



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Javier Martín Fernández, former Chair at the *Spanish Taxpayers' Ombudsman*, Felipe Alonso Murillo, Attorney at the *Spanish Supreme Court*, Yolanda Martínez and Elizabeth Gil, Doctors of Law at the *Universidad de Alicante*. All of them OPTR National Reporters of Spain.

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

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



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

Country: Spain

National Reporter: Yolanda Martínez; Elizabeth Gil; Javier Martín; Felipe Alonso

Affiliation

Tax Administration Tax Practitioner Judiciary Tax Ombudsman Academia

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

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

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

7. Criminal and administrative sanctions					
#	Question				
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?	<input type="checkbox"/> No	<input type="checkbox"/> A	<input checked="" type="checkbox"/> B	<input checked="" type="checkbox"/> C
57	If <i>ne bis in idem</i> is recognised, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	<input checked="" type="radio"/> Yes	<input type="radio"/> No		
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	<input checked="" type="radio"/> Yes	<input type="radio"/> No		

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

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

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

4. Normal audits			
#	Question	Yes	No
21	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)?	<input checked="" type="radio"/>	<input type="radio"/>
22	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	<input checked="" type="radio"/>	<input type="radio"/>
23	If yes, what is the normal limit in months?	18 months	
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
25	May the opinion of independent experts be used in the audit process?	<input checked="" type="radio"/>	<input type="radio"/>
26	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	<input checked="" type="radio"/>	<input type="radio"/>
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	<input type="radio"/>	<input checked="" type="radio"/>
28	If yes, does this mean only one audit per tax per year?	<input type="radio"/>	<input type="radio"/>
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	<input type="radio"/>	<input checked="" type="radio"/>
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	<input type="radio"/>	<input checked="" type="radio"/>

5. More intensive audits			
#	Question	Yes	No
31	Is authorisation by a court always needed before the tax authority may enter and search premises?	<input type="radio"/>	<input checked="" type="radio"/>
32	May the tax authority enter and search the dwelling places of individuals?	<input checked="" type="radio"/>	<input type="radio"/>
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	<input type="radio"/>	<input checked="" type="radio"/>
34	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	<input checked="" type="radio"/>	<input type="radio"/>
35	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	<input type="radio"/>	<input checked="" type="radio"/>
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	<input type="radio"/>	<input type="radio"/>
37	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	<input type="radio"/>	<input type="radio"/>
38	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognised?	<input type="radio"/>	<input checked="" type="radio"/>
39	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	<input type="radio"/>	<input type="radio"/>

6. Review and appeals			
#	Question	Yes	No
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	<input checked="" type="radio"/>	<input type="radio"/>
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	<input type="radio"/>	<input checked="" type="radio"/>
42	Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing?	<input checked="" type="radio"/>	<input type="radio"/>
43	Are there time limits applicable for a tax case to complete the judicial appeal process?	<input type="radio"/>	<input checked="" type="radio"/>
44	If yes, what is the normal time it takes for a tax case to be concluded on appeal?		
45	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	<input checked="" type="radio"/>	<input type="radio"/>

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

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

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



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

Country: Spain

National Reporter: Yolanda Martínez; Elizabeth Gil; Javier Martín; Felipe Alonso

Affiliation Tax Administration Tax Practitioner Judiciary (Tax) Ombudsman Academia

1. Identifying taxpayers and issuing tax returns

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
1	Implement safeguards to prevent impersonation when issuing unique identification number		C	C	No developments in this regard since March 2018
2	The system of taxpayer identification should take account of religious sensitivities		C	C	--
3	Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes		C	●	The Supreme Court has rejected, in its Judgment of 13 November 2018, that the data of lawyers and attorneys should be provided to the Tax Administration. In May 2017, the tax inspection department made a requirement to obtain information of lawyers and attorneys (e.g. identification data, the value of the claim, <i>inter alia</i>) with the aim to combat tax fraud. When an information requirement is made, it is necessary that it refers to relevant tax information. The Supreme Court has considered that the information required is not reasonable. On the other hand, it has been enacted the Law 3/2018 (Official Gazette of Spain, 6 Dec. 2018) that provides mechanisms to protect personal data and digital rights. In particular, arts. 79-97 refers to the guarantee of digital rights, such as the digital security, privacy, data protection of minors in <i>Internet</i> , among others.
4		Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax	C	C	No developments in this regard since 2015 IFA Spain Report
5	Where pre/populated returns are used, these should be sent to taxpayers to correct errors		C	C	No developments in this regard since 2015 IFA Spain Report
6	Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies	Publish guidance on taxpayers' rights to access information and correct inaccuracies	C	C	No developments in this regard since 2015 IFA Spain Report
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		C	C	No developments in this regard since 2015 IFA Spain Report
8	Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		C	●	The project for the implementation of the so-called "Norma UNE 19602" (UNE standard) for the management system of tax compliance has been submitted to public consultation (Official Gazette of Spain, 7 Dec. 2018). This standard for tax compliance has been elaborated by AENOR, and is aimed to spread the compliance and prevention within an entity; to set up control measures for the prevention of tax risks; and, to provide certainty and confidence before tax authorities, governing bodies, shareholders and investors.
9	Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication		C	C	No developments in this regard since March 2018

2. The issue of tax assessment

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
10		Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms	C	C	No developments in this regard since 2015 IFA Spain Report
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	C	●	There is a constant tendency towards the increase of electronic means to submit assessments and to correct errors. With the purpose to facilitate the fulfillment of tax obligations, the Resolution of 21 Dec. 2018 (Official Gazette of Spain, 7 Jan. 2019) broadens the scope for the rectification of self-assessments by electronic means.

3. Confidentiality

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
12	Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced).	Encrypt information held by a tax authority about taxpayers to the highest level attainable.	C	C	No developments in this regard since March 2018
13	Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes.	Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities.	C	C	No developments in this regard since 2015 IFA Spain Report
14	Audit data access periodically to identify cases of unauthorised access.		C	C	No developments in this regard since 2015 IFA Spain Report
15	Introduce administrative measures emphasizing confidentiality to tax officials.	Appoint data protection/privacy officers at senior level and local tax offices.	C	C	No developments in this regard since March 2018
16	Where pre/populated returns are used, these should be sent to taxpayers to correct errors.		C	C	No developments in this regard since 2015 IFA Spain Report
17	If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges).		C	C	No developments in this regard since 2015 IFA Spain Report
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		C	C	No developments in this regard since 2015 IFA Spain Report
19	Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.		C	C	No developments in this regard since March 2018. It should be highlighted that the "recurso de amparo" that was submitted by S.D.C in regard of the <i>Falciani case</i> (Judgment of the Supreme Court of 23 Feb. 2017) was accepted by the Constitutional Court in Oct. 2017 and it remains unresolved from the time being.
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		C	C	--
21	No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes.	Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data, and then reporting to Parliament.	C	C	--
22	Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard.		C	C	No developments in this regard since March 2018
23	If published, tax rulings should be anonymised and details that might identify the taxpayer removed.	Anonymise all tax judgments and remove details that might identify the taxpayer	C	C	No developments in this regard since 2015 IFA Spain Report
24	Legal professional privilege should apply to tax advice.	Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure.	C	C	--
25	Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege.		C	C	--

4. Normal audits

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
26	Audits should respect the following principles: (i) Proportionality. (2) <i>Ne bis in idem</i> (prohibition of double jeopardy). (3) <i>Audi alteram partem</i> (right to be heard before any decision is taken). (4) <i>Nemo tenetur se detegere</i> (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void.		C	⊙	Some developments related to this point since March 2018 (see below)

27	In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers.		C	C	No developments related to this point since 2015 IFA Spain Report.
28		In application of <i>ne bis in idem</i> the taxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed.	C	●	In application of <i>ne bis in idem</i> principle, taxpayers should only receive one audit per taxable period. However, the Spanish Tax System recognises the possibility that verification was carried out by two different bodies (" <i>Gestión-Inspección</i> ") with the limitation established by art. 140 of the General Tax Act (<i>Ley General Tributaria</i> , LGT): it is necessary to discover new facts or circumstances from different administrative actions. It is interesting to note the Judgment of the Supreme Court of 2 July 2018, which states that the use of a data verification procedure when a limited checking should have been used constitutes automatic nullity. There is an unfair use of the procedure since the beginning and the actions effected in the course of this procedure do not interrupt the limitation period (prescription).
29	In application of <i>audi alteram partem</i> , taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final.		C	C	No developments related to this point since 2015 IFA Spain Report.
30	In application of <i>nemo tenetur</i> , the right to remain silent should be respected in all tax audits.		C	C	--
31		Tax audits should follow a pattern that is set out in published guidelines.	C	●	The Decision of 8 January 2018 of The General Directorate of the Tax Administration has approved the general guidance of the 2018 Annual Audit Plan for Taxes and Customs.
32		A manual of good practice in tax audits should be established at the global level.	C	C	No developments related to this point since 2015 IFA Spain Report.
33		Taxpayers should be entitled to request the start of a tax audit (to obtain finality).	C	C	--
34	Where tax authorities have resolved to start an audit, they should inform the taxpayer	Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.	C	C	No developments related to this point since 2015 IFA Spanish Report. However, the Supreme Court has admitted a cassation appeal (Auto of 19 January 2018) to determine if the audit can be initiated with a request for information to the taxpayer (art. 93 of the LGT) or should be understood initiated with the notice of the beginning as a consequence of the information provided to the Tax Administration.
35	Taxpayers should be informed of information gathering from third parties.		C	C	No developments in this regard since 2015 IFA Spain Report.
36		Reasonable time limits should be fixed for the conduct of audits.	C	●	Regarding the inspection procedure duration, the Judgment of the Supreme Court of 3 May 2018 has established that in a particular complex case in which the Inspection could foresee that it was impossible to meet the deadline, it had to request the term extension and not try to justify the failure to comply with the time with delays not attributable to taxpayers.
37	Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.		C	C	No developments related to this point since IFA 2015 Spain Report.
38	The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer.	The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view.	C	C	No developments related to this point since IFA 2015 Spain Report.
39		Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.	C	C	No developments related to this point since IFA 2015 Spain Report.

5. More intensive audits

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
40		More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance.	C	C	No developments in this regard since IFA 2015 Spain Report.

41	If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure.		C	C	--
42	Entering premises or interception of communications should be authorised by the judiciary.		C	C	No developments related to this point since March 2018.
43	Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for <i>ex post</i> ratification.		C	C	No developments related to this point since IFA 2015 Spain Report.
44	Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases.	Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.	C	C	No developments related to this point since March 2018.
45		Access to bank information should require judicial authorisation.	C	C	No developments related to this point since IFA 2015 Spain Report.
46		Authorisation by the judiciary should be necessary for interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions.	C	C	No developments related to this point since IFA 2015 Spain Report.
47	Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time.		C	C	No developments in this regard since IFA 2015 Spain Report.
48		If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer.	C	C	No developments related to this point since IFA 2015 Spain Report.
49	Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.		C	C	No developments related to this point since IFA 2015 Spain Report.

6. Review and appeals

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
50		E-filing of requests for internal review to ensure the effective and speedy handling of the review process.	C	●	Royal Decree 1073/2017, of December 29, has introduced a modification in the revision regulation: the notifications will be made by electronic means in the cases in which it is obligatory to relate with the Administration in this way.
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		C	●	The Spanish Tax System makes the prior exhaustion of the available administrative reviews a condition to submit a judicial appeal. However, the Supreme Court (Judgment of 21 May 2018) has established that in some cases administrative review is not mandatory to submit a judicial appeal. In particular, when the administrative review is only based on the illegality or unconstitutionality of the law and the economic-administrative courts (<i>Tribunales Económico-Administrativos</i>) are not competent to pronounce themselves. Even the judgment only concerns the local area, it could be applied in others areas.
52		Reviews and appeals should not exceed two years.	C	C	No developments related to this point since IFA 2015 Spain Report.
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		C	●	Concerning the provision of evidence in the review process, the Judgment of the Supreme Court of 10 September 2018 implies an step further towards the protection of taxpayers' rights. The Judgment indicates that it is possible to submit evidences in administrative reviews despite not being submitted in the audit procedure, provided that they are relevant for the claim. There is one exception: that the attitude of the taxpayer was abusive and it is established in the file.
54	Where tax must be paid in whole or in part before and appeal, there must be an effective mechanism for providing interim suspension of payment.	An appeal should not require prior payment of tax in all cases.	C	●	In the Spanish Tax System the appeal does not delay the execution of the administrative act, unless the suspension of a payment is requested and guaranteed. However, the the Judgment of the Supreme Court of 27 February 2018 represents an improvement on the protection of the taxpayers' rights as it determines that the notification of the order for recovery (<i>providencia de apremio</i>) when the resolution for suspension is pending is contrary to the tax system.

55		The state should bear some or all of the costs of an appeal, whatever the outcome.	C	C	No developments related to this point since March 2018.
56	Legal assistance should be provided for those taxpayers who cannot afford it.		C	C	No developments related to this point since March 2018.
57	Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.		C	C	No developments related to this point since IFA 2015 Spain Report.
58	Tax judgments should be published.		C	C	No developments related to this point since IFA 2015 Spain Report.

7. Criminal and administrative sanctions

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
59	Proportionality and <i>ne bis in idem</i> should apply to tax penalties.		C	C	No developments related to this point since March 2018.
60		Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.	C	C	No developments related to this point since March 2018.
61		Voluntary disclosure should lead to reduction of penalties.	C	C	No developments related to this point since March 2018.
62	Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.		C	C	No developments related to this point since IFA 2015 Spain Report.

8. Enforcement of taxes

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
63	Collection of taxes should never deprive taxpayers of their minimum necessary for living.		C	C	No developments related to this point since IFA 2015 Spain Report.
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	C	C	No developments related to this point since IFA 2015 Spain Report.
65	Taxpayers should have the right to request delayed payment of arrears.		C	C	No developments related to this point since IFA 2015 Spain Report.
66		Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.	C	C	No developments related to this point since IFA 2015 Spain Report.
67	Temporary suspension of tax enforcement should follow natural disasters.		C	C	No developments related to this point since IFA 2015 Spain Report.

9. Cross-border procedures

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
68	The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation.	The taxpayer should be informed that a cross-border request for information is to be made.	C	C	No developments in this regard since IFA 2015 Spain Report
69		Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.	C	C	--
70		Provisions should be included in tax treaties setting specific conditions for exchange of information.	C	C	No developments in this regard since IFA 2015 Spain Report

71	If information is sought from third parties, judicial authorisation should be necessary.		C	C	No developments in this regard since IFA 2015 Spain Report
72		The taxpayer should be given access to information received by the requesting state.	C	C	--
73		Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.	C	C	No developments in this regard since March 2018
74		A requesting state should provide confirmation of confidentiality to the requested state.	C	C	No developments in this regard since March 2018
75	A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection.		C	C	--
76		For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.	C	C	--
77		Taxpayers should have a right to request initiation of mutual agreement procedure.	C	C	No developments in this regards since 2015 IFA Spain Report
78	Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.		C	C	No developments in this regards since 2015 IFA Spain Report

10. Legislation

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
79	Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail.	Retrospective tax legislation should ideally be banned completely.	C	C	No developments related this point since March 2018.
80		Public consultation should precede the making of tax policy and tax law.	C	●	In this sense, it is interesting art. 133 of the Law 39/2015 in regard of the citizen participation on establishing the internal rules. In some aspects, this provision has been declared contrary to the distribution of competences between the State and the Autonomous Communities by the Judgment of the Constitutional Court 55/2018 of 24 May, so that it is not applicable to the Autonomous Communities standards. According to art. 133 of the Law 39/2015, two types of citizen participation are possible: (i) public consultation, to obtain the opinion of citizens, organisations and associations before the normative project; (ii) public information, to obtain the opinion of citizens affected by a normative project, directly or through their representative associations, as well as to obtain additional contributions be made by other persons or entities.

11. Revenue practice and guidance

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
81	Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.		C	C	No developments in this regard since 2015 IFA Spain Report
82	Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet.		C	C	No developments in this regard since 2015 IFA Spain Report
83	Binding rulings should only be published in an anonymised form		C	C	No developments in this regard since 2015 IFA Spain Report
84	Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively.		C	C	No developments in this regard since 2015 IFA Spain Report

12. Institutional framework for protecting taxpayer's rights

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
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85	Adoption of a charter or statement of taxpayers' rights should be a minimum standard.	A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited.	C	C	No developments in this regard since 2015 IFA Spain Report
86		A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority.	O	O	No developments in this regard since March 2018
87		The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally.	C	C	--