



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Brian Njenga Kagunyi, Tax Associate at *Iseme, Kamau and Maema Advocates (DLA Piper)* and OPTR National Reporter of Kenya.

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

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



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

Country: KENYA
National Reporter: BRIAN NJENGA KAGUNYI
Affiliation

Tax Administration
 Tax Practitioner
 Judiciary
 Tax Ombudsman
 Academia

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

2. The issue of tax assessments			
#	Question	Yes	No
8	If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act <i>ex officio</i> to notify all affected taxpayers and arrange repayments to them?	<input type="radio"/>	<input checked="" type="radio"/>
9	Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment?	<input checked="" type="radio"/>	<input type="radio"/>
10	If yes, can the taxpayer request a meeting with the tax officer?	<input checked="" type="radio"/>	<input type="radio"/>

3. Confidentiality			
#	Question	Yes	No
11	Is information held by your tax authority automatically encrypted?	<input checked="" type="radio"/>	<input type="radio"/>
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	<input type="radio"/>	<input checked="" type="radio"/>
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	<input type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data?	<input type="radio"/>	<input checked="" type="radio"/>
16	Is information about the tax liability of specific taxpayers publicly available in your country?	<input type="radio"/>	<input checked="" type="radio"/>
17	Is "naming and shaming" of non-compliant taxpayers practised in your country?	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisors?	<input type="radio"/>	<input checked="" type="radio"/>
20	If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)?	<input type="radio"/>	<input checked="" type="radio"/>

7. Criminal and administrative sanctions					
#	Question				
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?	<input checked="" type="radio"/> No	<input type="radio"/> Yes	<input type="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 type="radio"/> No		
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	<input checked="" type="radio"/> Yes	<input type="radio"/> No		

8. Enforcement of taxes			
#	Question	Yes	No
59	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	<input checked="" type="radio"/>	<input type="radio"/>
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	<input checked="" type="radio"/>	<input type="radio"/>

9. Cross-border procedures			
#	Question	Yes	No
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?	<input type="radio"/>	<input checked="" type="radio"/>
62	Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for exchange of information?	<input type="radio"/>	<input checked="" type="radio"/>
63	If no to either of the previous two questions, did your country previously recognise the right of taxpayers to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?	<input type="radio"/>	<input checked="" type="radio"/>
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country?	<input type="radio"/>	<input checked="" type="radio"/>
65	Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?	<input 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"/>
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"/>
68	Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?	<input checked="" type="radio"/>	<input type="radio"/>

10. Legislation			
#	Question	Yes	No
69	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	<input checked="" type="radio"/>	<input type="radio"/>
70	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	<input checked="" type="radio"/>	<input type="radio"/>
71	Is there a prohibition on retrospective tax legislation in your country?	<input 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"/>

4. Normal audits			
#	Question	Yes	No
21	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)?	<input 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 type="radio"/>	<input checked="" type="radio"/>
23	If yes, what is the normal limit in months?		
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
25	May the opinion of independent experts be used in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
26	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	<input checked="" type="radio"/>	<input type="radio"/>
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	<input type="radio"/>	<input checked="" type="radio"/>
28	If yes, does this mean only one audit per tax per year?	<input type="radio"/>	<input checked="" type="radio"/>
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	<input type="radio"/>	<input checked="" type="radio"/>
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>
32	May the tax authority enter and search the dwelling places of individuals?	<input checked="" type="radio"/>	<input type="radio"/>
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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?		

11. Revenue practice and guidance			
#	Question	Yes	No
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	<input checked="" type="radio"/>	<input type="radio"/>
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	<input checked="" type="radio"/>	<input type="radio"/>
75	Does your country have a generalised system of advanced rulings available to taxpayers?	<input checked="" type="radio"/>	<input type="radio"/>
76	If yes, is it legally binding?	<input checked="" type="radio"/>	<input type="radio"/>
77	If a binding rule is refused, does the taxpayer have a right to appeal?	<input checked="" type="radio"/>	<input type="radio"/>

12. Institutional framework for protecting taxpayers' rights			
#	Question	Yes	No
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	<input type="radio"/>	<input checked="" type="radio"/>
79	If yes, are its provisions legally effective?	<input type="radio"/>	<input type="radio"/>
80	Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?	<input type="radio"/>	<input checked="" type="radio"/>
81	If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?	<input type="radio"/>	<input type="radio"/>
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	<input type="radio"/>	<input type="radio"/>

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 checked="" type="radio"/>	<input type="radio"/>
46	If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	<input type="radio"/>	<input checked="" type="radio"/>
47	Does the taxpayer need permission to appeal to the first instance tribunal?	<input type="radio"/>	<input checked="" type="radio"/>
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	<input type="radio"/>	<input checked="" type="radio"/>
49	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing)?	<input type="radio"/>	<input checked="" type="radio"/>
50	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	<input checked="" type="radio"/>	<input type="radio"/>
51	Does the loser have to pay the costs in a tax appeal?	<input checked="" type="radio"/>	<input type="radio"/>
52	If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	<input checked="" type="radio"/>	<input type="radio"/>
53	Are judgments of tax tribunals published?	<input checked="" type="radio"/>	<input type="radio"/>
54	If yes, can the taxpayer preserve its anonymity in the judgment?	<input type="radio"/>	<input checked="" type="radio"/>
55	If there is usually a public hearing, can the taxpayer request a hearing <i>in camera</i> (i.e. not in public) to preserve secrecy/confidentiality?	<input type="radio"/>	<input checked="" type="radio"/>



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

Country: KENYA

National Reporter: BRIAN NJENGA KAGUNYI

Affiliation

Tax Administration
 Tax Practitioner
 Judiciary
 (Tax) Ombudsman
 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"/>	Kenya has unique Personal Identification Number for all taxpayers.
2	The system of taxpayer identification should take account of religious sensitivities		<input checked="" type="radio"/>	<input type="radio"/>	This is not provided for under the Kenyan legal framework.
3	Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes		<input type="radio"/>	<input checked="" type="radio"/>	The Tax Procedures Act imposes a strict obligation to confidentiality on all third parties who get access to a taxpayer's information.
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 checked="" type="radio"/>	Tax laws in Kenya impose a liability on the third party as though the tax was due from them for failure to deduct and remit the tax.
5	Where pre/populated returns are used, these should be sent to taxpayers to correct errors		<input type="radio"/>	<input checked="" type="radio"/>	The taxpayer has access to their iTax portal allowing them to access the pre populated information prior to filing.
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 checked="" type="radio"/>	The electronic filing system allows taxpayers to make amendments to errors in the information provided.
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		<input type="radio"/>	<input checked="" type="radio"/>	iTax accounts have passwords to prevent interception by unauthorised persons.
8	Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		<input checked="" type="radio"/>	<input type="radio"/>	Kenya currently does not have a system of "cooperative compliance".
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"/>	The Kenya Revenue Authority has a customer care line available to taxpayers for assistance with filing returns and other tax related issues.

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"/>	Section 75 of the Tax Procedures Act authorises the use of an electronic tax system. Taxpayers are afforded an opportunity to explain information provided during a revenue authority audit or to give additional information prior to a final tax assessment being issued by the Commissioner.
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	<input type="radio"/>	<input checked="" type="radio"/>	Kenya has adopted an e-filing system and has begun issuing tax assessments to taxpayers electronically.

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"/>	Section 6 of the Tax Procedures Act imposes a requirement for all Kenya Revenue Authority officials to maintain confidentiality of taxpayer's information. Officials who fail to do so commit an offence under Section 102 of the Act.

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"/>	Tax officials are provided with credentials to access taxpayer's information.
14	Audit data access periodically to identify cases of unauthorised access.		<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
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"/>	An officer that fails to follow the provisions for confidentiality commits an offence.
16	Where pre/populated returns are used, these should be sent to taxpayers to correct errors.		<input type="radio"/>	<input checked="" type="radio"/>	Taxpayers are able to amend assessments and any other information on their / Tax profile.
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 checked="" type="radio"/>	An officer that fails to follow the provisions for confidentiality commits an offence.
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		<input type="radio"/>	<input checked="" type="radio"/>	Tax officials who contravene the confidentiality requirements commit an offence under Section 102 of the Tax Procedures Act.
19	Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.		<input type="radio"/>	<input checked="" type="radio"/>	Section 6 of the Tax Procedures Act lists the persons that can access a taxpayer's information. However, all these persons are subject to similar confidentiality requirements as the tax officials.
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		<input checked="" type="radio"/>	<input type="radio"/>	Kenya does not have "naming and shaming" provisions.
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 checked="" type="radio"/>	Politicians are not on the list of persons who are able to access taxpayer's information.
22	Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard.		<input type="radio"/>	<input checked="" type="radio"/>	Section 60 of the Tax Procedures Act states that tax officials shall only have access to a taxpayer's information once they have obtained a warrant.
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 checked="" type="radio"/>	<input type="radio"/>	The Tribunal's decisions are public information. However, the Tax Appeals Tribunal Section 29(10) states that the Tribunal shall take measures to prevent disclosure of trade secrets or other confidential information.
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 checked="" type="radio"/>	<input type="radio"/>	Section 60 (10) of the Tax Procedures Act states that tax officials may access taxpayer's information despite any law relating to privilege or contractual duty of confidentiality.
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 checked="" type="radio"/>	<input type="radio"/>	The Tax Procedures Act provides that tax officials will have access regardless of rules regarding privilege in the Evidence Act.

4. Normal audits

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
26	Audits should respect the following principles: (i) Proportionality. (2) <i>Ne bis in idem</i> (prohibition of double jeopardy). (3) <i>Audi alteram partem</i> (right to be heard before any decision is taken). (4) <i>Nemo tenetur se detegere</i> (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void.		<input type="radio"/>	<input checked="" type="radio"/>	In Kenya, Article 47 of the Constitution and the Fair Administrative Action Act provides for expeditious, efficient and lawful administrative action.

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 checked="" type="radio"/>	<input type="radio"/>	Section 59 of the Tax Procedures Act allows the Commissioner to obtain full information in respect of a tax liability.
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 checked="" type="radio"/>	Kenya Revenue Authority can only audit a taxpayer's affairs going back five financial years.
29	In application of <i>audi alteram partem</i> , taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final.		<input type="radio"/>	<input checked="" type="radio"/>	The Fair Administrative Action Act provides that all persons shall have the right to be heard, to attend proceedings in person or in the company of an expert of their choice, to cross-examine and to request for adjournment.
30	In application of <i>nemo tenetur</i> , the right to remain silent should be respected in all tax audits.		<input type="radio"/>	<input checked="" type="radio"/>	Article 50 provides for the right to refuse to give self-incriminating evidence for all persons.
31		Tax audits should follow a pattern that is set out in published guidelines.	<input type="radio"/>	<input checked="" type="radio"/>	The Taxpayer's Charter 2007, provides for a guideline on the audit process.
32		A manual of good practice in tax audits should be established at the global level.	<input type="radio"/>	<input checked="" type="radio"/>	The Taxpayer's Charter 2007, provides for a guideline on the audit process.
33		Taxpayers should be entitled to request the start of a tax audit (to obtain finality).	<input type="radio"/>	<input checked="" type="radio"/>	Taxpayers are allowed to request for private rulings or public rulings under the Tax Procedures Act.
34	Where tax authorities have resolved to start an audit, they should inform the taxpayer	Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.	<input type="radio"/>	<input checked="" type="radio"/>	The Revenue Authority issues a letter to taxpayers prior to commencing an audit indicating their intention to carry out an audit and the taxes to be audited..
35	Taxpayers should be informed of information gathering from third parties.		<input checked="" type="radio"/>	<input type="radio"/>	There are no specific provisions that provide for disclosure to the taxpayer.
36		Reasonable time limits should be fixed for the conduct of audits.	<input checked="" type="radio"/>	<input type="radio"/>	There are no specific provisions that provide for the time limit for the conclusion of audits.
37	Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.		<input type="radio"/>	<input checked="" type="radio"/>	Taxpayers may have their tax agents present during the audit.
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 checked="" type="radio"/>	Section 60 of the Tax Procedures Act provides for the Commissioner's tax decision after an audit.
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 checked="" type="radio"/>	

5. More intensive audits

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
40		More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance.	<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
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 checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
42	Entering premises or interception of communications should be authorised by the judiciary.		<input type="radio"/>	<input checked="" type="radio"/>	Section 60 of the Tax Procedures Act provides that tax officials should receive a warrant prior to access to a taxpayer's information.

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 checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
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 checked="" type="radio"/>	Section 60 of the Tax Procedures Act provides that tax officials should receive a warrant prior to access to a taxpayer's home.
45		Access to bank information should require judicial authorisation.	<input type="radio"/>	<input checked="" type="radio"/>	Section 60 of the Tax Procedures Act provides that tax officials should receive a warrant prior to accessing a taxpayer's information.
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 checked="" type="radio"/>	Section 60 of the Tax Procedures Act provides that tax officials should receive a warrant prior to accessing a taxpayer's information.
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 checked="" type="radio"/>	Under Section 60 (7) a person whose documents have been seized may have access to the information during the business hours of the Authority. Additionally, sub section 9 requires that the information seized should not be retained for a period longer than six months unless the document or data storage device is required for the purposes of any proceedings
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 checked="" type="radio"/>	Under Section 60, the tax officials may retain the hard drive only where the taxpayer has not provided a copy of the same within six months of the request.
49	Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.		<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.

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 checked="" type="radio"/>	The / Tax portal provides a platform for taxpayers to file their objections.
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		<input checked="" type="radio"/>	<input type="radio"/>	Kenyan legislation provides for an appeal process from the point of issuance of a tax decision by the Commissioner which must be adhered to by the taxpayer.
52		Reviews and appeals should not exceed two years.	<input checked="" type="radio"/>	<input type="radio"/>	Although the review and appeals are given time limitations, practical implementation has been wanting. Taxpayers may find an appeal going beyond two years.
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		<input type="radio"/>	<input checked="" type="radio"/>	Section 4 of the Fair Administrative Action Act provides that all persons whom administrative action is taken must be afforded an opportunity to be heard.
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 checked="" type="radio"/>	Section 51 of the Tax Procedures Act provides that a taxpayer that lodges an objection to a tax decision by the Commissioner must pay the entire amount in the assessment that is not in dispute.
55		The state should bear some or all of the costs of an appeal, whatever the outcome.	<input checked="" type="radio"/>	<input type="radio"/>	The Tribunal and Court have discretion on awarding of costs.
56	Legal assistance should be provided for those taxpayers who cannot afford it.		<input checked="" type="radio"/>	<input type="radio"/>	Taxpayers may either represent themselves or have a tax agent or advocate represent them.
57	Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.		<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
58	Tax judgments should be published.		<input type="radio"/>	<input checked="" type="radio"/>	All rulings by the Tax Appeals Tribunal, the High Court and Court of Appeal are public records.

7. Criminal and administrative sanctions

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
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59	Proportionality and <i>ne bis in idem</i> should apply to tax penalties.		<input type="radio"/>	<input checked="" type="radio"/>	Under Section 38 of the Tax Procedures Act, the late payment interest shall not, in aggregate exceed the principal tax liability.
60		Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.	<input type="radio"/>	<input checked="" type="radio"/>	Under Section 80 of the Tax Procedures Act, a person shall not be subject to both the imposition of a penalty and the prosecution of an offence in respect of the same act or omission in relation to a tax law.
61		Voluntary disclosure should lead to reduction of penalties.	<input type="radio"/>	<input checked="" type="radio"/>	On application under Section 37 of the Tax Procedures Act, the Commissioner may waive penalties accruing to the taxpayer.
62	Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.		<input type="radio"/>	<input checked="" type="radio"/>	The Finance Act 2018 reduced a number of penalties accruing to the taxpayer for non compliance.

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 checked="" type="radio"/>	Under Section 38 of the Tax Procedures Act, the late payment interest shall not, in aggregate exceed the principal tax liability.
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input type="radio"/>	<input checked="" type="radio"/>	Section 60 of the Tax Procedures Act states that the officials must have a warrant to have access to the information.
65	Taxpayers should have the right to request delayed payment of arrears.		<input type="radio"/>	<input checked="" type="radio"/>	Section 33 of the Tax Procedures Act allows a taxpayer to apply in writing to the Commissioner for an extension of time to pay tax due under a tax law.
66		Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.	<input type="radio"/>	<input checked="" type="radio"/>	Section 33 of the Tax Procedures Act allows a taxpayer to apply in writing to the Commissioner for an extension of time to pay tax due under a tax law.
67	Temporary suspension of tax enforcement should follow natural disasters.		<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.

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 checked="" type="radio"/>	<input type="radio"/>	There are no specific provisions for Exchange of Information in domestic law. Taxpayers must rely on the provisions contained in the respective Double Tax Agreements (DTA).
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 checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
70		Provisions should be included in tax treaties setting specific conditions for exchange of information.	<input type="radio"/>	<input checked="" type="radio"/>	All relevant DTAs have provisions governing the exchange of information between the states.
71	If information is sought from third parties, judicial authorisation should be necessary.		<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
72		The taxpayer should be given access to information received by the requesting state.	<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
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"/>	There are no specific local guidelines.
74		A requesting state should provide confirmation of confidentiality to the requested state.	<input type="radio"/>	<input checked="" type="radio"/>	The DTAs provide that requesting states should treat the information received as confidential.
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 checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.

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 checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
77		Taxpayers should have a right to request initiation of mutual agreement procedure.	<input type="radio"/>	<input checked="" type="radio"/>	All existing DTAs provide for a Mutual Agreement Procedure.
78	Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.		<input type="radio"/>	<input checked="" type="radio"/>	There are no specific provisions for MAP in domestic law. Taxpayers must rely on the provisions contained in the respective DTAs.

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 type="radio"/>	<input checked="" type="radio"/>	Previously, through the Provisional Collection of Taxes and Duties Act, the Kenya Revenue Authority collected taxes provisionally prior to the Finance Bill becoming an Act. However, in the case <i>Okiya Omtatah Okioti v Cabinet Secretary, National Treasury & 3 others [2018] eKLR</i> , the court held that the Provisional Collection of Taxes and Duties Act was unconstitutional as it purported to allow for the collection of taxes retrospectively, that is, the period before the Finance Bill becomes an Act.
80		Public consultation should precede the making of tax policy and tax law.	<input type="radio"/>	<input checked="" type="radio"/>	Article 118 of the Constitution provides for public participation and involvement in the legislative function of the parliament.

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"/>	
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 checked="" type="radio"/>	
83	Binding rulings should only be published in an anonymised form		<input type="radio"/>	<input checked="" type="radio"/>	A taxpayer may either apply for a public ruling or private ruling when seeking clarification from the Revenue Authority.
84	Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively.		<input type="radio"/>	<input checked="" type="radio"/>	

12. Institutional framework for protecting taxpayer's rights

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
85	Adoption of a charter or statement of taxpayers' rights should be a minimum standard.	A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited.	<input type="radio"/>	<input checked="" type="radio"/>	
86		A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority.	<input checked="" type="radio"/>	<input type="radio"/>	There are no specific local guidelines.
87		The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally.	<input type="radio"/>	<input checked="" type="radio"/>	

