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 Italy, Mr. Pietro Mastellone, a representative from 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 Italy 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 Italy between 2015 and 2017.

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.

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		☑	According to the Italian Supreme Court (ISC, Sixth Chamber, 14 May 2015, order no. 9933), the definition of "tax substitute" (*sostituto d'imposta*) contained in Art. 64, para. 1, Presidential Decree no. 600/1973, as the subject that is obliged to pay taxes (also partially) in place of others through the withholding, does not exclude that the substituted taxpayer is also *ab origine* (and not only in the phase of tax collection) so obliged to pay the tax jointly with the substitute.
Where pre-populated returns are used, these should be sent to taxpayers to correct errors				Law Decree no. 193 of 22 October 2016 (Legge di Stabilità 2017) has introduced - the possibility to file an integrative tax return "in favour" of the taxpayer, which allows the latter to correct mistakes and achieve lower taxes to pay. The integration may concern mistakes or omissions made in relation to income taxes, regional business tax (IRAP), VAT and payments made by withholding agents, and may be filed until the term available for Italian Tax Authorities (ITAs) for challenging the tax return. Moreover, the law provides re-opening of the terms for applying to the voluntary disclosure programme: in fact, from 24 October 2016 until 31 July 2017, it is possible to apply with the aim of correcting the violations committed until 30 September 2016.
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				
Minimum Standard	**Best Practice**	**Shift towards**	**Shift away**	**Development**
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			Following the guidelines drawn by the Parliament with Law no. 23 of 11 March 2014, in 2015 the Government has approved several legislative acts aimed at enhancing the mechanisms of "dialogue" between the Italian Tax Administrations (ITA) and taxpayers, which contribute to create a more relaxed relationship between ITAs and taxpayers. The actual framework provides various instruments that may be used by the taxpayer in order to prevent potential litigation with the ITAs, especially for complex situations and taxpayers producing cross-border income.
	Use e-filing to speed up assessments and correction of errors, particularly systematic errors	☑		The recently appointed Chief of the Italian Tax Authorities (ITAs) has promoted, in the course of 2017, a comprehensive reform of the tax administrations, which are a "public good" that shall always act in a fair and balanced manner with taxpayers' rights. The Chief of the ITAs has also sent a letter to all the Italian tax inspectors aimed at changing their mind towards a more cooperative approach. Although these developments have not a legal effectiveness, it is already possible to notice an increase of pre-assessments invitations for taxpayers (*inviti a comparire*) to clarify certain doubts and, eventually, avoid the issuance of a notice of assessment.
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		☑	On 3 October 2017, the Italian Data Protection Authority (*Garante per la protezione dei dati personali*) has sent to the Prime Minister a letter concerning the unacceptable – although unwanted – disclosure of data of millions of taxpayers contained in the digital platform SOGEI. This accident shows the complete inadequateness of the actual framework of confidentiality of taxpayers' data.
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			
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		☑		The consolidated case law (*see*, in particular, ISC, Fifth Chamber, 22 May 2013, no. 22024) punishes the unauthorised disclosure of confidential information made by tax inspectors as an "abusive access to a telematics system by a public official" (Art. 615-*ter* of the Italian Criminal Code). The crime, if committed by a tax inspector (*i.e.* a public official) is punished with the imprisonment from 1 to 5 years. This approach has been recently confirmed by ISC, Grand Chamber, 8 September 2017, no. 41210.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
3. Confidentiality (cont).				
Provide remedies for taxpayers who 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	☑		From 2015 onward, all the annual tax returns of politicians composing the Italian Government (and certain special commissioners appointed by the Government) shall be accessible to everyone, apart from certain sensible data (*e.g.* the place of residence, the tax code, etc.). This project, called "Transparent Administration" (http://presidenza.governo.it/AmministrazioneTrasparente/Organizzazione/index.html), allows all citizens to check on the official website of the Italian Government the income produced in the last years and the costs reimbursed by the State for their institutional functions (*e.g.* fuel, airplane tickets, etc.).
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	Anonymise all tax judgments and		☑	While tax rulings are not published at all, the tax judgments are available through

should be anonymised and details that might identify the taxpayer removed	remove details that might identify the taxpayer			specialised databases, which frequently allow to acknowledge the name of the taxpayer/s involved. This shows that the penalties for disclosure have not enough deterrent effect and should be strengthened.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
3. Confidentiality (cont).				
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 following principles: (1) Proportionality (2) *Ne bis in idem* (prohibition on double jeopardy) (3) *Audi alteram partem* (right to be heard before any decision is taken) (4) *Nemo tenetur se detegere* (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void		☑	☑	**<u>On the *ne bis in idem*, there is an improve from the ICC</u>:** - On 20 May 2016, the ICC has published a decision that faces the issue of legitimacy of the so-called "double track" system between tax crimes and tax administrative penalties in relation to VAT evasion. The case concerns an omitted payment of VAT, which has originated both criminal and tax proceedings. The ICC has returned the case to the criminal judge for a new evaluation of the issue, in the light of the recent reform of tax crimes made by Legislative Decree no. 158 of 24 September 2015, which has introduced the non-punishability of the defendant that paid the taxes claimed, interests for delayed payment and penalties before the discussion phase (*dibattimento*) of the criminal trial. - On July 20, 2016, the ICC issued a new decision in which – in the light of the case law of the ECtHR on the concept of "same fact", which differs from the approach followed in the Italian system –

				has declared the «*unconstitutionality of Art. 649 Criminal Procedural Code, in the part in which it excludes that the fact is the same for the only circumstance that there is a formal concurrence between the offense already judged with an irrevocable decision and the offense for which the new criminal trial has begun*». **<u>… but some "resistance" in its application by the ISC</u>:** - On the *ne bis in idem* principle, the ISC has showed its doubts on the legitimacy of the Italian so-called "double track" system between tax crimes and tax administrative penalties in relation to VAT evasion with EU law: in October 2016, the ISC has remitted the question to the CJEU, asking to the latter if *the ne bis in idem* principle may be considered a "bi-directional" principle, able to operate regardless the speed of the two proceedings (*i.e.* criminal and tax-administrative). **<u>Concerning the *nemo tenetur se detegere*, the ISC has adopted a "devaluing" approach, which may considered a decrease in taxpayers' protection</u>:** - «*The fact that the possession of income may constitute also a criminal offense and that the self-incrimination may violate the "nemo tenetur se detegere" principle, which does not even have a constitutional express recognition, is certainly recessive with respect to the obligation to contribute to public expenses according to Art. 53 IC*» (ISC, Tax Chamber, 24 February 2016, no. 3580).
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				
	In application of *ne bis in idem* thetaxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed			
Minimum Standard	**Best Practice**	**Shift towards**	**Shift away**	**Development**

4. Normal audits (cont).				
In application of *audi alteram partem*, 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				At the time the National Report was published, the situation seemed to turn towards a favourable interpretation for the taxpayer, allowing a general extension of the principle also to the phases preceding the notice of assessment, but in December 2015 the Grand Chamber of the Italian Supreme Court (ISC) has issued a decision that – again – steps back to the so-called postponed exercise of the right of defence, which means that the latter shall be considered adequately exercisable once the notice of assessment has been issued and served (i.e. not before). The Tax Court of Appeal of Tuscany, considering unacceptable the position of the Grand Chamber, has remitted the issue to the Italian Constitutional Court (ICC): in fact, such reconstruction would render the right *to audi alteram partem* a mere "option" in the hands of the ITAs. Although the hope was that the ICC would have followed its previous approach according to which *the audi alteram partem* has a *vis espansiva* and the recent openings coming from the administrative practice of the ITAs, on 13 July 2017 it has considered "manifestly inadmissible" the issue of constitutional legitimacy, leaving the debate still open and unresolved.
In application of *nemo tenetur*, the right to remain silent should be respected in tax audits.			☑	See below. **Concerning the *nemo tenetur se detegere*, the ISC has adopted a "devaluing" approach, which may considered a decrease in taxpayers' protection** → «*The fact that the possession of income may constitute also a criminal offense and that the self-incrimination may violate the "nemo tenetur se detegere" principle, which does not even have a constitutional express recognition, is certainly recessive with respect to the obligation to contribute to public expenses according to Art. 53 IC*» (ISC, Tax Chamber, 24 February 2016, no. 3580).
	Tax audits should follow a pattern that is set out in published guidelines			
	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)			

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			Following the guidelines drawn by the Parliament with Law no. 23 of 11 March 2014, in 2015 the Government has approved several legislative acts. Such reform, as clarified by the ITAs themselves in Circular Letter no. 9/E of 1st April 2016, has improved the preliminary rulings by lightening the taxpayer's fulfilments, reducing the ITAs' time of reaction (*e.g.* those provided "ordinary" preliminary rulings have been brought from 120 to 90 days) and, to the taxpayer's guarantee, extending the so-called silence-consent provision to all types of preliminary rulings (*i.e.* in case the ITAs do not answer within a given deadline, the taxpayer may presume that his proposed written solution is shared).
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	☑		The Italian Supreme Court has recently specified that a final audit report (*processo verbale di constatazione*) shall be issued also in case of a "short tax inspection" made in the taxpayer's premises aimed at collecting specific elements of proof (ISC, Tax Chamber, 10 May 2017, no. 11471).
	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 *ex post* 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	☑		The Italian Supreme Court has ruled that the authorisation from the Public Prosecutor aimed at allowing searches by Tax Authorities in the taxpayer's private home, shall not legitimise searches in the domicile of third parties (*i.e.* that are not the "direct target" of the tax audit): in absence of a specific authorisation for entering in third parties' domicile, all the proofs collected shall not be usable for grounding a tax assessment (ISC; Fifth Chamber, 22 April 2015, no. 8206):
	Access to bank information should require judicial authorisation			

Minimum Standard	Best Practice	Shift towards	Shift away	Development
5. More intensive audits (cont).				
	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			
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			
Audi alteram partem should apply in administrative reviews and judicial appeals				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
6. Review and appeals (cont).				
Where tax must be paid in whole or in	An appeal should not require prior payment		☑	The Italian tax system allows that Tax Authorities are able to collect

part before an appeal, there must be an effective mechanism for providing interim suspension of payment	of tax in all cases			the taxes requested while the appeal before the tax courts is still pending. This discipline generally provides that, in case of income taxes or VAT, the Tax Office may force the taxpayer to pay: a) 1/3 of the higher taxes requested, following 60 days from the notice of assessment is served (without tax administrative penalties); b) 2/3 of the higher taxes requested, following the decision of the Tax Court of First Instance that condemns the taxpayer; c) 3/3 of the higher taxes requested, following the decision of the Tax Court of Second Instance that condemns the taxpayer. In case of registration tax (*imposta di registro*), the Tax Office is able to pretend the payment (notwithstanding the pending appeal) of: a) the full amount (*i.e.* 3/3) of tax immediately following 60 days from the date of service of the notice of assessment, if the claim qualifies as "principal" registration tax" (*imposta di registro "principale"*) or "complementary" registration tax" not challenging the value of the transaction (*imposta di registro "complementare" non di valore*); or b) 1/3 of the amount of tax immediately following 60 days from the date of service of the notice of assessment, if the claim qualifies as "complementary" registration tax" challenging the value of the transaction (*imposta di registro "complementare" di valore*); c) the full amount (*i.e.* 3/3) of the tax following the decision of the Tax Court of Second Instance that condemns the taxpayer, if the claim qualifies as "supplementary" registration tax (*imposta di registro "suppletiva"*). If the taxpayer does not fulfil to such "fractioned" tax collection (or if he cannot do it), the Tax Office is authorised to start the forced tax collection and apply, in addition, a tax administrative penalty of 30% for "delayed payment of taxes" (Art. 13, para. 3, Legislative Decree no. 471/1997). Lower Courts usually interpret such criticisable such rule in an unfavourable manner for the taxpayer (*e.g.* Tax Court of First Instance of Prato, First Chamber, 4 June 2014, no. 173).
	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		☑		Tax litigation started with the appeal of the taxpayer before the Tax

request the exclusion of the public from a tax appeal hearing				Court of First Instance does not imply the discussion of the case in public hearing, unless the taxpayer expressly requests it
Tax judgments should be published		☑		Unlike administrative judgements that are all freely available online (https://www.giustizia-amministrativa.it), only selected tax judgements are published on specialised data banks for paying subscribers. Nevertheless, we may acknowledge a recent positive trend of publishing the principles established by (certain) provincial and regional lower courts' decisions (https://www.giustiziatributaria.gov.it/gt/web/guest/massimari-commissioni-tributarie-regionali).
7. Criminal and administrative sanctions.				
Proportionality and *ne bis in idem* should apply to tax penalties				With the *Taricco case*, the CJEU has ruled that the national judge (in particular, Italian criminal courts) shall not apply a national legislation laying down absolute limitation periods leading to impunity. Such decision has raised a bitter debate on the issue of limitation periods for tax crimes violating VAT and has stimulated a cross-border dialogue between Courts. On 26 January 2017, the ICC has remitted the issue to the CJEU (*prescrizione*) in respect of offences that may jeopardize the financial interests of the European Union and violate the principle of effectiveness provided by Art. 325 TFEU, setting forth the respect to the legality principle, the prohibition to retrospective application of rules and the legal regulation of the statute of limitation period. At this point, the CJEU should soon rule again on the *Taricco* case, with the hope that it would accept the solution proposed by the ICC, which provides a higher degree of protection to the taxpayer involved in a criminal proceeding for allegedly committed VAT offences. In a case concerning a fractioned paying of the taxes requested, the subsequent serious economic difficulties that forced the taxpayer to skip several installments has led the ITAs to suspend such form of payment and impose a tax administrative penalty of 30% calculated on the remaining taxes and a second one of 20% calculated on the amounts already paid. The taxpayer challenged such penalties and the Tax Court of first instance of Teramo (Tax Court of first instance of Teramo, First Section, 18 November 2015, no. 433) annulled them

				for infringement of the fundamental principle of proportionality laid down in EU law, which provides that the penalty shall take into account the seriousness of the offence and the nature of the violation: in this case, the violation was not 'substantive' (i.e. tax frauds), but merely 'formal', since the interruption of payment did not alter the tax base not the taxes claimed.
	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				The Italian system of tax administrative penalties is structured with very high rates (*e.g.* 100, 200, 240%, etc.) specifically aimed at stimulating the assessed taxpayer to: a) pay within the deadlines, b) try to reach a settlement with the Tax Office; c) apply to voluntary disclosure programmes (when available). Only in these manners, the taxpayer will benefit from a reduction in the penalties.
8. Enforcement of taxes.				
Collection of taxes should never deprive taxpayers of their minimum necessary for living				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
8. Enforcement of taxes (cont).				
	Authorisation by the judiciary should be required before seizing assets or bank accounts			
Taxpayers should have the right to request delayed payment of arrears				The Law Decree no. 193 of 22 October 2016 (Legge di Stabilità 2017) has introduced a special procedure that has allowed taxpayers to seek, within 31 March 2017, a quick settlement of tax collection notices concerning tax debts served until 31 December 2016.

	Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment			Art. 182-ter of Bankruptcy Law has been restyled at the end of 2016, in order to align the Italian legislation to the recent EU case law that admits the partial payment of VAT during pre-bankruptcy agreements with creditors. In the well-known *Degano Trasporti* case, in fact, the CJEU has ruled that «Article 4(3) TEU and Articles 2, 250(1) and 273 of the VAT Directive do not preclude national legislation […] interpreted as meaning that an insolvent trader may apply to a court to open a procedure for an arrangement with creditors for the purpose of settling its debts by liquidating its assets, in which that trader offers only partial payment of a VAT debt and establishes by an independent expert's report that that debt would not be repaid more fully in the event of that trader's bankruptcy». This amendment, not only represents a prompt implementation of "living" EU law in Italy, but represents a fundamental change for enterprises in serious financial and economic crisis for which VAT debts have always been an insurmountable obstacle for reaching an agreement with creditors and avoiding bankruptcy.
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		☑	The recent *Berlioz* case (CJEU, Grand Chamber, 16 May 2017, case C-682/15 *Berlioz*) substantially confirms the *Sabou* case law, according to which EU law «*must be interpreted as not conferring on a taxpayer of a Member State either the right to be informed of a request for assistance from that Member State addressed to another Member State, in particular in order to verify the information provided by that taxpayer in his income tax return, or the right to take part in formulating the request addressed to the requested Member State, or the right to take part in examinations of witnesses organised by the requested Member State*» (CJEU, Grand Chamber, 22 October 2013, case C-272/12 *Sabou*, para. 46). Therefore, each Member State is free to provide information taxpayer's rights during cross-border procedures: Italy does NOT provide any right in this respect.
	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			

Minimum Standard	Best Practice	Shift towards	Shift away	Development
9. Cross-border procedures (cont).				
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		☑	Apart from several pro-taxpayer decisions initially issued by lower courts, the established Italian case law admits that information stolen or illegally obtained abroad may successfully ground a notice of assessment served to an Italian taxpayer. The Italian Supreme Court has adopted this approach in relation to the *Falciani list* (see ISC, Tax Chamber, 28 April 2015, no. 8605; ISC, Tax Chamber, 13 May 2015, no. 9760).
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				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
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			The Parliament delegated the government the introduction of a GAAR. Art. 5 of Legislative Decree no. 128 of 5 August 2015 has added Art. 10-bis in the TBR, which unifies the concepts of abuse of law and tax avoidance under the same "umbrella": the introduction of a GAAR in Italy has permitted to reach a balance between the legitimate interest of the ITAs to tackle tax avoidance and the taxpayer's right to carry out economic activities having perfectly clear the dividing line between lawful and unlawful behaviours.
	Public consultation should precede the making of tax policy and tax law			
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				Rulings are not published at all, although a publication would guide taxpayer to act in conformity to the administrative practice of the Tax Offices. Only certain rulings, if considered particularly relevant,

				are published as a "Resolution" of the Italian Tax Authorities 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				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
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 Italian Taxpayers' Ombudsmen (provided by Art. 13, Law no. 212/2000, so called *Taxpayer's Bill of Rights*) are established at regional level, but their powers (e.g. to request documents or clarifications to Tax Offices, make recommendations, etc.) are very weak and non-enforceable. Therefore, such figures remain quite marginal and do not really help taxpayers to improve their rights in the day-by-day practice.
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			