



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 India, Mr. Dikshit Sengupta, a representative of the Tax Administration.

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 India 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 India 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: India

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				
The system of taxpayer identification should take account of religious sensitivities				
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			
Where pre-populated returns are used, these should be sent to taxpayers to correct errors				
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			
Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception				
Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis				
Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication				
2. The issue of tax assessment				
	Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms			

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			<p>With the objective of reducing the interface between the income tax department and the taxpayers, the concept of e-assessment was introduced in the budget of 2017. In the budget of 2018, this has been further refined and made applicable all over India and necessary legal provision has also been introduced in the Income Tax Act, 1961 (ITA).¹</p> <p>In India, only a small number of tax cases are audited every year. A scheme of e-assessment was first tried on a pilot basis in 2016 and then extended to 102 cities in 2017. Instructions were issued for the said purpose.² A scheme of centralised communication has also been notified in the official gazette.³ Two features of the scheme as available in the public domain are noticeable. The first is that such 'E-Proceeding' would enable seamless flow of Letters/Notices, Questionnaires, Orders etc. from the Assessing Officer to the taxpayers' account in the tax department's e-Filing website. On receipt of any communication from the tax department, the taxpayer would be able to submit the response along with attachments by uploading the same, on the portal. The response would be viewed by the Assessing Officer electronically in the Income Tax Business Application (ITBA) module. According to the tax department, besides saving precious time of the taxpayer, this would also provide a 24X7 anytime/anywhere convenience to the taxpayer to submit response in course of the assessment proceedings.⁴ The other aspect is the introduction of a team- based assessment with dynamic jurisdiction. Till now, the jurisdiction over a particular taxpayer was with a particular tax officer. This could possibly generate familiarity and could lead to corruption in some cases. A completely radical change from this age-old practice is the introduction of the concept of team assessment through the said scheme of e-assessment. The audit of cases will now be jurisdiction- free and a taxpayer based in say, Delhi or Mumbai, could</p>

¹ Section 143(3C) of the ITA states as follows:

“(3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based assessment with dynamic jurisdiction.”

² Instruction No 1/2018 dated February 12, 2018 and Instruction No 8/2017 dated September 29, 2017 issued by the Central Board of Direct Taxes.

³ The scheme known as Centralised Communication Scheme, 2018 has since been notified and is available at:

https://www.incometaxindia.gov.in/communications/notification/notification_12_2018.pdf

⁴ Source: Salient features of E-proceedings at Annexure C of Instruction No8/2017 available at: https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/Instruction08-2017.pdf

				possibly be assessed by a tax officer randomly selected by the Income Tax system from any part of the country ⁵ . Apparently, the effort is at minimizing the exercise of discretion and possible corruption ⁶ . There are certain exceptions though, for example, where manually kept books of accounts need to be examined, or witnesses need to be examined or cross-examined, etc. ⁷ While welcoming the scheme, some have flagged issue relating to certain undefined terms and possible difficulties that may arise in case of team assessment. ⁸ It is learnt that the scheme relating to dynamic jurisdiction is yet to be finalized.
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			
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			
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			In addition to the issued indicated above, although not in the context of tax, most importantly, the Supreme Court of India has declared the right to privacy as a fundamental right guaranteed by the Constitution and as such the same should be enforceable by the Courts. How this is going to interact with the provisions of the tax code is, of course, difficult to predict at this moment.
If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges)				
Introduce an offence for tax officials covering up unauthorised disclosure of confidential information				
Provide remedies for taxpayers who				

⁵ <http://indianexpress.com/article/business/budget/union-budget-2018-arun-jaitley-macro-jurisdiction-free-tax-assessment-e-assessment-transparency-push-for-companies-individuals-5048409/>

⁶ ibid

⁷ For further details, see CBDT instruction no 1/2018 (F. No. 225/1572017-ITA.II) available at: <https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/223/Conduct-Assessment-Proceedings-scrutiny-electronically-12-02-2018.pdf>

⁸ <http://www.in.kpmg.com/taxflashnews/KPMG-Flash-News-CBDT-Instruction-on-e-assessment-2.pdf>

are victims of unauthorised disclosure of confidential information				
Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted				
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			
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			

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				
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			
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			
Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege				
4. Normal audits.				
Audits should respect the				

<p>following principles:</p> <p>(1) Proportionality</p> <p>(2) <i>Ne bis in idem</i> (prohibition on double jeopardy)</p> <p>(3) <i>Audi alteram partem</i> (right to be heard before any decision is taken)</p> <p>(4) <i>Nemo tenetur se detegere</i> (principle against self-incrimination).</p> <p>Tax notices issued in violation of these principles should be null and void</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>On the flip side, one can possibly argue that there has been slight deterioration concerning search and seizure proceedings. The Finance Act, 2017 has introduced provisions that provide that there is no necessity of disclosing reasons for the search to any authority or Tribunal. Besides, survey operations can now be carried out at the premises of a charity organization also.</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>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>In application of <i>nemo tenetur</i>, the right to remain silent should be respected in tax audits.</p>				
	<p>Tax audits should follow a pattern that is set out in published guidelines</p>			
	<p>A manual of good practice in tax audits should be established at the global level</p>			

	Taxpayers should be entitled to request the start of a tax audit (to obtain finality)			
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			
Taxpayers should be informed of information gathering from third parties				
	Reasonable time limits should be fixed for the conduct of audits			
Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer				
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			
	Following an audit, a report should be prepared even if the audit does not result in additional tax or refund			
5. More intensive audits.				
	More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance			
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				

Entering premises or interception of communications should be authorised by the judiciary				
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification				
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			
	Access to bank information should require judicial authorisation			
	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			
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				
	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			
Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers				
6. Review and appeals.				
	E-filing of requests for internal review to ensure the effective and speedy handling of the review process			
The right of appeal should not depend upon prior exhaustion of administrative				

reviews				
	Reviews and appeals should not exceed two years			
<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals				
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			
	The state should bear some or all of the costs of an appeal, whatever the outcome			
Legal assistance should be provided for those taxpayers who cannot afford it				
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing				
Tax judgments should be published				

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				
	Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied			
	Voluntary disclosure should lead to reduction of penalties			
Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures				
8. Enforcement of taxes.				
Collection of taxes should never deprive taxpayers of their minimum necessary for living				
	Authorisation by the judiciary should be			

	required before seizing assets or bank accounts			
Taxpayers should have the right to request delayed payment of arrears				
	Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment			
Temporary suspension of tax enforcement should follow natural disasters				
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			

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			
	Provisions should be included in tax treaties setting specific conditions for exchange of information			
If information is sought from third parties, judicial authorisation should be necessary				
	The taxpayer should be given access to information received by the requesting state			
	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			
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				
	For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights			
	Taxpayers should have a right to request initiation of mutual agreement procedure			
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.				
Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail	Retrospective tax legislation should ideally be banned completely			
	Public consultation should precede the making of tax policy and tax law			

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				
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				
Binding rulings should only be published in an anonymised form				
Where a taxpayer relies upon published guidance of a revenue				

authority which subsequently proves to be inaccurate, changes should apply only prospectively				
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 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			
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			