



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Rostyslav I. Shiller and Amanda K. Bartmann, Attorney Advisors to the National Taxpayer Advocate of the *Internal Revenue Service*.

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:
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 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 type="radio"/>	<input checked="" 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 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 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 checked="" type="radio"/>	<input type="radio"/>
16	Is information about the tax liability of specific taxpayers publicly available in your country?	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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="radio"/> No	<input type="radio"/> A	<input type="radio"/> B	<input type="radio"/> 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 type="radio"/> Yes	<input checked="" 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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?	More than 24 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 checked="" type="radio"/>	<input type="radio"/>
28	If yes, does this mean only one audit per tax per year?	<input checked="" 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 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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 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 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 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 type="radio"/>	<input checked="" 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:
National Reporter:
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
2	The system of taxpayer identification should take account of religious sensitivities		●	○	In late 2017, Congress passed the Tax Cuts and Jobs Act (TCJA) which amended IRC § 24 (the Child Tax Credit provision (CTC)) and required that a Social Security Number (SSN) be provided for each dependent for whom the credit was being claimed. This provision disqualified certain taxpayers who are members of a religious group, most notably the Amish, from claiming the CTC, because they often do not claim SSNs for their children due to their deeply held religious beliefs. In 2018, the National Taxpayer Advocate raised this issue to IRS senior management and at the end of 2018, she was told a workaround has been established permitting these taxpayers to claim the CTC. Notwithstanding this agreement, on February 6, 2019, the IRS issued guidance instructing the suspension of amended returns where the Child Tax Credit was claimed, and no SSN was provided for the dependent(s) due to the taxpayer's religious beliefs. After considering this issue further, the IRS Chief Counsel issued advice on April 4, 2019 concluding that "... the Service need not provide administrative relief for these taxpayers."
3	Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes		○	●	In the IRS Taxpayer Protection Program (TPP), if a return is selected by identity theft filters, the taxpayer must go through authentication procedures which involve either providing certain information online or visiting a walk-in center and presenting photo identification. In 2018, the IRS created an exception and alternate authentication procedures for taxpayers who do not have photo identification due to religious beliefs. See 25.23.2.19.2.2, Returns Selected by Identity Theft Filters - Taxpayers Visiting the TAC (June 15, 2018), https://www.irs.gov/irm/part25/irm_25-023-002r
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	○	○	
5	Where pre/populated returns are used, these should be sent to taxpayers to correct errors		○	○	
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	○	●	Taxpayers have the right to request information about themselves under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et. seq. The IRS has also instructed its agents to provide taxpayers information about open cases upon request (i.e., without making a formal FOIA request).
7	Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception		○	●	As the IRS focuses more on delivering taxpayer services online, it continually updates its e-authentication procedures. Specifically, over the last year, the IRS is updating its procedures to comply with the new guidelines issued by the National Institute of Standards and Technology (NIST). https://www.treasury.gov/tigta/congress/congress_09262018.pdf
8	Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis		○	○	
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		●	○	The IRS has further consolidated the number of Taxpayer Assistance Centers (sites where taxpayers can go in person to receive assistance) and moved these sites to an appointment only system. While the IRS has made some investigation into using virtual services, it has not invested in the technology or a robust system to make this program successful. The IRS continues to attempt to shift taxpayers to electronic only communications, including by limiting when and what topics a taxpayer can call the IRS about. See National Taxpayer Advocate 2018 Annual Report to Congress 17-33 (Most Serious Problem: Tax Law Questions: The IRS's Failure to Answer the Right Tax Law Questions at the Right Time Harms Taxpayers, Erodes Taxpayer Rights, and Undermines Confidence in the IRS); National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance).

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	○	○	
11		Use e-filing to speed up assessments and correction of errors, particularly systematic errors	○	○	

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.	○	○	
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.	○	○	
14	Audit data access periodically to identify cases of unauthorised access.		○	○	
15	Introduce administrative measures emphasizing confidentiality to tax officials.	Appoint data protection/privacy officers at senior level and local tax offices.	○	○	
16	Where pre/populated returns are used, these should be sent to taxpayers to correct errors.		○	○	
17	If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges).		○	○	
18	Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.		○	○	
19	Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.		●	○	As an exception to the confidentiality rules under Section 6103, the IRS may contact third parties in connection with certain tax enforcement actions under Section 6702, provided it gives the taxpayer advanced notice of the contact. However, the generic advanced notice it provides on IRS Publication 1, which it sends to every taxpayer at the beginning of most enforcement actions, is inadequate because it does not give the taxpayer a reasonable opportunity to provide the information and avoid the contact. See National Taxpayer Advocate 2015 Annual Report to Congress 123-142 (Most Serious Problem: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers' Businesses and Reputations); National Taxpayer Advocate 2018 Objectives Report to Congress 98-101 (Area of Focus: IRS Third Party Contact (TPC) Notices Should Be More Specific, Actionable, and Effective). In J.B. v. United States, 2019 WL 923717 (2019) the United States Court of Appeals for the Ninth Circuit held that IRS Publication 1 did not provide the taxpayer with "reasonable notice in advance" of third party contacts, as required by IRC § 7602(c)(1)
20	If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).		○	○	
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.	○	○	
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.		○	○	
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	○	○	A taxpayer has the right to participate in the redaction of certain rulings published under Title 26, Section 6110.

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 type="radio"/>	<input type="radio"/>	In general, communications with tax advisors might be privileged under Title 26, Section 7525, unless they concern a transaction that has a significant purpose the avoidance. In addition, the attorney-client privilege may apply to communications with an accountant if the communications are "made in confidence for the purpose of obtaining legal advice from the lawyer." See <i>United States v. Kovel</i> , 296 F.2d 918, 921-22 (2nd Cir. 1961).
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
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 checked="" type="radio"/>	<input type="radio"/>	Under section 7602 of the Internal Revenue Code (IRC), the IRS has the authority to examine any books, papers, records, or other data that may be relevant to ascertain the correctness of any return. These types of examinations, which can occur through correspondence, at the taxpayer's home or business, or at an IRS office, are "real" or traditional audits. However, the IRS has several other types of compliance contacts with taxpayers that it does not consider to be "real" audits, including math error corrections, Automated Underreporter (AUR) (a document matching program), which constitute the majority of IRS compliance contacts. More importantly, "unreal" audits lack taxpayer protections typically found in "real" audits, such as the opportunity to generally seek an administrative review with the IRS Office of Appeals (Appeals) or the statutory prohibition against repeat examinations. National Taxpayer Advocate Blog: "Real" vs. "Unreal" Audits and Why This Distinction Matters, July 6, 2018, https://taxpayeradvocate.irs.gov/news/nta-blog-real-vs-unreal-audits-and-why-this-distinction-matters .
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 checked="" type="radio"/>	<input type="radio"/>	As an exception to the confidentiality rules under Section 6103, the IRS may contact third parties in connection with certain tax enforcement actions under Section 6702, provided it gives the taxpayer advanced notice of the contact. However, the generic advanced notice it provides on IRS Publication 1, which it sends to every taxpayer at the beginning of most enforcement actions, is inadequate because it does not give the taxpayer a reasonable opportunity to provide the information and avoid the contact. See National Taxpayer Advocate 2015 Annual Report to Congress 123-142 (Most Serious Problem: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers' Businesses and Reputations); National Taxpayer Advocate 2018 Objectives Report to Congress 98-101 (Area of Focus: IRS Third Party Contact (TPC) Notices Should Be More Specific, Actionable, and Effective). In J.B. v. United States, 2019 WL 923717 (2019) the United States Court of Appeals for the Ninth Circuit held that IRS Publication 1 did not provide the taxpayer with "reasonable notice in advance" of third party contacts, as required by IRC § 7602(c)(1)
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 checked="" type="radio"/>	<input type="radio"/>	No such process.
51	The right to appeal should not depend upon prior exhaustion of administrative reviews.		<input checked="" type="radio"/>	<input type="radio"/>	Lower-level (Examination function) can withhold right to administrative appeal or bypass that right.
52		Reviews and appeals should not exceed two years.	<input checked="" type="radio"/>	<input type="radio"/>	Inclusion of Counsel and Compliance can delay administrative appeals outcome. https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17_Volume1_MSP_18_AppealsCounsel.pdf
53	<i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.		<input type="radio"/>	<input checked="" type="radio"/>	The right to in-person participation in administrative appeals conferences has expanded. https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1_SU_01_APPEALS.pdf . However, in <i>Facebook, Inc. v. IRS</i> , the U.S. District Court for the Northern District of California held that Facebook had no enforceable right to take its case to the IRS Office of Appeals and the court had no authority to review the IRS's unexplained decision. <i>Facebook, Inc. & Subsidiaries v. IRS</i> , 2018-1 U.S.T.C. (CCH) ¶50,248 (N.D. Cal. 2018).
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 type="radio"/>	<input checked="" type="radio"/>	Payment of tax is generally not required for administrative appeal within the IRS. However, it may be required for an independent judicial review in certain situations. In <i>Larson v. United States</i> , the U.S. Court of Appeals for the Second Circuit held that it lacked jurisdiction to review assessable penalties under 28 U.S.C. § 1346(a) because the taxpayer had not fully paid them, as required under the <i>Flora</i> rule, and also lacked jurisdiction under the Administrative Procedure Act (APA). See <i>Larson v. United States</i> , 888 F.3d 578 (2d Cir. 2018), <i>aff'd</i> 118 A.F.T.R.2d (RIA) 7004 (S.D.N.Y. 2016), petition for rehearing and rehearing en banc filed, Docket No. 16-CV-00245 (June 8, 2018); see also <i>Flora v. United States (Flora)</i> , 362 U.S. 145 (1960), <i>reaff'd</i> <i>Flora v. United States</i> , 357 U.S. 63 (1958).
55		The state should bear some or all of the costs of an appeal, whatever the outcome.	<input checked="" type="radio"/>	<input type="radio"/>	Costs for administrative and judicial appeals generally rest with the respective parties.
56	Legal assistance should be provided for those taxpayers who cannot afford it.		<input checked="" type="radio"/>	<input type="radio"/>	Low income tax clinics exist, but can serve relatively few taxpayers on account of limited funding.
57	Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.		<input type="radio"/>	<input checked="" type="radio"/>	Taxpayer privacy is maintained during administrative proceedings but typically forfeited during judicial proceedings.
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"/>	Penalties for negligence are generally proportionate and subject to exceptions for reasonable cause under Section 6662. Penalties applicable to information reporting failures, such as the failure to report a tax shelter under Section 6707A or a foreign account under 31 U.S.C. § 5321. See, e.g., National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, at 1 (A Framework for Reforming the Penalty Regime); National Taxpayer Advocate 2018 Objectives Report to Congress 43-50).
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 checked="" type="radio"/>	<input type="radio"/>	In general voluntary disclosures can lead to a reduction in penalties. For example, a criminal can sometimes avoid being referred for prosecution under the IRS's voluntary disclosure practice. As another example, those who have negligently failed to report income can sometimes avoid negligence penalties by filing a qualified amended return before noncompliance is detected by the IRS. In addition, the IRS has programs to waive penalties for those who file delinquent information returns. However, the IRS has recently added civil penalty penalty framework to its longstanding voluntary disclosure practice, which could increase the penalties applicable to applicants who are not criminals.
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 checked="" type="radio"/>	<input type="radio"/>	In fiscal year 2018, 40 percent of taxpayers who entered into a streamlined payment plan with the IRS's Automated Collection System had income at or below their average living expenses. The IRS does not have a system in place to detect if collection action will deprive taxpayers of their minimum necessary for living. As a result, it is up to the taxpayer to prove or the IRS to investigate. In some instances collection action occurs when the taxpayer is otherwise living below their means. In those instances, it is possible to stop the collection activity. https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_Volume2_03_ImportanceFinancialAnalysis.pdf ; https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1_MSP_15_ECONOMICHARDSHIP.pdf ; https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume2_02_StudyAllowable.pdf ; Improving Tax Administration Today: Hearing Before the S. Subcomm. on Taxation and IRS Oversight of the S. Comm. on Finance, 115th Cong. (Jul. 26, 2018) (statement of Nina E. Olson, National Taxpayer Advocate).
64		Authorisation by the judiciary should be required before seizing assets or bank accounts	<input type="radio"/>	<input type="radio"/>	
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 checked="" type="radio"/>	<input type="radio"/>	A U.S. resident for purposes of a U.S. income tax treaty can request assistance from the U.S. competent authority if a taxpayer thinks that the actions of the United States, a treaty country, or both, cause or will cause double taxation or taxation otherwise inconsistent with the treaty. See Revenue Procedure 2015-40, 2015-35 I.R.B 236. In 2018, the IRS entered into competent authority agreements with Austria, Cayman Islands, Croatia, Estonia, Gibraltar, Greece, Hungary, Indonesia, Japan, Lichtenstein, Mauritius, and Slovenia. See https://www.irs.gov/businesses/country-by-country-reporting-jurisdiction-status-table .

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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	Under FOIA all instructions to staff that affect the public are required to be posted on the agency's website. It is also required to disclose certain legal advice to employees. However, the IRS has not always implemented these rules in a way that provides maximum transparency. See, e.g. National Taxpayer Advocate 2018 Annual Report to Congress (Most Serious Problem: Counsel Is Keeping More of Its Analysis Secret, Just When Taxpayers Need Guidance More than Ever); National Taxpayer Advocate 2019 Objectives Report to Congress 43-50 (Area of Focus: The Offshore Voluntary Disclosure (OVD) Programs Still Lack Focus Transparency, Violating the Right to Be Informed); National Taxpayer Advocate 2011 Annual Report to Congress 380-403 (Most Serious Problem: The IRS's Failure to Consistently Vet and Disclose its Procedures Harms Taxpayers, Deprives It of Valuable Comments, and Violates the Law); National Taxpayer Advocate 2010 Annual Report to Congress 71-84 (Most Serious Problem: IRS Policy Implementation Through Systems Programming Lacks Transparency and Precludes Adequate Review); National Taxpayer Advocate 2007 Annual Report to Congress 124-139 (Most Serious Problem: Transparency of the Office of Professional Responsibility); National Taxpayer Advocate 2008 Objectives Report to Congress xxi-xxvii (Area of Emphasis: Update on Transparency of the IRS); National Taxpayer Advocate 2006 Annual Report to Congress 10-30 (Most Serious Problem: Transparency of the IRS) .
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"/>	
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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 checked="" type="radio"/>	The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps address problems that taxpayers experience as a result of the way in which the IRS is applying the law and to propose administrative and legislative solutions to those problems, as described in Sections 7803(c) and 7811.
87		The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally.	<input type="radio"/>	<input checked="" type="radio"/>	TAS has offices in each state.