Observatory for the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by or with the contribution of the National Reporters of Spain, Prof. Prof. Yolanda Martínez Muñoz, Dr. Elizabeth Gil García both representatives of the Academia, Prof. Javier Martín Fernández, a representative of the Ombudsman Office and Prof. Felipe Alonso Murillo, a representative of the Judiciary.

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 Spain 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 Spain 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.

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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		✓		There is an increasing use of electronic identification systems (i.e. the so-called Cl@ve PIN) for the carrying out of some tax obligations (*see* section 2) could be underscored.
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			No developments in this regard.
Where pre-populated returns are used, these should be sent to taxpayers to correct errors				No developments in this regard.
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			No developments in this regard.
Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception				No developments in this regard.
Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		✓		In November 2015, an Annex to the Code was approved that contains 11 compliance indicators to improve transparency and legal certainty. In particular, paragraph 2 of the Annex states that companies may provide tax authorities with information about certain actions and decisions in tax matters, i.e. explanations about the presence in tax havens, the finance structure of the group, the degree of compliance with principles of BEPS Actions or the tax strategy of the group, among others, with the purpose of having an

				early understanding of the tax policy and the management of tax risks of companies. With that goal, at the end of 2016, a so-called "Tax Transparency Report" was proposed. Regarding the tax behaviour of the company in the light of the BEPS project, the latter must present all transactions that may lead to double deductions of the expenditure, double access to tax benefits, double use of losses, the use of hybrid entities or instruments and double non-taxation situations, including an explanation on the justification and the degree of compliance with principles of BEPS Actions
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		✓		The increasing use of digital identification/authentication systems may be seen as a disadvantage for those unable or unwilling to use electronic means. Despite this, assistance services are available for such purposes.
Minimum Standard	**Best Practice**	**Shift towards**	**Shift away**	**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			No developments in this regard.
	Use e-filing to speed up assessments and correction of errors, particularly systematic errors	✓		Concerning the use of *e-filing*, different electronic forms have been introduced to speed up self-assessment of taxes. Since 2016 tax period, all procedures related to the preparation, modification and filing of the *IRPF* will be carried out with the "Processing service for drafts/tax returns (*Renta WEB*)", which is accessible through any browser (for 2017 tax year a mobile app has been implemented for submitting the tax return). Taxpayers will have access to such platform through digital identification/authentication systems such as the electronic ID, the so-called Cl@ve PIN or Reference number, *inter alia.* Moreover, since 2016 tax period, a new section (box 127) has been included to request a rectification of the filed self-assessment tax return. Accordingly, the taxpayer can request a rectification, so the

				self-assessment itself will serve also as the self-assessment rectification request. Such request can be made electronically or by means of a letter addressed to the Tax Administration. Indeed, the *Renta Web* platform allows the taxpayer (under "modify a filed tax return" option) to make rectifications to self-assessments and supplementary returns as well as to select the previous filed return the taxpayer wishes to modify. The self-assessment rectification request can be filed (based on Art. 126 of the Royal Decree 1065/2007): (i) when the corresponding tax return has been filed; (ii) or, as long as the Tax Administration has not made the related final or provisional payment; (iii) and, within the period of four years since the day after the end of the period for filing tax returns or, if the tax return was submitted late, since the day after filing.
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	✓		Relevant tax information is protected under Art. 95 of the LGT. Concerning data protection, see Judgment of the Spanish Audiencia Nacional of 6 February 2017. In regard whistle-blowers, see Judgment of the Supreme Court of 23 February 2017 (Falciani case)
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			No developments in this regard.
Audit data access periodically to identify cases of unauthorised access				No developments in this regard.
Introduce administrative measures emphasising confidentiality to tax officials	Appoint data protection/privacy officers at senior level and local tax offices	✓		The Central Economic Administrative Court (Tribunal Económico Administrativo Central, TEAC) in its decision of 4 April 2017 has stated that the use of "secret comparable" in administrative valuations, that is, even if data are relevant and appropriate to make the valuation, the taxpayer could not be provided with such information for the purposes to make a comparison as they are confidential data (see section 4).
If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent				No developments in this regard.

persons (e.g. judges)				
Introduce an offence for tax officials covering up unauthorised disclosure of confidential information				No developments in this regard.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
3. Confidentiality (cont).				
Provide remedies for taxpayers who are victims of unauthorised disclosure of confidential information				No developments in this regard.
Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted		✓		The Judgment of the Supreme Court (*Tribunal Supremo, TS*) of 23 February 2017 refers to the *Falciani case*. In 2010, Spanish tax authorities requested information, in the framework of the Spain–France DTC, related to taxpayers taxed in Spain that were included in the HSBC list. The information provided was used by Spanish tax authorities to carry out the proper tax procedures in regard of 558 taxpayers. S.D.C. was included in such list but he did not provide the information required by tax authorities during the procedure. In consequence, the Tax Administration regarded certain money amounts as non-justified capital gains. The *Audiencia Provincial* of Madrid (29 April 2016) held that S.D.C. incurred in two criminal offences against the Treasury[1]. S.D.C. appealed the Judgment of 29 April 2016 before the Supreme Court. The *TS* has analysed the validity of the provision of the *Falciani list* as a lawful evidence to investigate and to later judge S.D.C.: *"It was an information contained in files that were unlawfully taken by an individual who was not acting as an agent for Spanish public bodies. It was neither a computer file whose delivery was negotiated between the individual and Spanish agents. The deterrence purpose where the origin of the unlawful evidence is based did not reach*

[1] Article 305 of the Criminal Code allows to follow the assessment procedure and the collection of the tax debt in case of a criminal procedure in public finances issues.

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				Herve Falciani as his aim was to get a profitable source of negotiation. In short, it was not an evidence obtained with the direct or indirect purpose of using it in a trial. The use of such sensitive files for persons affected does not have any –direct or remote– link with the contravention of personal data that were protecting tax evaders (…) the reception of the computer file with relevant financial information was made under legitimate rules of the exchange of information; the reception was materialised by the delivery of the information to diplomatic personnel of the France Republic located in Spain". In October 2017, the Constitutional Court has accepted the "*recurso de amparo*" submitted by S.D.C. (which constitutes a special review for protecting fundamental rights).
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			--
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		✓		The Judgment of the Spanish *Audiencia Nacional* of 6 February 2017 addresses the balance between the access to information as a universal right under Law 19/2013, on the one hand, and the confidentiality of relevant tax information under Art. 95 of the *LGT*, on the other hand: "*The Tax Administration is obliged to provide public information* [under Law 19/2013]. *The confidential nature of tax information is not unlimited as it is public information (…) the Tax Administration refused to provide the information requested because of the application of Art. 95 of the LGT.* [Indeed], *the information obtained were tax data obtained by the Tax Administration for the purpose of effectively applying taxes and, therefore, they were covered by the protection of Article 95 of the LGT, having confidential nature.* *(…) the right to information is not an absolute right, being subject to*

				certain limits (…) such limits are not only those established in Law 19/2013, but also those established in other Laws regulating issues related to the Tax Administration [such as the General Tax Act] *(…) Thus, a specific and current regulation exists, which is compatible with the Law 19/2013, on the access to the information held by the Tax Administration that will be regulated by its own norms*"
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			No developments regarding this point.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
3. Confidentiality (cont).				
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				--
4. Normal audits.				
Audits should respect the following principles: (1) Proportionality (2) *Ne bis in idem* (prohibition on double jeopardy) (3) *Audi alteram partem* (right to be heard before any decision is taken) (4) *Nemo tenetur se detegere*		✓		Some developments related to this point (see below)

(principle against self-incrimination). Tax notices issued in violation of these principles should be null and void				
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				No developments related to this point.
	In application of *ne bis in idem* thetaxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed			No developments related to this point.
Minimum Standard	**Best Practice**	**Shift towards**	**Shift away**	
4. Normal audits (cont).				
In application of *audi alteram partem*, 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 *audi alteram partem*, taxpayers have to be notified of all decisions taken in the audit procedure and have the right to challenge and be heard before the decision is taken (Art. 138(3) of the LGT –assessment proposal in the shortened audit procedure and Arts. 156 and 157 of the LGT for the inspection procedure). Concerning the right to a defence and according to the *Coca-cola case* –mentioned in the 2015 IFA Spain Report–, the TEAC in its decision of 4 April 2017 has stated the following reasons in the case of using the information of data bases of the Tax Administration to calculate tax bases or tax liabilities under the "*estimación indirecta*" method: "*The TEAC case-law prohibits the use of "secret comparable" in administrative valuations, that is, even if data are relevant and appropriate to make the valuation, the taxpayer could not be provided with such information for the purposes to make a comparison as they are confidential data* *(…) In any case, the Tax Administration should justify the means selected for determining the tax base as well as should explain*

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				calculations made. In such a way, the taxpayer may consider the suitability of such means and make allegations"
In application of *nemo tenetur*, the right to remain silent should be respected in tax audits.				--
	Tax audits should follow a pattern that is set out in published guidelines			No developments related to this point.
	A manual of good practice in tax audits should be established at the global level	✓		The general guidance of the 2018 Annual Audit Plan for Taxes and Customs has been approved through the Decision of 8 January 2018 of the General Directorate of the Tax Administration
	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			No developments related to this point.
Taxpayers should be informed of information gathering from third parties				No developments related to this point.
	Reasonable time limits should be fixed for the conduct of audits	✓		The powers of verification cannot be indefinitely extended as this could affect taxpayers' rights because of the uncertainty about the duration of the Tax Administration's actions. In this vein, the tax reform of the inspection procedure duration (Art. 150 of the *LGT*) has provided certainty. Even if the general deadline has been extended (18 months), obligations of information to the taxpayer have been increased in connection with such deadline extension. First, when communicating the beginning of the inspection procedure, the taxpayer will be informed about the time of the procedure. Second, there will be no application of justified periods of interruption, delays or non-justified interruptions stated in common rules. On the contrary, the suspension of the procedure will only be possible if cases of Article 150(3) of the *LGT* are met. Third,

				the taxpayer will be informed about the suspension of the procedure. Finally, the unfulfillment of the time for solving will not imply the expiration of the procedure, but it will trigger the effects spelled out in the law, such as the non-interruption of the prescription, the admissibility of spontaneous revenues and the non-requirement of interests for late payments.
Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer				No developments related to this point.
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			No developments related to this point.
	Following an audit, a report should be prepared even if the audit does not result in additional tax or refund			No developments related to this point.
5. More intensive audits.				
	More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance			No developments related to this point.
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		✓		In some cases, the complexity of the verification or the non-cooperation of the taxpayer requires the entry to buildings or the home ("*domicilio*") of the taxpayer in order to collect enough

				evidences that allow the tax regularisation. The inspection body may entry into buildings and even into the home constitutionally protected (Art. 18(2) of the Constitution). In the latter case, the agreement of the person or judicial authorisation is required (Art. 142(2) of the LGT). Concerning the need of judicial authorisation for the entrance in the home, review the view of the Juzgado Contencioso-administrativo of Cádiz (lower court), in its Judgment of 31 March 2016. "*Unless the agreement of the person is obtained, it is indispensable the prior judicial authorisation. The administrative authorisation does not allow the entrance and neither the adoption of measures indoors* *(…) For that purpose, it can be concluded that the inspection body has not taken care of Article 18(2) of the Constitution as it has been done without the mandatory judicial authorisation, and the taxpayer's authorisation was* [not freely] *granted*.
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for *ex post* ratification				No developments related to this point.
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	✓		The Judgment of the TS of 22 February 2017, in regard of the special procedure for protecting fundamental rights (Arts. 114 – 122 bis of the LJCA), analyses the case of administrative authorities inspecting a company's headquarter, under judicial authorisation, with the purpose to obtain pieces of evidence related to another company located there and even in respect of its administrator. "*A tax inspection action during the judicial authorised entry which exceeds such authorisation or, in any case, seeks documents not related with the corresponding procedure, meets the conditions to be directly appealed*".
	Access to bank information should require judicial authorisation			No developments related to this point.
Minimum Standard	**Best Practice**	**Shift**	**Shift**	**Development**

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		towards	away	
5. More intensive audits (cont).				
	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			No developments related to this point.
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				No developments related to this point.
	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			No developments related to this point.
Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers				No developments related to this point.
6. Review and appeals.				
	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				The Supreme Court has admitted a cassation appeal regarding the prior exhaustion of administrative reviews as a condition to submit a judicial appeal in some cases (Auto 6 July 2017).
	Reviews and appeals should not exceed two years			No developments related to this point.
Audi alteram partem should apply in administrative reviews and judicial appeals		✓		Concerning the provision of evidence in the review process, the Judgment of the TS of 20 April 2017 states that: "it is appropriate the provision of pieces of evidence in the administrative review and judicial appeals when no evidence was provided in the assessment

				procedure". The question that arises in this appeal is whether documents required by the Tax Administration for the VAT refund that were not submitting by the taxpayer during the assessment procedure can be accepted once such procedure ends. According to the *TS*, for the purposes of the unification of doctrine, "*there is no issue that the taxpayer presents documents that were not submitted in the audit procedure before judicial bodies*". The doctrine of the Supreme Court is clear: documentation not presented in the assessment procedure will be accepted when it is presented before judicial bodies. Article 34 of the *LGT* states that taxpayers have the right to present documentation where appropriate for solving the tax procedure in course. Therefore, taxpayers may submit documents to the tax dossier. On the other hand, it could be highlighted that the cassation system, created by the Law 7/2015 and modified by the *LJCA*, has replaced, since 22 July 2016, the amount requirement by the so-called "*interés casacional*" which implies the reinforcement of the possibility to access to the cassation appeal. In this regard, in practice, public audiences have increased based on Article 92.6 of the *LJCA*.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
6. Review and appeals (cont).				
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			No developments related to this point.
	The state should bear some or all of the costs of an appeal, whatever the outcome	✓		In the administrative framework, the submission of reviews is free and it is not required legal assistance. However, the Judgment of the TC 140/2016 (21 July 2016) based on the proportionality principle, underlines that the excessive nature of court fees may dissuade and obstruct the fundamental right to an effective judicial protection

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				("tutela judicial efectiva"), enshrined in Article 24 of the Constitution and Article 6(1) of the ECHR. According to the principle of legal certainty, the effects derived from such judgment are "*pro futuro*" as the unconstitutionality is based on the contravention of Article 24(1) of the Constitution because the excessive amount is an obstacle to have access to judicial procedures with no justification. With regard to costs of proceedings, Article 139 of the LJCA (in its latest reform of 22 July 2016) provides that costs of proceedings will be afforded by the party whose claims have been rejected, unless there are doubts of law or facts. In cases of partial acceptance of the claims, each party will afford its own costs, unless there is bad faith from one of the parties
Legal assistance should be provided for those taxpayers who cannot afford it		✓		Taxpayers have the right to free legal aid in cases stated in Law 1/1996 (10 January 1996): *"The aim of the current Law is to delimit the content and scope of the right to free legal aid enshrined in Article 119 of the Constitution as well as to regulate the procedure for its recognition and effectiveness.* *The free legal assistance service will be obliged in the terms stated in this Law. The professional associations* [Colegios profesionales] *may organize the service and excuse the collegiate advocate when there are justified reasons.* *The provisions of this Law will be generally applied to any type of judicial procedures, including recursos de amparo and the previous administrative procedure as well as prior counsel to the procedure stated in section 1 of Article 6*"
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing				No developments related to this point.
Tax judgments should be published				No developments related to this point.

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7. Criminal and administrative sanctions.				
Proportionality and *ne bis in idem* should apply to tax penalties		✓		The partial reform of the LGT trough the Law 34/2015 has focused on material and formal aspects of the principle non bis in idem such as Article 180 of the LGT has been modified –prohibition of imposing double administrative penalties–. The new Title VI of the LGT includes the prohibition of double penalties (both criminal and administrative) on the same facts as well as the regulation of procedures in cases of tax crime
	Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied	✓		Article 250(2) of the *LGT* provides with regard to the penalty procedure that "*the judgment will impede the imposition of an administrative penalty for the same facts*", but "*in case no tax crime has observed, the Tax Administration will start, where applicable, the penalty procedure according to the facts that were proved by the criminal court*". Procedural rules of this provision impede the initiation or continuation of a penalty procedure where, in regard of the same facts, a criminal trial has started; avoiding therefore parallel procedures and protecting the taxpayer's right in pending cases. However, once the criminal process ends with a final judgment, the new procedure of the Title VI of the *LGT* does not impede the beginning of a penalty procedure in those cases where the Court has not observed the existence of a tax crime, with the sole limitation of taking into account the facts proved in the criminal judgment. In the wake of the new doctrine of the *non bis in idem* principle stated by the ECHR in the *Case A and B v. Norway* of 15 November 2016, it may be submitted that the Spanish legislation is effectively aligned with that interpretation of Article 4 of Protocol No. 7. Indeed, the suspension of the penalty procedure in case of tax crimes constitutes a proper mechanism to warrant the proportionality of the penalty imposed because of a tax infringement. Thus, the initiation of the penalty procedure in the tax field when the criminal court has not observed the existence of a tax crime, will not imply, *per se*, the contravention of that principle since, according to the new ECHR interpretation, both procedures can also be considered connected in the time when they are carried out simultaneously.

	Voluntary disclosure should lead to reduction of penalties	✓		In the current configuration of the crime against the Treasury, a voluntary tax regularisation has been introduced in Article 252 of the LGT, that is to say, the possibility of issuing a complete recognition and payment of the tax debt –i.e. the other side of the crime–, making possible the recovery of legality and ending the temporary contravention of the legal interest protected generated by tax evasion. The lack of certainty in respect of the existence of such tax regularisation will imply the transfer to the competent jurisdiction or the submission of the file to the *Ministerio Fiscal*.
Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures				No developments related to this point.
8. Enforcement of taxes.				
Collection of taxes should never deprive taxpayers of their minimum necessary for living				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
8. Enforcement of taxes (cont).				
	Authorisation by the judiciary should be required before seizing assets or bank accounts			Regarding "enforcement of taxes", no amendments have been introduced since the 2015 IFA Spain Report. However, our jurisdiction is generally in compliance with minimum standards.
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				

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9. Cross-border procedures.				
The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation	The taxpayer should be informed that a cross-border request for information is to be made			Concerning "cross-border procedures", no amendments have been introduced since the 2015 IFA Spain Report. However, it should be highlighted the *Falciani case*.
	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			No developments in this regard.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
9. Cross-border procedures (cont).				
If information is sought from third parties, judicial authorisation should be necessary				No developments in this regard
	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			The Judgment of the Supreme Court on the *Falciani case* (*see* section 3) analyses the use of information obtained after a request of information in a criminal trial.

	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			No developments in this regard.
Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure				No developments related to this point.

Minimum Standard	Best Practice	Shift towards	Shift away	Development
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	✓		Regarding the principle of legality in tax matters, the Judgment of the Constitutional Court of 8 June 2017 has declared the unconstitutionality and nullity of the norm establishing the so-called "declaración tributaria especial". Accordingly, taxpayers of the Personal Income Tax (IRPF), Corporate Income Tax (IS) and Non-Resident Income Tax (IRNR) holding goods or rights with no link to income taxed under IRPF, IS and IRNR were able to submit a tax return with the purpose to adjust their tax situation. The Constitutional Court affirms that the enactment of such measure by

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				Decree Law is unconstitutional as the so-called "tax amnesty" has "*affected the essence to the duty to contribute to support public expenditures of Article 31(1) of the Constitution, and this has substantially altered the tax burden distribution whose should be supported by all taxpayers in our tax system based on criteria of ability to pay, equality and progressivity. In consequence, it cannot be introduced in the legal system through the instrument of Article 86(1) of the Constitution; this necessarily leads to declare the unconstitutionality and nullity of the impugned norm as it contravenes such constitutional provision*". Regarding the predictability of the Law, the issue of retroactivity in tax matters has a great relevance in practice. In this sense, two recent judgements can be highlighted: The Judgment of the Constitutional Court of 23 June 2016 in case of the retrospective application of a norm of the Personal Income Tax Act (Ley del Impuesto sobre la Renta de las Personas Físicas, LIRPF). The TC states that: "*in cases of proper retroactivity, we have reiterated that as general rule the prohibition of retroactivity operates at all, so it should be examined if requirements qualified as common good are met* *(…) if the objective of general interest was to avoid the improper taxation as non-regular labour income, it is obvious that was enough to introduce the legal norm with pro-future effects, or even giving improper retroactivity or the medium level, or requiring its application only in regard of taxpayers whose tax periods were still alive*". The Judgment of the Supreme Court of 21 February 2017 (Schweppes Case) in case of the retroactive application of a valuation method of related-transactions whose validity was after the accrual of verified taxes. The TC states that: "*this innovative method introduced by the TRLIS through the Law 36/2006 only applies, by legal mandate, to tax years initiated after 1 December 2016, which is a subsequent date of the tax years here concerned, with the non-admissibility of the retroactive use* *(…) Such mandate should have been enough… to invalidate impugned assessments, as they were the consequence of the*

				retroactive use of the valuation method with no validity to that time"
	Public consultation should precede the making of tax policy and tax law			--
11. Revenue practice and guidance.				
Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance				In regard of "revenue practice and guidance", no amendments have been introduced since the 2015 IFA Spain Report. However, our jurisdiction is generally in compliance with minimum standards.
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				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
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			No developments in this regard.
	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			The Taxpayers' Ombudsman, which was established in 1996, deals with complaints and suggestions that arise due to the application of the Spanish tax system by the institutions of the State. The Royal Decree 1070/2017, of 29 Dec. 2017, amends the regulation of the Taxpayers' Ombudsman in regard of its composition and the regime

	but independent from normal operations of that authority			for rejecting complaints and suggestions to be in line with the new administrative provisions. According to the 2016 annual report of the Taxpayers' Ombudsman, the number of complaints and suggestions (18.562) has increased in comparison with the prior years (14.000 in 2015 and 15.931 in 2014) and constitutes the highest register since the Taxpayers' Ombudsman was established. However, the report underlines that this number is quite reduced in regard of the millions of actions carried out by the tax authorities. On the other hand, it could be highlighted that the 57,26% of the complaints has been submitted by electronic means.
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			--

Short explanation:

This sign "--" means that the minimum standard/best practice mentioned has not been developed in Spain.

The expression "*no developments…*" means that the related minimum standard/best practice has been developed in Spain but no amendments have been introduced since the 2015 IFA Spain Report.