



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Salvatore Mirandola, Partner at *McCarthy Tétrault LLP* and OPTR National Reporter of Canada.

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

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



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

Country:
National Reporter:
Affiliation

Canada
Salvatore Mirandola

Tax Administration Tax Practitioner Judiciary Tax Ombudsman Academia

1. Identifying taxpayers and issuing tax returns			
#	Question	Yes	No
1	Do taxpayers have the right to see the information held about them by the tax authority?	<input type="radio"/>	<input type="radio"/>
2	If yes, can they request the correction of errors in the information?	<input checked="" type="radio"/>	<input type="radio"/>
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only?	<input checked="" type="radio"/>	<input type="radio"/>
4	If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non discriminatory/non arbitrary basis?	<input type="radio"/>	<input checked="" type="radio"/>
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	<input checked="" type="radio"/>	<input type="radio"/>
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	<input checked="" type="radio"/>	<input type="radio"/>
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?	<input checked="" type="radio"/>	<input type="radio"/>

2. The issue of tax assessments			
#	Question	Yes	No
8	If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act <i>ex officio</i> to notify all affected taxpayers and arrange repayments to them?	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	<input checked="" type="radio"/>	<input type="radio"/>
16	Is information about the tax liability of specific taxpayers publicly available in your country?	<input type="radio"/>	<input checked="" type="radio"/>
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/> No	<input type="radio"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>
57	If <i>ne bis in idem</i> is recognised, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	<input type="radio"/> Yes	<input 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>

4. Normal audits			
#	Question	Yes	No
21	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)?	<input type="radio"/>	<input checked="" type="radio"/>
22	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	<input type="radio"/>	<input checked="" type="radio"/>
23	If yes, what is the normal limit in months?		
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
25	May the opinion of independent experts be used in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
26	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process? (yes, by administrative policy)	<input checked="" type="radio"/>	<input type="radio"/>
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	<input type="radio"/>	<input checked="" type="radio"/>
28	If yes, does this mean only one audit per tax per year?	<input type="radio"/>	<input type="radio"/>
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	<input type="radio"/>	<input checked="" type="radio"/>
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	<input type="radio"/>	<input checked="" type="radio"/>

5. More intensive audits			
#	Question	Yes	No
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	<input type="radio"/>	<input checked="" type="radio"/>
32	May the tax authority enter and search the dwelling places of individuals?	<input checked="" type="radio"/>	<input type="radio"/>
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	<input checked="" type="radio"/>	<input type="radio"/>
34	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	<input checked="" type="radio"/>	<input type="radio"/>
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)? (yes, for criminal investigations but not for non-criminal audits)	<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? (yes, for information improperly obtained from a taxpayer using the civil audit powers, even though the investigation was criminal in nature)	<input checked="" 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? (if the investigation is criminal, the tax authority must obtain judicial authorization)	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" 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 type="radio"/>	<input checked="" 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"/>

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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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>)? (no, except for "large corporations" or equivalent in Canada's federal tax statutes)	<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 checked="" 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? (no for appeals to the Federal Court of Appeal; yes for appeals to the Supreme Court of Canada)	<input type="radio"/>	<input checked="" type="radio"/>
49	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing)?	<input checked="" type="radio"/>	<input type="radio"/>
50	Is the principle <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 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? (no in general, but there are circumstances where information or testimoney can be in camera)	<input type="radio"/>	<input checked="" type="radio"/>

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

Country: Canada
National Reporter:
Affiliation

T T J (A

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 type="radio"/>	
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"/>	<p>The September 18, 2018 Auditor General's audit report concluded that the CRA extended favourable treatment to some taxpayers but not others. According to this report, the CRA not only failed to consistently apply tax rules, but also couldn't accurately gauge its own performance. The Auditor General attributed these inconsistencies to a number of sources, including the judgement of the CRA tax auditor or agent, the region where the taxpayer's file was reassessed, and the type of taxpayer - i.e., individual, small business, or large corporation.</p> <p>In particular, the Auditor General concluded that,</p> <ul style="list-style-type: none"> •CRA's favourable treatment tended to fall upon larger international businesses and taxpayers with offshore assets or transactions, •CRA tended to apply stringent response deadlines to employees while granting seemingly unlimited extensions for large corporate taxpayers and taxpayers with offshore assets and transactions, and •for most taxpayers who were individuals with Canadian employment income, CRA requested information from these taxpayers more quickly and gave less time to respond than it did with other taxpayers such as international and large businesses and taxpayers with offshore transactions. <p>CRA agreed with this report and has already started to put processes in place through education, outreach and enforcement where the law will apply consistently while taking taxpayers' individual circumstances into account.</p> <p>On December 15, 2017 the Government of Canada released a revised version of Information Circular IC00-1R6, Voluntary Disclosures Program. The CRA administers the discretionary authority of the Minister of National Revenue to grant relief from interest and penalties arising from errors and omissions relating to income tax, source deductions and other amounts. In order to be accepted into this revised program, the disclosure must be voluntary, complete, must involve the application or potential application of a penalty, must include information that is at least one year past due and must either include payment of the estimated tax owing with the voluntary disclosure payment application or acceptable arrangements must be made for payment with the CRA collections officials. The changes to the program are generally restrictive in nature. Relief is restricted in certain circumstances and additional conditions have been introduced for making a valid voluntary disclosure.</p>

9	Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication		<input type="radio"/>	<input type="radio"/>	<p>The CRA continues to improve the number of services it can provide online. The main landing page on CRA's website is https://www.canada.ca/en/revenue-agency/services/e-services.html. Although this does not help taxpayers who are unwilling or unable to use electronic forms of communication, it does help those located in remote areas.</p> <p>On August 24, 2018, the CRA announced that it will open three new Northern Services Centres in Whitehorse, Yellowknife and Iqaluit to better support Indigenous communities and Canadians living in the North. In addition to maintaining a physical presence throughout the year, the CRA will expand the activities of the outreach program, the Community Volunteer Income Tax Program (CVITP) and the Liaison Officer service offered to businesses and self-employed individuals. The CRA will also set up dedicated telephone lines to make it easier for territorial residents to contact officers with specialized training to address their needs.</p> <p>The CRA launched its 'File my Return' service, which lets eligible Canadians file their income tax and benefit return by telephone by providing some personal information and answering a series of short questions through a dedicated, automated phone service, making tax-filing easier and simpler.</p> <p>The Benefits Unsheltered Initiative is CRA's communication and outreach efforts to shelters and other support organizations about benefits and credits administered by the CRA. In 2018, the CRA reported on its accomplishments to date in respect of this initiative.</p>
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2. The issue of tax assessment

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
10		Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms	<input type="radio"/>	<input type="radio"/>	
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	<input type="radio"/>	<input type="radio"/>	<p>The CRA continues to improve the number of services it can provide online. The main landing page on CRA's website is https://www.canada.ca/en/revenue-agency/services/e-services.html. Although this does not help taxpayers who are unwilling or unable to use electronic forms of communication, it does help those located in remote areas.</p> <p>On August 24, 2018, the CRA announced that it will open three new Northern Services Centres in Whitehorse, Yellowknife and Iqaluit to better support Indigenous communities and Canadians living in the North. In addition to maintaining a physical presence throughout the year, the CRA will expand the activities of the outreach program, the Community Volunteer Income Tax Program (CVITP) and the Liaison Officer service offered to businesses and self-employed individuals. The CRA will also set up dedicated telephone lines to make it easier for territorial residents to contact officers with specialized training to address their needs.</p>

3. Confidentiality

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
12	Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced).	Encrypt information held by a tax authority about taxpayers to the highest level attainable.	<input type="radio"/>	<input type="radio"/>	
13	Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes.	Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities.	<input type="radio"/>	<input type="radio"/>	The largest employee-initiated breach ever discovered at the CRA occurred in March 2018 when a worker briefly assessed the files of 11,745 individuals.
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"/>	In March 2017, the CRA completed a \$10.2 million technology project known as the "Enterprise Fraud Management Solution". The purpose of the project was to track and deter any unauthorized access to taxpayer information by CRA employees.
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"/>	See Nos. 13 and 15 above.
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		<input type="radio"/>	<input type="radio"/>	
19	Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.		<input type="radio"/>	<input type="radio"/>	
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		<input type="radio"/>	<input 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 type="radio"/>	
23	If published, tax rulings should be anonymised and details that might identify the taxpayer removed.	Anonymise all tax judgments and remove details that might identify the taxpayer	<input type="radio"/>	<input type="radio"/>	
24	Legal professional privilege should apply to tax advice.	Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure.	<input type="radio"/>	<input type="radio"/>	In <i>MNR v. Atlas Tube Canada ULC</i> , 2018 DTC 5124 (FC), the Federal Court held that a due diligence report prepared by an accounting firm was not protected by solicitor-client privilege. The Court also held that tax accrual working papers, if prepared by a non-lawyer (and not at the direction of a lawyer) and requested by the CRA in the context of an active audit of particular issues, is not subject to solicitor-client privilege.
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 type="radio"/>	

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 type="radio"/>	<p>In <i>BP Canada Energy Co. v. Minister of National Revenue</i>, 2017 FCA 61, Canada's Federal Court of Appeal reversed a lower court decision that had the effect of generally granting the CRA unrestricted access to the tax accrual working papers of a taxpayer. CRA intends to issue guidance clarifying its policies on the circumstances in which it may request such information.</p> <p>In <i>Canada (National Revenue) v. Hydro-Quebec</i>, 2018 FC 622, the Federal Court made a strong statement against an interpretation of the CRA's audit powers that would allow virtually unlimited invasions of taxpayer privacy. The decision dealt with CRA's power to compel production of information and documents about unnamed taxpayers from third parties. In this context, the decision held that the Court will both strictly interpret the CRA's audit powers and exercise its discretion in appropriate cases to protect taxpayers from unjustified intrusions by the government and to prevent abusive "fishing expeditions".</p> <p>In <i>MNR v. Cameco</i>, 2017 DTC 5102, the Federal Court held that the Minister's powers are broad but not unlimited. The Court concluded that the Minister does not have an unlimited ability to conduct oral examinations during an audit and that Parliament intended for there to be a restraint on the Minister's ability to question a taxpayer's employees.</p> <p>See also No.24 above.</p>
28		In application of <i>ne bis in idem</i> the taxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed.	<input type="radio"/>	<input 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"/>	See No. 8 above.
30	In application of <i>nemo tenetur</i> , the right to remain silent should be respected in all tax audits.		<input type="radio"/>	<input type="radio"/>	
31		Tax audits should follow a pattern that is set out in published guidelines.	<input type="radio"/>	<input type="radio"/>	
32		A manual of good practice in tax audits should be established at the global level.	<input type="radio"/>	<input type="radio"/>	
33		Taxpayers should be entitled to request the start of a tax audit (to obtain finality).	<input type="radio"/>	<input type="radio"/>	
34	Where tax authorities have resolved to start an audit, they should inform the taxpayer	Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.	<input type="radio"/>	<input type="radio"/>	
35	Taxpayers should be informed of information gathering from third parties.		<input type="radio"/>	<input type="radio"/>	
36		Reasonable time limits should be fixed for the conduct of audits.	<input type="radio"/>	<input type="radio"/>	
37	Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.		<input type="radio"/>	<input type="radio"/>	
38	The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer.	The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view.	<input type="radio"/>	<input type="radio"/>	5 June 2017, Canada's federal Taxpayers' Ombudsman released a report entitled <i>Rights and Rulings: Understanding the Decision</i> . In the report, the Ombudsman made recommendations to improve transparency associated with the CRA ruling letters in respect of determination of whether a worker is an employee or is self-employed and whether a worker's employment is pensionable under the Canada Pension Plan or insurable for Employment Insurance purposes. The CRA was expected to complete implementation of the report's recommendations by the end of 2018.
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"/>	In 2018, the CRA confirmed that it is directing more audit resources towards wealthy families and large businesses in part through the CRA's "related party initiative" and "risk based audits" programs.
41	If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure.		<input type="radio"/>	<input type="radio"/>	
42	Entering premises or interception of communications should be authorised by the judiciary.		<input type="radio"/>	<input type="radio"/>	
43	Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification.		<input type="radio"/>	<input type="radio"/>	
44	Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases.	Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.	<input type="radio"/>	<input type="radio"/>	
45		Access to bank information should require judicial authorisation.	<input type="radio"/>	<input type="radio"/>	
46		Authorisation by the judiciary should be necessary for interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions.	<input type="radio"/>	<input type="radio"/>	
47	Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time.		<input type="radio"/>	<input type="radio"/>	
48		If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer.	<input type="radio"/>	<input type="radio"/>	
49	Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.		<input type="radio"/>	<input type="radio"/>	

6. Review and appeals

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
50		E-filing of requests for internal review to ensure the effective and speedy handling of the review process.	<input type="radio"/>	<input type="radio"/>	
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		<input type="radio"/>	<input type="radio"/>	

52		Reviews and appeals should not exceed two years.	<input type="radio"/>	<input type="radio"/>	The Taxpayers' Ombudsman Report <i>Without Delay - An examination into service issues arising from delays in the Canada Revenue Agency's Taxpayer Relief Program</i> , dated September 2017, highlighted the delays in the CRA's review and appeals process. In part to respond to the findings of this Report, the CRA began setting out (on its website) average resolution times for low, medium and high income tax objections. For example, for income tax objections resolved in December 2018, low complexity income tax objections were completed in an average of 91 days and medium complexity income tax objections were completed in an average of 248 days from the date the objection was submitted. High complexity income tax objections may take over 690 days to resolve. CRA hopes to maintain and better these service standards.
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		<input type="radio"/>	<input type="radio"/>	
54	Where tax must be paid in whole or in part before and appeal, there must be an effective mechanism for providing interim suspension of payment.	An appeal should not require prior payment of tax in all cases.	<input type="radio"/>	<input type="radio"/>	
55		The state should bear some or all of the costs of an appeal, whatever the outcome.	<input type="radio"/>	<input type="radio"/>	
56	Legal assistance should be provided for those taxpayers who cannot afford it.		<input type="radio"/>	<input 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 type="radio"/>	
60		Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.	<input type="radio"/>	<input type="radio"/>	
61		Voluntary disclosure should lead to reduction of penalties.	<input type="radio"/>	<input type="radio"/>	See No. 8 above. The Canadian voluntary disclosure program has been made more restrictive.
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"/>	In late 2017, the Department of Finance announced that it would "consider situations where the application of late-filing penalties creates a disproportionate burden on low-income taxpayers." The Department's comments were made in response to a query regarding the disproportionate impact of late-filing penalties on middle-class individuals for late-filing certain elections.
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input type="radio"/>	<input type="radio"/>	
65	Taxpayers should have the right to request delayed payment of arrears.		<input type="radio"/>	<input type="radio"/>	
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.	○	○	The CRA is gaining easier access to information on Canadians' overseas' bank accounts. Canada made a commitment to the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes partners to participate in the Common Reporting Standard as part of a global effort to increase transparency. Under the Common Reporting Standard, dozens of countries will share information about bank accounts held by non-residents. Canada has joined Australia, the Netherlands, the United Kingdom and the United States in the Joint Chiefs of Global Tax Enforcement (J5) Group.
69		Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.	○	○	
70		Provisions should be included in tax treaties setting specific conditions for exchange of information.	○	○	
71	If information is sought from third parties, judicial authorisation should be necessary.		○	○	
72		The taxpayer should be given access to information received by the requesting state.	○	○	
73		Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.	○	○	
74		A requesting state should provide confirmation of confidentiality to the requested state.	○	○	
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.		○	○	
76		For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.	○	○	
77		Taxpayers should have a right to request initiation of mutual agreement procedure.	○	○	
78	Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.		○	○	

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.	○	○	
80		Public consultation should precede the making of tax policy and tax law.	○	○	

11. Revenue practice and guidance

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
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81	Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.		<input type="radio"/>	<input type="radio"/>	5 June 2017, Canada's federal Taxpayers' Ombudsman released a report entitled <i>Rights and Rulings: Understanding the Decision</i> . In the report, the Ombudsman made recommendations to improve transparency associated with the CRA ruling letters in respect of determination of whether a worker is an employee or is self-employed and whether a worker's employment is pensionable under the Canada Pension Plan or insurable for Employment Insurance purposes.
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"/>	<p>The CRA continues to improve the number of services it can provide online. The main landing page on CRA's website is https://www.canada.ca/en/revenue-agency/services/e-services.html Although this does not help taxpayers who are unwilling or unable to use electronic forms of communication, it does help those located in remote areas.</p> <p>On August 24, 2018, the CRA announced that it will open three new Northern Services Centres in Whitehouse, Yellowknife and Iqaluit to better support Indigenous communities and Canadians living in the North. In addition to maintaining a physical presence throughout the year, the CRA will expand the activities of the outreach program, the Community Volunteer Income Tax Program (CVITP) and the Liaison Officer service offered to businesses and self-employed individuals. The CRA will also set up dedicated telephone lines to make it easier for territorial residents to contact officers with specialized training to address their needs.</p> <p>The CRA's 'File my Return' service lets eligible Canadians file their income tax and benefit return by telephone by providing some personal information and answering a series of short questions through a dedicated, automated phone service, making tax-filing easier and simpler.</p>
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"/>	<p>In 2018, the Taxpayers' Ombudsman launched an examination to determine whether the CRA is effectively integrating the rights and values of the Taxpayer Bill of Rights in its activities, and on the CRA's accountability and reporting regarding the integration of these rights in its services to taxpayers.</p> <p>CRA appointed a Chief Service Officer who is responsible for leading the CRA's service transformation to be trusted, fair and helpful by putting people first.</p> <p>The CRA also announced the composition of an external advisory panel on service. The panel which is comprised of senior leaders and experts from the public, private and not-for-profit sectors will provide the CRA with advice on emerging trends and practices in service design and delivery as well as on client expectations related to services.</p> <p>The 2017 Auditor General's report examined CRA's call centres and found that even though call centre agents were courteous, professional and attentive to questions, they provided incorrect information to callers almost 30 percent of the time overall, and 36 percent of the time when call centre agents were asked questions about filing personal taxes. The CRA agreed with these findings and committed to provide accurate information to callers. In late 2017, the CRA launched a three-pronged improvement plan to address the current issues in this area, namely,</p> <ul style="list-style-type: none"> • to launch a new approach to training and evaluating agents on their technical knowledge, • to update the telephony platform's monitoring tools, and • to establish a new national quality monitoring team to supplement existing local quality practices.

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.	○	○	Recent reports from the Office of the Taxpayers' Ombudsman have included (i) "Rights and Rulings: An examination into the sufficiency of information in ruling letters from the CPP/EI Rulings Division of the Canada Revenue Agency"; (ii) "Without Delay: An examination into service issues arising from delays in the Canada Revenue Agency's Taxpayer Relief Program"; and (iii) "Benefits Unsheltered: An examination into the Canada Revenue Agency's communication and outreach efforts to shelters and other support organizations about benefits and credits administered by the Canada Revenue Agency". In 2018, the CRA responded to these reports by implementing (or cocommitting to implement) most of the recommendations contained therein. In addition, in August 2018, the Taxpayers' Ombudsman announced that her office was launching an examination to determine whether the Canada Revenue Agency is effectively integrating the rights and values of the Taxpayer Bill of Rights in its activities, and on the CRA's accountability and reporting regarding the integration of these rights in its service to taxpayers.
87		The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally.	○	○	