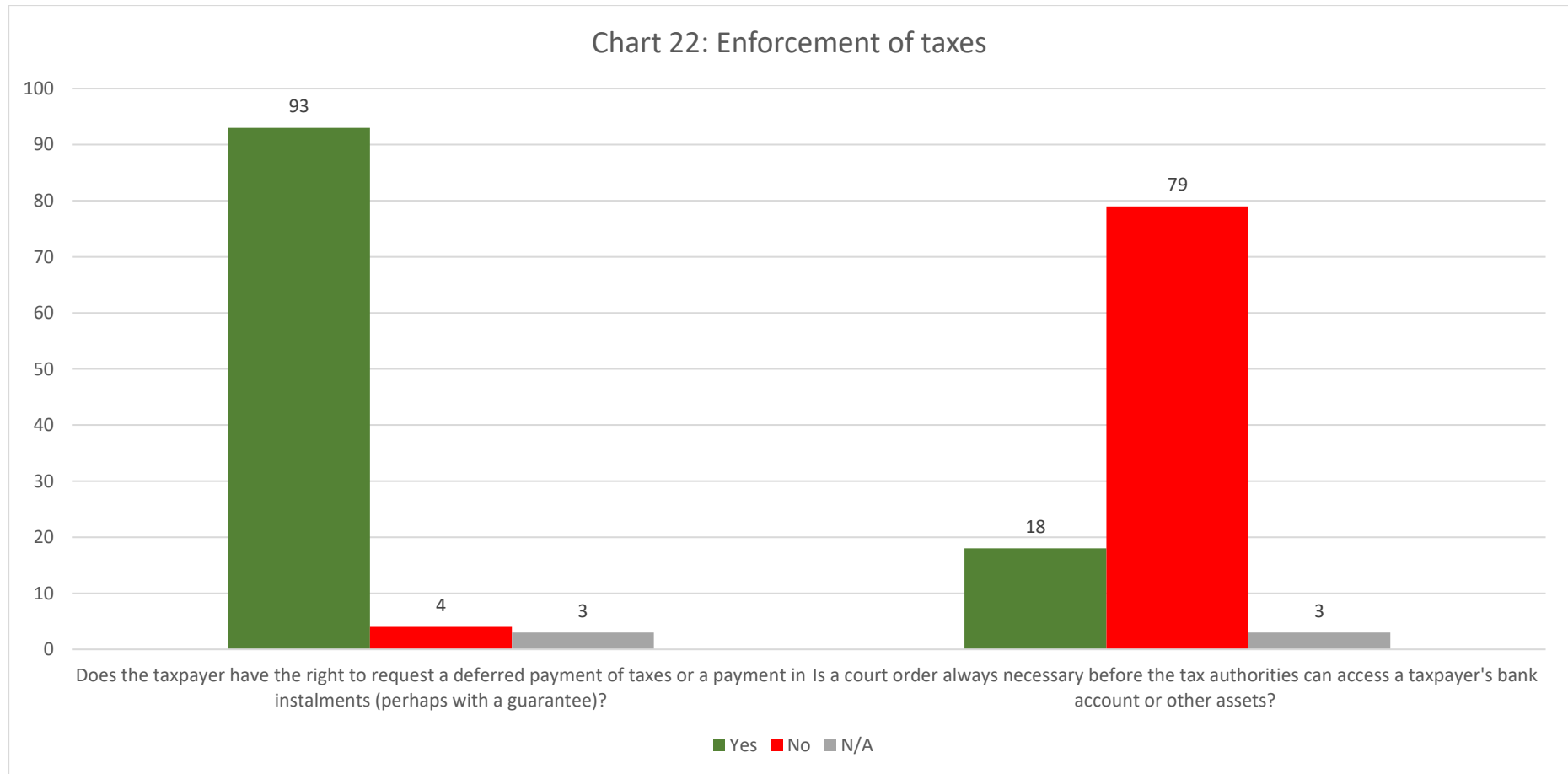


Does the principle *ne bis in idem* apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?

Chart 21: Criminal and administrative sanctions (3)



B.8 Enforcement of taxes



B.9 Cross-border procedures

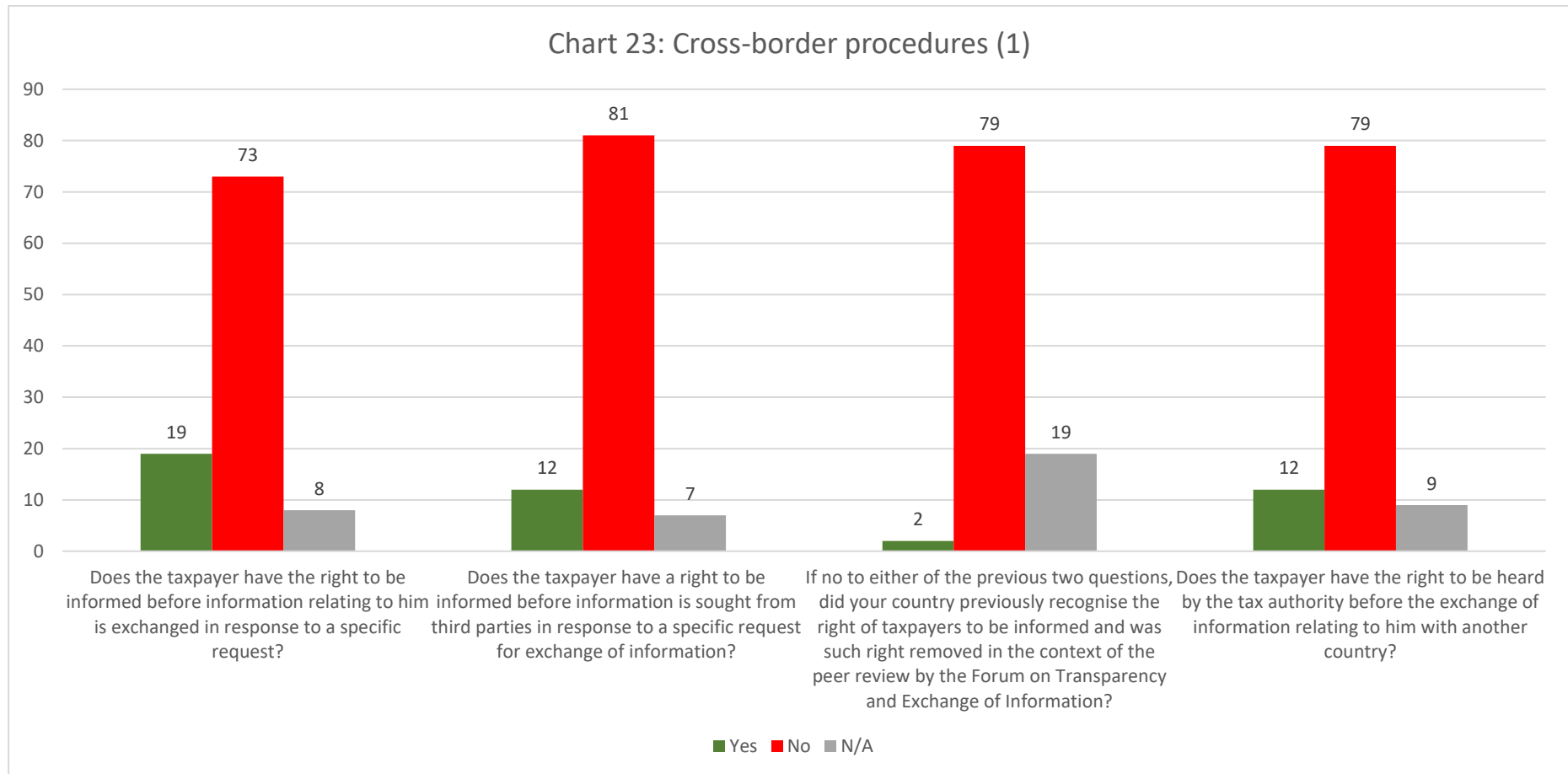
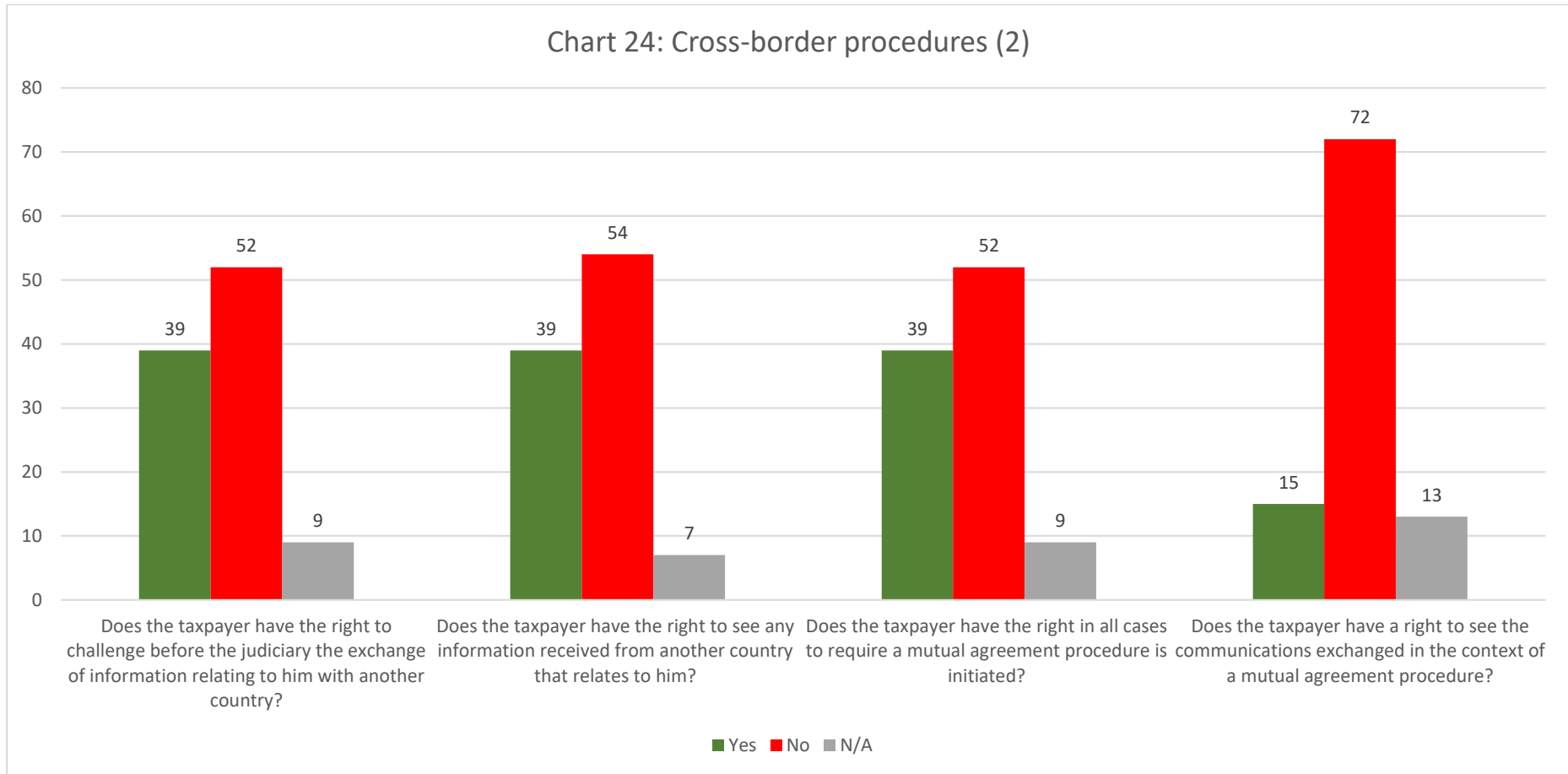
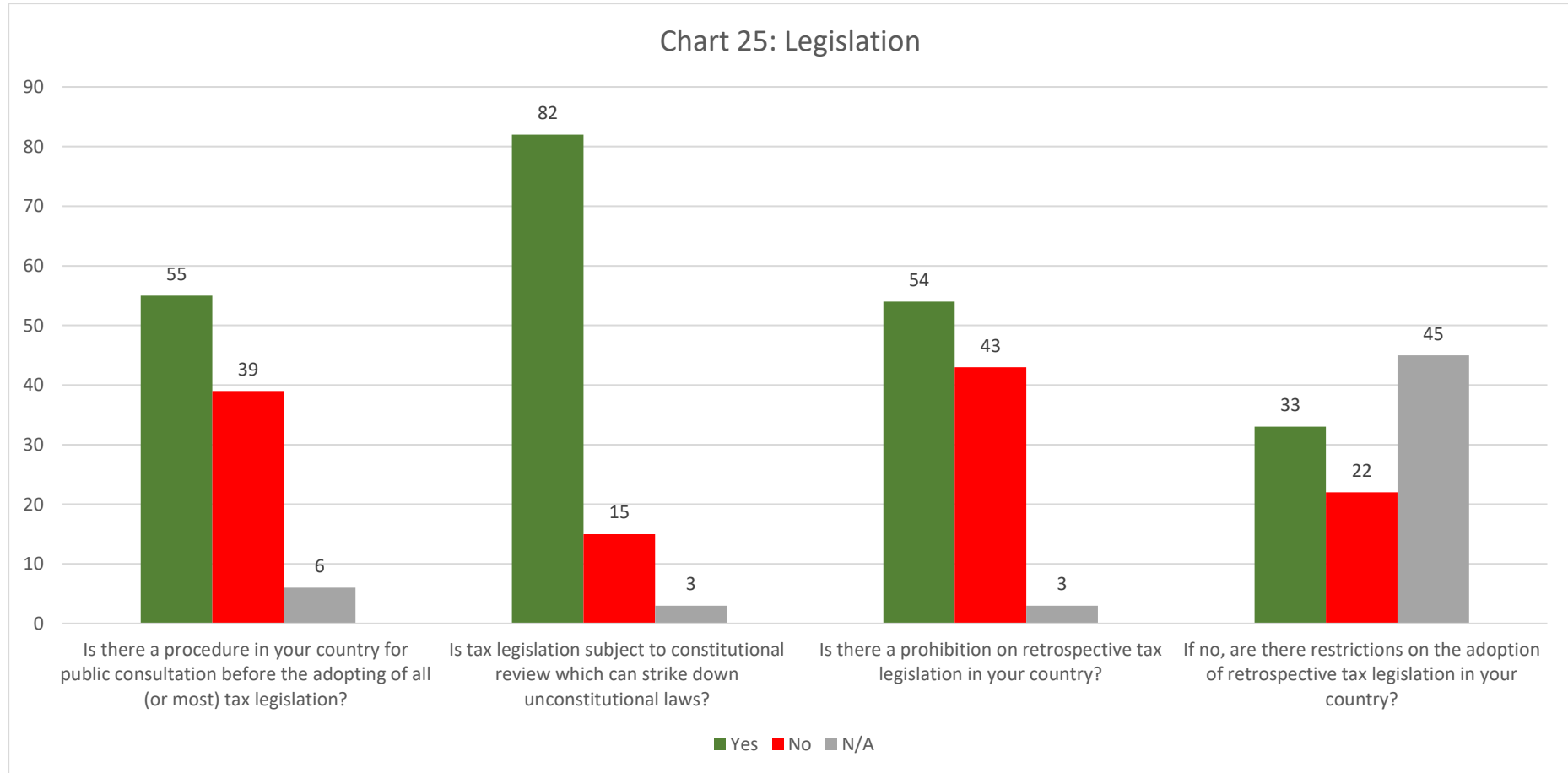


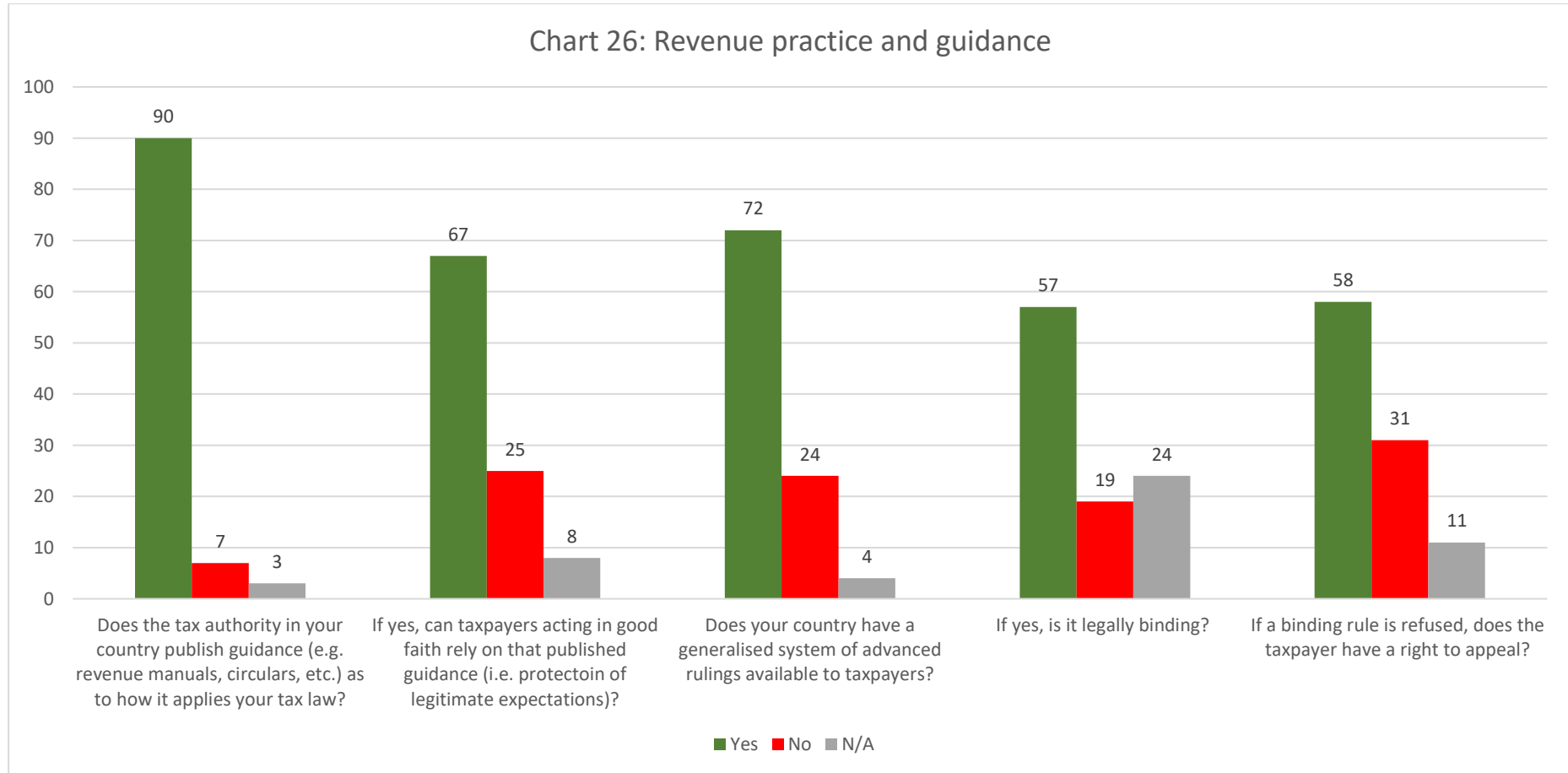
Chart 24: Cross-border procedures (2)



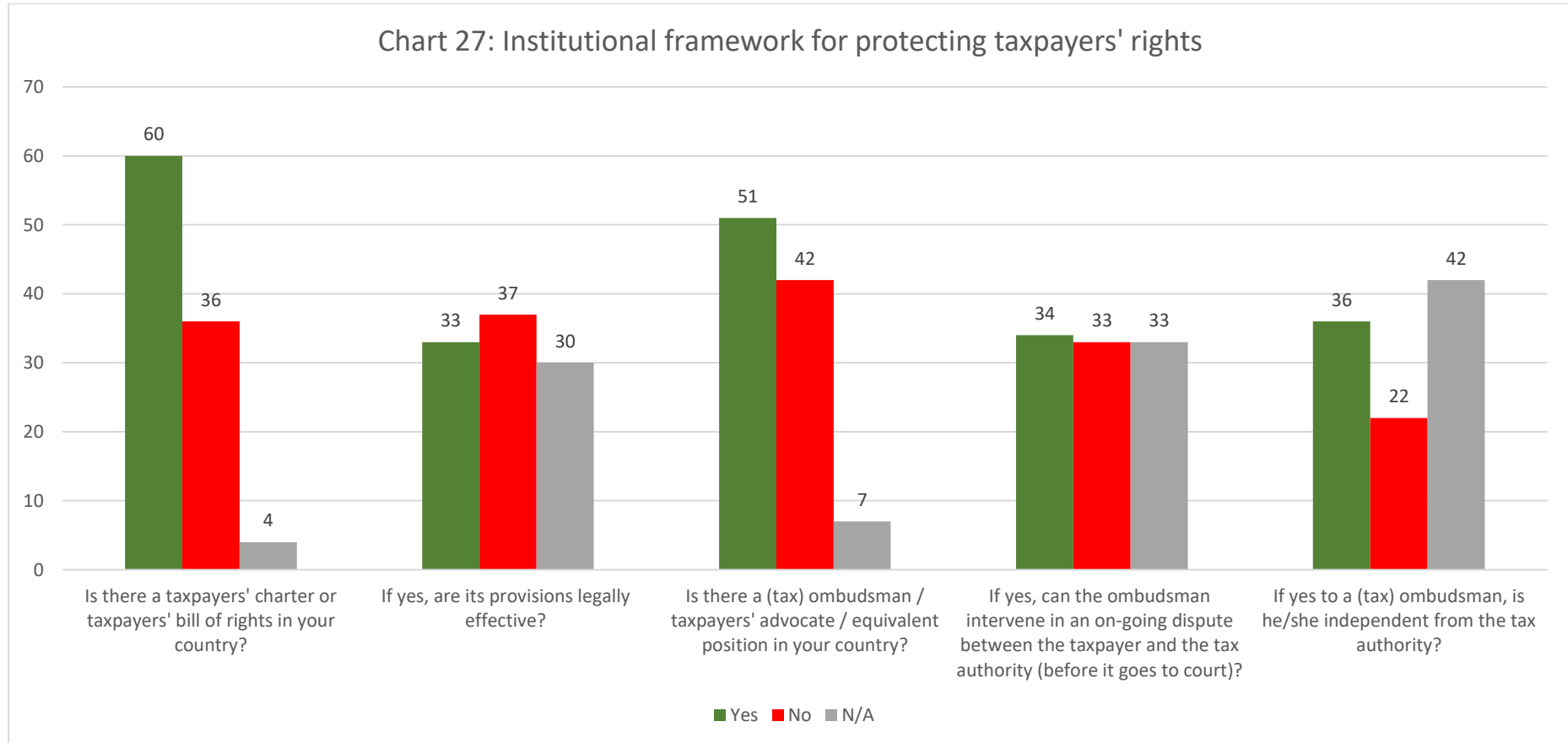
B.10 Legislation



B.11 Revenue practice and guidance



B.12 Institutional framework for protecting taxpayers' rights



Appendix «C»: The protection of taxpayers’ rights per country (2018).

The following are the answers provided in all national reports to the questions regarding the effective implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers’ rights in 82 specific situations, as identified in Questionnaire # 1, and explained in detail in the main text of this General Report. Accordingly, it is not advisable to interpret the content expressed in these charts separately of the explanation carried out in the abovementioned text.

C.1 Argentina - Bulgaria

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers											
1	Do taxpayers have the right to see the information held about them by the tax authority?	N/A	N/A	No	Yes	Yes	Yes	N/A	N/A	Yes	Yes
2	If yes, can they request the	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Argentina (Practitioner-Academic)	Australia (Ombudsman)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	correction of errors in the information?										
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only?	No	Yes	No	Yes	Yes	No	No	Yes	No	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?	No	No	N/A	Yes	Yes	N/A	N/A	Yes	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsman)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

		Argentina (Practitioner-Academic)	Australia (Ombudsman)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	special cases) to receive assistance in complying with their tax obligations?										
2. 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 <i>ex officio</i> to notify all affected taxpayers and arrange	No	Yes	No	Yes	Yes	No	No	No	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	repayments to them?										
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?	No	No	No	Yes	Yes	Yes	Yes	No	No	No
10	If yes, can the taxpayer request a meeting with the tax officer?	N/A	No	N/A	Yes	Yes	Yes	Yes	No	No	No
3. Confidentiality											

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
11	Is information held by your tax authority automatically encrypted?	No	No	Yes	Yes	Yes	No	No	Yes	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	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes
13	If yes, must the tax official identify himself/herself before accessing information held	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No	No	Yes

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	about a specific taxpayer?										
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	No	Yes	No	No	No	No	No	No	Yes
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	No	No	Yes	No	No	Yes	No	Yes	Yes	Yes
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.	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	<i>habeas data</i> or freedom of information?										
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
20	If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)?	No	No	Yes	No	No	No	No	Yes	No	No
4. Normal Audits											

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
21	Does the principle <i>audi alteram partem</i> 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	Yes	Yes	Yes	Yes	No	Yes	No	No
22	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be	Yes	No	Yes	No	No	No	Yes	No	No	Yes

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	concluded within so many months?										
23	If yes, what is the normal limit in months?	6 months	N/A	24 months	N/A	N/A	N/A	> 24 months	N/A	6 months	6 months
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
25	May the opinion of independent experts be used in the audit process?	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
26	Does the taxpayer have the right to receive a full report	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	on the conclusions of the audit at the end of the process?										
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	Yes	No	Yes	Yes	Yes	No	No	Yes	No	Yes
28	If yes, does this mean only one audit per tax per year?	Yes	N/A	Yes	Yes	Yes	N/A	N/A	Yes	No	No
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different	No	No	No	No	No	No	No	No	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	periods or different taxes)?										
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)?	No	No	No	No	No	No	No	Yes	No	No
5. More intensive audits											
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	Yes	No	No	No	No	No	No	Yes	No	No
32	May the tax authority enter and	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes

		Argentina (Practitioner-Academic)	Australia (Ombudsman)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	search the dwelling places of individuals?										
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	Yes	Yes	Yes	No	Yes	No	No	Yes	No	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	Yes	Yes	Yes	No	No	Yes	Yes	Yes

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination?)	Yes	No	No	Yes	Yes	Yes	No	Yes	No	Yes
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	Yes	No	N/A	No	No	No	N/A	Yes	No	No
37	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic	No	No	N/A	N/A	N/A	No	N/A	Yes	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	accounting information to the tax authority?										
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?	No	No	Yes	Yes	Yes	No	No	Yes	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
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?	N/A	N/A	Yes	Yes	Yes	N/A	N/A	Yes	No	No
6. Reviews and appeals											
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Are there any arrangements for alternative dispute resolution (e.g.	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsman)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	mediation or arbitration) before a tax case proceeds to the judiciary?										
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	No	Yes	Yes	Yes	No	No	No	Yes
43	Are there time limits applicable for a tax case to complete the judicial appeal process?	N/A	No	No	No	No	No	No	No	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	> 24 months	18 months
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	Yes	No	Yes	Yes	Yes	No	No	No	No	Yes
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?)	Yes	N/A	Yes	Yes	Yes	N/A	N/A	N/A	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
47	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	No	No	No	No	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?)	No	Yes	Yes	No	No	No	No	No	No	No
50	Is the principle audi alteram partem (i.e. each party has a right to a hearing)	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	applied in all tax appeals?										
51	Does the loser have to pay the costs in a tax appeal?	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
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)?	Yes	Yes	No	N/A	N/A	Yes	Yes	No	No	Yes
53	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
54	If yes, can the taxpayer preserve its anonymity in the judgment?	No	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
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?	N/A	Yes	Yes	Yes	No	No	Yes	No	No	No
7. Criminal and administrative sanctions											
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c)	C	No	B + C	A + B	A	C	C	No	B	B + C

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	the imposition of a tax penalty and a criminal liability?										
57	If <i>ne bis in idem</i> 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)?	Yes	No	Yes	No	No	Yes	No	Yes	No	Yes
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	result in a reduced or a zero penalty?										
8. Enforcement of taxes											
59	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	Yes	Yes	No	No	No	No	No
9. Cross-border procedures											

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?	No	No	No	No	No	No	No	No	No	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?	No	No	No	No	No	No	No	No	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
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?	No	No	No	No	No	No	No	No	No	No
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating	No	No	No	No	No	No	No	No	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsman)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	to him with another country?										
65	Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?	No	No	Yes	No	No	No	Yes	Yes	No	No
66	Does the taxpayer have the right to see any information received from another country that relates to him?	No	No	No	Yes	Yes	Yes	Yes	Yes	No	No
67	Does the taxpayer have the right in all	Yes	No	Yes	No	Yes	No	No	No	No	No

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	cases to require a mutual agreement procedure is initiated?										
68	Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?	No	No	Yes	No	No	No	No	No	No	No
10. Legislation											
69	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	No	Yes	Yes	Yes	No	No	Yes	No	Yes

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
70	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
71	Is there a prohibition on retrospective tax legislation in your country?	Yes	No	No	No	No	Yes	No	Yes	Yes	No
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	No	Yes	Yes	No	N/A	Yes	N/A	Yes	No
11. Revenue practice and guidance											

		Argentina (Practitioner-Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	N/A	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
75	Does your country have a generalised system of advanced rulings available to taxpayers?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No

		Argentina (Practitioner-Academic)	Australia (Ombudsman)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsman and Academic)	Austria (Ombudsman)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
76	If yes, is it legally binding?	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
77	If a binding rule is refused, does the taxpayer have a right to appeal?	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
12. Institutional framework for protecting taxpayers' rights											
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
79	If yes, are its provisions legally effective?	N/A	No	No	No	No	No	Yes	Yes	No	No
80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No

		Argentina (Practitioner- Academic)	Australia (Ombudsperson)	Australia (Academic)	Austria (Tax Administrator, Practitioner, Ombudsperson and Academic)	Austria (Ombudsperson)	Belgium (Practitioners)	Belgium (Practitioner and Academic)	Brazil (Practitioner 1)	Brazil (Practitioner 2)	Bulgaria (Practitioners)
	position in your country?										
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	No	Yes	Yes	No	No	No	Yes	N/A	No	No
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	N/A	Yes	Yes	No	No	No	Yes	N/A	No	No

C.2 Canada – Czech Republic

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner - Academic)
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers											
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	N/A	N/A	Yes	N/A	Yes	Yes	No	Yes	No
2	If yes, can they request the correction of errors in the information?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only?	Yes	N/A	No	No	Yes	Yes	Yes	No	No	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
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?	No	N/A	N/A	No	Yes	Yes	Yes	N/A	N/A	N/A
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	No	No	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
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	N/A	Yes	No	Yes	Yes	No	Yes	No	No
2. 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	No	N/A	Yes	No	Yes	Yes	No	No	No	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	the tax authority act <i>ex officio</i> to notify all affected taxpayers and arrange repayments to them?										
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	N/A	Yes	Yes	Yes	Yes	Yes	Yes	No	No
10	If yes, can the taxpayer request a meeting with the tax officer?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	N/A	No
3. Confidentiality											

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner - Academic)
11	Is information held by your tax authority automatically encrypted?	Yes	N/A	Yes	Yes	Yes	Yes	No	No	No	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?	No	N/A	Yes	Yes	Yes	Yes	No	No	Yes	Yes
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	N/A	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information?	Yes	N/A	Yes	Yes	Yes	Yes	No	No	No	No
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	Yes	N/A	No	Yes	No	No	No	No	No	No
16	Is information about the tax liability of specific taxpayers publicly	No	N/A	Yes	No	Yes	Yes	No	No	No	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	available in your country?										
17	Is "naming and shaming" of non- compliant taxpayers practised in your country?	Yes	N/A	No	No	Yes	Yes	No	No	No	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. <i>habeas data</i> or freedom of information?	No	N/A	Yes	No	Yes	No	No	No	No	No
19	Is there a system of protection of legally privileged	Yes	N/A	Yes	Yes	Yes	Yes	Yes	No	No	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	communications between the taxpayer and its advisors?										
20	If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)?	No	N/A	No	No	No	No	Yes	N/A	N/A	No
4. Normal Audits											
21	Does the principle <i>audi alteram partem</i> 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	No	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	object and be heard before the decision is finalised)?										
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?	No	N/A	No	Yes	Yes	Yes	Yes	No	No	No
23	If yes, what is the normal limit in months?	N/A	N/A	N/A	9 months	3 months	2 months	> 24 months	N/A	N/A	N/A
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
25	May the opinion of independent experts be used in the audit process?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
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	N/A	Yes	No	Yes	Yes	No	Yes	No	Yes
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	No	N/A	No	No	Yes	Yes	Yes	Yes	No	Yes
28	If yes, does this mean only one audit per tax per year?	N/A	N/A	N/A	N/A	Yes	Yes	Yes	No	N/A	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	N/A	No	No	Yes	Yes	No	No	No	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)?	No	N/A	Yes	No	No	No	Yes	Yes	No	No
5. More intensive audits											
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	No	N/A	No	No	No	No	No	No	Yes	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsperson)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
32	May the tax authority enter and search the dwelling places of individuals?	Yes	N/A	Yes	No	No	No	No	Yes	No	No
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	Yes	N/A	Yes	No	No	No	Yes	No	Yes	Yes
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	N/A	Yes	Yes	N/A	No	Yes	No	Yes	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination?)	Yes	N/A	Yes	No	No	Yes	Yes	No	No	Yes
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	Yes	N/A	Yes	N/A	N/A	Yes	No	N/A	N/A	Yes
37	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	Yes	N/A	Yes	N/A	N/A	No	No	N/A	N/A	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
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	N/A	Yes	Yes	No	Yes	No	No	Yes	Yes
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?	Yes	N/A	Yes	N/A	N/A	No	N/A	N/A	No	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsperson)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
6. Reviews and appeals											
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	N/A	Yes	No	Yes	Yes	No	No	No	No
42	Is it necessary for the taxpayer to bring his case first before an administrative	No	N/A	Yes	No	No	Yes	No	No	No	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	court to quash the assessment/decision, before the case can proceed to a judicial hearing?										
43	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	N/A	Yes	No	Yes	Yes	No	No	No	No
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	N/A	N/A	> 24 months	N/A	3 months	3 months	N/A	N/A	N/A	N/A
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	No	N/A	Yes	No	Yes	Yes	No	Yes	Yes	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
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?)	Yes	N/A	Yes	N/A	No	Yes	N/A	Yes	No	Yes
47	Does the taxpayer need permission to appeal to the first instance tribunal?	No	N/A	No	No	No	No	No	No	No	No
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	N/A	Yes	No	No	No	No	No	No	No
49	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on	Yes	N/A	Yes	No	Yes	Yes	No	No	No	No

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	the file, or by e/filing?										
50	Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	N/A	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
51	Does the loser have to pay the costs in a tax appeal?	Yes	N/A	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
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)?	Yes	N/A	Yes	Yes	No	N/A	Yes	No	Yes	No
53	Are judgments of tax tribunals published?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsperson)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner - Academic)
54	If yes, can the taxpayer preserve its anonymity in the judgment?	No	N/A	Yes	No	Yes	No	No	N/A	No	Yes
55	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	No	N/A	Yes	No	Yes	Yes	Yes	No	No	No
7. Criminal and administrative sanctions											
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax	No	N/A	No	B + C	B	A	B	A	B + C	A + B

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?										
57	If <i>ne bis in idem</i> 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)?	N/A	N/A	N/A	No	Yes	Yes	No	No	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	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
8. Enforcement of taxes											

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
59	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	N/A	No	Yes	No	No	No	No	No	No
9. Cross-border procedures											
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in	No	N/A	N/A	No	Yes	Yes	No	No	No	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	response to a specific request?										
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?	No	N/A	N/A	No	Yes	Yes	No	No	No	Yes
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	No	N/A	N/A	No	N/A	N/A	No	No	No	N/A

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	the Forum on Transparency and Exchange of Information?										
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?	No	N/A	N/A	No	Yes	No	No	Yes	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	N/A	N/A	No	Yes	No	No	Yes	Yes	Yes
66	Does the taxpayer have the right to	Yes	N/A	N/A	No	Yes	Yes	No	No	No	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	see any information received from another country that relates to him?										
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	No	N/A	N/A	No	Yes	No	Yes	Yes	Yes	No
68	Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?	No	N/A	N/A	No	No	No	No	No	No	N/A
10. Legislation											
69	Is there a procedure in your country for public	Yes	N/A	Yes	No	Yes	Yes	No	Yes	Yes	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
	consultation before the adopting of all (or most) tax legislation?										
70	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	N/A	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
71	Is there a prohibition on retrospective tax legislation in your country?	No	N/A	No	Yes	No	No	Yes	Yes	Yes	Yes
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	No	N/A	No	N/A	Yes	Yes	N/A	No	N/A	N/A

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsperson)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
11. 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	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	No	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
75	Does your country have a generalised system of advanced rulings available to taxpayers?	Yes	N/A	Yes	No	No	No	No	Yes	Yes	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner- Academic)
76	If yes, is it legally binding?	No	N/A	Yes	N/A	N/A	N/A	N/A	Yes	Yes	Yes
77	If a binding rule is refused, does the taxpayer have a right to appeal?	No	N/A	Yes	Yes	Yes	N/A	N/A	No	Yes	Yes
12. Institutional framework for protecting taxpayers' rights											
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	Yes	N/A	Yes	Yes	Yes	No	Yes	Yes	No	No
79	If yes, are its provisions legally effective?	No	N/A	No	Yes	Yes	N/A	No	No	No	N/A
80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?	Yes	N/A	Yes	No	No	No	Yes	No	No	Yes

		Canada (Practitioner)	Canada (Ombudsman 1)	Canada (Ombudsman 2 - Quebec only)	Chile (Practitioner)	China (Tax Administrator - Retired)	China (Academic)	Colombia (Ombudsman)	Cyprus (Tax Administrator)	Cyprus (Practitioner - Academic)	Czech Republic (Practitioner - Academic)
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	No	N/A	Yes	N/A	N/A	N/A	Yes	N/A	N/A	Yes
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	Yes	N/A	Yes	N/A	N/A	N/A	No	N/A	N/A	Yes

C.3 Denmark – Ireland

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers											
1	Do taxpayers have the right to see the information held about them by the tax authority?	No	N/A	Yes	N/A	N/A	Yes	Yes	Yes	No	N/A
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only?	Yes	Yes	No	No	N/A	Yes	Yes	Yes	No	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
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?	No	No	N/A	No	N/A	Yes	Yes	Yes	N/A	No
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
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	Yes	Yes	Yes	N/A	N/A	No	No	Yes
2. 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 <i>ex officio</i> to notify all	Yes	No	Yes	Yes	N/A	N/A	N/A	No	No	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	affected taxpayers and arrange repayments to them?										
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	Yes	Yes	Yes	Yes	N/A	Yes	No	No
10	If yes, can the taxpayer request a meeting with the tax officer?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	N/A	No
3. Confidentiality											
11	Is information held by your tax authority	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	automatically encrypted?										
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?	No	No	Yes	Yes	Yes	N/A	N/A	No	Yes	Yes
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	N/A	No	Yes	Yes	Yes	N/A	N/A	N/A	Yes	Yes
14	Is access to information held about a taxpayer audited internally to	Yes	No	Yes	Yes	Yes	N/A	N/A	No	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	check if there has been any unauthorised access to that information?										
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	No	No	Yes	Yes	Yes	N/A	N/A	No	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	Yes	No	Yes	N/A	N/A	N/A	No	No	No
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	No	No	No	Yes	No	N/A	N/A	No	No	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
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. <i>habeas data</i> or freedom of information?)	Yes	No	No	No	N/A	N/A	N/A	No	Yes	Yes
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No	Yes	Yes
20	If yes, does this extend to advisors other than those	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	who are legally qualified (e.g. accountants, tax advisors)?										
4. Normal Audits											
21	Does the principle <i>audi alteram partem</i> 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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
22	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must	No	No	No	Yes	Yes	N/A	Yes	No	Yes	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	be concluded within so many months?										
23	If yes, what is the normal limit in months?	N/A	N/A	N/A	12 months	N/A	N/A	N/A	4 months	12 months	N/A
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
25	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No	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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	No	No	No	Yes	Yes	N/A	Yes	No	No	Yes
28	If yes, does this mean only one audit per tax per year?	N/A	N/A	N/A	Yes	Yes	N/A	Yes	N/A	N/A	Yes
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	No	No	No	N/A	N/A	Yes	No	No	No
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer	No	No	No	No	Yes	N/A	Yes	No	No	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	wishes to get finality of taxation for a particular year?)										
5. More intensive audits											
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	No	No	Yes	Yes	N/A	Yes	Yes	Yes	No	No
32	May the tax authority enter and search the dwelling places of individuals?	Yes	No	Yes	Yes	N/A	Yes	Yes	No	Yes	Yes
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	Yes	No	Yes	Yes	N/A	N/A	N/A	No	No	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
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	Yes	Yes	Yes	N/A	Yes	Yes	Yes	No	Yes
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	Yes	N/A	No	Yes	N/A	N/A	N/A	N/A	N/A	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
37	If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	No	N/A	Yes	Yes	N/A	N/A	Yes	N/A	N/A	Yes
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	Yes	No	Yes	No	N/A	N/A	Yes	No	No	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	to self-incriminate is recognised?										
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?	Yes	N/A	Yes	No	N/A	N/A	N/A	N/A	N/A	Yes
6. Reviews and appeals											
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	Yes	No	No	Yes	N/A	Yes	No	No	Yes
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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
43	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	Yes	N/A	Yes	No	No	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	N/A	N/A	N/A	N/A	N/A	N/A	N/A	24 months	N/A	N/A
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	No	Yes	Yes	Yes	N/A	N/A	N/A	No	Yes	Yes
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)?	N/A	Yes	Yes	No	N/A	N/A	N/A	N/A	Yes	No
47	Does the taxpayer need permission to	No	No	No	No	N/A	N/A	N/A	No	No	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	appeal to the first instance tribunal?										
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	Yes	Yes	Yes	No	N/A	N/A	N/A	No	No	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	Yes	Yes	Yes	N/A	N/A	No	No	Yes
50	Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
51	Does the loser have to pay the costs in a tax appeal?	Yes	No	Yes	Yes	Yes	N/A	Yes	No	No	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)?	Yes	N/A	No	No	N/A	Yes	Yes	N/A	N/A	No
53	Are judgments of tax tribunals published?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
54	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	N/A	Yes	Yes	N/A	N/A	N/A	N/A	No	No
55	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve	Yes	N/A	Yes	Yes	N/A	N/A	N/A	No	No	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	secrecy/confidentiality?										
7. Criminal and administrative sanctions											
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?	N/A	C	No	A + B	N/A	A + B + C	A + B + C	A + C	No	No
57	If <i>ne bis in idem</i> is recognised, does this prevent two parallel	No	Yes	No	No	Yes	Yes	N/A	No	N/A	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?										
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	Yes	No	Yes	Yes	N/A	Yes	N/A	No	No	Yes
8. Enforcement of taxes											
59	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes
9. 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	Yes	No	Yes	N/A	N/A	Yes	No	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	No	No	No	No	Yes	N/A	N/A	No	No	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	exchange of information?										
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?	No	No	No	No	N/A	N/A	N/A	No	No	No
64	Does the taxpayer have the right to be heard by the tax authority before the	No	No	Yes	No	N/A	N/A	N/A	No	No	No

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	exchange of information relating to him with another country?										
65	Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?	Yes	No	Yes	Yes	N/A	N/A	N/A	No	No	No
66	Does the taxpayer have the right to see any information received from another country that relates to him?	Yes	No	Yes	No	Yes	N/A	N/A	No	Yes	No
67	Does the taxpayer have the right in all cases to require a mutual agreement	No	No	No	Yes	Yes	N/A	N/A	No	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	procedure is initiated?										
68	Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?	Yes	No	No	No	N/A	N/A	N/A	No	N/A	No
10. Legislation											
69	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	Yes	Yes	Yes	Yes	Yes	N/A	N/A	No	Yes	Yes
70	Is tax legislation subject to constitutional review which can strike down	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	unconstitutional laws?										
71	Is there a prohibition on retrospective tax legislation in your country?	No	No	No	No	Yes	Yes	Yes	Yes	No	No
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	Yes	No	Yes	Yes	N/A	N/A	N/A	N/A	No	Yes
11. 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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
75	Does your country have a generalised system of advanced rulings available to taxpayers?	Yes	Yes	Yes	No	N/A	Yes	Yes	No	Yes	Yes
76	If yes, is it legally binding?	Yes	Yes	Yes	N/A	N/A	Yes	Yes	N/A	Yes	Yes
77	If a binding rule is refused, does the taxpayer have a right to appeal?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
12. Institutional framework for protecting taxpayers' rights											
78	Is there a taxpayers' charter or taxpayers'	No	No	No	No	Yes	Yes	N/A	Yes	Yes	Yes

		Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
	bill of rights in your country?										
79	If yes, are its provisions legally effective?	No	N/A	N/A	N/A	Yes	N/A	N/A	Yes	No	Yes
80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?	Yes	Yes	No	Yes	N/A	N/A	N/A	No	No	Yes
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	Yes	No	N/A	Yes	N/A	N/A	N/A	N/A	N/A	Yes
82	If yes to a (tax) ombudsman, is he/she independent	Yes	Yes	N/A	Yes	N/A	N/A	N/A	N/A	N/A	Yes

	Denmark (Practitioner and Tax Administrator)	Finland (Practitioner and Academic)	Germany (Tax Administrator, Practitioner and Academic)	Greece (Tax Administrator and Academic)	Guatemala (Tax Administrator)	Guatemala (Practitioner)	Guatemala (Judiciary)	Guatemala (Academic)	India (Academic)	Ireland (Practitioner)
from the tax authority?										

C.4 Italy – Mexico

	Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academic)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)	
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers													
1	Do taxpayers have the right to see the information held about them by the tax authority?	No	No	N/A	Yes	No	No	Yes	N/A	Yes	Yes	Yes	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
2	If yes, can they request the correction of errors in the information?	No	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only?	Yes	Yes	Yes	No	No	No	No	Yes	No	No	No	Yes
4	If yes, are there rules or procedures in place to	Yes	No	Yes	N/A	No	No	N/A	Yes	No	No	No	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	ensure this system is available to all eligible taxpayers on a non-preferential/non discriminatory/non arbitrary basis?												
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	complying with their tax obligations?												
2. 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 <i>ex officio</i> to notify all	Yes	No	Yes	No	No	No	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	affected taxpayers and arrange repayments to them?												
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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
10	If yes, can the taxpayer	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	request a meeting with the tax officer?												
3. Confidentiality													
11	Is information held by your tax authority automatically encrypted?	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	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	No	Yes	No	Yes	No	No	Yes	Yes	No	Yes	Yes	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	taxpayer's affairs?												
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	No	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	No
14	Is access to information held about a taxpayer audited internally to check if there	No	No	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	has been any unauthorised access to that information?												
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	No	No	Yes	No	No	No	No	No	Yes	No	Yes	No
16	Is information about the tax liability of specific taxpayers	Yes	No	No	No	No	Yes	No	No	Yes	Yes	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	publicly available in your country?												
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
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	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	taxpayers (e.g. <i>habeas data</i> or freedom of information?)												
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No
20	If yes, does this extend to advisors other than those who are legally qualified (e.g.	Yes	Yes	Yes	No	No	No	Yes	No	Yes	Yes	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	accountants, tax advisors)?												
4. Normal Audits													
21	Does the principle <i>audi alteram partem</i> 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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	decision is finalised)?												
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	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes
23	If yes, what is the normal limit in months?	1 month	3 months	3 months	3 months	N/A	N/A	N/A	N/A	12 months	N/A	12 months	12 months

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
25	May the opinion of independent experts be used in the audit process?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes
26	Does the taxpayer have the right to receive a full report on the conclusions of	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	the audit at the end of the process?												
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	No	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No
28	If yes, does this mean only one audit per tax per year?	No	N/A	N/A	Yes	No	No	Yes	Yes	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	No	No	No	No	No	No	No	No	No	No	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)?	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
5. More intensive audits													
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	No	Yes	Yes	Yes	Yes	No	No	No	Yes	No	No	No
32	May the tax authority enter and search the dwelling places of individuals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
33	Is there a procedure in place to ensure that	Yes	No	Yes	Yes	No	Yes	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	legally privileged material is not taken in the course of a search?												
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	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	Yes	Yes	No	No	Yes	No	Yes	No	Yes	No	No	No
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	No	Yes	N/A	No	No	No	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
37	If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	No	No	N/A	No	No	No	No	No	No	No	No	No
38	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes	No	Yes	No	No	No	No	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	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?												
39	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of	No	Yes	N/A	No	No	No	N/A	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	non-self-incrimination?												
6. Reviews and appeals													
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	before a tax case proceeds to the judiciary?												
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?	No	No	Yes	No	Yes	Yes	N/A	Yes	No	Yes	No	Yes
43	Are there time limits applicable for	No	Yes	No	No	No	Yes	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	a tax case to complete the judicial appeal process?												
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	12 months	2 months	N/A	N/A	N/A	9 months	N/A	N/A	18 months	N/A	N/A	N/A
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
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?)	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No
47	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	Yes	No	No	No	Yes	No	No	No	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	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No
50	Is the principle audi alteram partem (i.e.	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	each party has a right to a hearing) applied in all tax appeals?												
51	Does the loser have to pay the costs in a tax appeal?	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	No	Yes
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)?	Yes	Yes	N/A	N/A	Yes	Yes	N/A	Yes	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
53	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes
54	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
55	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
7. Criminal and administrative sanctions													
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty	B + C	No	No	No	No	No	A + B + C	No	A + B + C	B	B	B

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	and a criminal liability?												
57	If <i>ne bis in idem</i> 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)?	No	N/A	N/A	N/A	N/A	No	Yes	No	Yes	No	No	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
8. Enforcement of taxes													
59	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	Yes	Yes	No	No	Yes	No	No	No
9. Cross-border procedures													
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a	No	No	No	No	No	Yes	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	specific request?												
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?	No	No	No	No	No	No	No	No	No	No	No	No
63	If no to either of the previous two questions, did your country previously	No	No	No	No	No	No	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	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?												
64	Does the taxpayer have the right to be heard by the tax authority before the	No	No	No	No	No	No	Yes	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	exchange of information relating to him with another country?												
65	Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No
66	Does the taxpayer have the right to see any	No	No	No	No	No	Yes	No	No	No	Yes	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	information received from another country that relates to him?												
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
68	Does the taxpayer have a right to see the communications exchanged in	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	the context of a mutual agreement procedure?												
10. Legislation													
69	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No
70	Is tax legislation subject to constitutional review which can strike down	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	unconstitutional laws?												
71	Is there a prohibition on retrospective tax legislation in your country?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	No	No	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	No	N/A
11. Revenue practice and guidance													
73	Does the tax authority in	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?												
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
75	Does your country have a generalised system of advanced rulings available to taxpayers?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
76	If yes, is it legally binding?	No	No	No	Yes	Yes	N/A	Yes	Yes	Yes	Yes	No	Yes
77	If a binding rule is refused, does the taxpayer have a right to appeal?	No	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	No	Yes
12. Institutional framework for protecting taxpayers' rights													
78	Is there a taxpayers' charter or	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	taxpayers' bill of rights in your country?												
79	If yes, are its provisions legally effective?	Yes	N/A	Yes	No	N/A	Yes	Yes	No	Yes	Yes	Yes	Yes
80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?	Yes	No	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and	Yes	No	Yes	N/A	N/A	N/A	No	Yes	Yes	Yes	Yes	Yes

		Italy (Practitioner 1)	Italy (Practitioner 2)	Italy (Practitioner and Academics)	Kenya (Tax Administrator)	Kenya (Practitioner 1)	Kenya (Practitioner 2)	Luxembourg (Academic)	Mauritius (Practitioner)	Mexico (Practitioner 1)	Mexico (Practitioner 2)	Mexico (Ombudsman)	Mexico (Academic)
	the tax authority (before it goes to court)?												
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	Yes	N/A	No	N/A	N/A	N/A	No	Yes	Yes	Yes	Yes	Yes

C.5 Panama – Slovenia

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers												
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	N/A	N/A	Yes	Yes	Yes	N/A	N/A	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" which	No	No	No	No	No	Yes	Yes	No	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	h applies to some taxpayers only?											
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?	N/A	N/A	N/A	No	N/A	Yes	No	No	Yes	Yes	N/A
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	N/A	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
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	No	No	No	No	No	Yes	Yes	Yes	No
2. The issue of tax assessment												

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
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 <i>ex officio</i> to notify all affected taxpayers and arrange repayments to them?	No	No	No	No	No	No	No	Yes	Yes	Yes	No
9	Does a dialogue take place in your country between the taxpayer and	No	Yes	No	Yes	No	Yes	No	No	Yes	Yes	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	the tax authority before the issue of an assessment in order to reach an agreed assessment?											
10	If yes, can the taxpayer request a meeting with the tax officer?	N/A	Yes	N/A	Yes	N/A	Yes	N/A	No	Yes	Yes	N/A
3. Confidentiality												
11	Is information held by your tax authority automatically encrypted?	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No
12	Is access to information held by the tax authority about a specific taxpayer	Yes	No	Yes	Yes	No	No	No	Yes	Yes	Yes	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	accessible only to the tax official(s) dealing with that taxpayer's affairs?											
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	Yes	N/A	Yes	Yes	N/A	No	N/A	Yes	Yes	Yes	N/A
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information?	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	Yes	No	No	No	No	No	No	No	No	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	No	No	No	Yes	No	Yes	Yes	No	Yes	Yes
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
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. <i>habeas data</i> or freedom of information?)	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	No
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
20	If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)?	Yes	N/A	N/A	No	No	No	N/A	Yes	No	No	Yes
4. Normal Audits												
21	Does the principle <i>audi alteram partem</i> 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	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	before the decision is finalised)?											
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?	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
23	If yes, what is the normal limit in months?	N/A	12 months	12 months	12 months	N/A	6 months	3 months	N/A	6 months	6 months	N/A
24	Does the taxpayer have the right to be represented by a person of its	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	choice in the audit process?											
25	May the opinion of independent experts be used in the audit process?	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	only receive one audit in respect of the same taxable period)?											
28	If yes, does this mean only one audit per tax per year?	Yes	No	N/A	No	Yes	Yes	No	Yes	No	N/A	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	No	No	No	No	Yes	No	Yes	No	No
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes	Yes	No	No	No	No	Yes	No	Yes	No	Yes	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	to get finality of taxation for a particular year)?											
5. More intensive audits												
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	No	No	Yes	No	No	No	No	No	No	No	No
32	May the tax authority enter and search the dwelling places of individuals?	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No
33	Is there a procedure in place to ensure that legally privileged material is not	Yes	No	No	Yes	No	Yes	Yes	Yes	No	Yes	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	taken in the course of a search?											
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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	Yes	No	No	No	Yes	No	Yes	No	Yes	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	No	N/A	N/A	Yes	Yes	Yes	No	No	No	No	N/A
37	If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	No	N/A	Yes	No	No	No	No	No	No	No	N/A

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
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?	No	No	No	Yes	Yes	No	No	Yes	No	No	Yes
39	If yes, is there a requirement to give the taxpayer	N/A	No	N/A	Yes	Yes	No	N/A	Yes	No	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	a warning that the taxpayer can rely on the right of non-self-incrimination?											
6. Reviews and appeals												
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case	No	No	No	No	No	No	No	No	No	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	proceeds to the judiciary?											
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	Yes	Yes	Yes	Yes	No	No	No	Yes	N/A	Yes
43	Are there time limits applicable for a tax case to complete the judicial appeal process?	Yes	No	Yes	No	No	No	Yes	Yes	Yes	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	N/A	N/A	> 24 months	N/A	N/A	> 24 months	2 months	2 months	9 months	12 months	N/A
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
46	If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim	N/A	N/A	Yes	Yes	No	Yes	N/A	Yes	Yes	Yes	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	suspension of the tax debt?											
47	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	Yes	No	No	No	No	No	No	No	No
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	Yes	No	No	No	No	No	No	Yes	No
49	Is there a system for the simplified resolution of tax disputes (e.g. by a determination	No	No	No	No	No	No	Yes	No	Yes	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	on the file, or by e/filing?											
50	Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
51	Does the loser have to pay the costs in a tax appeal?	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
52	If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of	N/A	N/A	No	No	N/A	Yes	No	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	the conduct of the other party)?											
53	Are judgments of tax tribunals published?	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
54	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	No	N/A	No	Yes	Yes	No	N/A	Yes	Yes	Yes
55	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality)?	No	No	No	No	Yes	Yes	Yes	Yes	No	No	No
7. Criminal and administrative sanctions												

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?	B	A + C	B + C	B	B + C	B	A + B	B + C	B + C	C	A + B + C
57	If <i>ne bis in idem</i> is recognised, does this prevent two parallel sets of court	No	N/A	No	No	No	No	No	No	Yes	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?											
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
8. Enforcement of taxes												
59	Does the taxpayer have the right to request a deferred payment of taxes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	or a payment in instalments (perhaps with a guarantee)?											
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	No	No	No	No	No	No	No
9. 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	No	No	No	No	No	No	No	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
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	No	No	No	No	No	No	No	No	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	No	No	No	No	No	No	No	No	No	No	N/A

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	the peer review by the Forum on Transparency and Exchange of Information?											
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	No	No	No	No	No	No	No	No	No
65	Does the taxpayer have the right to challenge before the judiciary the exchange of information	Yes	No	No	No	No	Yes	No	Yes	No	No	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	relating to him with another country?											
66	Does the taxpayer have the right to see any information received from another country that relates to him?	Yes	No	No	Yes	Yes	No	Yes	Yes	No	No	No
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	Yes	No	No	No	Yes	No	No	Yes	No	Yes	Yes
68	Does the taxpayer have a right to see the	No	No	No	No	No	No	No	No	No	No	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	communications exchanged in the context of a mutual agreement procedure?											
10. Legislation												
69	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	No	No	No	Yes	No	No	Yes	Yes	Yes	No
70	Is tax legislation subject to constitutional review which can strike down	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	unconstitutional laws?											
71	Is there a prohibition on retrospective tax legislation in your country?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	N/A	N/A	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
11. Revenue practice and guidance												
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	to how it applies your tax law?											
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protectoin of legitimate expectations)?	N/A	N/A	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes
75	Does your country have a generalised system of advanced rulings available to taxpayers?	No	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes
76	If yes, is it legally binding?	N/A	N/A	N/A	Yes	No	Yes	N/A	No	Yes	No	Yes
77	If a binding rule is refused, does the	No	Yes	Yes	No	Yes	Yes	N/A	No	Yes	No	Yes

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
	taxpayer have a right to appeal?											
12. Institutional framework for protecting taxpayers' rights												
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	Yes	No	No	Yes	Yes	No	No	Yes	No	No	No
79	If yes, are its provisions legally effective?	No	N/A	N/A	Yes	Yes	No	N/A	No	No	N/A	N/A
80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No

		Panama (Practitioner)	Peru (Practitioner 1)	Peru (Practitioner 2)	Peru (Practitioner 3)	Poland (Judiciary-Academic)	Portugal (Practitioner)	Russia (Practitioner-Academic)	Serbia (Tax Administrator and Academics)	Slovenia (Tax Administrator)	Slovenia (Practitioner) (*)	Slovenia (Practitioner-Academic and Judiciary)
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	N/A	No	No	No	Yes	No	N/A	No	N/A	Yes	No
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	N/A	N/A	N/A	Yes	Yes	No	N/A	No	N/A	N/A	N/A

C.6 South Africa – Venezuela

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers															
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	No	N/A	N/A	No	Yes	Yes	N/A	N/A	N/A	Yes	No	Yes	No
2	If yes, can they request the correction of errors in the information?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	N/A	N/A	Yes	No	Yes	N/A
3	In your country, is there a system of "cooperative compliance" /	No	No	Yes	Yes	Yes	No	No	Yes	N/A	Yes	Yes	No	No	Yes

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	"enhanced relationship" which applies to some taxpayers only?														
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?	No	N/A	Yes	Yes	No	No	No	No	N/A	Yes	No	No	N/A	No
5	Is it possible in your country for taxpayers to	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	communicate electronically with the tax authority?														
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	No	Yes	Yes	Yes	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in	Yes	Yes	Yes	No	Yes	No	Yes	No	N/A	Yes	Yes	No	Yes	No

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	complying with their tax obligations?														
2. 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	No	No	No	No	No	Yes	Yes	Yes	N/A	No	No	No	No	No

		South Africa (Ombudserson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudserson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	repayments to them?														
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?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	N/A	Yes	Yes	No	Yes	No
10	If yes, can the taxpayer request a meeting with the tax officer?	Yes	Yes	Yes	No	No	Yes	Yes	Yes	N/A	Yes	Yes	N/A	Yes	N/A

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
3. Confidentiality															
11	Is information held by your tax authority automatically encrypted?	No	Yes	Yes	Yes	Yes	No	No	No	N/A	No	Yes	Yes	Yes	Yes
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?	No	No	Yes	Yes	No	No	No	Yes	N/A	No	Yes	Yes	Yes	No
13	If yes, must the tax official identify	N/A	N/A	Yes	Yes	No	N/A	No	Yes	N/A	N/A	Yes	No	No	N/A

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	himself/herself before accessing information held about a specific taxpayer?														
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information?	No	N/A	Yes	Yes	Yes	No	Yes	Yes	N/A	No	Yes	No	No	Yes
15	Are there examples of tax officials who have been criminally prosecuted in the	No	Yes	Yes	No	Yes	No	No	No	N/A	No	Yes	No	No	No

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	last decade for unauthorised access to taxpayers' data?														
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	No	Yes	No	Yes	Yes	No	No	N/A	No	Yes	No	Yes	No
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	Yes	No	Yes	Yes	No	No	Yes	No	N/A	No	No	Yes	No	Yes
18	Is there a system in your country by which the courts	Yes	Yes	Yes	No	No	No	No	No	N/A	No	Yes	Yes	Yes	No

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information?)														
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	N/A	Yes	Yes	Yes	Yes	Yes

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
20	If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)?	No	No	Yes	No	No	No	No	Yes	N/A	No	Yes	No	Yes	Yes
4. 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	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	N/A	Yes	Yes	No	Yes	Yes

		South Africa (Ombudserson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudserson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	object and be heard before the decision is finalised)?														
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?	No	No	Yes	Yes	Yes	No	No	No	N/A	Yes	Yes	No	Yes	No
23	If yes, what is the normal limit in months?	N/A	N/A	1 month	18 months	N/A	N/A	N/A	N/A	N/A	6 months	> 24 months	N/A	12 months	N/A
24	Does the taxpayer have the right to be represented by a	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	person of its choice in the audit process?														
25	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	No	No	No	Yes	N/A	No	Yes	No	No	Yes
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	Yes	Yes	Yes	No	Yes	No	No	N/A	Yes	Yes	Yes	Yes	No
27	Does the principle ne bis in idem apply to tax audits (i.e. that the taxpayer	No	Yes	Yes	No	Yes	No	No	No	N/A	No	Yes	Yes	Yes	No

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	can only receive one audit in respect of the same taxable period?														
28	If yes, does this mean only one audit per tax per year?	No	No	Yes	N/A	Yes	N/A	No	N/A	N/A	N/A	Yes	Yes	No	No
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	No	No	No	Yes	No	No	No	N/A	Yes	No	No	No	No
30	Does the taxpayer have the right to	No	No	No	No	Yes	Yes	No	No	N/A	Yes	No	Yes	No	Yes

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?														
5. More intensive audits															
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	No	Yes	No	No	Yes	Yes	Yes	No	N/A	No	No	Yes	Yes	No
32	May the tax authority enter and search the dwelling	No	No	Yes	Yes	Yes	Yes	Yes	No	N/A	No	Yes	Yes	No	Yes

		South Africa (Ombudserson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudserson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	places of individuals?														
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	Yes	Yes	Yes	No	Yes	Yes	No	No	N/A	No	No	Yes	Yes	No
34	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	electronic communications)?														
35	Is the principle nemo tenetur applied in tax investigations (i.e. the principle against self-incrimination)?	No	Yes	No	No	No	Yes	No	Yes	N/A	Yes	Yes	Yes	Yes	Yes
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	Yes	Yes	N/A	N/A	No	Yes	No	Yes	N/A	No	No	No	Yes	No

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
37	If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	No	No	N/A	N/A	No	No	No	No	N/A	No	No	No	No	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	No	Yes	No	No	Yes	Yes	No	Yes	N/A	Yes	Yes	No	Yes	No

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognised?														
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?	No	No	N/A	N/A	Yes	Yes	No	Yes	N/A	Yes	Yes	N/A	No	N/A
6. Reviews and appeals															
40	Is there a procedure for an internal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	review of an assessment/decision before the taxpayer appeals to the judiciary?														
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	Yes	Yes	Yes	No	No	No	No	Yes	N/A	No	Yes	Yes	Yes	Yes
42	Is it necessary for the taxpayer to bring his case first before an	Yes	No	No	Yes	No	No	Yes	No	N/A	No	No	Yes	No	Yes

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing?														
43	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	No	No	No	No	N/A	No	No	Yes	Yes	No
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	12 months	> 24 months	N/A

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve et repete)?	Yes	Yes	No	Yes	No	No	Yes	No	N/A	No	No	No	No	Yes
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)?	Yes	Yes	N/A	Yes	No	N/A	Yes	N/A	N/A	N/A	N/A	N/A	N/A	No
47	Does the taxpayer need permission to	No	No	No	No	No	No	No	No	N/A	No	No	No	No	No

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	appeal to the first instance tribunal?														
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	Yes	No	No	Yes	No	Yes	No	N/A	Yes	No	No	No	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	Yes	No	No	No	No	No	No	N/A	Yes	Yes	No	No	No
50	Is the principle audi alteram partem (i.e.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	each party has a right to a hearing) applied in all tax appeals?														
51	Does the loser have to pay the costs in a tax appeal?	No	No	Yes	Yes	No	Yes	Yes	No	N/A	No	No	Yes	Yes	Yes
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)?	Yes	N/A	Yes	Yes	No	Yes	Yes	N/A	N/A	N/A	Yes	No	Yes	No

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
53	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes
54	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	No	Yes	Yes	No	Yes	Yes	Yes	N/A	Yes	No	No	No	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	N/A	No	No	Yes	No	No	No	N/A	Yes	Yes	No	No	No
7. Criminal and administrative sanctions															

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
56	Does the principle ne bis in idem apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?	A + C	B	No	B + C	No	No	No	B + C	N/A	No	No	C	B	B
57	If ne bis in idem is recognised, does this prevent two	Yes	No	N/A	Yes	Yes	No	No	Yes	N/A	N/A	No	No	No	No

		South Africa (Ombuds person and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombuds person, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?														
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	No	Yes
8. Enforcement of taxes															
59	Does the taxpayer have the right to	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?														
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	No	No	No	No	N/A	No	No	No	Yes	No
9. Cross-border procedures															
61	Does the taxpayer have the right to be	No	Yes	Yes	No	No	Yes	No	No	N/A	No	No	No	Yes	No

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	informed before information relating to him is exchanged in response to a specific request?														
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?	No	No	Yes	No	No	No	No	No	N/A	No	Yes	No	Yes	No

		South Africa (Ombudserson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudserson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
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?	No	No	N/A	No	No	N/A	No	Yes	N/A	No	No	No	N/A	No
64	Does the taxpayer have the right to be heard by the tax	No	No	Yes	No	No	Yes	No	No	N/A	No	No	No	No	No

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	authority before the exchange of information relating to him with another country?														
65	Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?	Yes	Yes	Yes	Yes	No	Yes	No	No	N/A	No	No	Yes	No	No
66	Does the taxpayer have the right to see any information received from	No	Yes	Yes	Yes	Yes	Yes	No	Yes	N/A	No	No	No	No	No

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	another country that relates to him?														
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	Yes	No	No	No	Yes	Yes	No	No	N/A	No	No	No	No	No
68	Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?	No	Yes	No	No	Yes	N/A	No	No	N/A	No	No	Yes	No	No
10. Legislation															

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
69	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No	No	Yes	No
70	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	N/A	No	Yes	No	Yes	Yes
71	Is there a prohibition on retrospective tax	No	No	Yes	No	Yes	No	No	No	N/A	No	No	Yes	Yes	Yes

		South Africa (Ombudsperson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsperson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	legislation in your country?														
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	No	No	N/A	Yes	No	Yes	Yes	Yes	N/A	Yes	No	N/A	N/A	N/A
11. Revenue practice and guidance															
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	No	Yes	Yes

		South Africa (Ombudserson and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudserson, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	how it applies your tax law?														
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protectoin of legitimate expectations)?	No	No	No	Yes	No	Yes	Yes	Yes	N/A	Yes	No	No	Yes	No
75	Does your country have a generalised system of advanced rulings available to taxpayers?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	N/A	Yes	Yes	Yes	No	Yes
76	If yes, is it legally binding?	Yes	Yes	No	Yes	Yes	Yes	No	Yes	N/A	N/A	Yes	Yes	N/A	Yes

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
77	If a binding rule is refused, does the taxpayer have a right to appeal?	No	Yes	Yes	No	No	Yes	No	No	N/A	N/A	No	No	N/A	Yes
12. Institutional framework for protecting taxpayers' rights															
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	Yes	Yes	Yes	Yes	No	No	Yes	No	N/A	Yes	Yes	No	No	No
79	If yes, are its provisions legally effective?	No	No	Yes	Yes	No	N/A	Yes	Yes	N/A	No	Yes	No	N/A	N/A
80	Is there a (tax) ombudsman / taxpayers' advocate	Yes	Yes	Yes	Yes	No	No	Yes	Yes	N/A	Yes	Yes	No	No	No

		South Africa (Ombudsman and Academic)	South Africa (Academic)	South Korea (Academic)	Spain (Ombudsman, Judiciary and Academics)	Sweden (Practitioner and Academic)	Switzerland (Judiciary)	Taiwan (Academic)	Netherlands (Practitioner)	Turkey (Academic)	United Kingdom (Practitioner)	United States (Tax Administrators)	Venezuela (Practitioner 1)	Venezuela (Practitioner 2)	Venezuela (Academic)
	/ equivalent position in your country?														
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	Yes	Yes	Yes	Yes	No	N/A	No	No	N/A	No	Yes	No	No	N/A
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	Yes	Yes	No	Yes	No	N/A	No	Yes	N/A	Yes	Yes	No	No	N/A