



## Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Ian Young, Technical Manager at the *ICAEW* and OPTR National Reporter of United Kingdom.

This set of questionnaires comprise the National Reporter's 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:**  
**National Reporter:**  
**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 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>

3. Confidentiality			
#	Question	Yes	No
11	Is information held by your tax authority automatically encrypted?	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	<input 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>
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 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" type="radio"/>
66	Does the taxpayer have the right to see any information received from another country that relates to him?	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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?	06 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" 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 checked="" 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 checked="" type="radio"/>	<input 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 checked="" 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 type="radio"/>	<input checked="" 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?	Months	
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 type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>
77	If a binding rule is refused, does the taxpayer have a right to appeal?	<input type="radio"/>	<input 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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 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 checked="" type="radio"/>	<input type="radio"/>



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

Country: United Kingdom  
National Reporter: Ian Young  
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		<input type="radio"/>	<input type="radio"/>	
2	The system of taxpayer identification should take account of religious sensitivities		<input type="radio"/>	<input type="radio"/>	
3	Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes		<input type="radio"/>	<input type="radio"/>	
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	<input type="radio"/>	<input type="radio"/>	
5	Where pre/populated returns are used, these should be sent to taxpayers to correct errors		<input type="radio"/>	<input type="radio"/>	
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	<input type="radio"/>	<input type="radio"/>	
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		<input type="radio"/>	<input type="radio"/>	
8	Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		<input type="radio"/>	<input checked="" type="radio"/>	The largest businesses with turnover in excess of £30m or with more than 250 employees are dealt with by the HMRC Large Business Directorate and come within the HMRC cooperative compliance arrangements. All these businesses have a personal customer compliance manager allocated to their "case". HMRC guidance on its approach to these large businesses is explained at <a href="https://www.gov.uk/guidance/hm-revenue-and-customs-large-business#history">https://www.gov.uk/guidance/hm-revenue-and-customs-large-business#history</a> . All these large businesses are required to be part of the cooperative compliance regime which is not available to other, smaller, businesses.
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		<input type="radio"/>	<input type="radio"/>	

### 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	<input type="radio"/>	<input type="radio"/>	
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	<input type="radio"/>	<input type="radio"/>	

### 3. Confidentiality

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
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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.	<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
14	Audit data access periodically to identify cases of unauthorised access.		<input type="radio"/>	<input type="radio"/>	
15	Introduce administrative measures emphasizing confidentiality to tax officials.	Appoint data protection/privacy officers at senior level and local tax offices.	<input type="radio"/>	<input type="radio"/>	
16	Where pre/populated returns are used, these should be sent to taxpayers to correct errors.		<input type="radio"/>	<input type="radio"/>	
17	If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges).		<input type="radio"/>	<input type="radio"/>	
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		<input type="radio"/>	<input type="radio"/>	
19	Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.		<input type="radio"/>	<input type="radio"/>	
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
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.		<input type="radio"/>	<input type="radio"/>	
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	<input type="radio"/>	<input type="radio"/>	
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.	<input checked="" type="radio"/>	<input type="radio"/>	Legal professional privilege does not apply to tax advice provided by chartered accountants and other advisors who are not members of the legal profession. This position was confirmed in a Supreme Court judgment in 2013 in the case of R (on the application of Prudential plc and another) (Appellants) v Special Commissioner of Income Tax and another (Respondents) [2013] UKSC 1 The Supreme Court press release explaining the judgment is available at <a href="https://www.supremecourt.uk/cases/docs/uksc-2010-0215-press-summary.pdf">https://www.supremecourt.uk/cases/docs/uksc-2010-0215-press-summary.pdf</a> . The judgment stated: "legal advice privilege should not be extended to communications in connection with advice given by professional people other than lawyers, even where that advice is legal advice which that professional person is qualified to give." Chartered accountants do have litigation privilege which applies to advice given in anticipation, or in relation to, cases which are going to appear before the courts
25	Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege.		<input type="radio"/>	<input type="radio"/>	

#### 4. Normal audits

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
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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.		<input type="radio"/>	<input type="radio"/>	
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.		<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
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.		<input type="radio"/>	<input type="radio"/>	
30	In application of <i>nemo tenetur</i> , the right to remain silent should be respected in all tax audits.		<input type="radio"/>	<input type="radio"/>	
31		Tax audits should follow a pattern that is set out in published guidelines.	<input type="radio"/>	<input type="radio"/>	
32		A manual of good practice in tax audits should be established at the global level.	<input type="radio"/>	<input type="radio"/>	
33		Taxpayers should be entitled to request the start of a tax audit (to obtain finality).	<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
35	Taxpayers should be informed of information gathering from third parties.		<input type="radio"/>	<input type="radio"/>	
36		Reasonable time limits should be fixed for the conduct of audits.	<input type="radio"/>	<input type="radio"/>	
37	Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.		<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
39		Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.	<input type="radio"/>	<input type="radio"/>	

## 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.	<input type="radio"/>	<input type="radio"/>	

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.		<input type="radio"/>	<input type="radio"/>	
42	Entering premises or interception of communications should be authorised by the judiciary.		<input type="radio"/>	<input type="radio"/>	
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.		<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
45		Access to bank information should require judicial authorisation.	<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
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.		<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
49	Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.		<input type="radio"/>	<input type="radio"/>	

## 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.	<input type="radio"/>	<input type="radio"/>	
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		<input type="radio"/>	<input type="radio"/>	
52		Reviews and appeals should not exceed two years.	<input type="radio"/>	<input type="radio"/>	
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		<input type="radio"/>	<input type="radio"/>	



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.	<input checked="" type="radio"/>	<input type="radio"/>	<p><b>Payments of tax when appeals by other taxpayers have failed</b></p> <p>If an Accelerated Payment Notice (APN) is issued by HMRC then tax becomes payable immediately without any right of appeal against the notice. APNs can be issued when the tax authority, HMRC, believes that tax is payable and some form of, defined, tax avoidance is in point or, alternatively, a court case has been decided in favour of HMRC and HMRC believes that the particular taxpayer's case is similar to the decided case: in the latter cases HMRC may issue a Follower Notice (FN). These new powers, APN and FN, were introduced by Finance Act 2014 and the House of Lords Economics Affairs Committee in their report referred to in the summary of relevant facts in question 59 below, recommended that:</p> <p>"Accelerated Payment Notice/Follower Notice legislation be amended to include a right of appeal to the tax tribunal. Whenever a new power is introduced or an existing power significantly extended it should be accompanied by a right of appeal against the exercise of the power, not just against the underlying tax liability."</p>
55		The state should bear some or all of the costs of an appeal, whatever the outcome.	<input type="radio"/>	<input type="radio"/>	
56	Legal assistance should be provided for those taxpayers who cannot afford it.		<input type="radio"/>	<input type="radio"/>	
57	Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.		<input type="radio"/>	<input type="radio"/>	
58	Tax judgments should be published.		<input type="radio"/>	<input type="radio"/>	

## 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.		<input checked="" type="radio"/>	<input type="radio"/>	<p><b>General comments</b></p> <p>Two recent, independent, reports have both been critical of the additional powers that HMRC has taken on in recent years. These reports were in December 2018 The Powers of HMRC: Treating Taxpayers Fairly <a href="https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/242.pdf">https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/242.pdf</a> by the House of Lords Economic Affairs Committee and in November 2017 The implications of recent additions to HMRC powers and the shifting balance in the relationship with taxpayers <a href="https://www.ifs.org.uk/uploads/TLRC_DP_13.pdf">https://www.ifs.org.uk/uploads/TLRC_DP_13.pdf</a> by the IFS Tax Law Review Committee.</p> <p><b>GAAR (General anti-abuse rule) and Follower Notices</b></p> <p>If the taxpayer wishes to appeal beyond a certain point in the GAAR process they are at risk of a 60% penalty under provisions in Finance Act 2016.</p> <p>If taxpayers continue appeals after receiving a follower notice they can face penalties of up to 50% of the tax if they are unsuccessful. In his evidence to the House of Lords Economic Affairs Committee, the subsequent report is referred to in the summary of relevant facts in answer to question 54 above, a former Lord Chief Justice of England and Wales said:</p> <p>"The imposition of penalties on those who wish to use the court system to establish that, contrary to the view of HMRC, there is no liability, fetters access to justice."</p>
60		Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.	<input type="radio"/>	<input type="radio"/>	
61		Voluntary disclosure should lead to reduction of penalties.	<input type="radio"/>	<input type="radio"/>	
62	Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.		<input type="radio"/>	<input type="radio"/>	

## 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.		<input type="radio"/>	<input type="radio"/>	

64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input checked="" type="radio"/>	<input type="radio"/>	<p><b>Direct recovery of debts</b></p> <p>Provisions in Finance (No 2) Act 2015 (Schedule 8) – Enforcement by deduction from accounts now allow HMRC to direct recover debts from taxpayers’ bank accounts without a prior court order. All that is required is that “HMRC is satisfied that the person is aware that the sum is due and payable ...(para 2(4) Schedule 8)”</p> <p>There are various safeguards which are set out in an HMRC Briefing <a href="https://www.gov.uk/government/publications/issue-briefing-direct-recovery-of-debts-2/issue-briefing-direct-recovery-of-debts">https://www.gov.uk/government/publications/issue-briefing-direct-recovery-of-debts-2/issue-briefing-direct-recovery-of-debts</a> published in August 2015 which includes an HMRC guarantee “that every debtor will receive a face-to-face visit from HMRC agents before their debts are considered for recovery through DRD [direct recovery of debts]” That safeguard is not in the legislation. A House of Commons Library report published in May 2018 <a href="https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07051">https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07051</a> indicates that the provisions that the DRD statutory provisions have not, in practice, given rise to many complaints.</p>
65	Taxpayers should have the right to request delayed payment of arrears.		<input type="radio"/>	<input type="radio"/>	
66		Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.	<input type="radio"/>	<input type="radio"/>	
67	Temporary suspension of tax enforcement should follow natural disasters.		<input type="radio"/>	<input type="radio"/>	

## 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.	<input type="radio"/>	<input type="radio"/>	
69		Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.	<input type="radio"/>	<input type="radio"/>	
70		Provisions should be included in tax treaties setting specific conditions for exchange of information.	<input type="radio"/>	<input type="radio"/>	
71	If information is sought from third parties, judicial authorisation should be necessary.		<input type="radio"/>	<input type="radio"/>	
72		The taxpayer should be given access to information received by the requesting state.	<input type="radio"/>	<input type="radio"/>	
73		Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.	<input type="radio"/>	<input type="radio"/>	
74		A requesting state should provide confirmation of confidentiality to the requested state.	<input type="radio"/>	<input type="radio"/>	
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.		<input type="radio"/>	<input type="radio"/>	
76		For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.	<input type="radio"/>	<input type="radio"/>	
77		Taxpayers should have a right to request initiation of mutual agreement procedure.	<input type="radio"/>	<input type="radio"/>	

78	Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.		<input type="radio"/>	<input type="radio"/>	
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### 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.	<input type="radio"/>	<input type="radio"/>	
80		Public consultation should precede the making of tax policy and tax law.	<input type="radio"/>	<input type="radio"/>	

### 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.		<input type="radio"/>	<input type="radio"/>	
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.		<input type="radio"/>	<input type="radio"/>	
83	Binding rulings should only be published in an anonymised form		<input type="radio"/>	<input type="radio"/>	
84	Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively.		<input type="radio"/>	<input type="radio"/>	

### 12. Institutional framework for protecting taxpayer's rights

#	Minimum standard	Best practice	Shift Away	Shift Towards	Summary of relevant facts in 2018
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.	<input type="radio"/>	<input type="radio"/>	
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.	<input type="radio"/>	<input type="radio"/>	
87		The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally.	<input type="radio"/>	<input type="radio"/>	

**Observatory on the protection of taxpayers' rights  
Questionnaire 2018  
United Kingdom – Ian Young, ICAEW, response**

**Question 8**

*Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis*

The largest businesses with turnover in excess of £30m or with more than 250 employees are dealt with by the HMRC Large Business Directorate and come within the HMRC cooperative compliance arrangements. All these businesses have a personal customer compliance manager allocated to their "case".

HMRC guidance on its approach to these large businesses is explained at <https://www.gov.uk/guidance/hm-revenue-and-customs-large-business#history>

All these large businesses are required to be part of the cooperative compliance regime which is not available to other, smaller, businesses.

**Question 24**

*Legal professional privilege should apply to tax advice.*

Legal professional privilege does not apply to tax advice provided by chartered accountants and other advisors who are not members of the legal profession. This position was confirmed in a Supreme Court judgment in 2013 in the case of *R (on the application of Prudential plc and another) (Appellants) v Special Commissioner of Income Tax and another (Respondents)* [2013] UKSC 1

The Supreme Court press release explaining the judgment is available at <https://www.supremecourt.uk/cases/docs/uksc-2010-0215-press-summary.pdf> .

The judgment stated:

“legal advice privilege should not be extended to communications in connection with advice given by professional people other than lawyers, even where that advice is legal advice which that professional person is qualified to give.”

Chartered accountants do have litigation privilege which applies to advice given in anticipation, or in relation to, cases which are going to appear before the courts.

**Question 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*

**Payments of tax when appeals by other taxpayers have failed**

If an Accelerated Payment Notice (APN) is issued by HMRC then tax becomes payable immediately without any right of appeal against the notice. APNs can be issued when the tax authority, HMRC, believes that tax is payable and some form of, defined, tax avoidance is in point or, alternatively, a court case has been decided in favour of HMRC and HMRC

believes that the particular taxpayer's case is similar to the decided case: in the latter cases HMRC may issue a Follower Notice (FN).

These new powers, APN and FN, were introduced by Finance Act 2014 and the House of Lords Economics Affairs Committee in their report referred to in the summary of relevant facts in question 59 below, recommended that:

“Accelerated Payment Notice/Follower Notice legislation be amended to include a right of appeal to the tax tribunal.

Whenever a new power is introduced or an existing power significantly extended it should be accompanied by a right of appeal against the exercise of the power, not just against the underlying tax liability.”

### **Question 59**

*Proportionality and ne bis in idem should apply to tax penalties.*

### **General comments**

Two recent, independent, reports have both been critical of the additional powers that HMRC has taken on in recent years.

These reports were in December 2018 *The Powers of HMRC: Treating Taxpayers Fairly* <https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/242.pdf> by the House of Lords Economic Affairs Committee and in November 2017 *The implications of recent additions to HMRC powers and the shifting balance in the relationship with taxpayers* [https://www.ifs.org.uk/uploads/TLRC\\_DP\\_13.pdf](https://www.ifs.org.uk/uploads/TLRC_DP_13.pdf) by the IFS Tax Law Review Committee.

### **GAAR (General anti-abuse rule) and Follower Notices**

If the taxpayer wishes to appeal beyond a certain point in the GAAR process they are at risk of a 60% penalty under provisions in Finance Act 2016.

If taxpayers continue appeals after receiving a follower notice they can face penalties of up to 50% of the tax if they are unsuccessful. In his evidence to the House of Lords Economic Affairs Committee, the subsequent report is referred to in the summary of relevant facts in answer to question 54 above, a former Lord Chief Justice of England and Wales said:

“The imposition of penalties on those who wish to use the court system to establish that, contrary to the view of HMRC, there is no liability, fetters access to justice.”

### **Question 64**

*Authorisation by the judiciary should be required before seizing assets or bank accounts*

### **Direct recovery of debts**

Provisions in Finance (No 2) Act 2015 (Schedule 8) – Enforcement by deduction from accounts now allow HMRC to directly recover debts from taxpayers' bank accounts without a prior court order.

All that is required is that “HMRC is satisfied that the person is aware that the sum is due and payable ....(para 2(4) Schedule 8)”

There are various safeguards which are set out in an HMRC Briefing <https://www.gov.uk/government/publications/issue-briefing-direct-recovery-of-debts--2/issue-briefing-direct-recovery-of-debts> published in August 2015 which includes an HMRC guarantee “that every debtor will receive a face-to-face visit from HMRC agents before their debts are considered for recovery through DRD [direct recovery of debts]” That safeguard is not in the legislation.

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**Ian Young - ICAEW  
March 2019**