



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Véronique de Brabanter, Luk Cassimon, Gilles van Hulle and Liesbeth Vermeire, Attorneys at *PwC / Law Square* and OPTR National Reporters of Belgium.

This set of questionnaires comprise the National Reporters' 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: Belgium
National Reporter: Véronique De Brabanter, Liesbeth Vermeire and Luk Cassimon
Affiliation: PwC Legal

Administration Practitioner Blogger 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 checked="" 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 type="radio"/>	<input checked="" 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 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>
10	If yes, can the taxpayer request a meeting with the tax officer?	<input checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	<input 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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"/>

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 checked="" type="radio"/>	<input 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?	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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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?	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>)?	<input type="radio"/>	<input checked="" 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 <i>effiling</i>)?	<input type="radio"/>	<input checked="" type="radio"/>
50	Is the principle <i>audi alteram partem</i> (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 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"/>	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>
71	Is there a prohibition on retrospective tax legislation in your country?	<input checked="" type="radio"/>	<input type="radio"/>
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	<input type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	<input type="radio"/>	<input checked="" 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		○	○	
2	The system of taxpayer identification should take account of religious sensitivities		○	○	
3	Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes		○	○	
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		●	○	This is not always the case. In 2018, the tax on securities accounts entered into force. In principle, this tax is due by the intervening bank. However, the holder of the securities account remains the taxpayer and therefore can be held liable to pay the taxes due (in case the bank did not withhold the tax). The same principle applies in case of an intervening foreign bank and this bank did not withhold the tax.
5	Where pre/populated returns are used, these should be sent to taxpayers to correct errors		○	○	
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	○	●	Following the entry into force of the GDPR, the tax authorities published new guidelines, describing the rights of the taxpayers and the use of their personal data.
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		○	○	
8	Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		○	●	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 not yet a legal basis. 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.
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		○	○	

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	○	○	
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	○	○	

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.	○	●	In practice, in certain specific cases where a large number of data was seized by the Tax Authorities, it can be agreed with the Tax Authorities to proceed to an encryption of the data and agree upon specific access procedures.
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.	○	●	Following the implementation of the GDPR in Belgian law, 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 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 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 the subject of an 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 the 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 a identification, authentication, authorization, login and audit system (cf. Art. 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 Federal Public Service Finance in the context of its missions)
14	Audit data access periodically to identify cases of unauthorised access.		○	●	The Data Protection Officer shall periodically monitor access and attempts of access to detect security incidents. (cf. Article 10.54 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))
15	Introduce administrative measures emphasizing confidentiality to tax officials.	Appoint data protection/privacy officers at senior level and local tax offices.	○	●	A Service for Information Security and Protection of Privacy is set up within the Federal Public Service Finance and is 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. (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))
16	Where pre/populated returns are used, these should be sent to taxpayers to correct errors.		○	○	
17	If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges).		○	○	
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		○	○	
19	Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.		○	○	
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		○	○	
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.	○	○	
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.		○	○	
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.	○	○	
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.	●	○	On 18 January 2018, the Supreme Court ruled that information that was obtained from a lawyer in breach with 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).
25	Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege.		○	○	

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) Ne bis in idem (prohibition of double jeopardy), (3) Audi alteram partem (right to be heard before any decision is taken), (4) Nemo tenetur se detegere (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void.		●	○	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 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 strict (in accordance with the case law of the ECtHR).

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.		●	○	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 where 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 to the illegality of this request (CFI Antwerp, div. Antwerp 2 February 2018).
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.		○	○	
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.		○	○	
30	In application of <i>nemo tenetur</i> , the right to remain silent should be respected in all tax audits.		○	○	
31		Tax audits should follow a pattern that is set out in published guidelines.	○	○	
32		A manual of good practice in tax audits should be established at the global level.	○	○	
33		Taxpayers should be entitled to request the start of a tax audit (to obtain finality).	○	○	
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.	○	○	
35	Taxpayers should be informed of information gathering from third parties.		○	○	
36		Reasonable time limits should be fixed for the conduct of audits.	●	○	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 (reasonable time limit- Supreme Court dd. 21 September 2018, F.15.0005.N). In practice, we notice a shift away from the best practice.
37	Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.		○	○	
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.	○	○	
39		Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.	○	○	

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.	○	○	
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.		○	○	
42	Entering premises or interception of communications should be authorised by the judiciary.		○	○	
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.		○	○	
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.	○	○	
45		Access to bank information should require judicial authorisation.	○	○	
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.	○	○	
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.		○	○	
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.	○	○	
49	Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.		○	○	

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.	○	●	You can file a protest letter online. Moreover, in case of a court procedure, you can also deposit legal briefs online.
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		○	○	
52		Reviews and appeals should not exceed two years.	○	○	
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		○	○	
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.	○	○	
55		The state should bear some or all of the costs of an appeal, whatever the outcome.	○	○	
56	Legal assistance should be provided for those taxpayers who cannot afford it.		○	○	
57	Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.		○	○	
58	Tax judgments should be published.		○	○	

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.		●	○	The 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. The Court of Appeal Antwerp decided in two cases (Antwerpen 9 January 2018 - Antwerpen 20 March 2018) 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.
60		Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.	○	○	
61		Voluntary disclosure should lead to reduction of penalties.	○	○	
62	Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.		○	●	VAT: the VAT authorities published an internal instruction regarding remission of VAT penalties (in case of good faith)

8. Enforcement of taxes

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
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63	Collection of taxes should never deprive taxpayers of their minimum necessary for living.		<input checked="" type="radio"/>	<input type="radio"/>	The tax collector tries to collect the taxes due. Recently, the Belgian Ombudsman launched an appeal that the tax collectors were to stringent and imposed unreasonable conditions and periods to pay taxes via monthly installments.
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input checked="" type="radio"/>	<input type="radio"/>	In 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 case of disputed tax debts as a conservatory measure (law of 25 December 2017).
65	Taxpayers should have the right to request delayed payment of arrears.		<input checked="" type="radio"/>	<input type="radio"/>	cf question 63
66		Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.	<input type="radio"/>	<input type="radio"/>	
67	Temporary suspension of tax enforcement should follow natural disasters.		<input type="radio"/>	<input type="radio"/>	

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 checked="" type="radio"/>	Most Belgian DTT provide this provision. As an example, the new DTT 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).
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 checked="" type="radio"/>	Beside the EU Arbitration Convention, Belgium is bound by the Council Directive (EU) 2017/1852 of 10 October 2017, which both foresees the possibility to initiate a MAP. Currently the Government is working on a project to implement the Directive in national law.
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 checked="" type="radio"/>	<input type="radio"/>	The FPS hosts a specific website (Fisconet), which includes amongst others, relevant legislation, case law and rulings. However, recently the access to this website was impeded because a free account is necessary to have access. In practice, this makes the access to the website more difficult.
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 checked="" type="radio"/>	In Belgium, the principle of legitimate expectations applies. This means that the position of the tax authorities created legitimate expectations on behalf of the taxpayer, the tax authorities must respect these expectations. Any changes can only apply for the future. However, it is currently unclear whether the principle of the legitimate expectations also applies when the taxpayer relied on a position that was contra legem. The case law of the Supreme Court is ambiguous. In 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. decision of the Court of Appeal Ghent - 25 September 2018)

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 type="radio"/>	
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 type="radio"/>	
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"/>	