



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 Luxembourg, Prof. Dr. Aikaterini (Katerina) Pantazatou, a representative of the Academia.

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 Luxembourg 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 Luxembourg 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: Luxembourg

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				N/A
The system of taxpayer identification should take account of religious sensitivities				N/A
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			N/A
Where pre-populated returns are used, these should be sent to taxpayers to correct errors				N/A
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	✓		<p>Upon the adoption of the General Data Protection Regulation EU 2016/679 (the GDPR), the Luxembourg government introduced a Bill of law to implement the Regulation. The Bill is planned to enter into force simultaneously with the GDPR, on 25 May 2018, and will repeal and replace the currently applicable Law of 2 August 2002 (data protection law). The Law of 2 August 2002 provides that the person concerned (the 'data subject') has a right to information which includes, inter alia, information about the identity of the controller; the specific purpose or purposes of the processing for which the data are intended; any other additional information such as the recipients or categories of recipients to whom the data may be communicated; the existence of a right of access to data concerning the subject and the possibility of rectification of this data. Alongside the Directive, which allows for exceptions and limitations in the case of tax matters, this access to information shall not apply when the processing is necessary to safeguard a significant economic or financial interest of the (given) State or the European Union, including in the [...] fiscal area. The (subject's) right to information may, further, be limited in the case of the processing of his data in order to safeguard the state's financial interests, <i>including in taxation matters</i>.</p> <p>The Bill does not include the derogation enshrined in the Regulation that restrictions to the rights and obligations [provided in the Regulation] may apply by way of legislative measure in order to safeguard other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a</p>

				<p>Member State, including monetary, budgetary and taxation matters [...].No particular right to the taxpayer is provided for the correction of his data in the data protection legislation.</p> <p><u>However</u>, the application of §205 of the Abgabenordnung (General Tax Act) requires a pending assessment procedure. Outside of such procedure, a taxpayer cannot rely on §205 to request access to his tax file as confirmed by the the <i>Tribunal Administratif</i> in 2002. The General Tax Act does not contain any specific provisions allowing taxpayers' to access their personal tax file as recently confirmed by the <i>Tribunal Administratif</i> (first instance Tribunal in direct tax matters, Trib. Adm., 30 juin 2017, n°37931 et 38551, p. 17.) In the absence of any express provisions, the Tribunal ruled that such a right should be interpreted by virtue of the right of the defence guaranteed under §205 of the General Tax Act. (See also below under point 2).</p>
Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		✓		<p>No development, however extension of the platform MyGuichet used by the Luxembourg direct tax authorities or bank services. It allows taxpayers to file online official forms, attach supporting documents and submit electronic signatures. It is a secured platform in which, users have to first identify through an authentication device or certificate obtained beforehand via a local provider (Luxtrust). The secured authentication aims to ensure a protection of the digital identity of the user as well as electronic data submitted into the platform. Currently, up to 9 different tax filings can be done via the platform (certain tax returns filings, CbCR reporting, etc.)</p>
Where a system of “cooperative compliance” operates, ensure it is available on a non-discriminatory and voluntary basis				N/A
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				N/A
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			<p>§ 205 AO that provides that if deviation from the tax return is envisaged, the points on which the substantial deviation results in a less favourable position for the taxpayer should be submitted to him in advance for comments, has <i>not</i> been amended. However, the Cour Administrative d' Appel (CAA) ruled on 06/12/2016 that the tax authorities have a positive obligation to communicate to the taxpayer the elements, on the basis of which, they decided not to follow his tax return/assessment. If</p>

				the taxpayer is not heard, the consequence is, according to the CAA, that it is not possible for the tax authorities to assess the tax situation of the taxpayer. However, if the disparity lays, according to the taxpayer, on the question of the application of the law which falls under the competence of the tax authorities, the taxpayer does not have the right to be heard before the tax assessment notice is made.
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			N/A
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	✓		Tax officials are required to strictly observe tax secrecy at the risk of sanctions, which include imprisonment from 8 days to 6 months, and a fine from 500 EUR to 5.000 EUR. (§412 Abgabenordnung (« Loi Générale des Impôts »; 'General Tax Act'), introduced by Loi du 23 décembre 2016 portant mise en oeuvre de la réforme fiscale 2017, (Mémorial A - N°274, 27 décembre 2016, p. 5137).
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			N/A
Audit data access periodically to identify cases of unauthorised access				N/A
Introduce administrative measures emphasising confidentiality to tax officials	Appoint data protection/privacy officers at senior level and local tax offices			N/A
If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges)				N/A
Introduce an offence for tax officials covering up unauthorised disclosure of confidential information				N/A
Provide remedies for taxpayers who are victims of unauthorised disclosure of confidential information				No development in comparison to the past – rather additional information to the IFA Report 2015. Breach of the right to privacy. Earlier case law has been varying a lot with regard to the compensation the courts of different instances awarded to the applicants. Courts of first instance were quite hesitant to award to compensate the applicants for non-pecuniary damage

				(because of their breach to their right to privacy). However, different chambers of the Court of Appeal have adopted completely different approaches, allowing a compensation of 25,000 euros as compensation for non-pecuniary damage for "breach of privacy of a client's "private life," because of his 'disappointment' to see his legitimate expectations unfulfilled with respect to the bank's obligation to bank secrecy (Cour d'appel, 4e chambre, 2 avril 2003). In contrast, no damages have been awarded in similar cases of breach of bank secrecy as the court ruled that the appellant's legitimate expectations with respect to bank secrecy did not have 'sufficient practical and autonomous existence in relation to the tax debt [at issue] to justify the award of damages and interest.' (Cour d'appel, 9e chambre, 5 novembre 2009 and Arrêt de la 7e chambre du 16 mars 2011)
Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted				See developments (supra) under General Data Protection Regulation and its implementation in Luxembourg. No developments with regard to the developments in the strictly speaking 'tax sphere'.
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			N/A
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			N/A

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				N/A

<p>If published, tax rulings should be anonymised and details that might identify the taxpayer removed</p>	<p>Anonymise all tax judgments and remove details that might identify the taxpayer</p>			<p>The requirement to publish advance tax rulings was introduced by a grand-ducal regulation released in December 2014.¹ The regulation was implementing §29a of the Luxembourg General Tax Act,² which formalized, for the first time, the administrative tax ruling practice in Luxembourg. Article 7 of the grand-ducal regulation provides that prior to their publications, advance tax decisions must be summarized and <i>anonymously released</i>. The publication is made on an annual basis and is featured within the annual report of the Luxembourg Direct Tax Authorities. The first publication was made in the 2015 annual report of the tax authorities, which is available on their website. The information released in the annual report indicates mainly the number of tax rulings issued (tax rulings and advance pricing agreements are shown distinctively), the amount of favorable opinions v. negative answers, and a very broad description of the subjects raised within the advance tax decisions, including their legal basis.</p>
<p>Legal professional privilege should apply to tax advice</p>	<p>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</p>			<p>N/A</p>
<p>Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege</p>				<p>N/A</p>
<p>4. Normal audits.</p>				
<p>Audits should respect the following principles: (1) Proportionality (2) <i>Ne bis in idem</i> (prohibition on double jeopardy) (3) <i>Audi alteram partem</i> (right to be heard before any decision is taken) (4) <i>Nemo tenetur se detegere</i> (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void</p>			<p>✓</p>	<p>Cour Administrative d' Appel 17/11/2016: it should be remembered that § 162 (9) AO,³ , must certainly be interpreted as meaning that, with the exception of data relating to employees in the service of a enterprise or other person, an on-the-spot check shall be used exclusively to analyze the particular tax situation of the taxpayer whose tax case is subject to verification and shall not be used to collect information concerning the tax position of other taxpayers (Court adm rm March 1, 2012, n ° 28883C of the role, Pas adm 2016, V Taxes n ° 617). In § 193 (1) AO which pursues the same purpose [...] there are no specific time limits on the use of the information obtained for the purposes of taxation of the same taxpayer in respect of other taxation years. The provisions of §§ 162 (9) and 193 (1) WA allow for the execution of an on-the-spot check outside the procedure for examining the tax return. This way, such control may still be carried out even though the investigation procedure relating to the tax year concerned</p>

¹ Règlement grand-ducal du 23 décembre 2014 relatif à la procédure applicable aux décisions anticipées rendues en matière d'impôts directs et instituant la Commission des décisions anticipées, (Mémorial A - N°264, 29 décembre 2014, p. 5612).

² §29a Abgabenordnung (« Loi Générale des Impôts »; 'General Tax Act'), (Mémorial A - N°257, 24 December 2014, p. 5472).

³ § 162 (9) AO, provides for the possibility of tax audits to control the proper and continuous books' and records' keeping.

				has already been closed and as long as the prescribed tax claim is not acquired.
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				N/A

Minimum Standard	Best Practice	Shift towards	Shift away	Development
4. Normal audits (cont).				
	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			N/A
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				N/A
In application of <i>nemo tenetur</i> , the right to remain silent should be respected in tax audits.				N/A
	Tax audits should follow a pattern that is set out in published guidelines			N/A
	A manual of good practice in tax audits should be established at the global level			N/A
	Taxpayers should be entitled to request the start of a tax audit (to obtain finality)			N/A
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			N/A
Taxpayers should be informed of				N/A

information gathering from third parties				
	Reasonable time limits should be fixed for the conduct of audits			N/A
Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer				N/A
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			N/A
	Following an audit, a report should be prepared even if the audit does not result in additional tax or refund			N/A
5. More intensive audits.				
	More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance			N/A
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				N/A
Entering premises or interception of communications should be authorised by the judiciary				N/A
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification				N/A
Inspection of the taxpayer's home should require authorisation by the	Where tax authorities intend to search the taxpayer's premises, the taxpayer should be			N/A

judiciary and only be given in exceptional cases.	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			N/A
	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			N/A
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				N/A
	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			N/A
Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers				N/A
6. Review and appeals.				
	E-filing of requests for internal review to ensure the effective and speedy handling of the review process			N/A
The right of appeal should not depend upon prior exhaustion of administrative reviews				N/A
	Reviews and appeals should not exceed two years			N/A
<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals				N/A
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			N/A

	The state should bear some or all of the costs of an appeal, whatever the outcome			N/A
Legal assistance should be provided for those taxpayers who cannot afford it				N/A
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing				N/A
Tax judgments should be published				N/A

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				N/A
	Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied			N/A
	Voluntary disclosure should lead to reduction of penalties	✓		As from 1 January 2016 and for a limited period of two years, Luxembourg introduced a voluntary disclosure programme for individuals and corporate entities allowing them to declare any income that was not declared since 2006, provided that such income falls within the following categories of offences: voluntary or involuntary tax fraud or tax scam (the programme does not apply if the income falls within the scope of anti-money laundering or anti-terrorism regulations; in this case, the offence will be reported to the Public Prosecutor for a sentence). The sanctions in case of disclosure are limited to the payment of taxes due, with an additional 20 per cent increase if the corrective tax returns are filed in 2017.
Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures				See supra.
8. Enforcement of taxes.				
Collection of taxes should never deprive taxpayers of their minimum necessary for living				N/A
	Authorisation by the judiciary should be required before seizing assets or bank accounts			N/A
Taxpayers should have the right to request delayed payment of arrears				N/A

	Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment			N/A
Temporary suspension of tax enforcement should follow natural disasters				N/A
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			<p>Following the Berlioz judgment, a first amendment to the – contested – law of 25 November 2014 was proposed – but dismissed for lack of coherence – by the legislator in the framework of the Luxembourg tax reform of 2017. Pursuant to section 4 of the law in force (law of 25 November 2014), which the bill (no 7223) also intends to retain, the taxpayer who is the subject of the audit should not be informed of the request of the foreign authority. This non-disclosure obligation is addressed specifically to the information holders. Any breach of this obligation of confidentiality is sanctioned by a fine. However, in the absence of such a request for "confidentiality" from the foreign authority, the current law does not specify the role of the Luxembourg administration with regard to the taxpayers for whom it has the information sought by the foreign authority. In the past, however, administrative practice would provide, on a case-by-case basis, prior notification of taxpayers subject to international control, despite the lack of an expressed legal basis.</p> <p>The new Bill of law (no 7223) was introduced on 19 December 2017. It suggests three amendments to the contested law: a) the verification of the 'foreseeable relevance' by the direct tax authorities;⁴ the reintroduction of an action for annulment before administrative courts by the taxpayer (recours en annulation) against the request for information (which was abolished by the law of 25 November 2014)⁵ and the possibility of the judicial authorities to access the information request.⁶</p>

Minimum Standard	Best Practice	Shift towards	Shift away	Development
9. Cross-border procedures (cont).				

⁴ Art. 3(1), Texte coordonné du Projet de loi n°7223 portant modification de la loi du 25 novembre 2014 prévoyant la procédure applicable à l'échange de renseignements sur demande en matière fiscale, www.chd.lu.

⁵ Art. 6(1), Texte coordonné du Projet de loi n°7223.

⁶ Art. 6(1), Texte coordonné du Projet de loi n°7223.

	Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer			N/A
	Provisions should be included in tax treaties setting specific conditions for exchange of information			N/A
If information is sought from third parties, judicial authorisation should be necessary				N/A
	The taxpayer should be given access to information received by the requesting state			See supra, under the first question of the section.
	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			N/A See supra, under the first question of the section.
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				N/A
	For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights		✓	<p>No new developments/ additional information to the IFA Report 2015: Under the current Data Protection Law, individuals have the right to be informed on the fact that personal data will be collected and processed (Article 26 (1) of the Data Protection Law). Any individual on behalf of whom data is collected must be duly informed. Article 26 (2) provides that Where the data has not been obtained from the data subject [...] the controller or his representative must at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed provide the data subject with at least the following information, except where he already has it:</p> <ul style="list-style-type: none"> (a) the identity of the controller and of his representative, if any; (b) the purposes of the processing; (c) any further information such as <ul style="list-style-type: none"> - the categories of data concerned, - the recipients or categories of recipients, - the existence of the right of access to and the right to rectify the data concerning him <p>Individuals need only be informed once, except where there is a change of circumstances. The form of the notification (email, website, hard copy document etc.) and the choice of the medium (self-certification, prospectus of the investment fund and/ or application form and/ or personalized correspondence) is left to the appreciation of the reporting financial institution.</p>

				<p>As per article 30 (1) (a) of the Data Protection Law, an individual may however not object the processing of data where such processing is explicitly provided for by national legislation, as is the case in the context of the AEOI Law.</p> <p>Development: Under the new Bill currently discussed (see supra) where the data has not been obtained from the data subject, the latter has to be informed within max. 1 month from the collection or until the first communication (transmission) of the data at the latest.</p> <p>However, under the new Bill, this obligation to information does not exist in the following cases: If the person has voluntarily already provided the information, if the acquisition or communication of the information is provided in EU or Luxembourg law (as is the case with the automatic exchange of financial information), it is impossible or requires disproportionate efforts to inform the subject, it is covered by professional secrecy.</p>
	Taxpayers should have a right to request initiation of mutual agreement procedure			<p>Luxembourg tax authorities published Circular Conv. D.I.n° 60 of 28 August 2017. According to the Circular the MAP should be available to taxpayers in as many circumstances as possible (including in all cases relating to a tax audit). Of Luxembourg's 81 tax treaties, 74 contain a provision allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty or do not provide for a deadline for such a request. The remaining seven tax treaties provide for a two year deadline for submitting an application for the initiation of a mutual agreement procedure.</p>
Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure				<p>Taxpayers can only initiate the procedure and are called by the tax authorities to submit documents relevant for the procedure. They may ask the tax authorities about the progress of their case and usually, they are notified that the procedure is still pending. In general, they do not participate in the procedure, unless initiated by the tax authorities.</p>
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			<p>Retrospective tax legislation is not allowed in Luxembourg. Exceptions include interpretative laws, more favourable fiscal laws and retroactivity for purposes of general interest (according to Steichen also in order to combat tax evasion). (no changes – information missing from the IFA Report).</p>
	Public consultation should precede the making of tax policy and tax law			N/A

Minimum Standard	Best Practice	Shift towards	Shift away	Development
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11. Revenue practice and guidance.

Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance				N/A
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				N/A
Binding rulings should only be published in an anonymised form				N/A
Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively				N/A

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			N/A
	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			N/A
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			N/A