



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Duy Dam, Director of Tax Complaints and Review of the *Office of Inspector-General of Taxation & Taxation Ombudsman* and OPTR National Reporter of Australia.

This set of questionnaires comprise the National Reporter's assessment on the country practice during 2018 in the protection of taxpayers' rights (Questionnaire # 1), and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*" (Questionnaire # 2). These questionnaires were filled in considering the following parameters:

1. *For Questionnaire # 1*, an assertive assessment (yes/no) was required on the effective implementation in domestic law of 82 legal safeguards, guarantees and procedures relevant in 12 specific areas for the practical protection of taxpayers' rights, as identified by Baker & Pistone in 2015. This line of questioning aims to get an overview of the state of protection of taxpayers' rights in the country in 2018.
2. *For Questionnaire # 2*, an impartial, non-judgmental evaluation was required on the developments, either of improvement or of decline, in the level of realisation of 57 minimum standards and 44 best practices, distributed into 87 benchmarks for the practical protection of taxpayers' rights. In this regard, a summary of events occurred in 2018 (legislation enacted, administrative rulings, circulars, case law, tax administration practices), that serve as grounds for each particular assessment, was also required.



Observatory on the Protection of Taxpayers' Rights
Questionnaire No. 1: Country Practice

Country: Australia
National Reporter: Inspector-General of Taxation & Taxation Ombudsman
Affiliation

Tax Administration Tax Practitioner Judiciary Tax Ombudsman Academia

1. Identifying taxpayers and issuing tax returns			
#	Question	Yes	No
1	Do taxpayers have the right to see the information held about them by the tax authority?	<input type="radio"/>	<input type="radio"/>
2	If yes, can they request the correction of errors in the information?	<input checked="" type="radio"/>	<input type="radio"/>
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only?	<input checked="" type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	<input checked="" type="radio"/>	<input type="radio"/>
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	<input checked="" type="radio"/>	<input type="radio"/>
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?	<input checked="" type="radio"/>	<input type="radio"/>

2. The issue of tax assessments			
#	Question	Yes	No
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?	<input checked="" type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
10	If yes, can the taxpayer request a meeting with the tax officer?	<input type="radio"/>	<input checked="" type="radio"/>

3. Confidentiality			
#	Question	Yes	No
11	Is information held by your tax authority automatically encrypted?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input checked="" type="radio"/>	<input type="radio"/>
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	<input checked="" type="radio"/>	<input type="radio"/>
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information?	<input checked="" type="radio"/>	<input type="radio"/>
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	<input checked="" type="radio"/>	<input type="radio"/>
16	Is information about the tax liability of specific taxpayers publicly available in your country?	<input type="radio"/>	<input checked="" type="radio"/>
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	<input type="radio"/>	<input checked="" type="radio"/>
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)?	<input checked="" type="radio"/>	<input type="radio"/>
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	<input checked="" type="radio"/>	<input type="radio"/>
20	If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)?	<input type="radio"/>	<input checked="" type="radio"/>

7. Criminal and administrative sanctions					
#	Question				
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?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>
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)?	<input type="radio"/> Yes	<input checked="" type="radio"/> No		
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	<input checked="" type="radio"/> Yes	<input type="radio"/> No		

8. Enforcement of taxes			
#	Question	Yes	No
59	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	<input checked="" type="radio"/>	<input type="radio"/>
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	<input type="radio"/>	<input checked="" type="radio"/>

9. Cross-border procedures			
#	Question	Yes	No
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
65	Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?	<input type="radio"/>	<input checked="" type="radio"/>
66	Does the taxpayer have the right to see any information received from another country that relates to him?	<input type="radio"/>	<input checked="" type="radio"/>
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	<input type="radio"/>	<input checked="" type="radio"/>
68	Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?	<input type="radio"/>	<input checked="" type="radio"/>

10. Legislation			
#	Question	Yes	No
69	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	<input type="radio"/>	<input checked="" type="radio"/>
70	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	<input type="radio"/>	<input checked="" type="radio"/>
71	Is there a prohibition on retrospective tax legislation in your country?	<input type="radio"/>	<input checked="" type="radio"/>
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	<input type="radio"/>	<input checked="" type="radio"/>

4. Normal audits			
#	Question	Yes	No
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)?	<input type="radio"/>	<input checked="" type="radio"/>
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)?	<input type="radio"/>	<input checked="" type="radio"/>
23	If yes, what is the normal limit in months?		
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
25	May the opinion of independent experts be used in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
26	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	<input checked="" type="radio"/>	<input type="radio"/>
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)?	<input type="radio"/>	<input checked="" type="radio"/>
28	If yes, does this mean only one audit per tax per year?	<input type="radio"/>	<input type="radio"/>
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	<input type="radio"/>	<input checked="" type="radio"/>
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)?	<input type="radio"/>	<input checked="" type="radio"/>

5. More intensive audits			
#	Question	Yes	No
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	<input type="radio"/>	<input checked="" type="radio"/>
32	May the tax authority enter and search the dwelling places of individuals?	<input checked="" type="radio"/>	<input type="radio"/>
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	<input checked="" type="radio"/>	<input type="radio"/>
34	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	<input type="radio"/>	<input checked="" type="radio"/>
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	<input type="radio"/>	<input checked="" type="radio"/>
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input type="radio"/>

6. Review and appeals			
#	Question	Yes	No
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	<input checked="" type="radio"/>	<input type="radio"/>
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	<input checked="" type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
43	Are there time limits applicable for a tax case to complete the judicial appeal process?	<input type="radio"/>	<input checked="" type="radio"/>
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?		
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	<input type="radio"/>	<input checked="" type="radio"/>

11. Revenue practice and guidance			
#	Question	Yes	No
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	<input checked="" type="radio"/>	<input type="radio"/>
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	<input checked="" type="radio"/>	<input type="radio"/>
75	Does your country have a generalised system of advanced rulings available to taxpayers?	<input checked="" type="radio"/>	<input type="radio"/>
76	If yes, is it legally binding?	<input checked="" type="radio"/>	<input type="radio"/>
77	If a binding rule is refused, does the taxpayer have a right to appeal?	<input type="radio"/>	<input checked="" type="radio"/>

12. Institutional framework for protecting taxpayers' rights			
#	Question	Yes	No
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	<input checked="" type="radio"/>	<input type="radio"/>
79	If yes, are its provisions legally effective?	<input type="radio"/>	<input checked="" type="radio"/>
80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?	<input checked="" type="radio"/>	<input type="radio"/>
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	<input checked="" type="radio"/>	<input type="radio"/>
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	<input checked="" type="radio"/>	<input type="radio"/>

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)?	<input type="radio"/>	<input type="radio"/>
47	Does the taxpayer need permission to appeal to the first instance tribunal?	<input type="radio"/>	<input checked="" type="radio"/>
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	<input type="radio"/>	<input checked="" type="radio"/>
49	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing)?	<input checked="" type="radio"/>	<input type="radio"/>
50	Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals?	<input checked="" type="radio"/>	<input type="radio"/>
51	Does the loser have to pay the costs in a tax appeal?	<input checked="" type="radio"/>	<input type="radio"/>
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)?	<input checked="" type="radio"/>	<input type="radio"/>
53	Are judgments of tax tribunals published?	<input checked="" type="radio"/>	<input type="radio"/>
54	If yes, can the taxpayer preserve its anonymity in the judgment?	<input checked="" type="radio"/>	<input type="radio"/>
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?	<input checked="" type="radio"/>	<input type="radio"/>



1. Identifying taxpayers and issuing tax returns

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
1	Implement safeguards to prevent impersonation when issuing unique identification number		<input type="radio"/>	<input checked="" type="radio"/>	<p>Director identification numbers 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 with 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 will prevent the use of fictitious identities. This initiative is intended to assist regulators to map relationships between entities and individuals over time. <i>Source: https://treasury.gov.au/consultation/c2018-t330649/</i></p> <p>Client identity program In partnership with the Digital Transformation Agency, the Australian Taxation Office (ATO) is developing GovPass – a way to manage digital identity across government. GovPass forms the government's client identity program, allowing individuals to securely and easily identify themselves, connect with government digital services and authorise people to act on their behalf. <i>Source: 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)</i></p>
2	The system of taxpayer identification should take account of religious sensitivities		<input type="radio"/>	<input type="radio"/>	
3	Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes		<input type="radio"/>	<input type="radio"/>	
4		Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax	<input type="radio"/>	<input type="radio"/>	
5	Where pre/populated returns are used, these should be sent to taxpayers to correct errors		<input type="radio"/>	<input checked="" type="radio"/>	The ATO continues to work to obtain data more quickly following the end of the financial year and to the expand the amount of information that may be pre-filled into taxpayers' income tax returns. This work enables the ATO to continue to provide a more complete pre-filing service earlier for individual taxpayers to review for accuracy. In the future, the ATO aims to streamline the lodgment process for individuals with straightforward affairs, making it easier for taxpayers to meet their tax obligations on time. <i>Source: ato.gov.au - We are an active and capable regulator, 12 July 2018</i>
6	Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies	Publish guidance on taxpayers' rights to access information and correct inaccuracies	<input type="radio"/>	<input checked="" type="radio"/>	The <i>Taxpayers' Charter – accessing information under the Freedom of Information Act 1982 (FOI Act)</i> requires the ATO publish documents used in making decisions. The FOI Act gives taxpayers the right to access other documents 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, out of date or misleading. <i>Source: https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers-Charter/Taxpayers-Charter---accessing-information-under-the-Freedom-of-Information-Act/</i>
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		<input type="radio"/>	<input checked="" type="radio"/>	<p>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, assisting tax practitioners, and superannuation reporting.</p> <p>To maintain integrity across the digital ecosystem, the ATO developed the DSP Operational Framework, which sets out the minimum requirements a DSP needs to meet 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, which 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.</p> <p><i>Source: 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)</i></p>
8	Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		<input type="radio"/>	<input checked="" type="radio"/>	<p>The Commissioner of Taxation's remedial power was 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, 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, Treasury and the private sector. A register showing modifications is available on the ATO website at ato.gov.au/CRP and will be expanded over time to improve transparency in the Commissioner's remedial power process.</p> <p><i>Source: 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)</i></p>

9	Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication		○	●	<p>Assistance is provided through the Tax Help program in remote areas to facilitate lodgment for taxpayers who are unable to lodge electronically (and by default some who are unwilling); and provides assistance to taxpayers who have disabilities. Source: https://www.ato.gov.au/individuals/lodging-your-tax-return/tax-help-program/</p> <p>The ATO supported the Australian Security and Investment's outreach program in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands in north-west South Australia in a week-long series 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 super, 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. Source: 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)</p> <p>The ATO provides support for small business through the Let's Talk website that offers free workshops and webinars on a variety of tax and super 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. Source: https://lets-talk.ato.gov.au/</p>
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2. The issue of tax assessment

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
10		Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms	○	●	<p>The ATO continues to engage with taxpayers at an early stage to provide public advice and guidance assisting taxpayers to understand 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 2017-18 with some specific activities being:</p> <p>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.</p> <p>Small businesses: ATO provided guidance on ride-sourcing, accommodation sharing, and the sharing economy more generally. Other activities designed to help 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.</p> <p>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 to correct large volumes of tax returns where errors have been identified.</p> <p>Privately owned and wealthy groups: The ATO's pre-lodgment advice services and taxpayer engagement programs for privately owned and wealthy groups are designed to resolve potential disputes and errors before lodgment. By working in advance with large taxpayers to agree on tax treatment, the ATO aims to create certainty, for both it and the taxpayer about their tax position 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 consider tax to be assured when it have objective evidence that the right amount has been reported. Amongst other entities, the ATO's Justified Trust program includes 320 private groups. Where the ATO is unable access evidence to assure 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.</p> <p>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.</p> <p>Not-for-profit organisations: Assistance specifically for not-for-profit organisations included providing up-to-date, tailored information on the ATO website, and not-for-profit news service. The ATO also established a dedicated phone service for not-for-profit organisations.</p> <p>Superannuation funds: The ATO is continuing to educate employers about their superannuation guarantee obligations, and using new data models – nearest-neighbour risk models – to identify non-compliant employers and ensure that employees receive their correct entitlements.</p> <p>Source: 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)</p>
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	○	●	<p>Recently, the ATO 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 future, this offering aims to streamline the lodgment process for taxpayers with straightforward affairs, making it easier for people to meet their tax obligations on time. To support individual taxpayers to correctly report income in their tax return, the ATO uses automated programs that identify and correct errors once a return is lodged checked against the third-party data received. This means 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.</p> <p>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. Source: 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)</p>

3. Confidentiality

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
12	Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced).	Encrypt information held by a tax authority about taxpayers to the highest level attainable.	<input type="radio"/>	<input type="radio"/>	
13	Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes.	Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities.	<input type="radio"/>	<input type="radio"/>	
14	Audit data access periodically to identify cases of unauthorised access.		<input type="radio"/>	<input type="radio"/>	
15	Introduce administrative measures emphasizing confidentiality to tax officials.	Appoint data protection/privacy officers at senior level and local tax offices.	<input type="radio"/>	<input checked="" type="radio"/>	<p>The Australian Government's Notifiable Data Breaches Scheme came into force on 22 February 2018. It requires agencies and organisations that hold data to have in place appropriate plans to minimise the risk of data breaches and, where they do occur, to take action to remediate the potential harm to affected citizens; or where remedial action is not effective; to notify the affected citizens so they may take action to protect themselves against harm. <i>Source: https://www.oaic.gov.au/privacy-law/privacy-act/notifiable-data-breaches-schem</i></p> <p>All Australian Government agencies were required to implement the Australian Government Agencies Privacy Code (the Code) on 1 July 2018 (https://www.oaic.gov.au/privacy-law/australian-government-agencies-privacy-code/). The Code requires all agencies to appoint a full time designated Privacy Officer and Privacy Champion and to implement protocols and safeguards to manage confidential, personal and sensitive information and action plans for dealing with potential breaches. <i>Source: https://www.oaic.gov.au/privacy-law/australian-government-agencies-privacy-code/</i></p>
16	Where pre/populated returns are used, these should be sent to taxpayers to correct errors.		<input type="radio"/>	<input type="radio"/>	
17	If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges).		<input type="radio"/>	<input type="radio"/>	
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		<input type="radio"/>	<input type="radio"/>	
19	Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.		<input type="radio"/>	<input type="radio"/>	
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		<input type="radio"/>	<input checked="" type="radio"/>	<p>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 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. <i>Source: https://static.treasury.gov.au/uploads/sites/1/2017/12/c2017-c246047-Exposure-Draft.pdf</i></p>
21	No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes.	Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data, and then reporting to Parliament.	<input type="radio"/>	<input type="radio"/>	
22	Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard.		<input type="radio"/>	<input type="radio"/>	
23	If published, tax rulings should be anonymised and details that might identify the taxpayer removed.	Anonymise all tax judgments and remove details that might identify the taxpayer	<input type="radio"/>	<input type="radio"/>	
24	Legal professional privilege should apply to tax advice.	Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure.	<input type="radio"/>	<input type="radio"/>	

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

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
26	Audits should respect the following principles: (1) Proportionality. (2) <i>Ne bis in idem</i> (prohibition of double jeopardy). (3) <i>Audi alteram partem</i> (right to be heard before any decision is taken). (4) <i>Nemo tenetur se detegere</i> (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void.		<input type="radio"/>	<input checked="" type="radio"/>	Recent initiatives by the ATO have 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 for inadvertent errors that result from a failure to take reasonable care of adopting positions which are not reasonably arguable. Penalty relief is available for individual taxpayers, small business, self-managed superannuation funds, strata bodies, not-for-profit organisations and cooperatives. Source: https://www.ato.gov.au/general/interest-and-penalties/penalties/penalty-relief/
27	In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers.		<input type="radio"/>	<input checked="" type="radio"/>	<p>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 to reduced 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 to prefill in 2018 of information on disposal of shares and units, are examples of how the ATO has increased the speed and breadth of its prefilling service.</p> <p>Making better use of its data allows for early engagement with taxpayers to assist them and enables the ATO to identify those taxpayers may be non-compliant. In the 2018 financial year, 87.5% of the value of income reported in individual tax returns was able to match exactly to pre-filled information.</p> <p>The ATO has also introduced a program for taxpayers who are entitled to a Refund of Franking Credits that 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 program and to lodge a claim form for the refund. In the 2018 financial year, the ATO issued Refunds of Franking Credit to approximately 59,000 taxpayers.</p> <p>In addition to the above, the ATO also uses automated programs 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 minimising the risk of debt issues arising at a later stage.</p>
28		In application of <i>ne bis in idem</i> the taxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed.	<input type="radio"/>	<input checked="" type="radio"/>	In certain areas of compliance, the ATO is aiming to reach this best practice standard for the one audit per taxable period standard. For example, it is piloting a new approach for worker classification assurance that should minimise the need for audit activity.
29	In application of <i>audi alteram partem</i> , taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final.		<input type="radio"/>	<input type="radio"/>	
30	In application of <i>nemo tenetur</i> , the right to remain silent should be respected in all tax audits.		<input type="radio"/>	<input type="radio"/>	
31		Tax audits should follow a pattern that is set out in published guidelines.	<input type="radio"/>	<input type="radio"/>	
32		A manual of good practice in tax audits should be established at the global level.	<input type="radio"/>	<input type="radio"/>	
33		Taxpayers should be entitled to request the start of a tax audit (to obtain finality).	<input type="radio"/>	<input type="radio"/>	
34	Where tax authorities have resolved to start an audit, they should inform the taxpayer	Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.	<input type="radio"/>	<input type="radio"/>	
35	Taxpayers should be informed of information gathering from third parties.		<input type="radio"/>	<input type="radio"/>	
36		Reasonable time limits should be fixed for the conduct of audits.	<input type="radio"/>	<input type="radio"/>	
37	Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.		<input type="radio"/>	<input type="radio"/>	

38	The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer.	The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view.	<input type="radio"/>	<input type="radio"/>	
39		Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.	<input type="radio"/>	<input type="radio"/>	

5. More intensive audits

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
40		More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance.	<input type="radio"/>	<input type="radio"/>	
41	If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure.		<input type="radio"/>	<input type="radio"/>	
42	Entering premises or interception of communications should be authorised by the judiciary.		<input type="radio"/>	<input type="radio"/>	
43	Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification.		<input type="radio"/>	<input type="radio"/>	
44	Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases.	Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.	<input type="radio"/>	<input type="radio"/>	
45		Access to bank information should require judicial authorisation.	<input type="radio"/>	<input type="radio"/>	
46		Authorisation by the judiciary should be necessary for interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions.	<input type="radio"/>	<input type="radio"/>	
47	Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time.		<input type="radio"/>	<input type="radio"/>	
48		If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer.	<input type="radio"/>	<input type="radio"/>	
49	Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.		<input type="radio"/>	<input type="radio"/>	

6. Review and appeals

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
50		E-filing of requests for internal review to ensure the effective and speedy handling of the review process.	<input type="radio"/>	<input type="radio"/>	
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		<input type="radio"/>	<input type="radio"/>	
52		Reviews and appeals should not exceed two years.	<input type="radio"/>	<input type="radio"/>	
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		<input type="radio"/>	<input type="radio"/>	
54	Where tax must be paid in whole or in part before and appeal, there must be an effective mechanism for providing interim suspension of payment.	An appeal should not require prior payment of tax in all cases.	<input type="radio"/>	<input type="radio"/>	
55		The state should bear some or all of the costs of an appeal, whatever the outcome.	<input type="radio"/>	<input type="radio"/>	
56	Legal assistance should be provided for those taxpayers who cannot afford it.		<input type="radio"/>	<input checked="" type="radio"/>	<p>The ATO's Dispute Assist program 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." <i>Source: ATO Annual Report 2017-18, p 36</i> (https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Report_2017-18/annual%20report%202017-18.PDF).</p> <p>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." <i>Source: https://businesslaw.curtin.edu.au/law/tax-clinic/</i></p> <p>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." (http://srr.ministers.treasury.gov.au/media-release/046-2018/) 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." <i>Source: Prime Minister's Address to the Australian Chamber of Commerce and Industry Annual Dinner</i> (https://www.pm.gov.au/media/australian-chamber-commerce-and-industry-annual-dinner); <i>Assistant Treasurer Press Release</i> (http://srr.ministers.treasury.gov.au/media-release/046-2018/)</p>
57	Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.		<input type="radio"/>	<input type="radio"/>	
58	Tax judgments should be published.		<input type="radio"/>	<input type="radio"/>	

7. Criminal and administrative sanctions

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
59	Proportionality and <i>ne bis in idem</i> should apply to tax penalties.		<input type="radio"/>	<input type="radio"/>	
60		Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.	<input type="radio"/>	<input type="radio"/>	
61		Voluntary disclosure should lead to reduction of penalties.	<input type="radio"/>	<input type="radio"/>	
62	Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.		<input type="radio"/>	<input type="radio"/>	

8. Enforcement of taxes

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
63	Collection of taxes should never deprive taxpayers of their minimum necessary for living.		<input type="radio"/>	<input checked="" type="radio"/>	In 2018, the ATO: <ul style="list-style-type: none"> reviewed and updated the financial difficulty and serious hardship content on its website to improve clarity and accessibility for taxpayers. https://www.ato.gov.au/General/Financial-hardship/ commenced working on a brochure with external stakeholders, including tax agents, for taxpayers in financial difficulty or serious hardship to promote greater awareness of debt relief options. The ATO aims to release the brochure in 2019. commenced reviewing how it actions applications for release in order to reduce the time 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.
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input type="radio"/>	<input checked="" type="radio"/>	In 2018, the ATO reviewed its use of garnishee notices as a result of which it will be: <ul style="list-style-type: none"> revising garnishee learning products and procedures for better clarity and useability revising wording of garnishee notices pursuing a policy change to enable the refund of garnisheed funds in limited circumstances. <p>The IGT also launched a review into the ATO's use of garnishee notices following concerns raised in the media. <i>Source:</i> http://igt.gov.au/publications/reports-of-reviews/use-of-garnishee-notices/</p>
65	Taxpayers should have the right to request delayed payment of arrears.		<input type="radio"/>	<input type="radio"/>	The right itself has not specifically changed, however, changes have specifically been made to access and availability of this through online tools to support payment plans for individuals debts relating to superannuation guarantee, fringe benefits and costs and fines.
66		Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.	<input type="radio"/>	<input checked="" type="radio"/>	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 its performance in progressing insolvencies tends to be conservative. <p>It has also 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.</p>
67	Temporary suspension of tax enforcement should follow natural disasters.		<input type="radio"/>	<input checked="" type="radio"/>	For much of 2018, significant parts of Australia were declared to be drought-affected. In response the ATO: <ul style="list-style-type: none"> suspended stronger debt collection activities; and 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. <p>The ATO also 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> <p>It also 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. <i>Source:</i> https://www.ato.gov.au/General/Financial-hardship/In-detail/Help-for-drought-affected-taxpayers/?=redirected</p>

9. Cross-border procedures

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
68	The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation.	The taxpayer should be informed that a cross-border request for information is to be made.	<input type="radio"/>	<input type="radio"/>	
69		Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.	<input type="radio"/>	<input type="radio"/>	
70		Provisions should be included in tax treaties setting specific conditions for exchange of information.	<input type="radio"/>	<input type="radio"/>	
71	If information is sought from third parties, judicial authorisation should be necessary.		<input type="radio"/>	<input type="radio"/>	

72		The taxpayer should be given access to information received by the requesting state.	<input type="radio"/>	<input type="radio"/>	
73		Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.	<input type="radio"/>	<input type="radio"/>	
74		A requesting state should provide confirmation of confidentiality to the requested state.	<input type="radio"/>	<input type="radio"/>	
75	A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection.		<input type="radio"/>	<input type="radio"/>	
76		For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.	<input type="radio"/>	<input type="radio"/>	
77		Taxpayers should have a right to request initiation of mutual agreement procedure.	<input type="radio"/>	<input type="radio"/>	
78	Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.		<input type="radio"/>	<input type="radio"/>	

10. Legislation

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
79	Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail.	Retrospective tax legislation should ideally be banned completely.	<input type="radio"/>	<input type="radio"/>	
80		Public consultation should precede the making of tax policy and tax law.	<input type="radio"/>	<input type="radio"/>	

11. Revenue practice and guidance

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
81	Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.		<input type="radio"/>	<input type="radio"/>	
82	Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet.		<input type="radio"/>	<input type="radio"/>	
83	Binding rulings should only be published in an anonymised form		<input type="radio"/>	<input type="radio"/>	
84	Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively.		<input type="radio"/>	<input type="radio"/>	

12. Institutional framework for protecting taxpayer's rights

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
85	Adoption of a charter or statement of taxpayers' rights should be a minimum standard.	A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited.	<input type="radio"/>	<input checked="" type="radio"/>	Following a recommendation made in the IGT's 2016 review into 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. <i>Source: https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers-Charter/</i> This includes a one page overview of taxpayer rights and obligations <i>Source: https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers-Charter/Taxpayers-Charter-essentials/</i> and a dedicated publication informing taxpayers of their rights when they are subject to an ATO review or audit. <i>Source: https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers-Charter/Taxpayers-Charter-if-you-re-subject-to-review-or-audit/</i>
86		A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority.	<input type="radio"/>	<input checked="" type="radio"/>	In 2018, the IGT 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. <i>Source: http://igt.gov.au/</i>
87		The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally.	<input type="radio"/>	<input type="radio"/>	