



## **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 Poland, Dr. Dr. Małgorzata Sęk and Prof. Michał Wilk, 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 Poland 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 Poland 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.

Minimum Standard	Best Practice	Shift towards	Decrease	Development
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>				
Implement safeguards to prevent impersonation when issuing unique identification numbers				Recent amendments to the Value Added Tax Act provides for the de-registering of VAT taxpayers in the event of not fulfilling specific formal tax duties and in the case of some other irregularities. The problem is that a procedure for such a deregistration has not been regulated in detail, and there is no obligation to formally notify the taxpayer about the instigation of proceedings aimed at deregistration, no guarantee for taxpayer's active participation in the proceedings and no obligation to formally notify the taxpayer about the deregistration itself. Also the legal form of the deregistration and the right to challenge the deregistration is subject to discussion. The described above regulation makes the situation of taxpayers rather uncertain. Alarming statistics on the number of deregistrations are being published by the Ministry of Finance and the press. The standard should be to formally notify the taxpayer about attempted deregistration (if contact with the taxpayer can be established), allow for his active participation and issue a well-grounded deregistration decision, with a clear appeal option.
The system of taxpayer identification should take account of religious sensitivities				
Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes	Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax			
Where pre-populated returns are used, these should be sent to taxpayers to correct errors				
Provide a right of access for taxpayers to personal information held about them, and a right to apply to correct inaccuracies	Publish guidance on taxpayers' rights to access information and correct inaccuracies			
Where communication with taxpayers is in electronic form,				

institute systems to prevent impersonation or interception				
Where a system of “cooperative compliance” operates, ensure it is available on a non-discriminatory and voluntary basis				
Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication				
Minimum Standard	Best Practice	Shift towards	Decrease	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			Another novelty is that a private ruling will not be issued if it can be reasonably assumed that the factual situation or future event will fall under the newly introduced (as of 15 July 2016) General Anti-Avoidance Rule (GAAR) or constitute an abuse of law in the area of VAT[2].[3] In such a case, a “protective opinion” (opinia zabezpieczająca) may be requested, with the exception of VAT. It is more expensive and lengthy to receive a protective opinion than to receive a private ruling. It is worth emphasizing that general and private rulings and tax explanations do not provide any protection if a decision is issued on the basis of the GAAR or VAT abuse of law clause, which strongly decreases the level of protection enjoyed by the taxpayer. Besides, tax authorities are increasingly prone to refuse a private ruling on the ground of assumed application of the GAAR.
	Use e-filing to speed up assessments and correction of errors, particularly systematic errors			
3. Confidentiality				
Provide a specific legal guarantee	Encrypt information held by a tax authority			

for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced)	about taxpayers to the highest level attainable			
Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes	Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities			
Audit data access periodically to identify cases of unauthorised access				
Introduce administrative measures emphasising confidentiality to tax officials	Appoint data protection/privacy officers at senior level and local tax offices			
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				

Minimum Standard	Best Practice	Shift towards	Decrease	Development
<b>3. Confidentiality (cont).</b>				
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	Require judicial authorisation before any			

employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer)	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			
Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard				
If published, tax rulings should be anonymised and details that might identify the taxpayer removed	Anonymise all tax judgments and remove details that might identify the taxpayer			

Minimum Standard	Best Practice	Shift towards	Decrease	Development
<b>3. Confidentiality (cont).</b>				
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				
<b>4. Normal audits.</b>				
<p>Audits should respect the following principles:</p> <p>(1) Proportionality</p> <p>(2) <i>Ne bis in idem</i> (prohibition on double jeopardy)</p> <p>(3) <i>Audi alteram partem</i> (right to be heard before any decision is taken)</p> <p>(4) <i>Nemo tenetur se detegere</i> (principle against self-incrimination).</p> <p>Tax notices issued in violation of these principles should be null and void</p>				
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 <i>ne bis in idem</i> the taxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed	✓		<p>On 1 March 2017 the Ministry of Finance introduced a major reform of tax administration forming a so-called National Tax Administration ('Krajowa Administracja Skarbowa'). The reform included a merger of tax offices, fiscal audit offices and customs offices.</p> <p>There are some improvements, which include the prohibition of carrying out the audit for the second time – unfortunately with major exceptions and lack of effective legal instruments which could be used by a taxpayer in case of violation of that rule - which may question the practical application of such a provision.</p>
<b>Minimum Standard</b>	<b>Best Practice</b>	<b>Shift towards</b>	<b>Shift away</b>	
<b>4. Normal audits (cont).</b>				

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				
In application of <i>nemo tenetur</i> , the right to remain silent should be respected in tax audits.				
	Tax audits should follow a pattern that is set out in published guidelines	-	-	On 1 March 2017 the Ministry of Finance introduced a major reform of tax administration forming a so-called National Tax Administration ('Krajowa Administracja Skarbowa'). The reform included a merger of tax offices, fiscal audit offices and customs offices. Within the frame of tax administration reform new auditing authorities (i.e. tax and customs offices) got a number of invasive competences. At the same time the demarcation line between 'regular' and 'hard' tax audits has not been clearly drawn. As a consequence there is a serious risk of 'taking a sledgehammer to crack a nut' – where the 'hard', tax and customs audit was meant to tackle tax frauds (in VAT in particular).
	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			A serious problem for VAT taxable persons is the practice of

	the conduct of audits			<p>extending VAT refund deadlines. The statutory deadline of 60 days since the submission of a VAT return may be extended if tax authorities need to verify the correctness of the tax settlement. Due to the need to fight against VAT fraud such prolongations are frequent, often long-term and repeated.</p> <p>The main problem is that it is very difficult to challenge the legitimacy of the verification process itself, with any activity of tax authorities overturning the allegation of inaction or protraction. Without a statutory maximum period of verification, this leads to extensions by several months or years, and - potentially - indefinite extensions. The taxpayer's right to a timely settlement of the case is thus infringed. From the perspective of a taxpayer it could have been better to receive a decision declining the refund request and be able to challenge it within administrative and judicial appeal procedures. A good standard in this respect would be the introduction of a maximum deadline for the refund to be granted or denied, with a right to challenge such a decision.</p>
Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer				
<b>Minimum Standard</b>	<b>Best Practice</b>	<b>Shift towards</b>	<b>Shift away</b>	<b>Development</b>
<b>4. Normal audits (cont).</b>				
The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer	The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view			
	Following an audit, a report should be prepared even if the audit does not result in additional tax or refund			
<b>5. More intensive audits.</b>				
	More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance		✓	On 1 March 2017 the Ministry of Finance introduced a major reform of tax administration forming a so-called National Tax Administration ('Krajowa Administracja Skarbowa'). Within the frame of tax administration reform new auditing authorities (i.e. tax and customs



				offices) got a number of invasive competences. At the same time the demarcation line between 'regular' and 'hard' tax audits has not been clearly drawn. As a consequence there is a serious risk of 'taking a sledgehammer to crack a nut' – where the 'hard', tax and customs audit was meant to tackle tax frauds (in VAT in particular).
If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure				
Entering premises or interception of communications should be authorised by the judiciary				
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification				
Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases.	Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed			
	Access to bank information should require judicial authorisation			
<b>Minimum Standard</b>	<b>Best Practice</b>	<b>Shift towards</b>	<b>Shift away</b>	<b>Development</b>
<b>5. More intensive audits (cont).</b>				
	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				
<b>6. Review and appeals.</b>				
	E-filing of requests for internal review to ensure the effective and speedy handling of the review process			
The right of appeal should not depend upon prior exhaustion of administrative reviews				
	Reviews and appeals should not exceed two years			
<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
<b>6. Review and appeals (cont).</b>				
Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment	An appeal should not require prior payment of tax in all cases			

	The state should bear some or all of the costs of an appeal, whatever the outcome			
Legal assistance should be provided for those taxpayers who cannot afford it				
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing				
Tax judgments should be published				
<b>7. Criminal and administrative sanctions.</b>				
Proportionality and <i>ne bis in idem</i> should apply to tax penalties				<p>On 1 January 2016 the position of a withholding agent in the civil law transactions tax (hereinafter: PCC) has improved. Previously notaries acting as withholding agents in this tax were subject to tax liability for any errors in withholding PCC unless a taxpayer could be found guilty for not withholding the tax in a proper amount. In specific cases such a rule left the notary vulnerable to tax risk, which could not be mitigated in any way. New regulations introduced a rule, under which a notary is exempt from the tax liability if he or she proves not being guilty for not withholding the tax. We find that development as a big improvement but we are of the opinion that it should be extended to all taxes and implemented in General Tax Law.</p> <p>Executing the policy of minimizing the VAT gap the legislator raised the penalties for so called 'invoice offences; in the Fiscal Criminal Code as well as introduced new criminal offences to the general Criminal Code. It raised a fierce discussion in the country as the highest penalty for forgery of the invoice reaches 25 years of imprisonment (where the amount presented on the invoice exceeds 10.000.000 PLN).</p>
	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				
<b>8. Enforcement of taxes.</b>				
Collection of taxes should never deprive taxpayers of their minimum necessary for living				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
<b>8. Enforcement of taxes (cont).</b>				
	Authorisation by the judiciary should be required before seizing assets or bank accounts			
Taxpayers should have the right to request delayed payment of arrears				
	Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment			
Temporary suspension of tax enforcement should follow natural disasters				
<b>9. Cross-border procedures.</b>				
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	The taxpayer should be informed that a cross-border request for information is to be made			

investigation				
	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
<b>9. Cross-border procedures (cont).</b>				
If information is sought from third parties, judicial authorisation should be necessary				
	The taxpayer should be given access to information received by the requesting state			
	Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information  A requesting state should provide confirmation of confidentiality to the requested state			
A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observe high standards of data protection				
	For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection			

	rights			
	Taxpayers should have a right to request initiation of mutual agreement procedure			
Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
<b>10. Legislation.</b>				
Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail	Retrospective tax legislation should ideally be banned completely			
	Public consultation should precede the making of tax policy and tax law		✓	A recent alarming legislative practice is the introduction of tax legislation drafted by the government, as bills submitted by members of the Parliament, which heavily reduces the public consultation requirements. Alarming is also the increasing pace of adopting new tax legislation and the growing frequency of tax law amendments. The widely discussed, also internationally, problems concerning the Polish Constitutional Court, may also have negative effects on the quality of adopted tax legislation and on the level of Constitutional protection enjoyed by taxpayers in general.
<b>11. Revenue practice and guidance.</b>				
Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance		✓		Another novelty is that a private ruling will not be issued if it can be reasonably assumed that the factual situation or future event will fall under the newly introduced (as of 15 July 2016) General Anti-Avoidance Rule (GAAR) or constitute an abuse of law in the area of VAT[2].[3] In such a case, a “protective opinion” (opinia zabezpieczająca) may be requested, with the exception of VAT. It is

				<p>more expensive and lengthy to receive a protective opinion than to receive a private ruling. It is worth emphasizing that general and private rulings and tax explanations do not provide any protection if a decision is issued on the basis of the GAAR or VAT abuse of law clause, which strongly decreases the level of protection enjoyed by the taxpayer. Besides, tax authorities are increasingly prone to refuse a private ruling on the ground of assumed application of the GAAR.</p> <p>Moreover, as of 1 January 2017 the Minister of Finance has been issuing tax explanations (objaśnienia podatkowe), i.e. general explanations on the application of tax law provisions. The focus of tax explanations is not merely on the interpretation of tax law provisions, but on the practical issues of their application, with practical examples. This new form of guidance may become a very important instrument protecting taxpayer's rights, but a lot will depend on administrative practice, which is now just forming with only one explanatory document of this kind published so far.</p>
Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet				
Binding rulings should only be published in an anonymised form				
Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively		✓		<p>As of 1 January 2017, protective effects of public and private rulings have been extended to persons who settled their tax liabilities in accordance with "settled interpretative practice" (utrwalona praktyka interpretacyjna). The settled interpretative practice is defined as clarifications on the scope and manner of application of tax law provisions, prevailing in individual rulings issued in respect of the same factual situation or future event and in the same legal status, during the tax period in question and twelve months preceding the beginning of the tax period.</p>

Minimum Standard	Best Practice	Shift towards	Shift away	Development
<b>12. Institutional framework for protecting taxpayers' rights.</b>				
Adoption of a charter or statement of taxpayers' rights should be a minimum standard	A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited			
	A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority			
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			