



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Anne Van de Vijver, Professor of tax law at the *University of Antwerpen* and Jef Van Eyndhoven, Attorney at *HCGB Advocaten*. Both 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: Anne Van de Vijver & Jef Van Eyndhoven
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 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 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 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"/>

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 type="checkbox"/> No	<input type="checkbox"/> A	<input type="checkbox"/> B	<input checked="" type="checkbox"/> C
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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>
23	If yes, what is the normal limit in months?	More than 24 months ▼	
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	<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 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 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 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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"/>

(*) There is no legal domestic basis, but this principle applies based on the European Convention of Human Rights and other international instruments.

(**) The law provides only facultative "una via" consultation.

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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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"/>

(*) A pilot programme will start in 2019.

(**) Telephone tapping by tax authorities is not authorized, but they can have access to electronic communication when searching premises (without court order).

(***) However, this principle could be invoked if there is a risk that criminal tax sanctions will be imposed (but also in this case only to avoid the sanctions not the taxation).



Observatory on the Protection of Taxpayers' Rights
Questionnaire No. 2: Standards of Protection

Country: Belgium
National Reporter: Anne Van de Vijver & Jef Van Eyndhoven
Affiliation Tax Administration Tax Practitioner Judiciary (Tax) Ombudsman Academia

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 type="radio"/>	
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 type="radio"/>	
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 law of 5 September 2018 (Belgian official Gazette, 10 September 2018) provides rules with respect to data protection and processing of data by the tax authorities. The rules are in line with the EU General Data Protection Regulation (GDPR) and include the right to information (art. 13 & 14 GDPR), the right to access personal data (art. 15 GDPR) and the right to rectification (art. 16 GDPR). The new rules also provide certain restrictions to the taxpayers' rights, but these restrictions are subject to strict conditions (art. 23 GDPR), for instance the law provides the tax authorities the right to use datamining and provides restrictions to the taxpayers right to access personal data and correct inaccuracies (cf. below).
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		<input type="radio"/>	<input type="radio"/>	
8	Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		<input type="radio"/>	<input type="radio"/>	
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		<input type="radio"/>	<input checked="" type="radio"/>	According to Belgian tax law, certain categories of taxpayers are exempt from the obligation to file a personal income tax declaration (art. 306, § 1 Income Tax Code). The tax authorities have to send these taxpayers a "proposal of simplified declaration" indicating the tax base as well as the tax due (art. 306, § 2 Income Tax Code). A royal decree of 6 March 2018 (Belgian official Gazette, 20 March 2018) extends the cases in which the exemption from the declaration obligation applies.

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	<input type="radio"/>	<input checked="" type="radio"/>	At the end of a tax audit, before establishing the actual tax assessment, tax authorities must send the taxpayer a notification indicating which remarks/comments made by the taxpayer are 'not' taken into account and the motives justifying this decision (a so called "notification of the decision to tax"; art. 346, 5° & art. 352bis Income Tax Code). The Court of Appeal of Liège ruled that sending this notification is a substantial formality, the non-compliance of which by the tax authorities leads to the annulment of the tax assessment (Liège 25 May 2018, no. 2016/RG/1233).
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	<input type="radio"/>	<input type="radio"/>	

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 checked="" type="radio"/>	<input type="radio"/>	Belgian tax law provides that the tax authorities have the obligation of professional secrecy (art. 337 Income Tax Code). Nevertheless, the Court of First Instance of Brugge ruled that the additional tax imposed as a result of an unannounced audit and access to professional premises whereby the tax authorities were accompanied by a filmcrew and wore bodycams for the purpose of reality television, was not contrary to the law and could not be annulled. The Court also refused to grant compensation to the taxpayer for the authorities' alleged breach of professional secrecy. The Court took into consideration that in the television broadcast the faces had been blurred (Court of First Instance of Brugge, 22 May 2018, no. 18/298/A).
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 type="radio"/>	
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 checked="" type="radio"/>	The law of 5 September 2018 (Belgian official Gazette, 10 September 2018) provides rules with respect to data protection and processing of data by the tax authorities. The rules are in line with the EU General Data Protection Regulation and include the right to information (art. 13 & 14 GDPR) and the right to access personal data (art. 15 GDPR). The new rules also provide certain restrictions to the taxpayers' rights, but these restrictions are subject to strict conditions (art. 23 GDPR), for instance the law provides the tax authorities the right to use datamining and provides restrictions to the taxpayers right to access personal data (cf. below).
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		<input type="radio"/>	<input type="radio"/>	
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 checked="" type="radio"/>	The law of 5 September 2018 (Belgian official Gazette, 10 September 2018) provides certain restrictions to the taxpayers' right to access personal data held by the tax authorities (art. 23 GDPR). Before, the taxpayer did not have the right to access personal data data during the preparation of a tax audit (art. 11 old Belgian Privacy Law). The Belgian Constitutional Court ruled that this exception was contrary to the non-discrimination principle because it also concerned data that was not relevant for the tax audit (Constitutional Court, 27 March 2014). Now, the exception has been made subject to more restrictions, i.e. the guarantees as provided for in art. 23(2) GDPR are provided for, access can only be denied during a period not exceeding one year as from the taxpayers' request and, in addition, only access to information that is relevant for the tax audit can be denied.
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.		<input type="radio"/>	<input type="radio"/>	

4. Normal audits

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
26	Audits should respect the following principles: (i) 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"/>	At the end of a tax audit, before establishing the actual tax assessment, tax authorities must send the taxpayer a notification indicating which remarks/comments made by the taxpayer are 'not' taken into account and the motives justifying this decision (a so called "notification of the decision to tax"; art. 346, 5° & art. 352bis Income Tax Code). The Court of Appeal of Liège ruled that sending this notification is a substantial formality, the non-compliance of which by the tax authorities leads to the annulment of the tax assessment (Liège 25 May 2018, no. 2016/RG/1233).
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"/>	Belgian tax authorities sent a formal request for information to a "Payment Service Provider" (PSP), as a third party, requesting to provide 'all' transaction data of 'all' foreign payment cards used in Belgium in 2015 and 2016 via the systems of that PSP. The Court of First Instance of Antwerp ruled that this is a "fishing expedition" which cannot be allowed. The possibility to request information from third parties does not allow the tax authorities to request data for which it can be established in advance to a very large extent that it is by no means likely that it will have any relevance for taxation purposes (Court of First Instance of Antwerp 2 February 2018, no. 17/1638/A).
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 type="radio"/>	
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 checked="" type="radio"/>	<input type="radio"/>	The Court of First Instance of Leuven ruled in a VAT case that it can not be generally permitted for a taxpayer to refuse to submit his bookkeeping and accounting documents, relying on his right to remain silent. The Court ruled that the obligation to submit the books and documents which the law requires a taxpayer to keep, is not subject to the right to remain silent, since they already exist independently of the will of the taxpayer (Court of First Instance Leuven 9 February 2018, no. 12/1462/A). It should be noted that the taxpayer in this case had already been notified by the tax authorities that he was being suspected of having committed tax fraud.
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 checked="" type="radio"/>	<input type="radio"/>	Since 2015 the Supreme Court has repeatedly confirmed that evidence illegally obtained by the tax authorities must not necessarily be excluded from a court litigation as evidence. Such evidence should only be discarded if the manner in which the tax authorities have obtained the evidence is completely opposed to good governance, or if the use of such evidence would impede the taxpayers' right to a fair trial. On 18 January 2018, the Supreme Court has again confirmed this jurisprudence and has ruled that the mere fact that the evidence was obtained in violation of the professional secrecy of a lawyer does not necessarily mean that it cannot be used in court (Supreme Court, 18 January 2018, F.16.0031.N). On 28 June 2018, having regard to the ECJ WebMindLicenses judgment (ECJ, 17 December 2015, C-419/14), the Belgian Supreme Court has asked the European Court of Justice for a preliminary ruling on the question whether evidence obtained in violation of the right to respect for private life, in VAT cases, must be excluded "in all circumstances"; or whether EU law allows for a weighing of interests in case of such violations, as is the case in Belgian jurisprudence ("Antigoon-doctrine") (Supreme Court 28 June 2018, no. F.17.0016.N).
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 checked="" type="radio"/>	<input type="radio"/>	The Court of First Instance of Leuven ruled in a VAT case that it can not be generally permitted for a taxpayer to refuse to submit his bookkeeping and accounting documents, relying on his right to remain silent. The Court ruled that the obligation to submit the books and documents which the law requires a taxpayer to keep, is not subject to the right to remain silent, since they already exist independently of the will of the taxpayer (Court of First Instance Leuven 9 February 2018, no. 12/1462/A). It should be noted that the taxpayer in this case had already been notified by the tax authorities that he was being suspected of having committed tax fraud.
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 checked="" type="radio"/>	<input type="radio"/>	According to the Belgian Income Tax Code the tax authorities have the right to access professional premises (Art. 319 ITC). The Court of Appeals of Gent ruled that, accordingly, the tax authorities also have access to the garden of a house that is also the address of a company, in order to look into the house through the window at the back of the house. The Court took into consideration that at the time of this observation the tax official was not aware of the fact that the house was also being used as a private home (Court of Appeals of Gent, 23 October 2018, no. 2017/AR/974). Also, The Court of First Instance of Antwerp has requested the Belgian Constitutional Court for a preliminary ruling asking whether it is compatible with the right to privacy that tax authorities can enter premises (private dwellings) based on an authorisation from a Police Judge, who decides based on a request that is not in the least substantiated on the basis of concrete facts (Court of First Instance of Antwerp 13 June 2018, no. 17/3858/A).
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 checked="" type="radio"/>	<input type="radio"/>	The Belgian Supreme Court has ruled that, in principle, tax officials can observe, unnoticed and from the public road, the professional activities of a taxpayer, as well as the professional transactions he carries out with other taxpayers, in order to determine tax liabilities, even if these observations take place repeatedly. In a specific case it is up to the judge to determine the legitimacy of the observations and, in particular, whether they are not of such nature that they constitute a violation of the right to privacy of those involved. In doing so the judge can take into account, among other things, the location where these observations are carried out, their systematic or permanent nature, the context of the observations and the reasonable privacy expectations of those involved (Supreme Court 14 December 2018, no. F.18.0093.N).
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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 checked="" type="radio"/>	<input type="radio"/>	In income tax cases the exhaustion of a prior administrative review is mandatory before an appeal can be made before the tax court. In 2018 several judicial appeals were found 'inadmissible' on the grounds that prior administrative review had not been exhausted (Court of First Instance of Antwerp 7 September 2018, no. 17/3882/A; Court of First Instance of Leuven 13 April 2018, no. 17/535/A; Court of First Instance of Bruges 11 April 2018, no. 17/1756/A; Court of First Instance of Bruges 9 April 2018, no. 16/3681/A). Also, the Supreme Court ruled in a case of withholding tax (on wages) where the tax is not formally assessed ("ingekohierd") that a third party, who withheld the tax and wishes to reclaim it, must first exhaust the administrative review procedure before being able to file an appeal before the tax court (Supreme Court 9 February 2018, no. F.15.0141.F). The Supreme Court thus annulled the judgment of the Court of Appeal of Brussels which had found the judicial appeal without prior administrative review 'admissible'. This is perhaps even more remarkable as it was "revealed" in 2018 that there is (was) an internal administrative instruction called "process 101" which obliges tax officials to reject every administrative appeal made by a taxpayer if the administrative appeal contains no new grievances or arguments in comparison with the ones made by the taxpayer in the assessment procedure.
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 checked="" type="radio"/>	<input type="radio"/>	It was "revealed" in 2018 that there is (was) an internal administrative instruction called "process 101" which obliges tax officials to reject every administrative appeal made by a taxpayer if the administrative appeal contains no new grievances or arguments in comparison with the ones made by the taxpayer in the assessment procedure.
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 type="radio"/>	
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 checked="" type="radio"/>	The Minister of Finance had issued an internal instruction that provides that no VAT-penalties will be imposed for the first infringement of a taxpayer acting in good faith. The legal basis for this decision is the Minister's right to provide mercy of administrative sanctions (Governor Order of 18 March 1831; Minister of Finance, Press release, 29 June 2018). For the new penalty policy in VAT cases, see: https://financien.belgium.be/nl/ondernemingen/btw/boeten#q5

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 checked="" type="radio"/>	<input type="radio"/>	Belgian tax law provides administrative sanctions in case no tax return has been filed. Before, case law considered that this also included late filing. Now the Supreme Court has changed its point of view and has ruled that the administrative sanctions are not applicable when the tax return has been filed but too late (Supreme Court 15 March 2018, F.17.0004.N). Meanwhile, however, the law has been changed. Administrative sanctions are now also explicitly applicable in the event of late filing (Art. 444 Income Tax Code). In a recent judgment the Belgian Constitutional Court seems to "overrule" the Supreme Court's judgment of 15 March 2018 in deciding that the new law is only an 'interpretative law' and that an administrative sanction (tax increase) in case of 'late filing' was also possible 'before' the new law (Constitutional Court 23 January 2019, no. 7/2019, §§ B.3.2, B.9.2 and B.12.1).
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 type="radio"/>	
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input checked="" type="radio"/>	<input type="radio"/>	The law of 26 November 2018 (Belgian Official Gazette, 4 December 2018) introduces a new procedure for the forced collection of unpaid VAT liabilities. Before this new procedure, tax authorities were obliged to send by registered mail a warrant to the VAT-payer. In the warrant the tax authorities had to justify the facts and the legal motivation for the initiation of the forced collection of taxes (including seizing assets). Under the new procedure the warrant is replaced by the registration of the unpaid VAT liability in a "collection register". The tax authorities must notify the VAT-payer of such registration. This new procedure, however, includes more uncertainties for the taxpayers. For instance, the notification must not be sent by registered mail but by ordinary mail. Note that preliminary authorisation by the judiciary to seize assets is not required under Belgian tax law.
65	Taxpayers should have the right to request delayed payment of arrears.		<input type="radio"/>	<input checked="" type="radio"/>	Before, the assessment of a request for delayed payment was a discretionary power of the tax collector. This was considered no longer tenable. Therefore, a circular was issued which lists the general conditions for granting a delayed payment plan (Circular 2018/C/69 dd. 1 June 2018 concerning the strategy for delayed payments). The delayed payment can also be requested digitally.
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 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 checked="" type="radio"/>	<input type="radio"/>	The Court of First Instance of Antwerp ruled that the general anti-avoidance rule that was introduced with effect as from assessment year 2013, is also applicable to a series of acts whereby at least the last act occurred after the entry into force of the general anti-avoidance rule. The fact that the first acts took place before that date, does not hinder the application of the rule (Court of First Instance of Antwerp, 29 October 2018, no. 17/2635/A). This decision is subject of discussion in Belgian literature. According to some scholars this decision entails a forbidden retroactive application of the law. According to others, since in Belgian tax law the general anti-avoidance rule is considered to be a mere procedural rule, retroactivity is not an issue. Procedural rules are immediately applicable.
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"/>	As of the beginning of 2018 the official legal and tax database of the FPS Finance, containing legislation, jurisprudence, circulars, instructions, etc. (Fisconet <i>plus</i>) has been made more difficult to access. It is no longer freely accessible, but only with a Microsoft profile and password (which must therefore be created if one does not already have this). This increases the threshold for accessing relevant legal material.
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 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 checked="" type="radio"/>	The law of 29 March 2018 (Belgian Official Gazette, 13 April 2018) has extended the competences of the "ombudsman" (Fiscale Bemiddelingsdienst). First, based on Governor Order of 18 March 1831 the Minister of Finance has the right to provide mercy of administrative sanctions (cf. also above). With respect to income taxes, the law has transferred this right to a new unit of the Fiscale Bemiddelingsdienst. Second, under the new rules access to the Fiscale Bemiddelingsdienst in respect of litigations with respect to the cadastral income has been simplified. The procedure does not require intervention of the tax authorities anymore. Third, the tax authorities also collect non-tax liabilities of the taxpayers (e.g. criminal sanctions or the recovery of unjustified pension payments). The competence of the Fiscale Bemiddelingsdienst has been extended to these procedures.
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"/>	