



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 Serbia, Dr. Svetislav V. Kostić, Dr. Lidija Živković and Dr. Dejan Stojanović, 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 Serbia 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 Serbia 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: Serbia

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				With respect to individuals, TIN is actually the same number which was assigned to an individual upon birth as a national identification number (whose digits contain specific information about the individual, e.g. date of birth, region of birth, gender, etc.) and which is unalterable. This complicates combating cases of its potential abuse for impersonation purposes.
The system of taxpayer identification should take account of religious sensitivities				The system of taxpayer identification does not take account of religious sensitivities. Namely, as noted above, in the case of individuals, the same number which serves a purpose of a national identification number is used as a TIN.
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			Art. 7(3) of the Law on Tax Procedure and Tax Administration (the LTPTA) imposes the obligation of confidentiality to 1) all public officials, 2) all other persons participating in any way in the tax procedure, misdemeanour as well as court procedure. According to Art. 157(1) of the Law on Personal Income Tax (LPIT) the taxpayer and the third party withholding the tax are jointly liable for paying over the tax.
Where pre-populated returns are used, these should be sent to taxpayers to correct errors				Pre-populated returns are not being sent to taxpayers to correct errors. However, please note that pre-populated returns are not a common feature of the Serbian tax system. Art. 9 of the Law on Protection of Personal Information stipulates that administrative authority's decision which has legal consequences for the taxpayer or which worsens his/her position cannot be based exclusively on the data which is processed automatically and which determines his/her capacities.
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	☑		Taxpayers have the right of access to personal information held about them in accordance with the Art. 20(1) of the Law on the Protection of Personal Information. Art. 22(1) and (2) of the same law prescribe the right of the taxpayer to request revision, amendment, updating, deletion as well as caseation or temporary suspension of data processing in cases when the taxpayer disputed the accuracy, completeness or currency of the relevant data, until the dispute is settled. Best practice is fulfilled by publishing the official Guidance on the Law on the Protection of Personal Information on the website of the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner). ¹

¹ <http://www.poverenik.rs/images/stories/dokumentacija-nova/vodic/vodickrozzakonozastitipodatakaolicnosti.pdf>. Last viewed: 16 October 2017.

				<p>Commissioner has announced that a draft on the new Law on the Protection of Personal Information is prepared and will soon be taken through the legislative procedure²</p> <p>In tax matters specifically, Art. 24(1)(6) of the LTPTA provides the right for taxpayers to access information on assessment and payment of tax related to them, held by the Tax Administration as well as to request revision of incorrect and incomplete information.</p> <p>Additionally, the new Law on General Administrative Procedure (the LGAP) prescribes, for the first time, in its Art. 15(2) the principle of protection of secret and personal data in the administrative procedure.</p>
Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception				<p>The Electronic Signature Law presupposes that the electronic signature, which may be used in the course of communication between the administrative authorities and interested parties in administrative procedure, is the so called <i>qualified</i> electronic signature. In order to be regarded as qualified, the electronic signature is required to fulfil numerous conditions prescribed by the Art. 7 of the Electronic Signature Law which are intended to prevent impersonation or interception of the party.</p>
Where a system of “cooperative compliance” operates, ensure it is available on a non-discriminatory and voluntary basis				<p>Formalized cooperative compliance system is not in operation in Serbia.</p>
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 checked="" type="checkbox"/>		<p>Art. 24(1)(1) of the LTPTA stipulates an obligation of the Tax Administration to provide basic legal assistance to inexpert taxpayers, which will enable them to fulfil their obligations with respect to filing tax returns and paying their taxes.</p> <p>Art. 38(9) of the LTPTA allows individuals to file a tax return (in the case of taxes which are not related to a business activity) not only in electronic, but also in paper form – directly or via post service.</p> <p>As of June 2017, the new Law on General Administrative Procedure (the LGAP) is in force. As <i>lex generalis</i> in relation to the LTATP, which specifically regulates tax procedure, the LGAP prescribes a new obligation for tax authorities: obligation to warn the taxpayer that, considering the facts established in that procedure, there is a basis for him/her to exert some other right, and not the right he/she is requesting to exert.</p>
2.The issue of tax assessment				

² <http://www.blic.rs/vesti/drustvo/poverenik-za-zastitu-podataka-o-licnosti-predstavio-novi-model-zakona/bvf0tet>. Last viewed: 16 October 2017.

	Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms			Serbian tax legislation does not specifically regulate a constructive dialogue between taxpayers and revenue authorities, but the legal basis for it exists. In practice, this opportunity has not been used and no improvement related thereto can be noticed since 2015.
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	<input checked="" type="checkbox"/>		The LTPTA introduced e-filing (gradually for different types of taxes), which is so far applicable to WHT, VAT, CIT, complementary PIT, excise duties, tax on business income, etc.
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			Confidentiality is guaranteed and minimum standard attained by virtue of Art. 7 of the LTPTA which contains in its paragraph 1 and 3 an obligation for all tax officials and other persons participating in tax administrative procedure, misdemeanour procedure, pre-investigation procedure and criminal procedure to keep all the documents, information, data, facts, data on technical inventions and patents of the taxpayer as confidential. Sanctions for officials who make unauthorized disclosures are contained in Art. 369 of the Criminal Code.
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			Digital access codes are used for encrypted data. Best practice is met through the establishment of an effective fire-wall.
Audit data access periodically to identify cases of unauthorised access				Minimum standard is met.
Introduce administrative measures emphasising confidentiality to tax officials	Appoint data protection/privacy officers at senior level and local tax offices			Internal administrative measures have been taken within the Tax Administration to ensure that the relevance of confidentiality is emphasised and data protection officers are appointed.
If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges)				Breaches of confidentiality are dealt with by a specific internal control department within the Tax Administration.
Introduce an offence for tax officials covering up unauthorised disclosure of confidential information				Tax officials covering up unauthorized disclosure of confidential information may be liable for complicity with respect to criminal act contained in Art. 369 of the Criminal Code (Revealing of Official Secret).
Provide remedies for taxpayers who are victims of unauthorised disclosure of confidential information				Taxpayer may initiate general civil procedure claiming breach of confidentiality and requiring compensation for damage.
Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted				Exceptions to the general rule of confidentiality are contained in the Art. 7(6), which explicitly states 8 cases in which it is not considered that the breach of confidentiality exists.

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			<p>Art. 7(7) of the LTPTA specifically prescribes the obligation of the Tax Administration to publish (twice a year, on its website) information on legal entities and entrepreneurs with outstanding tax debts above certain amounts (natural persons were also subject to this practice, but in 2014 changes were introduced due to confidentiality issues and they were consequently excluded from the Tax Administration’s obligation to “name and shame”).</p> <p>Data included in the process of “naming and shaming” is explicitly excluded from the general obligation of confidentiality. With respect to this, no judicial authorisation is required for the disclosure of confidential information. Several opinions of the Ministry of Finance confirmed that the taxpayer’s written consent is not required for “naming and shaming”.</p>
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			General previously described protection mechanisms apply. There is no specific protection of taxpayers’ personal information as to their disclosure to the politicians.

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				In accordance with Art. 9(1)(5) of the Law on Free Access to the Information of Public Interest, which regulates access of third persons to the information held by public authorities, access will not be enabled if the information is designated as confidential and if the disclosure of such information could cause severe consequences for interests protected by law and which outweigh interest for free access to information. The LTPTA, in Art. 7(2) explicitly stipulates that the breach of confidentiality harms the interests of the Republic of Serbia and of the taxpayer, which interests outweigh the interest of free access to information of public interest.
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			There are no tax rulings in Serbia. In line with Art. 33 of the Law on the Organisation of Judiciary, only the judgements of the Supreme Cassation Court are being published. The Rulebook on Change and Omission (Pseudonymy and Anonymity) of Data in Court Judgements presupposes anonymity as precondition for the publication of judgements.
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			Best practice is fulfilled through Art. 46(1)(2) of the LTPTA, which apart from lawyers, explicitly includes members of clergy, taxpayer’s family members and tax advisors (and their assistants) within the scope of persons which are provided with the privilege from disclosure. Please note that the profession of tax advisors is not officially regulated in Serbia, although the legal basis for this is included in Art. 17(3) of the LTPTA. Although Art. 17(3) presupposes the enactment of a separate law regulating this matter, such

				law has not been enacted as yet.
Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege				The only specific rules relating to the search of premises containing privileged material are the ones regulating the search of lawyer's office or apartment. According to Art. 156(6) of the Law on Criminal Procedure, in such case, lawyer designated by the Bar Association will be invited to be present during the search.
4. Normal audits.				
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		<input checked="" type="checkbox"/>		Being <i>lex generalis</i> in relation to the LTATP, which specifically regulates tax audits, the LGAP applies with respect to matters not regulated in LTATP. In its Art. 6 the LGAP prescribes, for the first time, the principle of proportionality, in line with the practice of the European Court of Human Rights. Additionally, Art. 9(1) of the Law on Inspectional Supervision (which is applicable in full only as of mid-2016 and which, in its Art. 69 presupposes that all specific laws regulating different types of inspections or audits, among which is the LTPTA regulating tax audits, shall be harmonized with its provisions) establishes that the audits are based on risk assessment and are proportionate to the estimated risk.
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="checkbox"/>		Art. 9(3) and Art. 103 of the new LGAP prescribes the obligation of the administrative authorities to obtain, on its own accord, all the information/documents relevant for the case in question in possession of other state authorities. Art. 9(4) of the LGAP prescribes the obligation of the administrative authorities not to request from the taxpayer information or documents except if such information or documents are not already contained within any of the official databases. Misdemeanour liability is prescribed for the failure of the administrative official to act accordingly. This is expected to lower previously highly burdensome requests of the tax authorities directed to obtaining by the taxpayer the information in possession of other administrative and judicial authorities.

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			Best practice is fulfilled through provisions of Art. 176(1)(1) of the Law on General Administrative Procedure, according to which taxpayer may be subject to two audits for the same taxable period only if new facts become known subsequently, or new evidence is presented, which could lead to a different decision of the tax authorities.
In application of <i>audi alteram partem</i> ,				In line with Art. 6 of the LTPTA, before reaching a decision which establishes

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				the rights and obligations of the taxpayer, Tax Administration is obliged to enable him/her insight into the factual and legal basis which will be used to deliver a decision in his/her specific case. The taxpayer is allowed to submit remarks to minutes issued by the Tax Administration (122(1) and 128(1) of the LTPTA). As of 2014, deadlines for the submission of taxpayer's remarks have been extended.
In application of <i>nemo tenetur</i> , the right to remain silent should be respected in tax audits.				The LTPTA does not prescribe the principle of non self-incrimination. Additionally, Art. 51(3) of the LTPTA stipulates that doubt stemming from the taxpayer's failure to provide information in cases when he/she is, pursuant to the law, obliged to do so, may be to his/her detriment in the process of determining his/her tax obligation.
	Tax audits should follow a pattern that is set out in published guidelines			In line with Art. 118 of the LTPTA, tax audits are conducted in line with the ordinary yearly plan issued by the Tax Administration, or in line with the extraordinary plan which is issued on the basis of assessment of importance and compliance risk of the taxpayer, as well as possible impact of planned audits to compliance of other taxpayers in the specific economic sector.
	A manual of good practice in tax audits should be established at the global level		<input checked="" type="checkbox"/>	Unlike during the first decade of the XXI century, when Serbian Tax Administration did publish manuals of good practice in tax audits, no such publications have been prepared or published more recently.
	Taxpayers should be entitled to request the start of a tax audit (to obtain finality)	<input checked="" type="checkbox"/>		In line with Art. 6(3) and (4) of the Law on Inspectional Supervision (harmonization of the LTPTA with the provisions of the Law on Inspectional Supervision, in accordance with its Art. 69 is expected) taxpayers are entitled to request the start of a tax audit. However, although such option does exist, the Tax Administration has not acted upon taxpayers' requests so far.
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			According to Art. 124(1) of the LTPTA, the taxpayer is informed about the audit before its commencement, through the warrant which is generally (several exceptions are prescribed) delivered to him by the tax inspector. The Law on Inspectional Supervision specifically lists within Art. 16(2) all the elements which must be included in the warrant for inspection that is to be delivered to the taxpayer. There is no practice of conducting initial meetings with the taxpayer.
Taxpayers should be informed of information gathering from third parties				No such obligation exists.
	Reasonable time limits should be fixed for the conduct of audits	<input checked="" type="checkbox"/>		No time limits are prescribed for the conduct of tax audits. There is only a general limitation enshrined in the principle of acting in good faith contained in the Art. 8 of the LTPTA, according to which frequency and duration of tax audits are limited to what is necessarily required. However, anticipated duration of the specific audit, taking into account the specific facts of the case, will be included in the warrant which is delivered to the taxpayer just before the commencement of the audit. Art. 16(2) of the Law on Inspectional Supervision explicitly states that one of the obligatory

				elements of the inspection warrant is the duration of the inspection – exact dates of commencement and finalization of the audit. Art. 9(2) of the new LGAP contains the same provision as the previous law, presupposing that the administrative procedure is to be conducted without protraction.
Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer				According to Art. 24(1)(7) of the LTPTA taxpayers have the right to be represented during the whole tax administrative procedure, which includes tax audits.
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			After the on-site tax audit is conducted, the tax inspector will deliver minutes on conducted tax audit to the taxpayer, which has the right to submit remarks related thereto. If within his/her remarks, the taxpayer has brought up evidence or facts that may alter the initially established factual basis, or legal assessment of the facts, tax inspector will issue supplementary minutes including this evidence/facts (Art. 128(1) of the LTPTA). In the case of an audit conducted within the premises of the Tax Administration, minutes are issued by the tax inspector only in the case irregularities with respect to facts relevant for tax assessment have been discovered (Art. 122(1) of the LTPTA).
	Following an audit, a report should be prepared even if the audit does not result in additional tax or refund			Pursuant to Art. 128(1) of the LTPTA, in the case of on-site tax audit, minutes are issued by the tax inspector even if no additional tax/refund resulted from it.
5. More intensive audits.				
	More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance			Principle of acting in good faith contained in the Art. 8 of the LTPTA, according to which frequency and duration of tax audits are limited to what is necessarily required, applies to the entirety of the tax procedure. As such, it applies both to normal and more intensive tax audits.
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				If the facts and circumstances established by the tax inspector during the audit indicate that the criminal act has been committed by the taxpayer, report will be issued to the director of the Tax Police, as of which moment provisions of the Law on Criminal Procedure apply. In line with the Art. 68(1)(2) of the Law on Criminal Procedure, the defendant (as well as the suspect in the course of pre-investigative procedure) has the right to silence, which, if used, cannot be to his/her detriment.
Entering premises or interception of communications should be authorised				Interception of communications is possible only with the authorisation of the judiciary. Art. 162(1)(1) of the Law on Criminal Proceedings specifies

by the judiciary				<p>criminal acts in cases of which interception of communication may be allowed by the court, among which are not tax evasion and other tax related criminal acts.</p> <p>In the case of entering taxpayer's premises, such as business premises, no authorization of the judiciary is required. However, entering personal premises (dwellings) requires judiciary authorization. (Art. 125(1) and (5) of the LTPTA)</p>
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification				Authorisation within the revenue authorities is not sufficient for the interception of communications or entering personal premises. In line with Art. 125(1) of the LTPTA revenue authorities' authorisation is sufficient for the inspection of the taxpayers' business premises. Subsequent judicial ratification is not required.
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			As of 2014, art. 157(5) of the LTPTA provides that inspection of the taxpayer's home is allowed only if the court authorization has been obtained. However, the taxpayer is not given an opportunity to appear before the court in the course of the issuance of the authorization.
	Access to bank information should require judicial authorisation		<input checked="" type="checkbox"/>	As of October 2015, the Law on Payment Services prescribes an obligation for the National Bank of Serbia (NBS) to maintain a Single Register of Accounts (SRA) of legal and natural persons. Information contained in the SRA relating to legal entities and entrepreneurs is public and may be accessed on the website of the NBS. However, please note that the transparency has been established only with respect to the information relating to the holders of bank accounts, and not with respect to the balance and transactions relating to those accounts. Information relating to natural persons who are not entrepreneurs is not made publicly available, but the Tax Administration has the right to access such information without judicial authorisation, in accordance with Art. 74(4)(5) of the Law on Payment Services.
	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			In line with Art. 162 of the Law on Criminal Procedure, interception of telephone communications and internet access monitoring is allowed only for explicitly specified criminal acts, among which is not tax evasion.
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				Art. 130(4) of the LTPTA prescribes that the seizure of documents is a measure that can be imposed by a decision of the Tax Administration during the tax audit only for the duration of the tax audit.

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			In line with the letter of the law (Art. 37a(1) of the LTPTA) it is the taxpayer who should extract the information from its electronic records and provide the excerpt of it in a standard form to the Tax Administration. Original is left with the taxpayer.
Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers				In line with Art. 125 of the LTPTA, in the case of inspection of business premises, the tax inspector has to conduct the audit during the working hours of the taxpayer. Exceptionally, when the purpose of the audit so requests and if the taxpayer has provided his/her consent, tax inspector may conduct the audit after the working hours of the taxpayer are over. There is, also, a general limitation enshrined in the principle of acting in good faith contained in the Art. 8 of the LTPTA, according to which frequency and duration of tax audits in general are limited to what is necessarily required.
6. Review and appeals.				
	E-filing of requests for internal review to ensure the effective and speedy handling of the review process			E-filing of requests for review are not available to taxpayers.
The right of appeal should not depend upon prior exhaustion of administrative reviews				According to Art. 140 (3) and (4) of the LTPTA, the taxpayer has the right to appeal only if the tax administrative act has become final, which encompasses the following situations: 1) the taxpayer has previously duly initiated the administrative review and the second instance administrative authority has issued a decision on it, 2) the taxpayer has previously duly requested the administrative review, but the second instance administrative authority failed to deliver a decision within 60 days after the taxpayer's initiation of the review.
	Reviews and appeals should not exceed two years		<input checked="" type="checkbox"/>	There are no time limits to the length of the judicial appeal process. Procedures before the Administrative Court often take longer than 2 years to resolve.
<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals		<input checked="" type="checkbox"/>		With respect to administrative reviews, Art. 11 of the new LGAP provides that the taxpayer must be allowed to express himself/herself about the facts relevant for deciding on the case in question. The novelty in comparison to the previous law relates to the fact that this obligation is prescribed for the administrative authority (including the tax authority) in the course of reaching any type of decision in administrative matters (both ruling and conclusion). Prior to this amendment, this obligation was prescribed only in the case administrative authority was in the course of issuing a ruling. Exception is provided by Art. 55 of the LTPTA according to which the tax administrative act assessing tax liability may be issued directly, without providing the taxpayer opportunity to express himself/herself, when the basis for tax assessment is information available in competent authorities' records.

				With respect to the judicial review, Art. 33(1) of the Law on Administrative Disputes presupposes that the Administrative Court has to hold a full hearing (which prior to the introduction of this law in 2009 was not the case). However, Art. 33(2) of the same law allows the Administrative Court not to hold a full hearing if the case at hand does not require direct hearing of parties, or the parties agree to it explicitly. Thanks to these exceptions, the Administrative Court has not applied full hearing in practice so far.
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			As a rule, appeal against the first instance tax administrative act does not have suspensory effect with regards to enforcement of tax (Art. 147(1) of the LTPTA). The same is true for the lawsuit initiating the administrative dispute (Art. 140(5) of the LTPTA). However, in line with Art. 147(2) of the LTPTA, appellate tax authority may suspend the enforcement of the tax administrative act against which the taxpayer appealed, if the taxpayer substantiates that by settling his/her tax obligation before the finality of the appealed tax administrative act he/she would suffer substantial financial damage. Additionally, Art. 23(2) of the Law on Administrative Disputes (LAD) provides that the Court may decide, upon the request of the taxpayer, to suspend the enforcement of the final tax administrative act until the court decision is reached, if the enforcement would lead to damage unlikely to be compensated for the taxpayer and if the suspension does not go against the public interest. Additionally, in line with Art. 23(3) of the LAD the taxpayer may require suspension even before the initiation of the administrative dispute, in cases of 1) urgency and 2) when an appeal for administrative (first instance) review is submitted, but the appellant procedure is not over.
	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				According to Art. 89 of the LGAP, such an option may be granted only to the party which is unable to bear the costs without thereby adversely affecting minimum necessary means for its support and the support of his/her family members, and which has submitted the request to the Court. The Draft of the Law on pro bono Legal Assistance is prepared but has not yet been enacted. Anticipated deadline for its entry into force - 1 Jan 2018, is likely to be postponed.
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing				Art. 35(2) of the Law on Administrative Disputes gives the Administrative Court discretionary power to decide on the exclusion of the public from the (whole or a segment of) tax appeal hearing, in order to protect the party's privacy.
Tax judgments should be published				Minimum standard is not fulfilled, since tax judgements are, as a rule, not being published. In line with Art. 33 of the Law on Organization of Courts, only the judgements of the Supreme Court of Cassation are being published.
Minimum Standard	Best Practice	Shift towards	Shift away	Development

7. Criminal and administrative sanctions.				
Proportionality and <i>ne bis in idem</i> should apply to tax penalties				Both principles apply to tax penalties in the Serbian legal environment.
	Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied			Since Serbia is a member of the Council of Europe and a signatory to the European Convention on Human Rights (which is, according to the Art. 18(2) of the Serbian Constitution, directly applicable), the reasoning of the case <i>Maresti v. Croatia</i> should be followed. However, this matter has not been specifically dealt with so far.
	Voluntary disclosure should lead to reduction of penalties			Pursuant to Art. 40 of the LTPTA, if the taxpayer establishes that the tax return he filed contains a mistake or omission, he should file an amended tax return immediately (or, at the latest, within the statute of limitation) in which case his mistake or omission will be deemed not to constitute a criminal act or misdemeanour.
Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures				N/A
8. Enforcement of taxes.				
Collection of taxes should never deprive taxpayers of their minimum necessary for living				The Law on Enforcement and Security Proceedings (more general law applicable with respect to matters relating to enforcement of taxes not specifically regulated by the LTPTA) prescribes possessions and income excluded from the enforcement proceedings in arts. 164, 218 and 257.
	Authorisation by the judiciary should be required before seizing assets or bank accounts			Judicial authorization is not required for the seizure of assets or bank accounts (arts. 95 – 112 of the LTPTA).
Taxpayers should have the right to request delayed payment of arrears				Art. 73 of the LTPTA allows the Tax Administration to delay the payment of arrears on request of the taxpayer which substantiates that the payment of arrears would cause an inadequately large burden or significant financial damage for him/her and provides sufficient security. Tax Administration has discretionary power to decide on the taxpayer's request. However, decision denying the delay may be appealed against by the taxpayer.
	Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment			Please see previous comment. Maximum time of payment deferral is 60 months.
Temporary suspension of tax enforcement should follow natural disasters				The Law on Enforcement and Security Proceedings stipulates that the provisions of the Law on Civil Procedure apply accordingly. Art. 223(1)(2) of the Law on Civil Procedure allows for a temporary suspension of the proceedings if the party to the proceedings is located in the area hit by natural disasters and is, therefore, cut off from the court.
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	The taxpayer should be informed that a cross-border request for information is to be made			Minimum standard is not met since there is no obligation of the Tax Administration to notify the taxpayer that it intends to request information from a foreign tax authority, nor is it obliged to notify him that a cross-border request for information has been made in relation to him by a

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				foreign tax authority.
Minimum Standard	Best Practice	Shift towards	Shift away	Development
9. Cross-border procedures (cont).				
	Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer			No provision prescribes such obligation of the Tax Administration as a requesting authority.
	Provisions should be included in tax treaties setting specific conditions for exchange of information			Serbian DTTs generally follow the Art. 26 of the OECD MC. As of 22 July 2010, previous Serbian position on the OECD MC specifying that Serbia reserves the right not to include para. 5 in its DTTs, has been deleted.
If information is sought from third parties, judicial authorisation should be necessary				Information received from the requested state is not passed on to a third state and such an option is not provided for in Serbian DTTs.
	The taxpayer should be given access to information received by the requesting state			The taxpayer has the right to request from the Tax Administration to provide him access to all the information kept by it relating to the assessment and enforcement of his taxes (Art. 6 of the LTPTA). To the extent that such information has been provided to the requesting state, the taxpayer will be granted access to it.
	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			There are no specific provisions preventing provision of information on request where the originating cause was the acquisition of stolen or illegally obtained information. Art. 157 of the LTPTA, which stipulates preconditions for the provision of legal assistance to the requesting jurisdiction in cases where no DTT or convention for the provision of legal assistance is concluded, presupposes in para. 3), point 2) that the requesting jurisdiction has to commit to use the received information and documentation only for the purpose of tax procedure, misdemeanour and criminal procedure, and that they will be made available only to officials authorized for dealing with the specific subject in the course of those procedures.
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				One of the conditions, laid down in para. 5 of Art. 157(3) of the LTPTA is that there should be no threat that the provision of legal assistance could lead to a breach of confidentiality or could cause a resident taxpayer substantial damage.
	For automatic exchange of financial information, the taxpayer should be notified of the proposed			The taxpayer does not have to be notified that the audit is being conducted on the basis of a foreign tax administration's request. Even if such

	exchange in sufficient time to exercise data protection rights			information is provided to the taxpayer, no legal remedies would be available to him to prevent the process of exchanging information. ³ The taxpayer does enjoy general protection of the right to confidentiality. However, the LTPTA explicitly states in Art. 7(6)(6) that there is no breach of confidentiality where a document, fact, or data is delivered to the tax authorities of a foreign jurisdiction in the process of EOI or provision of legal assistance in line with Art. 157 of the LTPTA.
	Taxpayers should have a right to request initiation of mutual agreement procedure			There has been communication between Serbian tax authorities and competent authorities of other contracting states, without much formalism. However, none of the 64 Serbian DTTs contain a provision corresponding to the one found in Art. 25(5) of the OECD MC, since Serbia has so far always refused to include the arbitration clause in its treaties. The reason which has been put forward for this approach was the protection of fiscal sovereignty. Moreover, there is no jurisprudence with respect to the application of DTTs. Having in mind the signing of the MLI, changes are expected in respect of the obligation of Serbian Tax Administration to implement a bilateral notification or consultation process with the competent authority of the other contracting state for cases in which it does not consider taxpayer's request as justified.
Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure				Serbian legislation does not provide any guidance on taxpayers' rights with respect to mutual agreement procedure.
10. Legislation.				
Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail	Retrospective tax legislation should ideally be banned completely			Retroactive (including retrospective) tax legislation is allowed under 3 conditions: 1) it is prescribed by the law, 2) it has effect only with respect to specific provisions of the law in question and 3) the base for it is reason of public interest established within the procedure of enactment of the law.
	Public consultation should precede the making of tax policy and tax law		<input checked="" type="checkbox"/>	According to the data available for the first three months after the new Serbian Government was formed (Aug – Oct 2016) less than 8% of all the law proposals were subject to the public discussion.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
11. Revenue practice and guidance.				
Taxpayers should be entitled to access all relevant legal material, comprising				Art. 24(1)(1) stipulates the right of the taxpayer to be granted by the Tax Administration free of charge all the information on relevant tax legislation.

³ D. Dabetić, D. Mraković, D. Stojanović, National Report for Serbia, IFA 2013, p. 668.

legislation, administrative regulations, rulings, manuals and other guidance				All the laws, regulations and bylaws are officially published in the official journal (Official Gazette of the Republic of Serbia) which is publicly available.
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 checked="" type="checkbox"/>		Taxpayers with no internet access may obtain necessary information via Tax Administration Contact Centre, over the phone. Additionally, numerous special Contact Centres, where taxpayers may obtain necessary relevant information in person, have been established around the country. A number of leaflets have been published covering various subject matters relevant for individual taxpayers (relating to different forms of tax).
Binding rulings should only be published in an anonymised form				There are no formal procedures in which a taxpayers can, in advance, obtain a ruling from the tax authorities on the tax treatment of a specific transaction. The opinions of the Ministry of Finance fulfil, to a certain extent, this role. They provide taxpayers with insights on the interpretation and application of specific provisions of tax legislation and are 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			<input checked="" type="checkbox"/>	Most recent case law of the Serbian Appellate Court shows that issues have occurred with respect to taxpayers relying upon published guidance of the Serbian Ministry of Finance, wherein the Ministry would subsequently change its position, while the Tax Administration would in essence retrospectively apply the new position to situations which have taken place when the previous position was the one publicly available and according to which the taxpayer determined its tax obligations.

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			In 2014, Serbian Tax Administration published a charter of taxpayers' rights under the title <i>Taxpayers' charter</i> . However, this is not a legal act, as it was created and published by the Tax Administration, nor it is some type of non-legislative instrument which would have a binding effect. This is a sort of informative brochure intended to explain to taxpayers, in a simple and understandable way, both their rights and obligations in the tax procedure. There are no further developments in this regards.
	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			There is no institution of taxpayer advocate or specific tax ombudsman in Serbia. Protection of taxpayers' rights falls under the supervision of general ombudsman. Nevertheless, best practice is fulfilled through the establishment of special unit within the Tax Administration - Department for Internal Control and Administrative Supervision, which acts on requests of taxpayers.
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			The organisational structure for the protection of taxpayers' rights operates only at a national level.