



Observatory for the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by or with the contribution of the National Reporter of Colombia, Ms. Natalia Quiñones, a representative of the tax practitioners.

This questionnaire comprises the National Reporter assessment on the level of compliance of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Pistone and Prof. Dr. Philip Baker at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Rights*". This report was filled in considering the following parameters:

1. It contains information on those issues in which there were movements towards or away from the level of compliance of the relevant standard/best practice in Colombia between 2015 and 2017.
2. It is indicated, by the use of a checkmark () whether there were movements towards or away from of the level of compliance of the relevant standard/best practice in Colombia between 2015 and 2017.
3. It contains a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices) that serves as grounds for each particular assessment of the level of compliance of a given minimum standard / best practice, in a non-judgmental way.

Country: Colombia

Minimum Standard	Best Practice	Shift towards	Shift away	Development
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers				
Implement safeguards to prevent impersonation when issuing unique identification numbers	Colombia has implemented a digital signature in addition to the unique taxpayer registry (RUT), so that no one may use the number without the digital signature			The digital signature has been working efficiently for many years now.
The system of taxpayer identification should take account of religious sensitivities				Christian protestant movements filed several constitutional claims last year requiring a special protection from the new exempt and not-for-profit regime, approved in December, 2016. They succeeded in being treated as exempt in spite of not complying with the requirements established for every other non-profit entity. There is currently no system to obtain tailored taxpayer ids for members of restrictive religious movements, and there is no way of associating an individual tax id to a specific religion or cult. Religious movements, however, are now entitled to constitutionally protected exempt status, regardless of whether they fulfil the requirements established for every other non-profit entity.
Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes	Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax		✓	The implementation of CRS now requires third party financial withholding agents to reveal taxpayer information that was not required before, including nationalities and beneficial owners for legal entities. There are no resources and many times no access to reported information.
Where pre-populated returns are used, these should be sent to taxpayers to correct errors				No pre-populated returns in Colombia. All taxpayers can consult the information on their income on the DIAN website, as reported by payors obligated to report.
Provide a right of access for taxpayers to personal information held about them, and a right to apply to correct inaccuracies	Publish guidance on taxpayers' rights to access information and correct inaccuracies		✓	CRS has created new opportunities for mistaken information that taxpayers may not see or correct.
Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		✓		DIAN now has an online free system to verify if any communication received by the taxpayer was truly originated by DIAN.
Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis				No cooperative compliance other than APAs in Colombia. APAs are non/discriminatory and voluntary, but taxpayers are not participating because of a concern with leaks of information from the APA section into the auditing section.
Provide assistance for those who face difficulties in meeting compliance obligations, including those with				DIAN does provide free assistance to those in need of it, but the assistance is based only in the main urban areas. Rural areas are highly neglected.

disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication				
2. The issue of tax assessment				
	Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms		✓	Tax authorities have now chosen to send special summons writs (first administrative stage of an assessment) by email, without even bothering to visit the taxpayers office or interrogating the taxpayer. Many of these audits are based on a misunderstanding of the taxpayer business that could be avoided with an auditing visit, which was usually performed before issuing the special summons.
Minimum Standard	Best Practice	Shift towards	Shift away	Development
2. The issue of tax assessment (cont)				
	Use e-filing to speed up assessments and correction of errors, particularly systematic errors			Colombia allows for e/filing for everyone, and it is mandatory for large taxpayers and companies.
3. Confidentiality				
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		✓	Circular 001 of 2013 provides for confidentiality obligations by tax authorities, but it does not cover obligations by financial institutions and other actors under CRS. Furthermore, the sanctions contained therein have not been applied because it is extremely difficult to demonstrate that a leak of information came from a specific official. Experts called by DIAN to implement digital footprints and firewalls to prevent leaks have renounced informally declaring that they received threats while performing initial system checks.
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		✓	DIAN has invested considerable money in digital security solutions. However, as mentioned above, experts have informally stated that they received threats while performing initial system checks.
Audit data access periodically to identify cases of unauthorised access				
Introduce administrative measures emphasising confidentiality to tax officials	Appoint data protection/privacy officers at senior level and local tax offices	✓		Natasha Avendaño, a very high level official has been appointed as data protection officer. She might be elected as the next DIAN chief.
If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges)				No investigations have been made public up to today. To our knowledge, no breach of confidentiality has yet been denounced by a taxpayer.
Introduce an offence for tax officials covering up unauthorised disclosure				Only administrative sanctions are available for these offenses at this point.

of confidential information				
Provide remedies for taxpayers who are victims of unauthorised disclosure of confidential information				No specific remedies have been made available to Colombian taxpayers. Practitioners are considering using the wrongful action claim against the State if there was an unauthorized disclosure.
Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted			✓	Interpretations of confidentiality following the Panama papers scandals have become more broad and relaxed. DIAN has considered press statements regarding investigations initiated against Taxpayers revealed in the Panama papers scandal.
If “naming and shaming” is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer)	Require judicial authorisation before any disclosure of confidential information by revenue authorities			Naming and shaming has only been considered at this point, mainly because of demands made by the press after the Panama papers scandal.
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			Because of the money laundering controls in place since the 1990s, all local authorities have a right to inspect taxpayer data, including local politicians. No restriction has been made yet on the uses they might give to this information, as access was granted under the SARLAFT system.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
3. Confidentiality (cont).				
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				The Panama papers scandal has turned public opinion and the press into demanding access to taxpayer data for the sake of the public’s right to be informed, especially in the cases of Public personalities.
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			DIAN only allows for general rulings, no specific situations may be submitted in a ruling request.
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			Privilege only applies to lawyers.
Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege				Tax authorities usually refrain from raiding lawyers offices. The only known raids have occurred when the Big 4 were directly investigated for the deduction of royalty payments for use of the brand PwC, KPMG, Deloitte, and EY.

4. Normal audits.				
<p>Audits should respect the following principles:</p> <ul style="list-style-type: none"> (1) Proportionality (2) <i>Ne bis in idem</i> (prohibition on 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). <p>Tax notices issued in violation of these principles should be null and void</p>				<p>All principles but the proportionality principle are usually respected in audits by DIAN. Lack of respect for the proportionality principle is observable in local tax audits, such as a municipality claiming the right to tax the entire national income of a mobile telephone company (Consejo de Estado, ruling no. , 201</p>
<p>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</p>				<p>Not applicable in Colombia. Any information refused by the taxpayer in the course of an audit may be interpreted as prejudicial by appeals and the courts.</p>

Minimum Standard	Best Practice	Shift towards	Shift away	Development
4. Normal audits (cont).				
	<p>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</p>			<p>This principle holds true for each of the taxes levied, but since even the corporate income tax is divided between CIT and CREE, a taxpayer may receive multiple audits for a single taxable period.</p>
<p>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</p>				<p>It is true that taxpayers and their advisors may attend all meetings, but obtaining said meetings is complicated and in many cases impossible.</p>
<p>In application of <i>nemo tenetur</i>, the right to remain silent should be respected in tax audits.</p>				<p>This is applicable in Colombia regarding taxpayer free statements, but any documentary evidence requested by DIAN must be provided in order to avoid prejudice in the next stages.</p>
	<p>Tax audits should follow a pattern that is set out in published guidelines</p>			<p>Although there are no published guidelines, most audits follow a standard pattern. What varies mostly is meetings and visits to the taxpayer before issuing a special summons.</p>

	A manual of good practice in tax audits should be established at the global level			
	Taxpayers should be entitled to request the start of a tax audit (to obtain finality)			Taxpayers may request the start, but tax authorities may take up to the statute of limitations period established in the laws to issue a special summons or official assessment.
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		✓	Rather than inform the taxpayer, a new practice by DIAN is to notify of the special summons via email, without even visiting the taxpayer to obtain evidence.
Taxpayers should be informed of information gathering from third parties				DIAN has tried to use the diplomatic exhort to obtain information from third parties abroad, and it is customary for DIAN to reach out to the taxpayer clients and suppliers without informing the taxpayer.
	Reasonable time limits should be fixed for the conduct of audits		✓	The statute of limitations for the firmness of a taxpayer return was increased from 2 to 3 years.
Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer				No changes in this respect.
Minimum Standard	Best Practice	Shift towards	Shift away	Development
4. Normal audits (cont).				
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			Only minutes of inspections and visits may be read and approved by the taxpayer before it is finalised. The result of the audit is then recorded in the special summons, in which the taxpayer has no participation.
Erjjujvc v.	Following an audit, a report should be prepared even if the audit does not result in additional tax or refund			All audits must result in either a special summons (Hairston instance assessment) or a closure notice, which must be duly motivated. It is very rare in cases where large amounts are on dispute.
5. More intensive audits.				
	More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance			Intensive audits are rare in Colombia.
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				Colombia has just implemented a criminal offence for Tax avoidance or evasion (2017 reform, approved as law 1819/16), but the only charge made so far was accompanied by several other charges in connection with the Panama papers scandal. It is too early to tell if administrative practice will

right to silence, and statements from the taxpayer should not be used in the audit procedure				respect this minimum standard.
Entering premises or interception of communications should be authorised by the judiciary				This has always been thus in Colombia. However, doubts remain for the collection procedures that may come from joint audits or mutual assistance agreements.
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification				No public cases yet to verify this standard. Most cases have raids performed by the criminal authorities (DAJ, and are connected to other criminal offences.
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			Colombia implements the minimum standard, but the best practice has not yet been implemented.
	Access to bank information should require judicial authorisation		✓	CRS has made bank information available without any need for a judicial order.
	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			No cases are known yet for the interception of communications or monitoring of internet activity by the Tax authorities. Only criminal authorities have well-established practice for this, and now that avoidance is a criminal offence, we may see new cases with this pattern in the near future.
Minimum Standard	Best Practice	Shift towards	Shift away	Development
5. More intensive audits (cont).				
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				There are no published rules on the seizure of documents by Tax authorities.
	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			Usually in criminal cases the original goes with the authorities, and the taxpayer is allowed to request a backup copy afterwards.
Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers				No known cases with the use of invasive techniques.
6. Review and appeals.				
	E-filing of requests for internal review to ensure the effective and speedy handling of the review			While e-filing is theoretically allowed, many of the evidence pieces are required in original apostilled form, so most taxpayers opt for physical filing.

	process			
The right of appeal should not depend upon prior exhaustion of administrative reviews				Taxpayers are allowed to appeal in the judicial stages once they have responded the special summons in writing.
	Reviews and appeals should not exceed two years			Average time for a final instance ruling is 6 years for the judicial stage plus two years of the administrative stage.
<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals				Colombia complies with this standard.
Where tax must be paid in whole or in part before an 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			Colombia only demands the payment of a judicial bond in extraordinary cases. Other than that, Tax is only due when a final instance ruling is issued against the taxpayer.
	The state should bear some or all of the costs of an appeal, whatever the outcome			The State almost never bears the costs of an appeal. It only does so when a final ruling orders DIAN to pay for those costs, and this is done so in very rare cases.
Legal assistance should be provided for those taxpayers who cannot afford it				This option has never been available in tax cases, only in criminal cases.
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing				The public is usually not present in a Tax hearing, but if eventually the press or someone else would want to come to the hearing, the taxpayer can only ask for the reserve of the information learned in the hearing.
Tax judgments should be published		✓		Tax judgements are public unless the case is closed in the administrative stage.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
7. Criminal and administrative sanctions.				
Proportionality and <i>ne bis in idem</i> should apply to tax penalties				Theoretically the principles are applied, but when judicial review has been requested, the courts have denied the annulment of the provisions mainly because of the economic effects theory, as fiscal deficit has been a constant in the last few years.
	Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied		✓	As of 2017, taxpayers may be subject to both criminal and administrative procedures.
	Voluntary disclosure should lead to reduction of penalties			Only voluntary corrections to a return entitle taxpayers to reduced penalties.
Sanctions should not be increased simply				Penalties are rather reduced when the taxpayer spontaneously corrects in

to encourage taxpayers to make voluntary disclosures				favour of the State.
Qqqqqqaaaaqasaqaaaaaq8. Enforcement of taxes.				
Collection of taxes should never deprive taxpayers of their Minimum necessary for living				The minimum vitalis principle is only followed strictly for VAT.
	Authorisation by the judiciary should be required before seizing assets or bank accounts		✓	Administrative practice of seizing bank accounts without judicial authorisation has become quite common in most municipalities, causing severe damage on business flows for taxpayers.
Taxpayers should have the right to request delayed payment of arrears		✓		Law 1819/2016 provides for new opportunities for taxpayers to pay in arrears or even get a partial condonation of interest.
	Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment			This is only protected in the case of taxpayers protected by an expropriation clause in a bilateral investment treaty.
Temporary suspension of tax enforcement should follow natural disasters				Natural disasters are usually followed by an executive decree providing for a temporary tax relief depending on the severity of the disaster. Mocha avalanche last year was granted a 5 year relief.
9. Cross-border procedures.				
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			This remains unchanged, although tax authorities have informally mentioned that only in very rare cases will they consider that there are no grounds for suspecting that evidence may be destroyed or resources moved around.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
9. Cross-border procedures (cont).				
	Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer			This is not considered an obligation by the Colombian authorities.
	Provisions should be included in tax treaties setting specific conditions for exchange of information			None of the treaties signed by Colombia until now include specific conditions for the exchange of information, other than the standard OECD language.

If information is sought from third parties, judicial authorisation should be necessary				Colombian authorities believe that an exhort without any judicial authority should be enough. They have resorted to this on 4 international transfer pricing cases known to me personally.
	The taxpayer should be given access to information received by the requesting state			Taxpayers get access to the information only and until it becomes grounds for a special summons.
	Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information A requesting state should provide confirmation of confidentiality to the requested state			Colombia believes that if the information is obtained from a treaty partner, the original source of the information is irrelevant. Further, if the information is public (lux leaks, paradise papers, Panama papers, etc.), tax authorities feel entitled to use said information and to send it to any treaty partner that may be interested.
A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observe high standards of data protection				No change. Colombia relies on the OECD to evaluate the standards for data protection in other jurisdictions.
	For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights			There is no public information on the dates of an automatic exchange. Guidelines were issued for taxpayers to review their bank information periodically.
	Taxpayers should have a right to request initiation of mutual agreement procedure			To my knowledge, no Colombian taxpayer has yet attempted to initiate a MAP.
Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure				Colombia has not participated in MAP procedures until now.
10. Legislation.				
Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail	Retrospective tax legislation should ideally be banned completely			Retrospective legislation has been allowed by the constitutional court on the grounds of the economic effects theory, bearing in mind the Colombian fiscal deficit after the peace agreements were signed.
	Public consultation should precede the making of tax policy and tax law			Public consultation takes place, but many times the output of those meetings is not reflected in the draft legislation introduced in Congress.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
11. Revenue practice and guidance.				
Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance				Only access to DÍAN circulars is restricted. This has relevant consequences insofar as it is a circular (circular 001/2013) that contains all the information on confidentiality obligations and sanctions for tax administration officials.

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				Any taxpayer can request a hard copy of rulings, laws, regulations, and any other legal material available.
Binding rulings should only be published in an anonymised form				Colombia has no binding rulings on specific cases. Only general consults on the interpretation of the law may be submitted.
Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively				A recent case regarding the annulment of a revenue ruling that allowed the deduction of royalty payments by oil and mineral companies showed that the Colombian tax authorities are looking to apply the annulment ruling ex-tunc, denying the deductibility for periods in which the revenue ruling allowing for the deductibility was enforced.
12. Institutional framework for protecting taxpayers' rights.				
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			A statement of taxpayer rights exist, but it is mostly limited to things like being treated with respect by tax officials.
	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	✓		A taxpayer defender exists, but faculties and budget granted are too limited for it to be truly effective. Fortunately, tax courts have granted a large importance to the recommendations writ issued by the defender in specific cases, which has lately increased the effectiveness of the institution.
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			The taxpayer defender has jurisdiction in all local municipalities.