




Observatory on the Protection of Taxpayers' Rights


Below you will find a questionnaire filled in by Leonardo Andres Bautista Raba (Taxpayer Ombudsman) Natalia Quinones Cruz (Chief of Office for International Affairs) and Yvonne Carolina Florez (Attorney) at the *Dirección de Impuestos y Aduanas Nacionales*. All of them OPTR National Reporters of Colombia.

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: Colombia National Reporter: Affiliation <input type="checkbox"/> Tax Administration <input type="checkbox"/> Tax Practitioner <input type="checkbox"/> Judiciary <input checked="" type="checkbox"/> Ombudsman <input type="checkbox"/> Academia			
1. Identifying taxpayers and issuing tax returns				7. Criminal and administrative sanctions			
#	Question	Yes	No	#	Question		
1	Do taxpayers have the right to see the information held about them by the tax authority?	<input checked="" type="radio"/>	<input type="radio"/>	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="radio"/> No	<input type="checkbox"/>
2	If yes, can they request the correction of errors in the information?	<input checked="" type="radio"/>	<input type="radio"/>	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
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"/>	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
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 checked="" type="radio"/>	<input type="radio"/>	8. Enforcement of taxes			
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	<input checked="" type="radio"/>	<input type="radio"/>	#	Question	Yes	No
6	If yes, are there systems in place to prevent unauthorised access to the channel of communication?	<input checked="" type="radio"/>	<input type="radio"/>	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"/>
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 type="radio"/>	<input checked="" 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"/>
2. The issue of tax assessments				9. Cross-border procedures			
#	Question	Yes	No	#	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"/>	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"/>
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"/>	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"/>
10	If yes, can the taxpayer request a meeting with the tax officer?	<input checked="" type="radio"/>	<input 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"/>
3. Confidentiality				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"/>
#	Question	Yes	No	65	Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?	<input type="radio"/>	<input checked="" type="radio"/>
11	Is information held by your tax authority automatically encrypted?	<input type="radio"/>	<input checked="" type="radio"/>	66	Does the taxpayer have the right to see any information received from another country that relates to him?	<input type="radio"/>	<input checked="" type="radio"/>
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"/>	67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	<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 type="radio"/>	<input 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"/>
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"/>	10. Legislation			
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"/>	#	Question	Yes	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	<input type="radio"/>	<input checked="" type="radio"/>	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"/>
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	<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"/>
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"/>	71	Is there a prohibition on retrospective tax legislation in your country?	<input checked="" type="radio"/>	<input type="radio"/>
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	<input checked="" type="radio"/>	<input type="radio"/>	72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	<input 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 checked="" type="radio"/>	<input type="radio"/>				

4. Normal audits				11. Revenue practice and guidance			
#	Question	Yes	No	#	Question	Yes	No
21	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)?	<input checked="" type="radio"/>	<input type="radio"/>	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"/>
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"/>	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"/>
23	If yes, what is the normal limit in months?	More than 24 months ▼		75	Does your country have a generalised system of advanced rulings available to taxpayers?	<input type="radio"/>	<input checked="" type="radio"/>
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"/>	76	If yes, is it legally binding?	<input 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"/>	77	If a binding rule is refused, does the taxpayer have a right to appeal?	<input 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	12. Institutional framework for protecting taxpayers' rights			
28	If yes, does this mean only one audit per tax per year?	<input checked="" type="radio"/>	<input type="radio"/>	#	Question	Yes	No
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes)?	<input type="radio"/>	<input checked="" type="radio"/>	78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	79	If yes, are its provisions legally effective?	<input type="radio"/>	<input checked="" type="radio"/>
				80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?	<input checked="" type="radio"/>	<input type="radio"/>
				81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	<input checked="" type="radio"/>	<input type="radio"/>
				82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	<input 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 type="radio"/>	<input checked="" 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)?	<input checked="" type="radio"/>	<input type="radio"/>				
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	<input type="radio"/>	<input checked="" type="radio"/>				
37	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	<input type="radio"/>	<input checked="" type="radio"/>				
38	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognised?	<input type="radio"/>	<input checked="" type="radio"/>				
39	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	<input type="radio"/>	<input type="radio"/>				
6. Review and appeals							
#	Question	Yes	No				
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	<input checked="" type="radio"/>	<input type="radio"/>				
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	<input 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"/>				
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	Months ▼					
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	<input type="radio"/>	<input checked="" type="radio"/>				

		Observatory on the Protection of Taxpayers' Rights			Country: Colombia	
		Questionnaire No. 2: Standards of Protection			National Reporter:	
					Affiliation <input type="checkbox"/> Tax Administration <input type="checkbox"/> Tax Practitioner <input type="checkbox"/> Judiciary <input checked="" type="checkbox"/> Tax Ombudsman <input type="checkbox"/> 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 checked="" type="radio"/>	<p>In order to avoid impersonation, personal access codes to the DIAN server has been implemented. Even, independent keys are assigned to the legal representative of a company and its fiscal auditor.</p> <p>The digital signature continue working efficiently.</p>	
2	The system of taxpayer identification should take account of religious sensitivities		<input type="radio"/>	<input type="radio"/>	No changes in this respect.	
3	Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes		<input checked="" type="radio"/>	<input type="radio"/>	<p>As of the reform approved in December 2016 and the rulling approved in December, 2017, non-for-profit regime demands the publication of information about donants that was not necessary before. According to these , the donations imply the authorization to publish donant's name, the amount of his donations and the destiny give to them.</p> <p>DIAN is working on implementing data mining regarding the digital movements of people in the near future.</p>	
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"/>	No changes in this respect.	
5	Where pre/populated returns are used, these should be sent to taxpayers to correct errors		<input type="radio"/>	<input checked="" type="radio"/>	The DIAN is working on implementing pre / populated returns. They are expected to be operational by 2020.	
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"/>	No changes in this respect.	
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		<input type="radio"/>	<input checked="" type="radio"/>	Taxation authority has conducted campaigns permanently, in order to avoid impersonation of DIAN communications.	
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"/>	No changes in this respect.	
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"/>	In rural areas, DIAN has focused on virtual management and visits to conduct personalized attention campaigns for users, awareness and culture of the contribution.	
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"/>	The proximity to the citizen has been formulated as one of the pillars of the new Integrated Planning and Management Model of the DIAN. In this context, taxpayers have been publicly invited to make their problems known, allowing them even the access to high level officials to find an effective solution.	
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	<input type="radio"/>	<input type="radio"/>	It does not apply in Colombia.	
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 checked="" type="radio"/>	By Decree 2184 of 2017, the Information Security Office was created as a unit responsible for leading the Information Security Management System, in order to protect information and information systems, access, use, disclosure, disruption and destruction not authorized. The creation of this office had its origin in compliance with the treaties on information exchange, as a measure to ensure the confidentiality and treatment of information. Recently Circular 001 of 2019 was issued to inform the Personal Data Treatment Policy compiled by the DIAN. Confidentiality, as a principle that governs data processing, implies that DIAN guarantees that all persons involved in the processing of personal data are obliged to ensure the confidentiality of information.		
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 checked="" type="radio"/>	DIAN has implemented measures to ensure that only authorized officials can access the information they require for the fulfillment of their duties. It also has firewalls that completely prevent unauthorized access to data held by revenue authorities, and even authorized use is restricted to specific IP addresses. On the other hand, DIAN has put into operation effective mechanisms to guarantee the integrity, availability and confidentiality of the information exchanged with other jurisdictions.		
14	Audit data access periodically to identify cases of unauthorised access.		<input type="radio"/>	<input checked="" type="radio"/>	In 2018, an audit of active authorizations was carried out, in order to maintain strict control of the officials of each unit with access to information, according to their functions. Audits are possible only when an investigation into unauthorized access to confidential information is in progress. No audit has been carried out so far.		
15	Introduce administrative measures emphasizing confidentiality to tax officials.	Appoint data protection/privacy officers at senior level and local tax offices.	<input type="radio"/>	<input checked="" type="radio"/>	Information security and privacy policies have been generated and included in the DIAN's good governance code, updated in 2019. In 2018, the culture of information security in public servants was strengthened through training courses.		
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"/>	In the event that a breach of confidentiality occurs, DIAN officials report the conduct before the competent judicial authority.		
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		<input type="radio"/>	<input type="radio"/>	The crime of the violation of personal data was created by Law 1273 of 2009, which amended the Criminal Code. This behavior can be committed by any citizen, but it is an aggravated crime when the disclosure is committed by a public authority. Additionally, there is provided the offense of favoring that can be committed by any citizen that helps to evade the action of the authority or impede an investigation that is ahead for any crime, such as the crime of violation of personal data. Regarding disciplinary offenses, Law 1581 of 2012, which regulated the protection of personal data, established the disciplinary responsibility of public authorities for the breach of what is regulated therein, for example, failure to keep the information under the conditions of security necessary to prevent consultation, use or unauthorized access. Accordingly, the new Disciplinary General Code approved in January, 2019, maintained the general duty of confidentiality of State officials.		
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"/>	Colombia complies with this minimum standard. Law 1581 of 2012 regulates exceptions to confidentiality expressly and exhaustively.		
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"/>	No changes in this respect.		
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"/>	In order to give the government greater transparency, the President of Colombia issued Circular 001 of 2018 to invite high-level public authorities of the Executive Branch to publish their tax return.		
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		<input checked="" type="radio"/>	<input type="radio"/>	The reform approved in December 2018 established that the information and procedures administered by the Risk Management System of the DIAN is confidential. In practice, this information is confidential even for the taxpayer. Regarding the exchange of information, the taxpayer's access to information about himself is not allowed, unless there is an investigation against him. A confidential document can only be disclosed with judicial authorization.		
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"/>	No changes in this respect.		
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"/>	Legal professional privilege applies to lawyers and accountants when they provide tax advice.		
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"/>	No changes in this respect.		

4. Normal audits					
#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
26	Audits should respect the following principles: (1) Proportionality. (2) <i>Ne bis in idem</i> (prohibition of double jeopardy). (3) <i>Audi alteram partem</i> (right to be heard before any decision is taken). (4) <i>Nemo tenetur se detegere</i> (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void.		<input checked="" type="radio"/>	<input type="radio"/>	Regarding the <i>Audi alteram partem</i> principle, Law 1819 of 2016 modified the regulation of provisional tax assessment which as of that moment do not allow the taxpayer to be heard before the decision is made. So far, no provisional tax settlements have been issued under these conditions. On the other hand, Law 1943 of 2018 created the simplified tax assessment that is also issued without the taxpayer having the right to be previously heard. In both cases, the silence of the taxpayer on these tax assessments generate their acceptance.
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"/>	The right not to provide documents that are in the hands of the tax authority, was recognized to taxpayers by law 1607 of 2012. In practice, DIAN requires information that is even in their possession and any information refused by the taxpayer in the course of an audit may be interpreted as prejudicial by appeals and the courts.
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"/>	No changes in this respect.
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 checked="" type="radio"/>	<input type="radio"/>	The procedure for issuing provisional tax assessment and simplified tax assessment does not contemplate the issuance of a prior act. Therefore, taxpayers have no right to be heard before such decisions are made. In fact, taxpayers will be aware of the start of an audit when they are notified of these types of tax assessments. However, taxpayers have the right to provide factual information and submit their views once an provisional tax assessment and simplified tax assessment are notified.
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"/>	In audits, DIAN respects the taxpayer's right to remain silent, without prejudice to the powers it has to make decisions with the evidence in the file. When a taxpayer does not respond to a request for information, it is interpreted as a reluctance that can lead to adverse decisions.
31		Tax audits should follow a pattern that is set out in published guidelines.	<input checked="" type="radio"/>	<input type="radio"/>	There is a tendency to move away from the best practice. In effect, guidelines have a limited scope, since it is impossible to regulate each of the situations that may arise in an audit.
32		A manual of good practice in tax audits should be established at the global level.	<input type="radio"/>	<input type="radio"/>	No changes in this respect.
33		Taxpayers should be entitled to request the start of a tax audit (to obtain finality).	<input type="radio"/>	<input type="radio"/>	The law does not allow taxpayers to request an audit with the purpose of correcting tax returns to reduce the tax charged or increase the balance in favor.
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 checked="" type="radio"/>	<input type="radio"/>	In general, special summons writ (first administrative stage of an audit) must be notified to taxpayers when tax authorities decides to start an audit. However, since 2016 it is allowed to issue provisional tax assessments without there being a prior approach between the DIAN and the taxpayers. The same applies to the simplified tax assessments created by law 1943 of 2018.
35	Taxpayers should be informed of information gathering from third parties.		<input type="radio"/>	<input type="radio"/>	No changes in this respect.
36		Reasonable time limits should be fixed for the conduct of audits.	<input type="radio"/>	<input type="radio"/>	No changes in this respect.
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"/>	No changes in this respect.
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"/>	Only minutes of inspections and visits may be read and approved by the taxpayer before it is finalized. The final audit report is carried out by the official in charge, without the participation of the taxpayer. Based on this, a special summons or a closure notice is issued, duly motivated.
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"/>	No changes in this respect.
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"/>	No changes in this respect.

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"/>	There are no changes with respect to the minimum standard. However, new crimes were created by law 1943 of 2018.
42	Entering premises or interception of communications should be authorised by the judiciary.		<input type="radio"/>	<input type="radio"/>	DIAN is authorized to order the registration of premises. the interception of communications is not a DIAN practice.
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"/>	DIAN does not have the power to make emergency decisions, subject to subsequent ratification. In 2019, the minimum standard will be impacted with the creation of the tax and crime office.
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"/>	DIAN's registration power does not authorize the entry into the taxpayers' homes, for which a search warrant issued by a judicial authority is required." When the commercial establishment and the taxpayer's home concur in the same address, the The tax authority should refrain from entering the dwelling house and withdraw goods from it without a search warrant. In Colombia, the best practice is not applied, the search warrant is known by the taxpayer when the diligence is going to be carried out.
45		Access to bank information should require judicial authorisation.	<input type="radio"/>	<input type="radio"/>	CRS has made bank information available without any need for a judicial order. The DIAN can access banking information without requiring judicial authorization, either through a periodic report of general information on banking operations by financial institutions, or through a request for specific information. Taz authority has more and more access to banking information via digital channels.
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"/>	No changes in this respect.
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"/>	No changes in this respect.
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"/>	No changes in this respect.
49	Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.		<input type="radio"/>	<input type="radio"/>	No changes in this respect.

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"/>	No changes in this respect. In 2019, great advances will be made in the digitization of the largest number of services.
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		<input type="radio"/>	<input type="radio"/>	A stage of administrative reviews must be exhausted before exercising the right to appeal.
52		Reviews and appeals should not exceed two years.	<input checked="" type="radio"/>	<input type="radio"/>	Average time for a final instance ruling is 6 years for the judicial stage plus two years of the administrative stage. These times may increase with the increase of the statute of limitations for the firmness of the tax returns from 2 to 3 years, requests for tax refunds and issuance of provisional tax assessments.
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		<input type="radio"/>	<input type="radio"/>	No changes in this respect.
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"/>	In Colombia, an appeal not require prior payment of tax before exercising this right.
55		The state should bear some or all of the costs of an appeal, whatever the outcome.	<input type="radio"/>	<input type="radio"/>	No changes in this respect.
56	Legal assistance should be provided for those taxpayers who cannot afford it.		<input type="radio"/>	<input type="radio"/>	No changes in this respect.
57	Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.		<input type="radio"/>	<input type="radio"/>	No changes in this respect.

58	Tax judgments should be published.		<input type="radio"/>	<input type="radio"/>	First and final instance ruling are published once they are notified.		
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"/>	At the end of 2016, the application of the principle of proportionality for the graduation of sanctions was approved by the legislator. In 2018, the application of this principle was extended to decisions that were enforceable.		
60		Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.	<input checked="" type="radio"/>	<input type="radio"/>	The same conduct can simultaneously lead to criminal and administrative proceedings, within which sanctions can be imposed independently. Law 1943 of 2018 created the crime of omission of assets or declaration of nonexistent liabilities. According to the regulation of this crime, the payment of the highest tax by the taxpayer does not end the criminal process when the omitted assets or nonexistent liabilities are of high value.		
61		Voluntary disclosure should lead to reduction of penalties.	<input type="radio"/>	<input checked="" type="radio"/>	Law 1943 of 2018 created a standardization tax for the year 2019, paid by taxpayers who have omitted assets omitted or declared nonexistent liabilities in their tax declarations of national taxes, in order to erode the tax base. The law allows the omitted assets to be included and nonexistent liabilities to be excluded, without generating tax sanctions or criminal offenses.		
62	Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.		<input type="radio"/>	<input type="radio"/>	No changes in this respect.		
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"/>	The minimum vitalis principle is only followed strictly for VAT. Additionally, in the collection processes for taxpayers there are some assets and minimum amounts of money that can not be seized.		
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input type="radio"/>	<input type="radio"/>	The law empowers DIAN to clear bank accounts without the need for judicial authorization. These actions have become quite common in many municipalities, causing severe damage to business flows for taxpayers.		
65	Taxpayers should have the right to request delayed payment of arrears.		<input type="radio"/>	<input type="radio"/>	Taxpayers can request delay payment of arrears and DIAN can grant it for a maximum period of one year, as long as they constitute guarantees.		
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"/>	This only protected in the case of taxpayers protected by an expropriation clause in a bilateral investment treaty. On the other hand, in bankruptcy proceedings conducted by an independent judge, it is possible to make structured planes for deferred payment with lower interest rates.		
67	Temporary suspension of tax enforcement should follow natural disasters.		<input type="radio"/>	<input type="radio"/>	Natural disasters are usually followed by an executive decree providing for a temporary tax relief depending on the severity of the disaster. No changes in this respect.		
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"/>	No changes in this respect.		
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"/>	No changes in this respect.		
70		Provisions should be included in tax treaties setting specific conditions for exchange of information.	<input type="radio"/>	<input type="radio"/>	No changes in this respect.		

71	If information is sought from third parties, judicial authorisation should be necessary.		<input type="radio"/>	<input type="radio"/>	No changes in this respect.
72		The taxpayer should be given access to information received by the requesting state.	<input type="radio"/>	<input type="radio"/>	The taxpayer does not have access to information received by the requesting state, except if a tax audit is in progress.
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 checked="" type="radio"/>	<input type="radio"/>	Multiple requests for information and collaboration were made to JITSIC special project on panama papers.
74		A requesting state should provide confirmation of confidentiality to the requested state.	<input type="radio"/>	<input type="radio"/>	No changes in this respect.
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"/>	No change. Colombia relies on the OECD to evaluate the standards for data protection in other jurisdictions.
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 checked="" type="radio"/>	This best practice was recognized in Law 1943 of 2018 and in the MAP Guide published in March 2019.
77		Taxpayers should have a right to request initiation of mutual agreement procedure.	<input type="radio"/>	<input checked="" type="radio"/>	Law 1943 of 2018 provided that taxpayers may request assistance for the MAP regulated in treaties to avoid double taxation signed by Colombia, by filing a formal request with DIAN. MAP Guideline was published in March 2019.
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"/>	According to Law 1943 of 2018, taxpayers can request DIAN assistance for the MAP. The ACC could allow the verbal presentation of the request by the taxpayer for unusual or complex cases, pursuant to MAP guidelines. The agreement reached by the ACC and the Foreign Competent Authority will be notified to the taxpayer who requested the assistance.

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 financing law 1943 of 2018 modified tax treatment of dividends and shares in profits received by national and foreign companies, and resident and non-resident individuals. Therefore, it established a transition regime that maintains the treatment prior to the entry into force of that law, only for dividends decreed until December 31, 2018. This means that the provisions of the new law apply for taxable and not taxable dividends of any fiscal year that was not decreed by December 2018. This, moreover, ignores the transition regime of Law 1819 of 2016, according to which the treatment dividends established there only would be applicable to dividends that were repaid with charge to profits generated from the taxable year 2017.
80		Public consultation should precede the making of tax policy and tax law.	<input type="radio"/>	<input checked="" type="radio"/>	Regulations and guidelines are published for comments before approval. In addition, they are issued expeditiously after the enactment of the law they develop.

11. Revenue practice and guidance

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
81	Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.		<input type="radio"/>	<input checked="" type="radio"/>	Circular 001 of 2019, which regulates the personal data treatment policy, was published and widely disseminated by the DIAN.
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"/>	The tendency is that all legal material is available primarily on the internet and less and less in physical media. However, in case taxpayers have difficulty accessing digital legal material, they can request it directly from DIAN who will provide a physical copy.
83	Binding rulings should only be published in an anonymised form		<input type="radio"/>	<input type="radio"/>	No changes in this respect.
84	Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively.		<input checked="" type="radio"/>	<input type="radio"/>	In accordance with the financing law 1943 of 2018, DIAN's guidance are mandatory for the tax authorities, but actions of taxpayers in administrative and judicial stage can only be based on the law. Therefore, as of its entry into force, the taxpayers' actions will not be covered by the provisions of a guideline.

12. Institutional framework for protecting taxpayer's rights

