

Observatory on the Protection of Taxpayers' Rights



***The IBFD Yearbook on Taxpayers' Rights
2021***

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0. Executive Summary

0.1. Introduction

The Observatory on the Protection of Taxpayers' Rights (OPTR) is a neutral, non-judgmental platform for monitoring developments concerning the effective protection of taxpayers' fundamental rights worldwide. Each year, these developments are compiled and composed in the Yearbook on Taxpayers' Rights, which provides a unique overview of the minimum standards for the protection of taxpayers' rights, the status of the legal framework and the case law on the matter.

The 2021 Yearbook initially provides an executive summary of the most significant findings of the year, which serves to illustrate the overarching trends. This introduction is followed by a detailed description of the method used for the underlying data.

The 2021 Yearbook elaborates on 12 different areas and provides the full set of findings for each of them, supported by reference to the underlying empirical data from the 56 reports provided for the year.

Appendix A adds an overview of the topical highlights of this year, and Appendix B outlines the full details of the protection of taxpayers' rights per country.

0.2. Overview of findings

The year 2021 in many ways established a *new normal* for taxpayers. Following a year of extraordinary measures to deal with the ongoing pandemic, this past year saw a few of the newly arisen trends solidify into trends for the future as well. For more than 5 years, ever since the General Report of the 69th IFA Congress in Basel in 2015, the OPTR's work has been reporting on these developments in the protection of taxpayers' rights.

In terms of protecting taxpayers' rights, 2021 saw several examples of measures being implemented as a necessity during the pandemic, providing for practical improvements on the protection of taxpayers' rights. While these measures may have been a necessary evil, they have also proven effective as permanent protections for taxpayers' rights. More general developments have been reported as well, and overall, the continuous trend has been that 2021 was quite the foreseeable year in this regard.

0.2.1. Digital, remote communication: The new normal

One continuous and undeniable development ever since 2015 has been in how tax administrations communicate with and guide taxpayers. The ever-increasing digitalization of global communication has affected this area for years now, but the immediate need to find a replacement for physical presence during the pandemic has catalysed developments in this area. This trend towards the need for further digital service channels has been noted by the OECD as well, in its 2021 report *Tax Administration: Digital Resilience in the COVID-19 Environment*.¹

Following this trend, digital and secure communication between tax administrations and taxpayers was given a strong boost in 2021, and several states surveyed have taken concrete

¹ See OECD, *Tax Administration: Digital Resilience in the COVID-19 Environment* p. 13 (OECD 2021), available at https://read.oecd-ilibrary.org/view/?ref=1092_1092163-3s4b6i4lda&title=Tax-Administration-Digital-Resilience-in-the-COVID-19-Environment (accessed 7 Mar. 2022).

actions to expand the scope of their registration programmes with enhanced security and confidentiality measures for taxpayers. In the same vein, tax administrations have extended their taxpayer assistance programmes in order to facilitate remote tax compliance and assisting taxpayers with their queries. Overall, these steps taken in 2021 have all contributed to the process of identifying taxpayers, communicating with them and completing tax assessments under difficult circumstances. However, notwithstanding the increased capacities in data management of tax administrations, taxpayers' right to *habeas data* suffered some hindrances in 2021 based on the alleged protection of the general interest.²

0.2.2. The (further) rise of e-filing, and other baby steps towards a constructive dialogue

The pandemic provided a decisive impetus for e-filing in 2021, a time during which a significant number of countries surveyed reported progress. Electronic invoicing,³ electronic taxpayer folders⁴ and tax “rewards” for businesses filing account documents electronically are among the several measures taken by many jurisdictions worldwide to level the playing field between taxpayers and tax authorities, at the cost of an increased reporting burden.

Regarding the building of a constructive dialogue between the parties, the actions taken by **Switzerland** stand out as an important step towards a best practice. While approving a new law aiming to the digitalization of tax procedures,⁵ the country approved a new code of conduct between taxpayers and tax authorities that aims to sustainably strengthen the “historically growing” relationship of respect and trust between taxpayers, tax representatives and tax administrations.⁶

0.2.3. Public country-by-country reporting, DAC7: Shrinking confidentiality

² See BE: Belgian Data Protection Authority, 4 June 2021, Decision 66/2021, available at <https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-66-2021.pdf>; and BE: Brussels Court of Appeal, 1 Dec. 2020, 2021/AR/1044, available at [arrest-van-1-december-2021-van-het-marktenhof-ar-1044.pdf](https://www.gerechtspraak.be/decision/1044-2021-arrest-van-1-december-2021-van-het-marktenhof-ar-1044.pdf) ([gegevensbeschermingsautoriteit.be](https://www.gerechtspraak.be)) (accessed 26 Jan. 2022). See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 5.

³ See CO: *Resolución No. 000015 de la DIAN, por la cual se desarrolla el registro de la factura electrónica de venta como título valor y se expide el anexo técnico de registro de la factura electrónica de venta como título valor*, available at <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000015%20de%2011-02-2021.pdf> (accessed 26 Jan. 2021). See also M. Bocachica, *Tax Authority Establishes Requirements for Circulation of Electronic Invoices as Negotiable Titles* (2 Mar. 2021), News IBFD.

⁴ See CL: Circular No. 41, que imparte instrucciones sobre modificaciones introducidas por la Ley N° 21.210 al Código Tributario, en relación con las normas que regulan la relación de los contribuyentes con el Servicio de Impuestos Internos, incluyendo normas sobre sitio electrónico, facilitación del cumplimiento tributario, ciclo de vida y fiscalización de los contribuyentes (2 July 2021), available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu41.pdf (accessed 26 Jan. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

⁵ See CH: Bundesgesetz über elektronische Verfahren im Steuerbereich [Federal Act on Electronic Procedures in Tax Matters], 2021, available at <https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/oc/2021/673/de/pdf-a/fedlex-data-admin-ch-eli-oc-2021-673-de-pdf-a.pdf> (accessed 1 Feb. 2022).

⁶ See CH: *Code of Conduct Taxation 2021*, available at <https://iff.unisg.ch/wp-content/uploads/2021/10/Verhaltenskodex-EN.pdf> (accessed 24 Jan. 2022). See *Switzerland Issues Code of Conduct Taxation 2021, Unofficial Translation* (5 Oct. 2021), News IBFD. See also *Switzerland Issues Code of Conduct Taxation 2021* (5 Oct. 2021), News IBFD; and CH: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 9.

Along with a major data leak occurring during the period,⁷ the trend in favour of establishing regulatory safeguards for confidentiality, while seemingly stable in other regions of the world,⁸ was dealt a blow in the European Union in the name of transparency with the enactment of disclosure of country-by-country information on the direct taxation of multinational enterprises.⁹ Disclosure of information in the name of promoting corporate transparency comes with the price of the confidentiality of the taxpayer, which is particularly alarming at a time when the circumstances have also endangered that confidentiality due to the necessary new measures for communicating with taxpayers. Although these two negative developments are unrelated, put together, they add up to an overall negative development in confidentiality for taxpayers in 2021.

Proportionality was put to the test as well, as tax authorities have been allowed to access greater quantities of information given sufficient guarantees for taxpayers, including the strengthening of safeguards in the context of bulk interception systems.¹⁰ However, 2021 was also a time for the endorsement of naming and shaming, something that clearly has to be taken as a negative development for taxpayers' individual rights.¹¹

Likewise, there were negative developments regarding the interaction between taxpayer privacy and freedom of information, since several courts ruled in favour of disclosing taxpayer

⁷ See L. Bao, *The Internal Revenue Bureau of The Ministry of Finance Broke out the Leakage of Personal Assets of Bookkeepers*, United Daily News (30 Nov. 2021), available at <https://udn.com/news/story/7314/5927958> (accessed 7 Feb. 2022). See also TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Questions 14 and 15.

⁸ See BO: Ley de 28 de diciembre de 2020 No. 1.357, Impuesto a las Grandes Fortunas, available at <https://web.senado.gob.bo/sites/default/files/LEY%20N%C2%B0%201357-2020.PDF> (accessed 2 Feb. 2022); BO: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 1. See also BR: Portaria [Ordinance] RFB No. 4, 2021, which provides on the Protocol of Auditability of the Tax and Customs Administration, used to enable the sharing of data and information protected by tax secrecy, available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=115082> (accessed 1 Feb. 2022); BR: Portaria [Ordinance] RFB No. 34, 2021, which provides for the sharing of data not protected by tax secrecy with agencies and entities of the direct federal public administration, independent and foundational, and of the other branches of government, available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=117598> (accessed 1 Feb. 2022); BR: OPTR Report (Academia), Questionnaire 2, Question 11; CL: Código Tributario [Tax Code], Decree-Law No. 830, 1974 (amended 2020), available at https://www.sii.cl/normativa_legislacion/dl830.pdf (accessed 2 Feb. 2022); and CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 11.

⁹ See Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, OJ L429 (22021), available at <http://data.europa.eu/eli/dir/2021/2101/oj> (accessed 1 Feb. 2022). See also V. Agianni, *Council of the European Union Analyses Its Reasoning on Approval of Public Country-By-Country Reporting (CBCR) Directive* (13 Oct. 2021), News IBFD.

¹⁰ See UK: ECtHR, Grand Chamber, 25 May 2021, App. Nos. 58170/13, 62322/14 and 24960/15, *Big Brother Watch and Others v. United Kingdom*, para. 423, available at <https://hudoc.echr.coe.int/eng?i=001-210077> (accessed 3 Feb. 2022); and SE: ECtHR, Grand Chamber, 25 May 2021, App. No. 35252/08, *Centrum För Rättvisa v. Sweden*, available at <https://hudoc.echr.coe.int/eng?i=001-210078> (accessed 3 Feb. 2022).

¹¹ See HU: ECtHR, Fourth Chamber, 12 Jan. 2021, *L.B. v. Hungary*, App. no. 36345/16, available at <https://hudoc.echr.coe.int/eng?i=001-207132> (accessed 7 Feb. 2022). See also C.E. Wefte H., *Highlights and Trends in Global Taxpayers' Rights 2020*, 75 Bull. Intl. Taxn. 7, sec. 3.3. (2021), Journal Articles & Opinion Pieces IBFD.

information even when possibly used for political purposes,¹² when particularly protected due to its nature or when linked to the exercise of other rights, such as the right to object.¹³

0.2.4. Taxpayer rights in normal and intensive tax audits: Baby steps towards the goal.

As mentioned in section 0.2.1., several of the novel measures to ensure taxpayers' rights during the pandemic filtered through to tax assessments and audit procedures, resulting in positive developments, but unfortunately there was no positive difference in the level of compliance with minimum standards and best practices relating to the most intensive audits. The pandemic also affected negatively the time limits for tax audits, setting a trend for longer audits, undetermined in time, although some positive developments in this regard are reported from **China (People's Rep.)**.¹⁴ However, the growing trend towards allowing the participation of independent technical experts in the framework of tax audits (as it is the case in 92% of the surveyed jurisdictions, according to Chart 28) is promising.¹⁵ Back in 2015, it was reported that the practice of **Denmark** of involving professional associations in the appointment of independent experts was particularly interesting in this respect.¹⁶ In addition, positive developments regarding *non bis in idem* have been reported in **Spain**¹⁷ and **Chile**,¹⁸ and *audi alteram partem* also received further support in **Spain**.¹⁹

¹² See ZA: HCSA, 16 Nov. 2021, *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v. South African Revenue Service and Others* (88359/2019) [2021] ZAGPPHC 779, available at <https://www.saflii.org/za/cases/ZAGPPHC/2021/779.pdf> (accessed 7 Feb. 2022). See also ZA: OPTR Report (Taxpayers / Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 20.

¹³ See HU: ECtHR, Fourth Chamber, 12 Jan. 2021, *L.B. v. Hungary*, App. no. 36345/16, available at <https://hudoc.echr.coe.int/eng/?i=001-207132> (accessed 9 Feb. 2022). See also FI: Helsinki Administrative Court Press Release – Information on the identities of those who objected to the disclosure of their tax information was not confidential (20 Apr. 2021), available at <https://oikeus.fi/hallinto-oikeudet/helsingin-hallinto-oikeus/fi/index/tiedotteet/2021/tietoverotietojensaluovuttamistavastustaneidenhenkilollisyksistaeiollutsalassa-pidettava.html> (accessed 7 Feb. 2022); and L. Ambagtsheer-Pakarinen, *Helsinki District Administrative Court: Tax Administration May Not Refuse to Give Media Names of Taxpayers Using Right to Object Under GDPR* (22 Apr. 2021), News IBFD.

¹⁴ See CN: Order no. 52 of the State Administration of Taxation, Provisions on the Procedures for Handling Tax Audit Cases (12 Jul. 2021), available at <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5166617/content.html> (accessed 22 Feb. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 35.

¹⁵ See Chart 28, at sec. 4.4.

¹⁶ P. Baker & P. Pistone, *General Report*, in *The Practical Protection of Taxpayers' Fundamental Rights* sec. 4.4. (IFA Cahiers vol. 100B, 2015), Books IBFD.

¹⁷ See ES: AN, 3 June 2021, SAN 3391/2021 [ECLI:ES:AN:2021:3391], available at <https://www.poderjudicial.es/search/AN/openDocument/8e0d6deef7bad41c/20210806> (accessed 17 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 27.

¹⁸ See CL: Circular No. 12, que Imparte instrucciones sobre derechos de los contribuyentes, comparecencia, notificaciones, procedimientos administrativos y judiciales de impugnación que establece la Ley N° 21.210, que moderniza la legislación tributaria, ch. 1, available at <https://www.sii.cl/normativa-legislacion/circulares/2021/circu12.pdf> (accessed 19 Jan. 2022); and CL, Ley 21.210, que moderniza la legislación tributaria, 2020, available at <http://bcn.cl/2f9fr> (accessed 19 Jan. 2022).

¹⁹ See ES: TS, 24 Mar. 2021, STS 839/2021 [ECLI:ES:TS:2021:839], available at <https://www.poderjudicial.es/search/TS/openDocument/9895cb10cf224d78/20210322> (accessed 22 Feb. 2022); ES: TS, 24 Mar. 2021, STS 412/2021 [ECLI:ES:TS:2021:412], available at <https://www.poderjudicial.es/search/documento/TS/9423282/tributario/20210223> (accessed 22 Feb. 2022); J. M. Tovillas Morán, *El principio de especialidad atribuye en exclusiva al procedimiento de inspección desarrollado por los órganos de inspección la potestad para comprobar los beneficios fiscales y regímenes*

While 2021 was characterized by notable activity in terms of criminal prosecutions and penalties imposed for the commission of tax offences, as indicated in section 7.1., this did not make an appreciable difference to the level of compliance with minimum standards and best practices relating to the most intensive audits. As regards the limited nature of the powers of the Tax Administration in the context of these audits, only **China (People's Rep.)** reported a shift towards fulfilment of the best practice by adding new provisions that the inspection bureau may conduct inspections before filing a case in accordance with the law if necessary. Criminal investigation authority usually acts based on the cases handed over by tax agencies or other governmental institutions. While doing so, booking standards shall be met.²⁰

Nemo tenetur continues a downward trend, as the only reported development, that of **Mexico**, requires accountants preparing financial statements to report to the tax authorities any possible infringements they may have become aware of in the course of their duties.²¹ The need for court authorizations for searches is mostly overlooked in practice, considering the recent developments in **Brazil**,²² **Bolivia**,²³ the **United Kingdom**²⁴ and the **United States**.²⁵

0.2.5. More prosecutions, stronger (accumulated) sanctions

A persistent trend towards expansion of punitive tax law continued in 2021, with a significant increase in tax penalties during the period, sometimes at the expense of proportionality. At the same time, the concurrence of criminal and administrative sanctions in respect of substantially identical facts was strengthened through rules and jurisprudential interpretations that ratify the difference between different types of sanctions. A very good example is the new Tax Collection Act of **Chinese Taipei**, which goes in both directions, though there are many other

especiales: Sentencia del Tribunal Supremo de 23 de marzo de 2021, Taxlandia (5 Aug. 2021), available at https://www.politicafiscal.es/el-principio-de-especialidad-sentencia-del-tribunal-supremo-de-23-de-marzo-de-2021?utm_source=newsletter_176&utm_medium=email&utm_campaign=el-principio-de-especialidad-sentencia-del-tribunal-supremo-de-23-de-marzo-de-2021-un-lustro-de-la-nueva-casacion-de-nuevo-el-establecimiento-permanente-typical-spanish-approach (accessed 22 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia) Questionnaire 2, Question 28.

²⁰ See CN: Order no. 52, *supra* n. 14; CN: Criminal Procedure Law of the People's Republic of China (2018), available at http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065631.htm (accessed 22 Feb. 2022); and CN: Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs (State Council No. 730), available at http://www.gov.cn/zhengce/content/2020-08/14/content_5534841.htm (accessed 22 Feb. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 39.

²¹ See MX: OPTR Report (Taxpayers/Tax Practitioners) Questionnaire 2, Question 40.

²² See BR: STF, 27 July 2020, ARE 1279182/MG, available at <https://stf.jusbrasil.com.br/jurisprudencia/1106752172/recurso-extraordinario-com-agravo-are-1279182-mg-0350112-6820138130433/inteiro-teor-1106752191> (accessed 23 Feb. 2022). See also BR: OPTR Report (Academia) Questionnaire 2, Question 41.

²³ See BO: Ley de 28 de diciembre de 2020 No. 1.357, Impuesto a las Grandes Fortunas, available at <https://web.senado.gob.bo/sites/default/files/LEY%20N%C2%B0%201357-2020.PDF> (accessed 2 Feb. 2022). See also BO: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

²⁴ See secs. 3.12., 4.1. and 4.2. See also UK: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 44.

²⁵ See US: DoJ Press Release, 29 Jul. 2021, *IRS Obtains Court Order Authorizing Summonses For Records Relating To U.S. Taxpayers Who Used Panamanian Offshore Service Providers To Hide Assets And Evade Taxes*, available at <https://www.justice.gov/usao-sdny/pr/irs-obtains-court-order-authorizing-summonses-records-relating-us-taxpayers-who-used> (accessed 23 Feb. 2022). See also W. Choi, *US District Court Greenlights IRS Summonses Concerning Tax Evasion through Panamanian Law Firm* (30 July 2021), News IBFD.

examples.²⁶ However, other developments have served to counteract this expansionary trend: a noteworthy decision on *non bis in idem* in **Brazil**;²⁷ the upholding of proportionality by imposing no sanctions on specific cases of malfunction of the tax authorities' platform in **Greece**;²⁸ new exculpatory circumstances based on the previous behaviour of the taxpayer in **Portugal**;²⁹ and special regimes for penalties considering the circumstances arising out of the COVID-19 pandemic in the **Netherlands**³⁰ and **Peru**,³¹ among other countries.

Consequently, there appears to have been an increase in criminal prosecutions and penalties imposed for tax fraud and related offences in **Germany**, where convictions on the so-called "cum/ex trades" were served;³² **Italy**, where the tax authorities arraigned a multinational corporation for allegedly committing VAT fraud;³³ and the **United States**, in a number of cases in which several courts held proportionate the application of the 50% maximum penalty against taxpayers for wilful failure to file a timely Report of Foreign Bank and Financial Accounts

²⁶ See TW: Tax Collection Act (30 Nov. 2021), available at https://law.dot.gov.tw/law-ch/home.jsp?id=12&contentid=12&parentpath=0%2C2&mcustomize=law_list.jsp&istype=L&classtablename=LawClass&lawclass=22&lawname=201803090434&article1=&article2=&keyword= (accessed 21 Mar. 2022); and TW: MoF Press Release, *The Legislative Yuan Passed the Draft Amendment to Some Provisions of the Tax Audit Law Today* (30 Nov. 2021), available at <https://www.mof.gov.tw/singlehtml/384fb3077bb349ea973e7fc6f13b6974?cntId=fb718960d9f44eb2804c6dc320bc846f> (accessed 21 Mar. 2022). See also Y. Lin, *Legislative Yuan Passes Amendments to Tax Collection Act* (5 Jan. 2022), News IBFD; W. Hoke, *Taiwan's Legislature Increases Tax Evasion Penalties* (30 Nov. 2021), News IBFD; and TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 58.

²⁷ See BR: CARF-CSRF-CARF-MF-DF (Prim. Turma), 5 Apr. 2021, Acórdão No. 9101-005.080, VCB Transportes Ltda., available at <http://carf.fazenda.gov.br/sincon/public/pages/ConsultarJurisprudencia/listaJurisprudenciaCarf.jsf#> (accessed 9 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 58.

²⁸ See GR: *Determination of the scope of application, the time and the scope of the electronic transmission of data to the Independent Public Revenue Authority, as well as any other matter necessary for the implementation of the provisions of Article 15A of Law 4174/2013 (Tax Code), (V'2470)*, as in force (18 Mar. 2021), available at https://www.aade.gr/sites/default/files/2021-04/a_1054_2021ada.pdf (accessed 11 Feb. 2022); and GR: *AADE e-Books – Operational Issues*, available at https://www.aade.gr/sites/default/files/2021-04/FAQs_myDATA_epixeirisiaka2.pdf (accessed 11 Feb. 2022). See also V. Dafnomilis, *No Fines Due In Case Of Inaccurate Submissions to Online Platform for Electronic Invoicing, Greece Says* (29 June 2021), News IBFD.

²⁹ See PT: Lei 7/2021 que reforça as garantias dos contribuintes e a simplificação processual, alterando a Lei Geral Tributária, o Código de Procedimento e de Processo Tributário, o Regime Geral das Infrações Tributárias e outros atos legislativos (26 Feb. 2021), available at <https://data.dre.pt/eli/lei/7/2021/02/26/p/dre/pt/html> (accessed 9 Feb. 2022). See also PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58.

³⁰ See NL: Staatscourant, 4 May 2021, 2021-9389, available at <https://zoek.officielebekendmakingen.nl/stcrt-2021-24144.html> (accessed 10 Feb. 2022). See also M. Schellenkens, *Ministry of Finance Publishes Decree on Penalty Interest for 2021 Tax Return* (12 May 2021), News IBFD.

³¹ See PE: *Resolución de Superintendencia No. 000078-2021/SUNAT que modifica el Reglamento del Régimen de Gradualidad Aplicable a la Infracción tipificada en el numeral 1 del artículo 176 del Código Tributario* (11 Jun. 2021), available at <https://www.sunat.gob.pe/legislacion/superin/2021/078-2021.pdf> (accessed 9 Feb. 2022); and E. Rodríguez Alzza, *Tax Administration Amends Regime on Gradual Application of Fines for Small- and Medium Enterprises* (23 June 2021), News IBFD. See also PE: OPTR Report (Tax Administration), Questionnaire 2, Question 58.

³² See DE: BGH, 28 Jul. 2021, 1 StR 519/20, available at <https://rewis.io/service/pdf/urteile/m51-01-07-2021-1-str-51920.pdf> (accessed 14 Feb. 2022). See also A. Perdelwitz, *Federal Court of Justice Confirms Decision of Criminal Court on Cum/Ex Trades* (29 July 2021), News IBFD.

³³ See W. Hoke, *Italy Accuses Booking.com of Evading €153 Million in VAT* (10 June 2021), News IBFD.

(FBAR), since this represents a careless disregard of a known or obvious risk, as well as violation of a known legal duty,³⁴ among many other developments.

0.2.6. Broader relief vis-à-vis tax collection: The aftermath of the (ongoing) pandemic

Coming out of a global pandemic and economic crisis, funds have been scarce for most states for the last 2 years, and, to mitigate the negative economic consequences of this, several of them have introduced postponements on collecting taxes, reduced interest rates for late payment of taxes and granted some extension to due dates for compliance. Although this has reportedly been a costly affair for the states concerned, the measures provide interesting contributions in regard to how to deal with taxpayers in financial distress on a continuous basis. In addition, to prevent taxpayer bankruptcy during the hardship of the pandemic, several countries have introduced specific measures in line with the best practice. Going forward, these interim measures, including new legislation in **Colombia** regulating the rescue and recovery mechanism for companies in insolvency proceedings³⁵ and a tax deferral scheme for small and medium-sized enterprises of **Denmark** that was approved by the European Commission,³⁶ could ideally provide inspiration for how to further prevent taxpayer bankruptcy and insolvency.

0.2.7. Taxpayer participation in cross-border procedures: A long and winding road

Unfortunately, taxpayers' rights in cross-border situations are weakened in practice, as they are generally not involved in the cross-border procedures carried out between the states. This situation entails the risk of taxpayers not exercising and protecting their rights in these procedures effectively. The situation in 2021 was no different, and it provides an interesting view to these challenges in the aftermath of implementing different cross-border measures in recent years. Probably the most important development regarding the matter was the introduction of new reporting obligations in the **European Union** for digital platforms and amendments to the existing framework of administrative cooperation in the field of taxation, rules adopted by the sixth amendment to the Directive on Administrative Cooperation

³⁴ See US: CA (Eleventh Circuit), 23 Apr. 2021, 19-14464, *United States of America v. Said Rum*, available at <https://media.ca11.uscourts.gov/opinions/pub/files/201914464.pdf> (accessed 10 Feb. 2022); and US: CFC, 19 Apr. 2021, 18-365, *Leon Landa v. United States*, available at https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2018cv0365-58-0 (accessed 10 Feb. 2022). See also W. Choi, *Court Upholds 50% Penalty for Wilful Failure to Disclose Swiss Bank Account for Taxpayer's Family* (22 Apr. 2021), News IBFD; and W. Choi, *Another Court of Appeals Affirms 50% Penalty for Reckless Failure to Disclose Foreign Bank Account* (26 Apr. 2021), News IBFD.

³⁵ See CO: Decreto 939 de 2021, por el cual se reglamenta parcialmente el parágrafo 3 del artículo 5 del Decreto Legislativo 560 de 2020 y se adiciona la Sección 7 al Capítulo 9 del Título 2 de la Parte 2 del Libro 2 del Decreto 1074 de 2015, Decreto Único Reglamentario del Sector Comercio, Industria y Turismo (19 Aug. 2021), available at <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20939%20DEL%2019%20DE%20AGOSTO%20DE%202021.pdf> (accessed 3 Mar. 2022). See also CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 66.

³⁶ See DK: *EU Commission Press Release* (26 May 2021), available at https://ec.europa.eu/commission/presscorner/detail/en/mex_21_2682 (accessed 28 Feb. 2022); DK: Act No. 779 (4 May 2021), <https://www.retsinformation.dk/eli/ta/2021/779> (accessed 7 Mar. 2022); DK: Act No. 122 (30 Jan. 2021), <https://www.retsinformation.dk/eli/ta/2021/122> (accessed 7 Mar. 2022); and DK: Act No. 248 (23 Feb. 2021), <https://www.retsinformation.dk/eli/ta/2021/248> (accessed 7 Mar. 2022). See also K. Ilieva, *European Commission Approves Danish Tax Deferral Schemes Aimed at Supporting Enterprises* (26 May 2021), News IBFD; and J. Lammers, *Denmark Signs and Gazettes Law on Extending Wage Tax and VAT Loan Schemes* (10 May 2021), News IBFD. See also DK: OPTR Report (Taxpayers / Tax Practitioners, Tax Administration), Questionnaire 2, Question 66.

(2011/16), approved by the Council of the European Union on 22 March 2021 (DAC7).³⁷ DAC7 expands the automatic exchange of information and reporting obligations to cover certain transactions through digital platforms, which will have to collect and verify the seller's name, address, taxpayer identification number, VAT number and business registration number, as well as identify its permanent establishments in the European Union, if applicable. Additionally, it modifies existing regulations with the aim of improving administrative cooperation in the exchange of information as regards, for instance, joint audits, information requests and data breaches.³⁸

Against this background, the European Court of Auditors affirmed that EU Member States only make limited use of the information exchanged automatically, due to either (i) weaknesses related to the timeliness, the accuracy and the completeness of automatic exchange of information; (ii) DAC2 information exchange functions being generally on time but still lacking in data quality and completeness; (iii) Member States receiving huge volumes of information, with information generally underused; (iv) DAC1 and DAC2 information not being rigorously exploited; or (v) exchanges of information having increased but some information remaining unreported, among other reasons. As a result, less than a third of the items of information received under DAC1 and DAC2, for example, resulted in further tax-related actions.³⁹

0.2.8. Have your say: Growing trend towards public consultation in the multilateral context

When reviewing the overall legal framework for the protection of taxpayers' rights, 2021 saw a positive trend towards including taxpayers in the legislative process via public consultation. This is particularly evident at the EU level, where the European Commission has confirmed a steady movement towards greater citizen participation in EU regulatory processes in general. At the OECD level, the policy of public consultation was maintained in 2021 in several proposals, particularly regarding the digitalization of the economy. Despite this intense consultation activity, a few jurisdictions have reported a shift away from best practice, among them **Slovenia**,⁴⁰ **New Zealand**⁴¹ and **Poland**.⁴²

³⁷ Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJ L104 (2021), Primary Sources IBFD.

³⁸ See T. Morales, [European Union Introduces New Reporting Obligations for Digital Platforms and Other Amendments to the Exchange of Information \(DAC7\) – Details](#) (24 Mar. 2021), News IBFD. See also M. Manca, [EU DAC7 Proposal Further Strengthens EU Tax Administrative Cooperation, Even in Respect of Digital Platforms](#), 61 Eur. Taxn. 4 (2021), Journal Articles & Opinion Pieces IBFD; and T. Morales, [Council](#), 61 Eur. Taxn. 6 (2021), Journal Articles & Opinion Pieces IBFD.

³⁹ See European Court of Auditors, [Exchanging tax information in the EU: solid foundation, cracks in the implementation](#) (2021), available at https://www.eca.europa.eu/lists/ecadocuments/sr21_03/sr_exchange_tax_inform_en.pdf (accessed 8 Mar. 2022).

⁴⁰ See P. Kovač, & M. Klun, *An Analysis of the Slovenian Tax Administration Response During COVID-19: Between Normative Measures and Economic Reality*, 23 Economic and Business Review 4 (2021), available at <https://doi.org/10.15458/2335-4216.1289> (accessed 20 Jan. 2022). See also SI: OPTR Report (Academia) Questionnaire 2, Question 79.

⁴¹ NZ: OPTR Report (Academia) Questionnaire 2, Question 79.

⁴² An example given is the legislative proceedings concerning the so called New Polish Deal (*Polski Ład*), with hundreds of pages of new tax legislation, introducing major changes as of 1 January 2022, which were discussed by the parliament in September and October 2021, signed by the President on 15 November and promulgated on 23 November 2021. Since the subject of this legislation is complicated, extensive and regards the situation of most Polish taxpayers, the *vacatio legis* in this case was considered by many experts as

0.2.9. Knowledge is power: Digitalization, key for taxpayer awareness on revenue practice

In terms of the relation between taxpayers and the legislative framework for protecting their rights, it is pivotal from a practical point of view that they be able to access the relevant legal materials and that they be able to rely on any binding guidance provided by the tax authorities.⁴³ In 2021, a positive trend towards a minimum standard in this area continued, and it was especially underpinned by the digitalization of tax administrations.

0.2.10. Taxpayers' bills of rights on a steady rise

Finally, 2021 marked a positive development in the area of institutional frameworks for the protection of taxpayers' rights, as more than half of the jurisdictions have now introduced taxpayers' charters or bills of rights providing a framework of certainty regarding the content and scope of taxpayers' rights and the tax authority's obligations.

0.3. Most significant developments of the year

0.3.1. Identifying taxpayers, issuing tax returns and communicating with taxpayers

Developing new ways to communicate, e.g. through virtual meetings, has provided for some obvious advantages to taxpayers, which appear to be here to stay. Among many other developments, **Belgium** enacted new legislation on the dematerialization of the relations between the tax authorities and taxpayers, according to which communication between them goes through an electronic mailbox, i.e., the "eBox".⁴⁴ In addition, the so-called *Administración Digital Integral* (Integral Digital Administration) in **Spain** allows communication with taxpayers through a virtual counter. See too the Remote Support and Tax Control in **Chile** and the QR code-based online services in **China (People's Rep.)**.⁴⁵

At the same time, these measures have propelled the need for further assisting and guiding taxpayers and, above all, have necessitated the invention of new ways to secure taxpayers'

inadequate. The legislation required amendments very soon after its adoption (three amending acts in December 2021) and further (partial and numerous) amendments are expected at the beginning of 2022. Extensive administrative guidance will also be needed to deal with the resulting uncertainties. See PL: Draft Bill No. 1532-A – Government bill amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts, available at <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=1532> (accessed 10 Mar. 2022). See also PL: OPTR Report (Taxpayers / Tax Practitioners, Academia) Questionnaire 2, Question 79.

⁴³ See Baker & Pistone, *supra* n. 16, at sec. 11.1., p. 68.

⁴⁴ See BE: Draft Bill 1697/001, available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697001.pdf> (accessed 24 Jan. 2022); BE: Report of the Finance and Budget Commission of the Chamber of Representatives on the Draft Bill 1697/002, available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697002.pdf> (accessed 24 Jan. 2022); BE: Draft Bill 1697/003, as approved by the Finance and Budget Commission of the Chamber of Representatives, available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697003.pdf> (accessed 24 Jan. 2022); BE: Draft Bill 1697/003, as finally approved, available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697004.pdf> (accessed 24 Jan. 2022); and F. Mortier, *Belgium Facilitates Electronic Communication Between Administration and Taxpayers* (25 Jan. 2021), News IBFD. See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 6.

⁴⁵ See OECD, *Tax Administration: Towards Sustainable Remote Working in a COVID-19 Environment* pp. 25-29 (OECD 2021), available at https://read.oecd-ilibrary.org/view/?ref=1100_1100317-s1ht91tyt0&title=Tax-Administration-Towards-sustainable-Remote-Working-in-a-post-COVID-19-Environment (accessed 27 Jan. 2022).

privacy and confidentiality, such as a separation between tax and civil registrations to protect independent service providers for confidentiality reasons in **Bulgaria**,⁴⁶ even though **Ghana** went in the opposite direction by unifying their citizen identification systems.⁴⁷

Also in this area, positive developments have taken place, which include a range of specific processes to verify the taxpayer's identity, systems to prevent impersonation or duplication, identification numbers and faceless identification schemes. The general trend in this regard is that the surveyed jurisdictions are moving towards a best practice and that improvements continue to happen on a permanent basis.⁴⁸ In this regard, the **United States** extended its PIN-based identity programme to all taxpayers able to verify their identity,⁴⁹ and **India** continued its faceless identification scheme for assessment and appellate proceedings, although the judiciary has ruled against the system capabilities for allowing taxpayers to effectively present their cases.⁵⁰ In a significant negative development, a statutory provision in the Faceless Assessment Legislation (section 144B) which provided that any assessment made not in accordance with the Scheme procedure, would be 'non-est' was deleted with retrospective effect from the inception of the Scheme, after the judiciary took recourse to it in many cases.⁵¹

⁴⁶ See *PIN in BULSTAT register is converted into a 9-digit code from January 4*, Darik News (3 Dec. 2021), available at <https://darik.news/en/pin-in-bulstat-register-is-converted-into-a-9-digit-code-from-january-4.html> (accessed 19 Jan. 2022). See also BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 1. However, as part of the COVID-19 measures, **Ghana** ordered the replacement of individuals' tax identification and social security numbers with their Ghanaian national identification card numbers, a development towards a unified citizens' identification. See A. Ofori-Boafoa, *COVID-19 Pandemic: Government Waives Penalties and Interest on Outstanding Tax Arrears (16 Mar. 2021)*, News IBFD (accessed 19 Jan. 2022).

⁴⁷ See GH: Ghana Revenue Authority Press Release, *Commencement of the Use of Ghana Card PIN as TIN* (3 Apr. 2021), available at <https://gra.gov.gh/commencement-of-the-use-of-ghana-card-personal-identification-number-as-taxpayer-identification-number/> (accessed 24 Mar. 2022). See also Ofori-Boafoa, *supra* n. 46.

⁴⁸ The data provided for the 2021 Yearbook reveals that 98% of the surveyed jurisdictions (47 out of 48) have reported that their jurisdictions have systems of electronic communication; see Chart 3; and that there are systems in place to prevent unauthorized access for 83% (40 out of 48); see Chart 4.

⁴⁹ See US: IRS, *National Tax Security Awareness Week, Day 3: IRS expands Identity Protection PIN Opt-In Program to taxpayers nationwide*, IR-2020-267, available at <https://perma.cc/Y3YH-MZEW> (accessed 19 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 1.

⁵⁰ See IN: HC Delhi, 2 June 2021, *Sanjay Aggarwal v. National Faceless Assessment Centre* [2021], W.P.(C) 5741/2021, available at <https://www.legitquest.com/case/sanjay-aggarwal-v-national-faceless-assessment-centre-delhi/1EACFE> (accessed 20 Jan. 2022); IN: HC Delhi, 12 July 2021, *Naresh Kumar Goyal v. National Faceless Assessment Centre* [2021] W.P.(C) 6245/2021 & CM APPLs. 19753-54/2021, available at <https://www.legitquest.com/case/naresh-kumar-goyal-v-national-faceless-assessment-centre-ors/1F170E> (accessed 20 Jan. 2022); and IN: HC Delhi, 3 June 2021, *Naina Lal Kidwai v. National Faceless Assessment Centre & Anr* [2021] W.P.(C) 5775/2021, available at <https://studycase.in/delhi-high-court-faceless-assessment-request-for-personal-hearing-rejected-100442.html> (accessed 20 Jan. 2021). See also IN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 6.

⁵¹ See IN: Finance Act 2022, sec. 144B, <https://egazette.nic.in/WriteReadData/2022/234693.pdf> (accessed 4 May 2022). See also IN: HC Gujarat, 5 Oct. 2021, *Gandhi Realty India Private Limited v. DCIT* [2021], C/SCA/7662/2021, available at <https://taxguru.in/wp-content/uploads/2021/12/Gandhi-Realty-India-Private-limited-Vs-Assistant-Joint-and-Deputy-Commissioner-of-Income-Gujarat-High-Court.pdf> (accessed 4 May 2022); HC Bombay, 21 Sep. 2021, *Chander Manwani v. National Faceless Assessment Centre* [2021] W.P. 3195/2021, available at <https://taxguru.in/wp-content/uploads/2021/09/Chander-Arjundas-Manwani-Vs-The-National-Faceless-Assessment-Centre-ors.-Bombay-High-Court.pdf> (accessed 4 May 2022).

Although reinforced through an expansion of the use of pre-populated returns in **Australia**⁵² and thorough regulation on taxpayers' rights in this regard issued in **Chile**,⁵³ there was a noteworthy shift away from the minimum standard regarding *habeas data* in **Belgium**, where the judiciary upheld the tax authorities' denial to a taxpayer of an information request for rectification of processing of personal data, based on the protection of the public interest.⁵⁴

Cooperative compliance was also boosted in 2021, and this through different paths. Among other measures, in **Chile**, the tax authorities were ordered to use all available means to facilitate tax compliance without unnecessary delay, demand or waiting, and in the least expensive way for taxpayers.⁵⁵ **Honduras** engaged in discussion of a cooperative compliance guide in cooperation with the Vienna University of Economics and Business (WU).⁵⁶

In parallel, there has been an exponential growth in compliance obligations for taxpayers and third parties. In the European Union, the entry into force of domestic legislation implementing Council Directive (EU) 2018/822⁵⁷ (DAC6) represents a significant increase in reporting duties for taxpayers and tax advisers.⁵⁸ In this regard, in the aftermath of the adoption of the seventh modification of Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7), which introduced a report obligation for digital platforms on revenues

⁵² See <https://www.servicesaustralia.gov.au/jobseeker-payment> (accessed 19 Jan. 2022). See also AU: OPTR Report (Tax Ombudsperson/Academia), Questionnaire 2, Question 4.

⁵³ See Circular No. 12, *supra* n. 18, at ch. 1; and Ley 21.210, *supra* n. 18. See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 5.

⁵⁴ See Decision 66/2021 *supra* n. 2; and 2021/AR/1044, *supra* n. 2. See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 5.

⁵⁵ See Circular No. 12, *supra* n. 18, at chs. 1 and 2. See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 7.

⁵⁶ See HN: *El SAR iniciará programa piloto de cumplimiento cooperativo en colaboración con el Centro de Política Tributaria Global de la Universidad de Viena (WU GTPC)* (9 Jul. 2020), available at <https://www.sar.gob.hn/2020/07/el-sar-iniciara-programa-piloto-de-cumplimiento-cooperativo-en-colaboracion-con-el-centro-de-politica-tributaria-global-de-la-universidad-de-viena-wu-gtpc/> (accessed 20 Jan. 2021). See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 7.

⁵⁷ Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, OJ L139 (2018), Primary Sources IBFD.

⁵⁸ See E. Casi-Eberhard et al., *One Directive, Several Transpositions: A Cross-Country Evaluation of the National Implementation of DAC6*, 13 World Tax J. 1 (2021), Journal Articles & Opinion Pieces IBFD; P. Eckl & F. Schill, *DAC6 Implementation in Germany*, 61 Eur. Taxn. 7 (2021), Journal Articles & Opinion Pieces IBFD; D. Kleist, *DAC6 Implementation in Sweden*, 61 Eur. Taxn. 1 (2021), Journal Articles & Opinion Pieces IBFD; B. Ramskov et al., *Danish Implementation of DAC6*, 61 Eur. Taxn. 7 (2021), Journal Articles & Opinion Pieces IBFD; and A. Hirt, *DAC6 from a Swiss Perspective*, 61 Eur. Taxn. 4 (2021), Journal Articles & Opinion Pieces IBFD. See also Austria - *DAC6 Compliance Table*, Tables IBFD; Belgium - *DAC6 Compliance Table*, Tables IBFD; Bulgaria - *DAC6 Compliance Table*, Tables IBFD; Croatia - *DAC6 Compliance Table*, Tables IBFD; Cyprus - *DAC6 Compliance Table*, Tables IBFD; Czech Republic - *DAC6 Compliance Table*, Tables IBFD; Denmark - *DAC6 Compliance Table*, Tables IBFD; Estonia - *DAC6 Compliance Table*, Tables IBFD; Finland - *DAC6 Compliance Table*, Tables IBFD; France - *DAC6 Compliance Table*, Tables IBFD; Germany - *DAC6 Compliance Table*, Tables IBFD; Greece - *DAC6 Compliance Table*, Tables IBFD; Hungary - *DAC6 Compliance Table*, Tables IBFD; Ireland - *DAC6 Compliance Table*, Tables IBFD; Italy - *DAC6 Compliance Table*, Tables IBFD; Latvia - *DAC6 Compliance Table*, Tables IBFD; Lithuania - *DAC6 Compliance Table*, Tables IBFD; Luxembourg - *DAC6 Compliance Table*, Tables IBFD; Malta - *DAC6 Compliance Table*, Tables IBFD; Netherlands - *DAC6 Compliance Table*, Tables IBFD; Poland - *DAC6 Compliance Table*, Tables IBFD; Portugal - *DAC6 Compliance Table*, Tables IBFD; Romania - *DAC6 Compliance Table*, Tables IBFD; Slovak Republic - *DAC6 Compliance Table*, Tables IBFD; Slovenia - *DAC6 Compliance Table*, Tables IBFD; Spain - *DAC6 Compliance Table*, Tables IBFD; and Sweden - *DAC6 Compliance Table*, Tables IBFD.

generated by sellers on these platforms as of 1 January 2023,⁵⁹ a series of interesting cases are currently before the Court of Justice of the European Union (ECJ) regarding the proportionality of requests for information by (tax) authorities in **Belgium**.⁶⁰

Regarding assistance with compliance obligations, there were myriad developments. Among many others, dispute assistance and tax consultancy services were put into place in **Australia**, **Tanzania**, **South Africa** and **Georgia**, as were the Volunteer Income Tax Assistance (VITA) and the Tax Counsel for the Elderly (TCE) programmes in the **United States**. In addition, there were developments regarding the face-to-face workshops and seminars of **Sweden**, the Business Support Units of **Malaysia**, the Special Taxpayer Assistance Programme (STAP) to assist micro and small businesses in completing their income tax returns in **Jamaica** and the Community Volunteer Income Tax Program of **Canada**.⁶¹

0.3.2. The issue of tax assessment

Tax administrations worldwide have been under significant pressure during the pandemic, as the limitations have also influenced the general administration and procedures, and especially the means to provide the necessary services. This has resulted in delays and backlogs, and it has also put a strain on constructive dialogue with taxpayers.

Against this background, the importance of cooperative compliance was even more significant for 2021, and it is positive to note that development throughout the years continued towards a constructive dialogue between taxpayers and revenue authorities before a tax audit occurs, increasingly built on cooperative compliance.⁶² To highlight a particularly positive example, **Switzerland** approved a new code of conduct between taxpayers and tax authorities which aims to sustainably strengthen the “historically growing” relationship of respect and trust between taxpayers, tax representatives and tax administrations.⁶³ In addition, the practice of **Chinese Taipei** of offering tax “rewards” for businesses filing account documents electronically, including a waiver of verification certificates, is noteworthy.⁶⁴ **Chile** developed

⁵⁹ Council Directive (EU) 2021/514, *supra* n. 37. See also Morales, *supra* n. 38.

⁶⁰ BE: ECJ, 12 Apr. 2021, Case C-674/20, *Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 10 December 2020 — Airbnb Ireland UC v. Région de Bruxelles-Capitale*, OJ C 128, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62020CN0674> (accessed 8 March 2022); and UK: ECJ, Case C-695/20, *Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) made on 22 December 2020 – Fenix International Limited v. Commissioners for Her Majesty's Revenue and Customs*, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=239459&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=358287> (accessed 8 March 2022).

⁶¹ See OECD, *Building Tax Culture, Compliance and Citizenship: A Global Source Book on Taxpayer Education* ch. 5 (OECD 2021), available at <https://doi.org/10.1787/18585eb1-en> (accessed 24 Jan. 2022).

⁶² The data provided for the 2021 Yearbook reveals that 60% of the surveyed jurisdictions (29 out of 48) have reported that their jurisdictions have systems for cooperative compliance; see Chart 5.

⁶³ See CH: *Code of Conduct Taxation 2021*, available at <https://iff.unisg.ch/wp-content/uploads/2021/10/Verhaltenskodex-EN.pdf> (accessed 24 Jan. 2022); Unofficial Translation: *Switzerland Issues Code of Conduct Taxation 2021* (5 Oct. 2021), News IBFD. See also S. Paez, *Switzerland Issues Code of Conduct Taxation 2021* (5 Oct. 2021), News IBFD; and CH: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 9.

⁶⁴ See TW: Ministry of Finance Press Release, *Profit-seeking enterprises can save time and receive rewards by producing all account books required documents electronically using the internet or multimedia* (8 Mar. 2021), available at <https://www.mof.gov.tw/Eng/singlehtml/f48d641f159a4866b1d31c0916fbcc71?cntId=9be0c0f01a8a46d69f12f0d26150949f> (accessed 25 Jan. 2022). See also MNE Tax, *Taiwan offers tax “rewards” for businesses filing*

a so-called *carpeta tributaria electrónica* (electronic tax folder), aiming for an improvement of the digital platforms of the Chilean tax authorities due to COVID-19.⁶⁵ **Switzerland** approved a new law enabling both the Federation and the cantons to move to a digital tax procedure; however, it does not contain many details, as the digital tax procedure is still a “moving target”.⁶⁶ For its part, in the **United Kingdom**, a consultation document of Her Majesty’s Revenue and Customs (HMRC) indicates an intention to increase and enhance facilities for e-filing over the next 4 years.⁶⁷

In **Russia**, the judgment of the Supreme Court in the *Spetskhimprom* case confirmed the duty of the tax authorities to determine the tax liability by exhausting all legal means to discover the material truth, based on all elements of which it has knowledge, in favour of or against the taxpayer, either through the taxpayer or through third parties.⁶⁸

0.3.3. Confidentiality

Simultaneously with the development of new ways of communicating with taxpayers, an increasing number of reporting obligations has propelled another general trend towards an increased need for confidentiality in recent years.⁶⁹ While the overall global development has been positive recently, with most jurisdictions providing specific guarantees for confidentiality in domestic law and providing sanctions for officials making unauthorized disclosures, there has been a setback at the EU level with the introduction of Directive 2021/2101, on public disclosure of country-by-country information.⁷⁰ Finding the right balance between collective rights and the effective protection of the individual rights of taxpayers remains a challenge. This issue was also raised before the European Court of Human Rights (ECtHR) in the Finnish *Satakunnan Markkinapörssi* case.⁷¹ Furthermore, the court handed down two Grand Chamber rulings in landmark cases on the general concept of exceptions to the right to privacy through bulk interception regimes in the *Big Brother Watch and Others*⁷² and the *Centrum För*

account documents electronically (11 May 2021), available at <https://mnetax.com/taiwan-offers-tax-rewards-for-businesses-filing-account-documents-electronically-43923> (accessed 25 Jan. 2022).

⁶⁵ See CL: Circular No. 14, que imparte instrucciones sobre modificaciones introducidas por la Ley N° 21.210 al Código Tributario, en relación con las normas que regulan la relación de los contribuyentes con el Servicio de Impuestos Internos, incluyendo normas sobre sitio electrónico, facilitación del cumplimiento tributario, ciclo de vida y fiscalización de los contribuyentes (2 July 2021), available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu41.pdf (accessed 26 Jan. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

⁶⁶ See Bundesgesetz über elektronische Verfahren im Steuerbereich, *supra* n. 5.

⁶⁷ See HMRC, *Building a trusted, modern tax administration system* secs. 5.3 and 5.5, available at <https://bit.ly/3IBE8Vt> (accessed 26 Jan. 2021). See also UK: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 10.

⁶⁸ See RU: Supreme Court Commercial Disputes Chamber, 15 Dec. 2021, *Spetskhimprom*, available at https://www.vsrf.ru/stor_pdf_ec.php?id=2068976 (accessed 25 Jan. 2022). See also RU: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 9.

⁶⁹ Baker & Pistone, *supra* n. 16, at sec. 1.1., p. 28. See also sec. 3.

⁷⁰ See Directive (EU) 2021/2101, *supra* n. 9. See also V. Agianni, *Council of the European Union Analyses Its Reasoning on Approval of Public Country-By-Country Reporting (CBCR) Directive* (13 Oct. 2021), News IBFD.

⁷¹ FI: ECtHR, 27 June 2017, App. No. 931/13, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, available at <https://hudoc.echr.coe.int/eng?i=001-175121> (accessed 8 March 2022). See also sec. 3.

⁷² *Big Brother Watch and Others*, *supra* n. 10.

*Rättvisa*⁷³ cases. Public country-by-country reporting was also proposed by members of the **United States** Congress through the Disclosure of Tax Havens and Offshoring Act proposal, introduced in the House of Representatives on 5 May 2021.⁷⁴ In the same vein, the question of the boundaries on requests for information by tax administrations relating to the seventh modification of Council Directive 2011/16/EU (DAC7) is currently pending before the ECJ.⁷⁵ In the same vein, AG Bobek opined that the General Data Protection Regulation (GDPR)⁷⁶ does not prohibit requests for information addressed by the tax authority to internet service providers, insofar as the request is linked to the determination of advertisers' tax obligations, there is a clear legal basis in national law for such a type of data transfer and the data requested are suitable and necessary for the tax authority to complete its official tasks.⁷⁷

Legal guarantees for privacy were established in **Bolivia**,⁷⁸ **Brazil**,⁷⁹ **Chile**⁸⁰ and **Ukraine**,⁸¹ accompanied by enhanced confidentiality guarantees, particularly in Latin America. **Brazil**

⁷³ *Centrum För Rättvisa*, *supra* n. 10. See also sec. 3.

⁷⁴ See Press Release, Axne, *Van Hollen Introduce Bicameral Legislation to Provide Transparency on Corporate Use of Tax Havens, Offshoring of Jobs* (11 May 2021), available at <https://axne.house.gov/media/press-releases/axne-van-hollen-introduce-bicameral-legislation-provide-transparency-corporate> (accessed 3 Feb. 2022). See also US: H.R.3007 – Disclosure of Tax Havens and Offshoring Act, available at <https://www.congress.gov/bill/117th-congress/house-bill/3007/text> (accessed 3 Feb. 2022).

⁷⁵ Case C-674/20, *supra* n. 59; and Case C-695/20, *supra* n. 59.

⁷⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L119 (2016), Primary Sources IBFD.

⁷⁷ LV: Opinion of Advocate General Bobek, 2 Sept. 2021, Case C-175/20, request for a preliminary ruling from the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) – *SIA 'SS' v. Valsts ieņēmumu dienests (Latvia)* lodged on 14 April 2020, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=245557&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2516384> (accessed 7 Feb. 2022).

⁷⁸ See BO: Ley de 28 de diciembre de 2020 No. 1.357, Impuesto a las Grandes Fortunas, available at <https://web.senado.gob.bo/sites/default/files/LEY%20N%C2%B0%201357-2020.PDF> (accessed 2 Feb. 2022). See also BO: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 11.

⁷⁹ See BR: Portaria [Ordinance] RFB No. 4, which provides on the Protocol of Auditability of the Tax and Customs Administration, used to enable the sharing of data and information protected by tax secrecy, 22 Jan. 2021, available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=115082> (accessed 1 Feb. 2022); and BR: Portaria [Ordinance] RFB No. 34, which provides for the sharing of data not protected by tax secrecy with agencies and entities of the direct federal public administration, independent and foundational, and of the other branches of government, 18 May 2021, available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=117598> (accessed 1 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 11.

⁸⁰ See CL: Código Tributario [Tax Code], Decree-Law No. 830, available at https://www.sii.cl/normativa_legislacion/dl830.pdf (accessed 2 Feb. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 11.

⁸¹ See UA: Law 1150-IX, on the Bureau of Economic Security of Ukraine, 2021, available at <https://zakon.rada.gov.ua/laws/show/1150-20#Text> (accessed 2 Feb. 2022). See also UA: OPTR Report (Academia), Questionnaire 2, Question 15.

uses a controlled virtual system to avoid misuse and leaking,⁸² and **Chile** announced the use of webscraping and machine learning to detect non-compliance.⁸³

Regrettably, there was a major leak of tax agents' personal data in **Chinese Taipei**, including ID numbers, addresses and dates of birth.⁸⁴ On the other hand, a major reform of the structure of the tax authority in **Colombia** granted greater autonomy to the Information Security Office in the adoption of information security policies.⁸⁵ Likewise, in **Kazakhstan**, a reform to Law 94-V, On Personal Data and Its Protection, required the appointment of data protection officers in all state agencies, including the tax administration.⁸⁶

Regarding whistle-blower protection, EU Member States had until 17 December 2021 to transpose the so-called EU Whistleblowing Directive, on the protection of persons who report breaches of Union law, including tax law.⁸⁷ To date, only seven of the EU Member States, namely **Austria, Bulgaria, Cyprus, Denmark, France, Lithuania, Malta, Portugal** and **Sweden**, appear to have transposed said directive into domestic law.⁸⁸ In the context of these and other developments, proportionality with regard to confidentiality has been put to the test. On the one hand, in **Spain**, the Supreme Court issued a series of judgments in which it limited the possibility for tax authorities to use taxpayer information to tax matters alone. In the case of the transfer of data to other administrations for non-tax purposes, the express authorization of the data subject must be stated.⁸⁹ On the other hand, Complementary Law 187/2021 in

⁸² See sec. 3.2. See also BR: OPTR Report (Academia), Questionnaire 2, Question 13.

⁸³ See CL: *Plan de Gestión de Cumplimiento Tributario 2022* pp. 19, 46 and 62, available at https://www.sii.cl/sobre_el_sii/pgct2022.pdf (accessed 2 Feb. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 13.

⁸⁴ See L. Bao, *supra* n. 7. See also TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Questions 14 and 15.

⁸⁵ See CO: Decreto No. 1742 del 20 de diciembre de 2020, por el cual se modifica la estructura de la Unidad Administrativa Especial Dirección de Impuestos y Aduanas Nacionales (DIAN), available at <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%201742%20DEL%20DE%20DICIEMBRE%20DE%202020.pdf> (accessed 2 Feb. 2022). See also CO: OPTR Report (CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 15).

⁸⁶ See KZ: Law 94-V, On Personal Data and Its Protection, available at <https://www.parlam.kz/ru/Legislative/DownloadDocument/9052> (accessed 22 Mar. 2022). See also KZ: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

⁸⁷ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L305 (2019).

⁸⁸ See the EU Whistleblowing Monitor, available at <https://www.whistleblowingmonitor.eu/> (accessed 21 Mar. 2022); and EURLex, *National transposition measures communicated by the Member States concerning Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law*, available at <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX%3A32019L1937> (accessed 3 Feb. 2022). See also A. Taylor, *EU countries miss deadline to implement whistleblower directive*, Euractiv (29 Dec. 2021), available at <https://www.euractiv.com/section/digital/news/all-eu-countries-miss-deadline-to-implement-whistleblower-directive/> (accessed 3 Feb. 2022).

⁸⁹ See ES: STS 4788/2021 [ECLI:ES:TS:2021:4788], 22 Dec. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/a08a1a3877792cbb/20220104> (accessed 2 Feb. 2022); STS 2528/2021 [ECLI:ES:TS:2021:2528], 24 Jun. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/b59039f61afa0344/20220128> (accessed 2 Feb. 2022); STS 2340/2021 [ECLI:ES:TS:2021:2340], 10 Jun. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/e09fdbecf17ff765/20210622> (accessed 2 Feb. 2022); STS 2340/2021 [ECLI:ES:TS:2021:2340], available at <https://www.poderjudicial.es/search/AN/openDocument/e09fdbecf17ff765/20210622> (accessed 2 Feb. 2022);

Brazil amended the National Tax Code to expressly authorize the disclosure of tax benefits and other special treatments, based on which some states have already been disclosing that information.⁹⁰

Finally, the question of exceptions to taxpayer confidentiality and disclosure by “naming-and-shaming” in the public interest was tried before the ECtHR in the *L.B. v. Hungary* case,⁹¹ which has been referred to the Grand Chamber. For its part, the Constitutional Court of **Belgium** suspended the Flemish, the Walloon and the Brussels transposition of Council Directive (EU) 2018/822 (DAC6) insofar as it relates to certain aspects of the reporting obligation of cross-border tax arrangements as imposed on “lawyers”, in an important development regarding the legal professional privilege.⁹² In the same vein, a preliminary request to the ECJ made by the *Conseil d'État (France)* asked whether article 8ab(5) of Directive 2011/16 (DAC6) infringes the right to an effective remedy by not excluding, in principle, lawyers participating in judicial proceedings from the scope of intermediaries who must supply information or who must notify another intermediary of that obligation; and the rights to privacy and protection of personal data by not excluding lawyers assessing their clients’ legal situation from the scope of intermediaries who must supply information or who must notify another intermediary of that obligation.⁹³

0.3.4. Normal audits

On a positive note, previous years’ reports on the drift away from proportionality in terms of tax audits and their foundational principles seem to have somewhat improved in 2021, which is a very fortunate development. In this regard, it is noteworthy that, in **Slovenia**, the Constitutional Court declared unconstitutional a surcharge tax of 70% on undeclared income,

STS 1818/2021 [ECLI:ES:TS:2021:1818], 13 May 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/c9464e1515e2902e/20210524> (accessed 2 Feb. 2022); STS 1002/2021 [ECLI:ES:TS:2021:1002], 15 Mar. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/1015f3b26b045fbc/20210329> (accessed 2 Feb. 2022); and STS 894/2021 [ECLI:ES:TS:2021:894], 11 Mar. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/fab4450daa63bc03/20210323> (accessed 2 Feb. 2022).

⁹⁰ See BR: Lei Complementar No. 187, 2021, available at https://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp187.htm (accessed 2 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 18.

⁹¹ HU: ECtHR, Fourth Chamber, 12 Jan. 2021, *L.B. v. Hungary*, App. no. 36345/16, available at <https://hudoc.echr.coe.int/eng?i=001-207132> (accessed 8 Mar. 2022).

⁹² See BE: CC, 17 Dec. 2020, 167/2020, *Orde van Vlaamse balies, Alain Claes, Belgian Association of Tax Lawyers and others v. Flemish Region*, available at <https://www.const-court.be/public/f/2020/2020-167f.pdf> (accessed 9 Feb. 2022); CC, 11 Mar. 2021, No. 45/2021, *Belgian Association of Tax Lawyers and others v. Walloon Region*, available at <https://www.const-court.be/public/f/2021/2021-045f.pdf> (accessed 9 Feb. 2022); and CC, 11 Mar. 2021, 46/2021, *Belgian Association of Tax Lawyers and others v. Brussels Region*, available at <https://www.const-court.be/public/f/2021/2021-046f.pdf> (accessed 9 Feb. 2022). See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 23. See further T. Morales, *CJEU Preliminary Ruling Request: Orde van Vlaamse Balies and Others (Case C-694/20) – Grondwettelijk Hof Submits Referral on DAC6 Reporting Obligation of Cross-Border Arrangements* (12 Apr. 2021), News IBFD

⁹³ See FR: ECJ, Case C-398/21, Request for a preliminary ruling from the Conseil d'État (France) lodged on 28 June 2021 – *Conseil national des barreaux, Conférence des bâtonniers, Ordre des avocats du barreau de Paris v. Premier ministre, Ministre de l'Economie, des Finances et de la Relance*, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=246268&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2919120> (accessed 3 Feb. 2022).

fully applicable just by the commencement of an *ex officio* assessment.⁹⁴ However, the introduction of financial institution notices in the **United Kingdom** departs from the *audi alteram partem* minimum standard by not requiring court approval before its issuance and the removal of the rights to appeal of affected third parties.⁹⁵ Also, in **Denmark**, an obligation to provide transfer pricing documentation for domestic Danish transactions was repealed, as it was deemed disproportionate.⁹⁶

One exception to this general trend is the development detected regarding *non bis in idem*, as now less than half the jurisdictions report that the principle applies to tax audits.⁹⁷

In this regard, the judgment of the National Court (*Audiencia Nacional*) of **Spain** dated 3 June 2021 prevents tax authorities from initiating a second assessment on a given tax and period.⁹⁸ Regarding *audi alteram partem*, also in **Spain**, the Supreme Court prevented tax authorities as well from extending the scope of an audit without previously notifying the taxpayer.

Regarding the content and structure of tax audits, in **Chile**, the tax authorities extensively regulated the actions of the tax authorities in the context of tax assessments aiming to better protect taxpayers' rights, through SII Letters Nos. 12 and 41.⁹⁹

In addition, 2021 was a year in which extensions of deadlines were necessary for the taxpayers' sake to meet their reporting and compliance obligations, and, at the same time, this development also challenged what is to be understood as a "reasonable" time limit on the side of the tax administration.

For its part, it is encouraging that, according to Chart 28 in section 4.4., the use of independent expert reports in the framework of audits has grown exponentially since 2018, when only 70% of the surveyed countries allowed them.¹⁰⁰ Keeping with the rising trend, 92% of the surveyed countries allowed said reports in 2021.

⁹⁴ See SI: CC, 30 Sept. 2020, U-I-113/17 (ECLI:SI:USRS:2020:U.I.113.17), available at <https://www.us-rs.si/decision/?lang=en&q=113%2F17&caselid=U-I-113%2F17&df=&dt=&af=&at=&pri=1&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=116202> (accessed 16 Feb. 2022). See also SI: OPTR Report (Academia), Questionnaire 2, Question 25.

⁹⁵ See UK: Finance Act 2021, available at <https://www.legislation.gov.uk/ukpga/2021/26/contents/enacted> (accessed 9 Feb. 2022); and HMRC, *Compliance checks: financial institution notice – CC/FS60* (26 Aug. 2021), available at <https://www.gov.uk/government/publications/compliance-checks-financial-institution-notice-ccfs60> (accessed 7 Feb. 2022). See also UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 25 and Annex.

⁹⁶ See DK: Law No. 2194 of 30 November 2021, Act amending the Tax Control Act and the Equalisation Act, available at <https://www.retsinformation.dk/eli/fta/2021/2194> (accessed 16 Feb. 2022); and DK: Proposal to Act amending the Tax Control Act and the Equalisation Act L-7-2021/1, available at <https://www.retsinformation.dk/eli/ft/202112L00007> (accessed 16 Feb. 2022). See also DK: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 26.

⁹⁷ See sec. 4. for further details on the specific principles and their development.

⁹⁸ See ES: SAN 3391/2021 [ECLI:ES:AN:2021:3391], 3 Jun. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/8e0d6deef7bad41c/20210806> (accessed 17 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 27.

⁹⁹ See secs. 1.4., 1.5., 1.6., 3.8. and 4.1. See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 30.

¹⁰⁰ See OPTR, *2018 General Report on the Protection of Taxpayers' Rights* (2019) sec. 4.4.

For the more intensive audits, the previously reported shift away from the fundamental principles has also been improved somewhat, but, overall, the improvement is not significant.

0.3.5. More extensive audits

As mentioned initially, in the area of more extensive audits in which the tax authorities have strictly limited powers, no appreciable difference to the level of compliance with minimum standards and best practices was detected in 2021. One of the few positive developments reported in this area comes from the Supreme Court of **Spain**, which stated in a judgment of 14 July 2021 that the tax administration cannot conduct investigations, determine settlements or impose sanctions on a taxpayer based on documents or evidence seized as a result of a search carried out in the home of third parties when such documents were considered invalid in a final criminal judgment because they were obtained in violation of fundamental rights, even if the entry and registration had been authorized by a judge. In addition, another Supreme Court judgment, this time of 23 September 2021, stated that the tax authorities cannot enter premises without first notifying the beginning of an audit procedure.¹⁰¹ Shifting away from the minimum standards and best practices, the State Court of Appeals of Minas Gerais, **Brazil**, found a prior authorization by the judiciary to enter premises (an accounting office) unnecessary, since such an activity would represent – in the view of the court – a mere exercise of the police power by tax authorities.¹⁰² On the other hand, in the **United States**, the judiciary authorized the IRS to issue summonses requiring multiple couriers and financial institutions to submit information about US taxpayers who may have used the services of Panama Offshore Legal Services (POLS) and its associates to evade US federal income taxes.¹⁰³ Also shifting from the minimum standard, new legislation in **Mexico** allows the tax authorities to seize bank deposits without prior judicial hearing when a tax assessment has become “due”.¹⁰⁴

0.3.6. Reviews and appeals

The positive developments regarding digitalization of the communication between tax administrations and taxpayers has further prompted e-filing of tax returns and other reports and electronic filing of reviews of incorrect tax assessments, speeding up the correction of tax assessments. For example, **Colombia** went for full digitalization of all tax proceedings (e.g.

¹⁰¹ See ES: STS 2982/2021 [ECLI:ES:TS:2021:2982], 14 Jul. 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/018f7cf37885acb1/20210727> (accessed 23 Feb. 2022); and ES: STS 3502/2021 [ECLI:ES:TS:2021:3502], 23 Sep. 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/36fc512f06556163/20211011> (accessed 23 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia) Questionnaire 2, Question 43.

¹⁰² See BR: STF, 27 July 2020, ARE 1279182/MG, available at <https://stf.jusbrasil.com.br/jurisprudencia/1106752172/recurso-extraordinario-com-agravo-are-1279182-mg-0350112-6820138130433/inteiro-teor-1106752191> (accessed 23 Feb. 2022). See also BR: OPTR Report (Academia) Questionnaire 2, Question 41.

¹⁰³ See US: DoJ Press Release, 29 July 2021, *IRS Obtains Court Order Authorizing Summonses for Records Relating to U.S. Taxpayers Who Used Panamanian Offshore Service Providers To Hide Assets and Evade Taxes*, available at <https://www.justice.gov/usao-sdny/pr/irs-obtains-court-order-authorizing-summonses-records-relating-us-taxpayers-who-used> (accessed 23 Feb. 2022). See also W. Choi, *US District Court Greenlights IRS Summonses Concerning Tax Evasion through Panamanian Law Firm* (30 July 2021), News IBFD.

¹⁰⁴ See MX: Código Fiscal de la Federación [Federal Tax Code], 2021, art., 144, available at http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 23 Feb. 2021). See also MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 45.

electronic notifications, obligations to email lawsuits to defendants, digital notifications, virtual hearings and electronic files) in 2021.¹⁰⁵ This positive improvement dovetails with a generally positive development in the area of reviews and appeals, where the previous trend towards limiting access to justice by requiring the prior exhaustion of administrative review before bringing a case to court seems to have been brought to a halt, with now slightly less than half the jurisdictions reporting that this is necessary.¹⁰⁶

The COVID-19 outbreak brought, as pointed out in section [0.2.](#), improvements that also comprised dispute resolution. As an example, the specific measures introduced during the pandemic in **Lithuania** have been reported to encourage faster dispute resolution, i.e. remote hearings, more efficient written procedures and wider use of electronic means, although exceptional cases may still exceed 2 years.¹⁰⁷ The **OECD** reports that the **Georgia** Revenue Service introduced remote, electronic tax dispute hearings in which taxpayers were offered the chance to have a remote hearing for their ongoing disputes.¹⁰⁸

In **Chile**, the general amendments to the tax code included the creation of the tax ombudsperson office, the *Defensoría del Contribuyente* (DEDECON), to assist taxpayers and provide legal assistance.¹⁰⁹ In **Lithuania**, a legal services information system (TEISIS) has provided residents with interactive consultations and electronic services of state-guaranteed legal aid.¹¹⁰

0.3.7. Criminal and administrative sanctions

In 2021, punitive tax law continued to expand its natural boundaries, extending the applicable punitive tax liabilities to both taxpayers and third parties because of the supremacy of public

¹⁰⁵ See CO: Ley 2080 de 2021, por medio de la cual se reforma el Código de Procedimiento Administrativo y de lo Contencioso Administrativo -Ley 1437 de 2011- y se dictan otras disposiciones en materia de descongestión en los procesos que se tramitan ante la jurisdicción, available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=156590 (accessed 23 Feb. 2022); and CO: Resolución DIAN No. 000056, por la cual se implementa la presentación electrónica de los recursos de reconsideración que deban presentarse ante la Dirección de Impuestos y Aduanas Nacionales, en cumplimiento de lo establecido en el artículo 559 del Estatuto Tributario (12 Jul. 2021), available at <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%c3%b3n%20000056%20de%2012-07-2021.pdf> (accessed 23 Feb. 2022). See also M. Bocachica, *Congress Establishes Mandatory Use of Electronic Means in Tax Proceedings* (22 Feb. 2021), News IBFD; and M. Bocachica, *Taxpayers May File Reconsideration Claims Electronically* (28 July 2021), News IBFD. See further CO: OPTR Report ((Tax) Ombudsman), Questionnaire 2, Question 8.

¹⁰⁶ See Chart 43 and sec. 6.1.

¹⁰⁷ See LT: Law on Tax Administration, 2005, available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.276549?jfwid=q8i88lr3sArticle> (accessed 7 Mar. 2022). The reported statements are based mostly on practical experience. The pandemic encouraged tax authorities to use other opportunities in practice, which turned out to be more efficient, as reported. See also LT: OPTR Report (Taxpayers / Tax Practitioners, Law Firm) Questionnaire 2, Question 51.

¹⁰⁸ See OECD, *supra* n. 45. See also GE: Tax Code of Georgia, art. 302(10), available at <https://matsne.gov.ge/en/document/download/1043717/93/en/pdf> (accessed 24 Feb. 2022).

¹⁰⁹ See CL: MoF Press Release, *Defensoría del Contribuyente comienza sus funciones con designación del Defensor Nacional* (12 Nov. 2021), available at <https://www.hacienda.cl/noticias-y-eventos/noticias/defensoria-del-contribuyente-dedecon-comienza-sus-funciones-con-designacion-del> (accessed 24 Feb. 2022). See also CL: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 54 and *infra*, sec. [12.3](#).

¹¹⁰ See the TEISIS website, <https://teisis.lt/external/home/main> (accessed 24 Feb. 2022). See also LT: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 54

interest and the efficiency of tax collection.¹¹¹ In that period, the number of tax penalties increased significantly, sometimes at the expense of proportionality. This has coincided with a concurrence in criminal and administrative sanctions.

A very good example is the case of **Chinese Taipei**, which instituted a significant increase in fines for tax evasion, both for authorship and abetting. Contrary to previous legislation, the amendment in question no longer allows corporate employees to avoid imprisonment by paying the fine.¹¹²

The Administrative Court in Blagoevgrad, **Bulgaria** (*Administrativen sad Blagoevgrad*), asked the ECJ for a preliminary ruling on whether the sealing of business premises together with an administrative penalty is proportionate for failing to issue an invoice, an interesting case that merits follow-up.¹¹³

However, some developments served to counteract this expansionary trend. Among other developments, **Brazil** upheld the *non bis in idem* principle against the tax administration's attempt to punish concurrently the non-payment of monthly advance payments and the final corporate tax debt,¹¹⁴ and **Portugal** incorporated a rule into its legislation according to which potential tax penalties are automatically waived if in the preceding 5 years the taxpayer has neither been convicted of any tax infraction nor availed of a reduction or waiver of tax penalties.¹¹⁵

Overall, 2021 was also characterized by criminal prosecutions and penalties imposed for tax offences. A major case broke in **Italy**, where the *Guardia di Finanza* (Financial Police) accused a multinational online travel company based in the **Netherlands** of evading payment of EUR 153 million in VAT between 2013 and 2019 by issuing invoices without VAT, due to the application of the so-called reverse-charge mechanism, although its counterpart (the accommodation provider) was not registered, so the tax was neither declared nor paid in Italy.

¹¹¹ C.E. Weffe H., *Taxpayers' Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting Project*, 74 Bull. Intl. Taxn. 2, sec. 2.4.4. (2020), Journal Articles & Opinion Pieces IBFD.

¹¹² See TW: Tax Collection Act, 2021, available at https://law.dot.gov.tw/law-ch/home.jsp?id=12&contentid=12&parentpath=0%2C2&mcustomize=law_list.jsp&istype=L&classtablename=LawClass&lawclass=22&lawname=201803090434&article1=&article2=&keyword= (accessed 21 Mar. 2022); and TW: MoF Press Release, *supra* n. 26. See also Lin, *supra* n. 26; Hoke, *supra* n. 26; and TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 58.

¹¹³ See BG: ECJ, Request for a preliminary ruling from the Administrativen sad Blagoevgrad (Bulgaria) lodged on 16 February 2021 – *MV – 98 v. Nachalnik na otdel 'Operativni deynosti' – grad Sofia v. glavna direksia 'Fiskalen kontrol' pri Tsentralno upravlenie na Natsionalna agentsia za prihodite*, available at <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=240981&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1526783> (accessed 10 Feb. 2022). See also Z. Szatmari, *CJEU Preliminary Ruling Request (VAT): MV - 98 (Case C-97/21) – Administrativen sad Blagoevgrad Submits Referral on Whether Sealing of Business Premises Together With Administrative Penalty Is Proportionate for Failing to Issue Invoice* (3 May 2021), News IBFD.

¹¹⁴ See BR: CARF-CSRF-CARF-MF-DF (Prim. Turma), Acórdão No. 9101-005.080, VCB Transportes Ltda. (5 Apr. 2021), available at <http://carf.fazenda.gov.br/sincon/public/pages/ConsultarJurisprudencia/listaJurisprudenciaCarf.jsf#> (accessed 9 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 58.

¹¹⁵ See PT: Lei 7/2021 que reforça as garantias dos contribuintes e a simplificação processual, alterando a Lei Geral Tributária, o Código de Procedimento e de Processo Tributário, o Regime Geral das Infrações Tributárias e outros atos legislativos, 2021, available at <https://data.dre.pt/eli/lei/7/2021/02/26/p/dre/pt/html> (accessed 9 Feb. 2022). See also PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58.

The multinational considers that the assessment and payment of all relevant taxes are the responsibility of third parties, namely, their domestic intermediaries.¹¹⁶

Several cases were prosecuted and decided in the **United States**.¹¹⁷ In that country, several courts held proportionate the application of the 50% maximum penalty against taxpayers for wilful failure to file a timely FBAR, since this represents a careless disregard of a known or obvious risk, as well as a violation of a known legal duty.¹¹⁸

In addition, 2021 saw new organizational structures for the investigation of tax offences. An interesting example of this is the use of information gathered on the basis of whistle-blower disclosures, which was also the topic in the *Halet v. Luxembourg* case before the ECtHR, in which the court weighed the disclosure of documents that were subject to professional secrecy¹¹⁹ against the general interest and the principle of proportionality.¹²⁰

0.3.8. Enforcement of taxes

As part of the trend that interim measures introduced during a time of crisis have proven useful for the continuous protection of taxpayers' rights, it is noteworthy to observe how states have dealt with the immediate threat to the financial foundation of their societies during the pandemic. Extending way beyond 2020 and in to 2021, the lingering financial crisis has threatened bankruptcy for many taxpayers, and in response states have introduced several interim measures in line with the best practice. For example, in **Denmark**, a taxpayer to whom a temporary payment of COVID-19 support has been paid out can choose the year of taxation of that support. The choice is between the year of payment and a later year; however, the support must be taxed no later than the year in which the recipient obtained an administrative decision awarding him the final right to the amount.¹²¹ **Greece** announced that companies and individuals exercising business activities can depreciate their fixed assets for the period in which their operation was suspended under a state decision, namely the extraordinary circumstances of the COVID-19 pandemic, if the fixed assets would have been used during

¹¹⁶ See Hoke, *supra* n. 33.

¹¹⁷ See US: DoJ News Release, *Two Bank Executives Charged for Conspiring to Launder Hundreds of Millions of Dollars Through U.S. Financial System in Connection with Odebrecht Bribery and Fraud Scheme* (25 May 2021), available at <https://www.justice.gov/opa/pr/two-bank-executives-charged-conspiring-launder-hundreds-millions-dollars-through-us-financial> (accessed 10 Feb. 2022). See also W. Choi, *US Grand Jury Indicts Two Australian Bankers for International Money Laundering and Bribery* (27 May 2021), News IBFD; and US: DoJ News Release, *Switzerland's Largest Insurance Company and Three Subsidiaries Admit to Conspiring with U.S. Taxpayers to Hide Assets and Income in Offshore Accounts* (14 May 2021), available at <https://www.justice.gov/opa/pr/switzerland-s-largest-insurance-company-and-three-subsidiaries-admit-conspiring-us-taxpayers> (accessed 10 Feb. 2022). See further W. Choi, *Swiss Insurance Company Admits to Helping US Taxpayers Hide Assets from IRS* (17 May 2021), News IBFD.

¹¹⁸ See *Said Rum*, *supra* n. 34; and *Leon Landa* *supra* n. 34. See also Choi (22 Apr. 2021), *supra* n. 34; and Choi, (26 Apr. 2021), *supra* n. 34.

¹¹⁹ See sec. 3.14.

¹²⁰ LU: ECtHR, 11 May 2021, App. No. 21884/18, *Halet v. Luxembourg*, available at <https://hudoc.echr.coe.int/eng?i=001-210131> (accessed 8 Mar. 2022).

¹²¹ See DK: Act No. 1956, 2021, available at <https://www.retsinformation.dk/eli/ta/2021/1956> (accessed 7 Mar. 2022); and DK: Act No. 2611, 2021, available at <https://www.retsinformation.dk/eli/ta/2021/2611> (accessed 7 Mar. 2022). See also DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 66.

the suspension period.¹²² In **Lithuania**, companies affected by the pandemic and listed by the tax authorities may form interest-free loan agreements until 31 August 2021 for debts that have been comprised for the period from 16 March 2020 to 31 August 2021. Companies shall pay the loans in instalments until 31 December 2022, among other measures.¹²³

While taxpayer bankruptcy and insolvency are a natural part of any society, it is worth considering whether some of the innovative features should be made permanent, for example to limit the state's power and ensure the taxpayer a right to a dignified existence, defined as the minimum necessary for living. As these measures deal directly with the effective collection of taxes, it should be noted that they come with a price as well. Among other measures, **Austria** reduced its basic personal income tax rate for certain portions of income, resulting in a relief of up to EUR 1.6 billion per year for wage and income taxpayers.¹²⁴ **Canada** extended the temporary amendments to the Income Tax Regulations applicable to registered pension plans and deferred salary leave plans from 2021 through 2022.¹²⁵ In the **United States**, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on 27 March 2020, established the Paycheck Protection Program (PPP) to provide forgivable loans of up to USD 10 million to small businesses.¹²⁶

Another example is the **United Kingdom**, which has been reported to show a lot of leeway in agreeing to postponement of liability and in approving time-to-pay arrangements during the pandemic, which reportedly increased the levels of tax debt greatly during the pandemic to a peak of GBP 67 billion in August 2020, largely because of HMRC's decision to suspend collection of VAT and income tax self-assessment debts at the outset.¹²⁷ On the other hand, the price of depriving taxpayers of their livelihood and a dignified existence may come with a cost as well. On that note, a controversy has been raging in **Spain** over the possibility, accepted by the Supreme Court in a 2019 ruling, of the tax administration seizing the minimum

¹²² See GR: General Department of Taxation, *Carrying out of valuations and fiscal monitoring of expenditure and of costs and expenses of expenditure and losses incurred by businesses affected by the COVID-19 pandemic* (21 May 2021), available at https://www.aade.gr/sites/default/files/2021-05/e2110_2021.pdf (accessed 25 Feb. 2022). See also V. Dafnomilis, *Individuals and Companies May Depreciate Fixed Assets for Period During which Their Operation Was Suspended* (2 June 2021), News IBFD.

¹²³ See LT: Tax Authority Guidance KM2514, available at <https://bit.ly/3Cm7ZPH> (accessed 7 Mar. 2022). See also G. Apulskyte, *Lithuania Further Extends Tax Relief Measures for Companies* (4 May 2021), News IBFD.

¹²⁴ See AT: Federal Ministry of Finance Press Release, *VAT Exemption for Face Masks*, available at <https://www.bmf.gv.at/en/current-issues/Corona/information-coronavirus/VAT-exemption-for-face-masks.html> (accessed 7 Mar. 2022). See also AT: OPTR Report (Tax Administration)/(Tax) Ombudsperson), Questionnaire 2, Question 66.

¹²⁵ See CA: Department of Finance Press Release, *Relief measures for Registered Pension Plans and deferred salary leave plans* (20 May 2021), available at <https://www.canada.ca/en/department-finance/news/2021/05/relief-measures-for-registered-pension-plans-and-deferred-salary-leave-plans.html> (accessed 28 Feb. 2022). See also J. Robles Santos, *Canada Proposes Extension of Relief for Registered Pension Plans and Deferred Salary Leave Plans for Duration of Pandemic* (31 May 2021), News IBFD.

¹²⁶ See US: IRS Revenue Proceeding 2021-20, available at <https://www.irs.gov/pub/irs-drop/rp-21-20.pdf> (accessed 7 Mar. 2022); and US: IRS Press Release IR-2021-91 (22 Apr. 2021), available at <https://www.irs.gov/newsroom/treasury-department-and-irs-provide-safe-harbor-for-small-businesses-to-claim-deductions-relating-to-first-round-paycheck-protection-program-loans> (accessed 7 Mar. 2022). See also W. Choi, *IRS Provides Safe Harbour for Deductions under Paycheck Protection Program* (23 Apr. 2021), News IBFD.

¹²⁷ See UK: *National Audit Office Audit Report and Accounts 2020-21* (22 Jun. 2021), available at <https://www.nao.org.uk/report/nao-annual-report-and-accounts-2020-21/> (accessed 8 Mar. 2022). See also UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64. See further sec. 8.

wage collected in previous months if it has not been used up in full and if it is being saved little by little in the account of the taxpayer.¹²⁸

0.3.9. Cross-border procedures

A continuous and general trend that has extended into 2021 is the increase in cross-border procedures between states and the accompanying weakening of taxpayers' rights in the process. Rules on mandatory disclosure and exchange of information are being continuously introduced in order to better equip tax administrations, at the same time weakening the protection of taxpayers. In the European Union, the most important example is DAC7, which expands the automatic exchange of information and reporting obligations to cover certain transactions through digital platforms and modifies existing regulations with the aim of improving administrative cooperation in exchange of information as regards, for instance, joint audits, information requests and data breaches.¹²⁹ A similar development has occurred in the **United States**, where newly adopted regulations clarify sales and use tax collection and reporting responsibilities of marketplace facilitators on behalf of online sellers as required by state law.¹³⁰

Positive developments for taxpayers' rights in cross-border situations in recent years include the widespread ratification of the MLI and its introduction of MAP and mandatory binding arbitration. In the same vein, the EU Tax Dispute Resolution Mechanisms¹³¹ also provide better taxpayer protection in this regard at the EU level.

Another interesting development is the Federal Court of **Canada's** decision in *Blue Bridge Trust Company Inc. v. Minister of National Revenue*. While endorsing the need for judicial review of the request for information, the court pointed out that the requested authority had to assume that the request for information complied with the domestic law of the requesting state and was necessary for the purposes of the investigation based on mutual trust between the parties to a double tax convention.¹³²

In **Denmark**, the National Tax Tribunal decided an appeal on access to cover letters, emails and other documents initiating the procedure between the Danish competent authority and the

¹²⁸ See ES: ATS 9295/2019 [ECLI:ES:TS:2019:9295A] (26 Sept. 2019), available at <https://www.poderjudicial.es/search/TS/openDocument/516f119dc390d40f/20191004> (accessed 9 Mar. 2022).

¹²⁹ See Morales, *supra* n. 38. See also sec. 9.

¹³⁰ See US: WA Department of Revenue Rules WAC 458-20-282, Marketplace tax collection and reporting (1 Jun. 2021), available at <https://dor.wa.gov/sites/default/files/2022-02/20-282cr3pfrmdraftjun21.pdf> (accessed 8 Mar. 2022). See also sec. 9.

¹³¹ Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, OJ L265 (2017), Primary Sources IBFD.

¹³² See CA: FCC, 11 Sept. 2020, *Blue Bridge Trust Company Inc. v. Minister of National Revenue* (2020 FC 893), available at <https://taxinterpretations.com/content/604629> (accessed 8 Mar. 2022); and CA: FCC, 24 Mar. 2021, available at *Blue Bridge Trust Company Inc. v. Minister of National Revenue* (2021 FCA 62), <https://taxinterpretations.com/content/610100> (accessed 8 Mar. 2022). See also P. Baker, *Blue Bridge Trust Company Inc v. Minister of National Revenue*: 2020 FC 893, pp. 747-774, 23 Intl. Tax Law Reports 4 (2021), available at https://library.ibfd.org/custom/web/SD_PDF/scans/2021/G-I/ITLR/vol.23/4_747-774.pdf?_ga=2.1673394.2021595780.1646735897-574979399.1627633795 (accessed 8 Mar. 2022).

Luxembourg competent authority. The court upheld the exemption of said documents from access to information based on the protection of confidentiality.¹³³

The prohibition of the exchange of illegally obtained information received a boost in **China (People's Rep.)**, where the newly reformed Personal Information Protection Law moved towards the best practice, since it is clear that no organization or individual may unlawfully provide personal information of others.¹³⁴

On the other hand, **Mexico** maintained the tax administration's collection powers in force despite a taxpayer's request to initiate a MAP procedure in a way practically identical to *solvo et repeto* and essentially rendering the MAP ineffective.¹³⁵

0.3.10. Legislation

No matter how limited the time and resources available to tax administrations, taxes must be based on a legal source, which results from the will of the people in a democratic state. For this to happen in practice, taxpayers should ideally be involved in shaping legislation via adequate public consultation. Some positive developments were reported in this area in 2021, with a significant growth in public consultation for tax matters.

Perhaps as a consequence of the “hardening” of soft law and the progressive intervention of multilateral bodies in the legislative processes in tax matters, and probably in response to doubts about the democratic legitimacy of the rule-making processes carried out by such bodies, 2021 saw a growing trend towards public consultation. This is particularly notable with respect to the European Union, where the European Commission confirmed a steady (and growing) movement towards greater citizen participation in EU regulatory processes in general, including one major consultation on taxpayers' rights.¹³⁶ In this regard, the Commission follows in the footsteps of the OECD, which maintained in 2021 its policy of public consultation on a number of its proposals, in particular those related to the digitalization of the economy. In addition, the European Commission launched 17 other public consultation initiatives in 2021, confirming the trend.¹³⁷

¹³³ See DK: National Tax Tribunal, 5 May 2021, SKM 2021.253 LSR, available at <https://skat.dk/data.aspx?oid=2303674&lang=da> (accessed 8 Mar. 2022). See also DK: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 71.

¹³⁴ See CN: Personal Information Protection Law, 2021, available at <http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml> (accessed 8 Mar. 2022); and CN: *Notice of the State Administration of Taxation on Issuing the Rules for the International Exchange of Tax Information* (18 May 2006), available at http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=3020d02c49508ff1bdfb&keyword=%e5%9b%bd%e9%99%85%e7%a8%8e%e6%94%b6%e6%83%85%e6%8a%a5%e4%ba%a4%e6%8d%a2%e5%b7%a5%e4%bd%9c%e8%a7%84%e7%a8%8b&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 (accessed 8 Mar. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 72.

¹³⁵ See Código Fiscal de la Federación, *supra* n. 103, at art. 142, available at http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 23 Feb. 2021). See also MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 76.

¹³⁶ See European Commission Public Consultation: *EU taxpayers' rights – simplified procedures for better tax compliance (Recommendation)*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12627-EU-taxpayers-rights-simplified-procedures-for-better-tax-compliance-Recommendation-public-consultation_en (accessed 9 Mar. 2022).

¹³⁷ See European Commission: *Have Your Say (Published Initiatives)*, available at <https://ec.europa.eu/info/law/better-regulation/have-your->

A particularly positive example comes by way of **Luxembourg**, where the Constitutional Court ruled that economic retroactivity of a tax provision is unconstitutional, as the principle of legal certainty precludes norms from being applied retroactively, and that the principle and its expressions of protection of legitimate expectations and the non-retroactivity of laws are general legal principles that are linked to the constitutional principle of the rule of law.¹³⁸ This development is somewhat at odds with the hesitant response of the ECtHR in the *Vegotex* case, referred to the Grand Chamber on 8 March 2021, which allowed the retroactive application of new legislation to prevent a tax credit attributable to the taxpayer from becoming time-barred, allegedly driven by a compelling reason of a general interest.¹³⁹

For its part, in **India**, the Supreme Court found “ludicrous” the tax authorities’ attempt to apply an expanded 2012 definition of software royalty to events occurring since 1 June 1976,¹⁴⁰ in parallel with a statement from the Prime Minister Shri Narendra Modi expressly qualifying retrospective tax legislation as “a mistake”.¹⁴¹ The Indian Parliament enacted legislation scrapping the retroactive 2012 Amendment, however, only limited to income arising from the transfer of a capital asset situate in India in consequence of the transfer of a share or interest in a company or entity registered or incorporated outside India made before the 28th day of May, 2012. Further, any order or notice made under that Amendment shall be deemed to never have been passed.¹⁴²

0.3.11. Revenue practice and guidance

Regarding tax legislation, it is pivotal that taxpayers not merely comprehend the rules but that they are also aware of them once implemented. This awareness, as a cornerstone of legal certainty, has been particularly challenging in recent years, with a high number of interim pandemic legislative provisions and a rise in cross-border tax initiatives at the OECD and EU levels. A growth in guidelines regarding corporate taxation issues was reportedly seen in 2021, indicating that tax authorities are aiming to improve certainty and reduce the risk of litigation. A noteworthy example in this regard is a judgment issued by the **Netherlands Hoge Raad** (Supreme Court), which leans towards the minimum standard. The court protected the

[say/initiatives_en?topic=TAX&feedbackOpenDateFrom=01-01-2021&feedbackOpenDateClosedBy=31-12-2021](#) (accessed 25 Mar. 2022).

¹³⁸ See LU: CC, 22 Jan. 2021, Case 00152, available at <http://legilux.public.lu/eli/etat/leg/acc/2021/01/22/a72/jo> (accessed 5 Mar. 2021). See also sec. 10.

¹³⁹ See BE: ECtHR, 10 Nov. 2020, Application No. 49812/09, *VEGOTEX International S.A. v. Belgium*, available at <https://hudoc.echr.coe.int/eng/?i=001-206214> (accessed 24 Feb. 2022).

¹⁴⁰ See IN: SC, 2 Mar. 2021, *Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income Tax*, 2021 SCC 159. 16, available at <https://itatonline.org/archives/engineering-analysis-centre-of-excellence-private-limited-vs-cit-supreme-court-taxability-of-sums-received-for-supply-of-software-as-royalty-given-the-definition-of-royalties-contained-in-article/> (accessed 9 Mar. 2022). See also M. Butani, *India – Global Tax Treaty Commentaries – Country Policy & Practice*, Country Tax Guides IBFD; and S. Shah, *Supreme Court Decision: Software Payments for End-Use or Resale not Taxable as Royalty* (9 Mar. 2021), News IBFD.

¹⁴¹ See IN: *PM addresses the Confederation of Indian Industry (CII) Annual Meeting 2021* (11 Aug. 2021), available at https://research.ibfd.org/collections/ftn/pdf/d7d48990ff3dcf2cdd3fa0c5132f317d-2021-31506_Support-Doc_WTD-Docs_India-Notes-Abolition-of-Retropective-Taxation.pdf (accessed 9 Mar. 2022). See also K.M. Strocko, *India's Retrospective Tax Laws Were a Mistake, Modi Says* (11 Aug. 2021), News IBFD.

¹⁴² See IN: The Taxation Laws (Amendment) Act, 2021, [https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Taxation%20Laws%20\(Amendment\)%20Act,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Taxation%20Laws%20(Amendment)%20Act,%202021.pdf) (accessed 9 Mar. 2022); K.M. Strocko, *Indian Parliament Passes Bill to End Retrospective Tax Laws* (9 Aug. 2021), News IBFD. See also section [10.2](#) of this yearbook.

taxpayer against an incorrect statement on the website of the Tax and Customs Administration and allowed the taxpayer to rely on information published by the Dutch tax authorities even when it appears to be inaccurate.¹⁴³

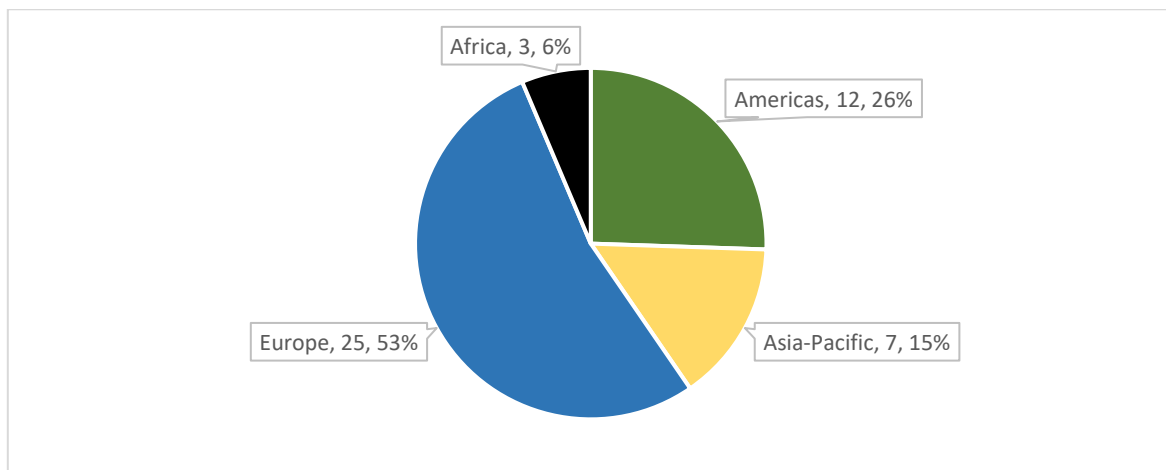
0.3.12. Institutional framework for the protection of taxpayers' rights

Overall, the efficient protection of taxpayers' rights requires an institutional framework, which can be shaped in several ways, such as a taxpayers' bill of rights or taxpayers' charters. A significant improvement among the jurisdictions that have a framework like that occurred in 2021, since more than half of them are now reporting that the provisions are in fact legally effective.¹⁴⁴

0.4. Methodological remarks

Following the OPTR's working standard and procedure, this yearbook has been prepared based on the information provided in 56 reports from 87 national reporters from 47 countries worldwide, distributed regionally as presented in Chart A.

Chart A. Surveyed Countries per Region



Reporters are grouped by country. To the fullest extent possible, these groups of experts are formed by practitioners/taxpayers, tax authorities, academics, tax ombudspersons and the judiciary of each surveyed country in order to obtain a neutral, balanced report on the situation of taxpayers' rights in each jurisdiction. Individual reporters can have more than one affiliation simultaneously (e.g. tax administration and academia). The judicial, academic and tax ombudsperson members of each country group of experts are considered neutral, whereas the taxpayer, tax practitioner and tax administration members are considered not neutral. The national groups of experts for 2021 are as follows:

¹⁴³ See NL: HR, 5 Nov. 2021, 20/0373 [ECLI:NL:HR:2021:1654], available at https://www.ndfr.nl/content/ECLI_NL_HR_2021_1654 (accessed 15 Mar. 2022).

¹⁴⁴ See sec. 12.2., Charts 78 and 79

Country	Position	Name
Argentina	Practitioner-Academic	Alberto Tarsitano
Australia	Ombudsperson	Duy Dam
		Karen Payne
	Academic	John Bevacqua
Austria	Tax Administration-Ombudsperson	Alfred Faller
Belgium	Practitioner	Jef Van Eyndhoven
	Academic	Sylvie De Raedt
Bolivia	Practitioner-Academic	Alvaro Villegas Aldazosa
Bosnia and Herzegovina	Academic	Ana Dujmovic
Brazil	Practitioner-Academic	Paulo Ayres Barreto
		Dalton Luiz Dallazem
	Judiciary	Bianor Arruda
	Academic	Luís Eduardo Schoueri
		Raphael Assef Lavez
Bulgaria	Academic	Stoycho Dulevski
	Practitioner	Boyana Milcheva
		Ivan Alexander Manev
Canada	Practitioner	Salvatore Mirandola
Chile	Practitioner	Yuri Alberto Varela
		Ignacio Núñez
China	Academic	Zhengwen Shi

Country	Position	Name
(People's Rep.).		
Chinese Taipei	Practitioner-Academic	Huang Shih Chou
Colombia	Ombudsperson	Leonardo Andrés Bautista Raba
		Yvonne Carolina Florez Cutiva
Cyprus	Academic	Venetia Argyropoulou
Czech Republic	Practitioner-Academic	Hana Skalická
Denmark	Tax Administrator	Henrik Klitz
	Practitioner	Henrik Peytz
Finland	Academic	Kristiina Äimä
Germany	Tax Administrator	Eva Oertel
	Practitioner	Martin Bartelt
	Academic	Daniel Dürrschmidt
Greece	Tax Administrator-Academic	Katerina Perrou
Guatemala	Practitioner	Alfredo Rodríguez
		Alejandra Fuentes-Pieruccini
Honduras	Tax Administrator	Roberto Ramos Obando
		Cristian Erazo Delgado
India	Practitioner	Kuntal Dave
Italy	Practitioner	Pietro Mastellone
		Isabella Cugusi
	Academic	Giovanna Tieghi
Japan	Academic	Masato Ohno

Country	Position	Name
Kazakhstan	Practitioner	Anuar Nurakhmet
Kenya	Academic	Bosire Nyamori
Lithuania	Practitioner	Artūras Liutvinas
Luxembourg	Judiciary	Fatima Chaouche
Mauritius	Practitioner	Ahmad Khalid Phul
Mexico	Practitioner	Luis Salinas
		Fernando Juárez Hernández
		Diana Bernal Ladrón de Guevara
	Academic	Carlos Espinosa Berecochea
Netherlands	Practitioner	Roxana Bos
		Paul Harpin
New Zealand	Academic	Adrian Sawyer
Norway	Tax Administration	Bente Bøgestub
Peru	Practitioner-Academic	Cecilia Delgado Ratto
	Practitioner	Esteban Montenegro Guillinta
	Ombudsperson	Víctor Alberto Zúñiga Morales
Poland	Practitioner-Academic	Małgorzata Sęk
		Aneta Nowak-Piechota
	Judiciary-Academic	Dominik Mączyński
Portugal	Practitioner	Rui Camacho Palma
Russia	Practitioner	Dmity Anishchenko
	Academic	Petr Popov

Country	Position	Name
Serbia	Academic	Svetislav V. Kostić
		Lidija Živković
Slovenia	Practitioner	Marusa Pozvek
	Academic	Polonca Kovač
South Africa	Ombudsperson	Gert van Heerden
	Academic	Jennifer Roeleveld
	Practitioner	Kevin Burt
Spain	Ombudsperson-Academic	Javier Martín Fernández
	Academic	Yolanda Martínez Muñoz
		Elizabeth Gil García
		Felipe Alonso Murillo
		Jesús Rodríguez
		Manuel Lucas
Sweden	Practitioner	Lynda Ondrasek Olofsson
	Academic	Eleonor Kristoffersson
Switzerland	Academic	Peter Hongler
Turkey	Academic	Billur Yalti
Ukraine	Academic	Iryna Stepanova
United Kingdom	Practitioner	Robin Williamson
United States	Practitioner-Academic	Christine S. Speidel
Uruguay	Practitioner	Guzmán Ramírez
	Academic	Addy Mazz

Country	Position	Name
Venezuela	Practitioner	Marie Roschelle Quintero

In addition, two regional units keep track of the development of the jurisprudence of international courts dealing with taxpayers' rights, namely (i) for Europe, comprising the case-law of the ECtHR and the ECJ; and (ii) for the Americas, covering the judgments of the Inter-American Court of Human Rights (ACtHR). The regional groups of experts for 2020 are as follows:

Region	Position	Name
Europe	Tax Administrator-	Katerina Perrou
	Academic	
	Judiciary	Natalia Vorobyeva
Americas	Practitioner	Guzmán Ramírez

Reporters were asked to provide relevant information in three different ways. First, through Questionnaire 1, reporters should assess assertively (yes/no) the level of practical implementation of legal procedures, safeguards and guarantees associated with taxpayers' rights in domestic law in 82 situations. The answers are presented throughout this yearbook in pie charts that compile the answers per country.

In cases in which there is more than one report per country, it may be reported that the same country has experienced progress and setbacks in the adoption of a given standard or practice, depending on the different assessments made by the reporters concerned. In those cases, the groups of national reporters were asked to discuss internally their disagreement and, if possible, to align their assessments of a given factual situation. Despite these efforts, agreement was not always possible. In cases of remaining divergences, the different reports from the same country are taken as fractions of the jurisdiction's report to maintain parity between jurisdictions, so that all countries are equally represented. Specifically, each of the two reports from **Brazil**, **Mexico**, **Poland** and **Slovenia** will have a value of 0.5, and each of the three reports from **Bulgaria** and **Peru** will have a value of 0.33 for Questionnaire 1's statistical purposes, as presented in the pie charts, so that each of these countries is represented with an equal value vis-à-vis other countries with single reports. All divergent opinions among reporters of the same country have been reported alongside the pie charts.

This formula aims to give all countries equal weight and to split the input of each country among the various reporters. In other words, where more than one team is involved, or a question has sub-questions, there may be decimals in the findings. All decimal results have been rounded off by (i) dropping all decimals when the first decimal is smaller than or equal to 4; (ii) adding 1 to the rounding digit when the first decimal is greater than 5; (iii) dropping all decimals when the first decimal is 5 and the figure is smaller than its counterpart in the statistical analysis; and (iv) adding 1 to the rounding digit when the first decimal is 5 and the

figure is greater than its counterpart in the analysis. Appendix B of this yearbook compiles all answers reporters provided in this regard.

Second, through Questionnaire 2, reporters should assess assertively (shift towards/shift away) the level of compliance with 57 minimum standards and 44 best practices to protect taxpayers' rights, grouped in 86 benchmarks. The answers are presented throughout this yearbook, in boxes that state the minimum standard or best practice discussed in each specific section. In cases in which there is more than one report per country, it may be reported that the same country has experienced progress and setbacks in the practical adoption of the minimum standard or best practice, depending on the different assessments made by the reporters concerned. In those cases, different reports from the same country have been identified by a number, as they appear in Appendix B of this yearbook.

Third, reporters should provide an impartial, non-judgemental summary of events occurring in 2021 (legislation enacted, administrative rulings, circulars, case law and tax administration practices) that grounds each report's assessment of the level of compliance in the above-mentioned benchmarks for the practical protection of taxpayers' rights. The information is presented, editorially selected, throughout this yearbook. Reporters do not always substantiate their evaluations, which makes it methodologically impossible to report the reasons for diverging assessments in the cases of multiple reports for a single country.

1. Identifying Taxpayers, Issuing Tax Returns and Communicating with Taxpayers

1.1. General issues

Since its inception, the OPTR has reported a steady trend towards improving mechanisms for interaction with taxpayers based on the extensive use of digital tools.¹⁴⁵ The outbreak of the COVID-19 pandemic has exponentially increased the speed of the process: the restrictions on paper-based communication and in-person interactions have led to a greater demand on digital service channels.¹⁴⁶

As will be seen below, the provision of remote digital services by tax administrations and the filing of returns and other information in electronic format has continued its upward trend. The information provided by national reporters openly leans in this direction.

Regarding taxpayer identification, several states surveyed have taken concrete actions to expand the scope of their registration programmes with enhanced security and confidentiality measures for taxpayer data. In this regard, the practice whereby tax and civil registrations of natural persons engaged in the provision of independent services were differentiated for confidentiality reasons is noteworthy. The same applies to secure taxpayer identification practices for access to tax administrations' online systems, which also received a boost in 2021 (section [1.2.](#)).

The situation is stable as regards the protection of the confidentiality of taxpayer information held by third parties. The few developments reported are of a regulatory nature, related to the secure transfer of information to the tax administration and to the confidentiality obligations of persons who have, or have had, access to taxpayer information (section [1.3.](#)).

The protection of taxpayers' right to *habeas data* has suffered some setbacks, although this does not mean that the general trend towards greater protection has retreated. The possibility to use and correct pre-populated returns has increased in the period, and guidance has been provided in strong fashion. Several countries have expanded the use of pre-populated returns to minor and local taxes. The possibility to obtain certified information on the tax base for estate tax, with appropriate security guarantees, was reported. However, in one case, the concept of "reserved information" was expanded to prevent the taxpayer's ability to access information relevant to the return. In another case, the judiciary upheld the denial of access to personal information of the taxpayer on public interest grounds (section [1.4.](#)).

Following the trend imposed since 2020 by the COVID-19 pandemic, digital and secure communication between tax administrations and taxpayers was given a strong boost in 2021. Measures in this regard have been both regulatory, establishing simplified communication procedures, and operational, implementing technological tools to facilitate communication with taxpayers, although some of these facilities (e-assessments) have been objected to for impeding the proper exercise of the right to defence (section [1.5.](#)).

Similarly, the persistence of pandemic conditions has prompted the development of more cooperative compliance programmes among the surveyed countries, as well as actions that

¹⁴⁵ See Observatory on the Protection of Taxpayers' Rights (OPTR), [The IBFD Yearbook on Taxpayers' Rights 2020](#), sec. 1 (IBFD 2021), Books IBFD; and Observatory on the Protection of Taxpayers' Rights (OPTR), [The IBFD Yearbook on Taxpayers' Rights 2019](#), sec. 1 (IBFD 2020), Books IBFD

¹⁴⁶ See OECD, *supra* n. 1, at p. 13

favour constructive dialogue and cooperation between tax authorities and taxpayers, even though they may not qualify properly as cooperative compliance programmes, with minimum setbacks (section [1.6.](#)).

Similarly, tax administrations have had to expand their taxpayer assistance programmes due to the persistence of the COVID-19 pandemic. Indeed, this activity has underpinned the digitalization of tax administrations in 2021. Multiple developments are reported, aimed at facilitating remote tax compliance and assisting taxpayers with any queries they may have regarding their tax status, including access to information in multiple languages (section [1.7.](#)).

In conclusion, based on the information so provided, it can be stated – this yearbook does – that tax administrations have taken taxpayer-centred approaches regarding taxpayer identification, the issuance of tax returns and communication with taxpayers, tending towards compliance with the minimum standards and best practices that the OPTR monitors.¹⁴⁷

1.2. Identification of taxpayers

Minimum standard: Implement safeguards to prevent impersonation when issuing a unique identification number

Shifted towards/improved the minimum standard:

Australia, Bulgaria, United States

Shifted away from the minimum standard:

Slovenia

Minimum standard: The system of taxpayer identification should take account of religious sensitivities

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

None

During 2021, most countries maintained the trend towards the implementation of safeguards linked to the issuance of taxpayer identification numbers,¹⁴⁸ along the line of developments reported in previous OPTR Yearbooks.

In this regard, **Australia** changed the myGovID¹⁴⁹ identity requirements, enabling taxpayers to achieve a greater online identity strength. Taxpayer access to standard identity strength

¹⁴⁷ See OECD, *supra* n. 45, at pp. 25-29.

¹⁴⁸ See S. Gueydi, [Bahrain Releases Rules and Procedures for Authorizing VAT Agents and Representatives](#) (3 May 2021), News IBFD; R. Offermanns, [Belgium Announces VAT Registration and Deregistration Must be Filed Electronically](#) (13 July 2021), News IBFD; B. Rodríguez, [Tax Administration Reaffirms Obligation for Importers and Exporters with Commercial Activities to Register in Tax Electronic System](#) (1 July 2021), News IBFD; M. Corral, [Dominican Republic Issues Guidance on Tax Identification Number \(RNC\)](#) (14 June 2021), News IBFD; G. Seeyave, [Mauritius Introduces Online VAT Registration](#) (4 May 2021), News IBFD; E. Orellana Polo, [Tax Administration Updates List of Non-Resident Digital Service Providers Registered for VAT Purposes](#) (17 May 2021), News IBFD; and E. Rodríguez Alzaa, [Cooperatives and Associations Must Identify and Report Information on Ultimate Beneficiaries](#) (14 July 2021), News IBFD.

¹⁴⁹ A myGovID ID Card is a digital identity certificate issued by the Australian government. See <https://www.mygovid.gov.au/> (accessed 19 Jan. 2022).

has been expanded by including Australian citizenship certificates and ImmiCards¹⁵⁰ as accepted identity documents and by verifying an Australian passport, at least one other identity document and a photo. The process includes a one-off face verification process, which entails scanning a taxpayer's face to check they are a real person, the right person and are verifying in real time.¹⁵¹

Bulgaria amended its legislation regarding the identification numbers (BULSTAT numbers) of self-insured persons that practised freelance professions to separate the taxpayer's identification number from the person's unique identification number (UIC). The measure aims to protect taxpayers' privacy, in line with Regulation (EU) 2018/1725,¹⁵² on the protection of natural persons regarding the processing of personal data. Prior to the amendment, the BULSTAT number was the same as the natural person's unique identification number (UIC), so that a freelance professional's private UIC became public through the BULSTAT number.¹⁵³

However, as part of the COVID-19 measures, **Ghana** ordered the replacement of individuals' tax identification and social security numbers with their Ghanaian national identification card numbers, a development towards a unified citizens' identification.¹⁵⁴

In the same vein, as reported in the OPTR 2020 Yearbook,¹⁵⁵ the **United States'** Internal Revenue Service (IRS) has extended the scope of its PIN-based identity protection programme (IP PIN) to all those taxpayers able to verify their identity. The online PIN application, Get an IP PIN, secures access through a multi-factor authentication process to verify a person's identity.¹⁵⁶ In addition, the IRS updated its frequently asked questions (FAQs) on general issues of the Foreign Account Tax Compliance Act (FATCA). The updated FAQs provide information for Model 1 Foreign Financial Institutions (FFIs) that are required to, but have not been able to, obtain and exchange the US taxpayer identification number (TIN) for

¹⁵⁰ An ImmiCard is issued to certain visa holders who do not have and cannot obtain a passport recognized by the Australian Government. An ImmiCard assists visa holders to provide evidence of their Commencement of Identity (COI) in Australia. Agencies such as Medicare and Centrelink must verify a visa holder's COI before enrolling them in government services. See <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/immicard/overview> (accessed 19 Jan. 2021).

¹⁵¹ See AU: Commissioner of Taxation, *Annual Report 2020-21* pp 30-31, available at https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/ATO_annual_report_2020-21.pdf (accessed 19 Jan. 2022). See also AU: OPTR Report (Tax Ombudsperson/Academia), Questionnaire 2, Question 1.

¹⁵² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018, on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, OJ L295 (2018).

¹⁵³ See *PIN in BULSTAT register is converted into a 9-digit code from January 4*, Darik News (3 Dec. 2021), available at <https://darik.news/en/pin-in-bulstat-register-is-converted-into-a-9-digit-code-from-january-4.html> (accessed 19 Jan. 2022). See also BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 1. However, as part of the COVID-19 measures, **Ghana** ordered the replacement of individuals tax identification and social security numbers with their Ghana national identification card numbers, a development towards a unified citizens' identification. See Ofori-Boafoa, *supra* n. 46.

¹⁵⁴ See Ghana Revenue Authority Press Release, *supra* n. 47. See also Ofori-Boafoa, *supra* n. 46.

¹⁵⁵ See OPTR, *supra* n. 143 (2020), at sec. 1.2.

¹⁵⁶ See US: IRS, *National Tax Security Awareness Week, Day 3: IRS expands Identity Protection PIN Opt-In Program to taxpayers nationwide*, IR-2020-267, available at <https://perma.cc/Y3YH-MZEW> (accessed 19 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 1.

each specified US person that is an account holder or a controlling person of a non-US entity.¹⁵⁷

For its part, in **Japan**, taxpayers were prompted to request their individual ID card by their interest in applying for special subsidies for individual businesses damaged by the effects of the COVID-19 pandemic.¹⁵⁸

Regarding the legal scope of measures aimed at suspending the registration and identification of taxpayers, the State Tax Service (STS) of **Ukraine** clarified that the cancellation of VAT registration releases the taxpayer from the obligations linked to the report of taxable transactions, unless such suspension is annulled. Should that be the case, the taxpayer should be retroactively reinstated on the register, without penalties for late filing.¹⁵⁹

1.3. Information supplied by third parties and withholding obligations

Minimum standard: Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes

Shifted towards/improved the minimum standard:

Colombia, Turkey

Shifted away from the minimum standard:

Chinese Taipei

Best practice: Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax

Shifted towards/matched the best practice:

Colombia

Shifted away from the best practice:

None

There were no significant changes in 2021 to the trend in favour of protecting the confidentiality of taxpayers regarding the information handled by third parties for tax purposes.

In **Colombia**, a resolution established the conditions for secure transfer of information related to the consolidated industry and services tax, part of the so-called Simple Taxation Regime (*Régimen Simple de Tributación*, RST), an optional taxation model that replaces the income tax and integrates the national excise tax and the consolidated industry and commerce tax to local tax authorities for control purposes.¹⁶⁰

¹⁵⁷ W. Choi, [IRS Provides Codes for Foreign Financial Institutions with Missing US Tax Identification Numbers \(TINs\)](#) (14 May 2021), News IBFD.

¹⁵⁸ See the Individual Number Card website at <https://www.kojinbango-card.go.jp/en/>. See also JP: OPTR Report (Academia), Questionnaire 2, Question 1.

¹⁵⁹ See O. Olekhova, [State Tax Service Clarifies VAT Liabilities For Taxpayer Whose VAT Registration Has Been Cancelled](#) (10 May 2021), News IBFD.

¹⁶⁰ See CO: Resolución No. 26, por la cual se establecen las condiciones para transferir la información relacionada con el Impuesto de Industria y Comercio Consolidado a los municipios y distritos en el marco del Impuesto Unificado bajo el Régimen Simple de Tributación, sus características técnicas y se dictan otras disposiciones (24 Mar. 2021), available at <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000026%20de%2024-03->

Turkey modified its Tax Procedures Act to require the partners, executives and personnel of the service providers of the revenue administration to keep the confidentiality of the information and secrets they learn about taxpayers during the provision of their services. This obligation continues even after termination of the service provision.¹⁶¹

In **Chinese Taipei**, the Regulations Governing Electronic Reporting with Respect to the Implementation of Financial Account Information in Tax Matters for Financial Institutions were enacted, enabling the Ministry of Finance to request that financial institutions provide information on reportable financial accounts, without any reference to confidentiality.¹⁶²

1.4. The right to access (and correct) information held by tax authorities

Minimum standard: Where pre-populated returns are used, these should be sent to taxpayers to correct errors

Shifted towards/improved the minimum standard:

Australia

Shifted away from the minimum standard:

None

Minimum standard: Provide a right of access for taxpayers to personal information held about them, and a right to apply to correct inaccuracies

Shifted towards/improved the minimum standard:

Chile

Shifted away from the minimum standard:

Belgium

Best practice: Publish guidance on taxpayers' rights to access information and correct inaccuracies

Shifted towards/matched the best practice:

Chile, United States

Shifted away from the best practice:

Guatemala

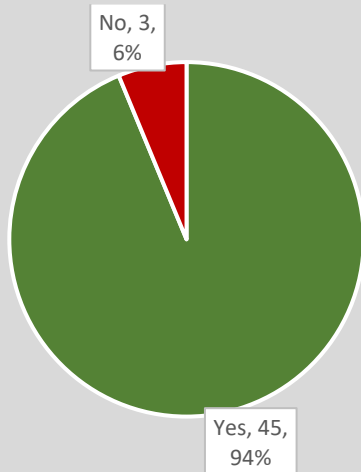
[2021.pdf](#) (accessed 26 Jan. 2022). See also CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 3.

¹⁶¹ See TR: Law 7338, modifying the Tax Procedures Act, 2021, art. 13, available at <https://www.resmigazete.gov.tr/eskiler/2021/10/20211026-1.htm> (accessed 19 Jan. 2022). See also TR: OPTR Report (Academia), Questionnaire 2, Question 3.

¹⁶² See TW: Regulations Governing Electronic Reporting with Respect to the Implementation of Financial Account Information in Tax Matters for Financial Institutions, 2021, available at <https://law-out.mof.gov.tw/EngLawContent.aspx?KW=Directions+Governing+Electronic+Reporting+with+Respect+to+the+Implementation+of+Financial+Account+Information+in+Tax+Matters+for&id=20506&lan=E> (accessed 24 Jan. 2022). See also TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 3.

Chart 1. Do taxpayers have the right to see the information held about them by the tax authority?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

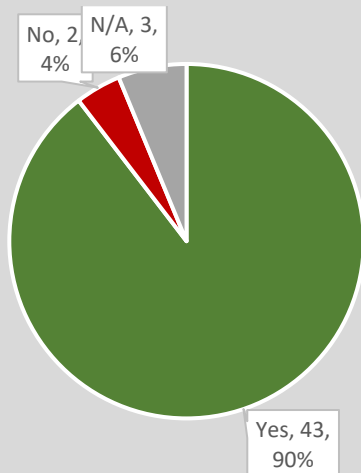
No: Bosnia and Herzegovina, Mexico (1), Mexico (2), New Zealand, Slovenia (1)

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 1.

Chart 2. If yes, can they request the correction of errors in the information?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

No: Turkey, Ukraine

Not applicable: Bosnia and Herzegovina, Mexico (1), Mexico (2), New Zealand, Slovenia (1)

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 2.

Regarding pre-populated returns, the **Australian** Taxation Office (ATO) expanded the data available in its pre-fill service to include reminders to taxpayers who earn foreign income and increased reminders to those who invest in cryptocurrency. The ATO also ensured the pre-fill service was able to provide JobSeeker amounts to simplify the return process and increase accuracy of individual income tax returns being lodged.¹⁶³

¹⁶³ See <https://www.servicessaustralia.gov.au/jobseeker-payment> (accessed 19 Jan. 2022). See also AU: OPTR Report (Tax Ombudsperson/Academia), Questionnaire 2, Question 4.

However, in **Belgium**, the tax authorities refused the request made by a **Luxembourg** fiduciary (an individual) requesting information, access, rectification and restriction of processing of personal information held about her. In a decision of 4 June 2021 (66/2021), the Belgian Data Protection Authority ruled that the Belgian tax authorities had to comply with the request for information, access and rectification, and that the Belgian tax authorities could not reject the request merely by referring to the exceptional ground provided for by law allowing a restriction of the rights of interested parties when this is strictly necessary to safeguard the tax interests of the state. However, the Belgian tax authorities appealed against this decision. The *Marktenhof* overturned the decision of the Data Protection Authority, ruling that it didn't consider the tax authority's mission of protecting the general interest, through its decision 2021/AR/1044 of 1 December 2021. According to the court, the Luxembourg fiduciary abused her right of complaint (misusing it for a purpose other than that for which it is intended) and the Belgian tax authorities were not obligated to comply with the request.¹⁶⁴

Kazakhstan started sending pre-filled tax returns for vehicle tax to taxpayers.¹⁶⁵

On guidance to taxpayers on their right to access information, **Chile's** *Servicio de Impuestos Internos* (SII) issued Letter 12/2021, in which the tax administration is instructed on the procedures to be followed to safeguard taxpayers' rights, appearance and notifications for tax administrative and judicial procedures established by Law 21.210, which modernizes the tax legislation of that country.

With regard to taxpayers' access to information held by the tax administration and the possibility of correcting inaccuracies, the letter expressly regulates the following rights: (i) to obtain (electronic) copies of documents; (ii) to be exempted from providing documents that do not correspond to the procedure or that are already with the service; (iii) to obtain, once the relevant procedure is completed, the return of the original documents provided; (iv) to be informed of all kinds of annotations in the file made by the service; (v) to carry out the necessary rectifications, except in the cases established by law and without prejudice to the corresponding penalties under the law; and (vi) to obtain the necessary corrections, except in the cases established by law and without prejudice to the penalties that may apply in accordance with the law.¹⁶⁶

In **Chinese Taipei**, taxpayers can apply online to receive information on financial estate lists of the decedent for estate tax purposes from 1 September 2021. The information is downloadable with a Citizen Digital Certificate or an electronic certificate approved by the Ministry of Finance by visiting the Financial Estate Electronic Data Filing Service section of The e-Filing and Tax Payment Service of the Ministry of Finance. The data download period is 90 days. The information is also retrievable via mail.¹⁶⁷

¹⁶⁴ See Decision 66/2021, *supra* n. 2; and 2021/AR/1044, *supra* n. 2. See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 5.

¹⁶⁵ See S. Issakova, [Kazakhstan Sends Prefilled Tax Returns for Vehicle Tax To Taxpayers](#) (22 Apr. 2021), News IBFD.

¹⁶⁶ See Circular No. 12, *supra* n. 18, at ch. 1; and Ley 21.210, *supra* n. 18. See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 5.

¹⁶⁷ See the Chinese Taipei tax authority's website, at <https://tax.nat.gov.tw>. See also [Taiwan Notes Method to Access Financial Information](#) (19 Nov. 2021), News IBFD (accessed 24 Jan. 2022).

In addition, the **United States**’ IRS made additional (though still limited) information available through taxpayer online accounts and through online tools.¹⁶⁸

However, **Guatemala** reports a setback: the *Servicio de Administración Tributaria* (SAT) Regulation SAT-DSI-1337-2021 limits the access to information on the part of taxpayers by broadening the concept of “reserved information” to documents used within audits and internal rulings of the tax administration.¹⁶⁹

1.5. Communication with taxpayers

Minimum standard: Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception

Shifted towards/improved the minimum standard:

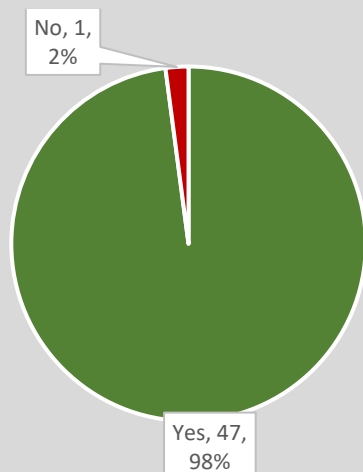
Belgium, Chile, Honduras, India, United States

Shifted away from the minimum standard:

Slovenia

Chart 3. Is it possible in your country for taxpayers to communicate electronically with the tax authority?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Japan

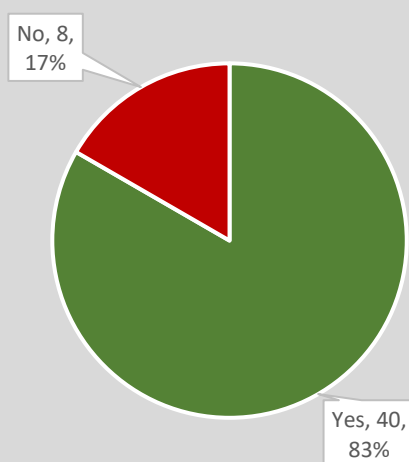
Source: OPTR: Questionnaire 1, Question 3.

¹⁶⁸ See US: 2021 *National Taxpayer Advocate Annual Report to Congress* (2021 NTA ARC) pp. 109-135, available at <https://www.taxpayeradvocate.irs.gov/reports/2021-annual-report-to-congress/full-report/> (accessed 19 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 5.

¹⁶⁹ See A. Batres, *SAT se reserva hacer pública cierta información durante 7 años*, available at <https://www.soy502.com/articulo/sat-reserva-hacer-publica-cierta-informacion-durante-7-anos-930> (accessed 19 Jan. 2022). See also GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 5.

Chart 4. If yes, are there systems in place to prevent unauthorized access to the channel of communication?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Chinese Taipei, Colombia, Czech Republic, Denmark, Finland, Germany, Greece, Honduras, India, Italy, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela

No: Bolivia, Bosnia and Herzegovina, Cyprus, Guatemala, Japan, Netherlands, Switzerland, Ukraine

Source: OPTR: Questionnaire 1, Question 4.

The trend towards implementing and improving systems to prevent impersonation or interception of e-communications with taxpayers was maintained in 2021.

Belgium enacted Bill 1697/001, on the dematerialization of the relations between the Belgian Federal Public Service Finance, citizens, legal persons and certain third parties, fostering safe and reliable electronic communication with tax authorities as a rule. The communication between the tax authorities and citizens takes place via an “eBox”, i.e. an electronic mailbox that allows users to exchange electronic messages. To ensure security, communication takes place via authentication mechanisms as defined by Regulation (EU) 910/2014.¹⁷⁰ These mechanisms are provided by the CSAM Platform, the central login point for all online services provided by the government, and are designed to ensure maximum protection of the user's identity and data. When registering with the eBox via this platform, citizens can choose between several secured digital keys to identify themselves.¹⁷¹

In **Chile**, Letter 12/2021, mentioned several times in this yearbook,¹⁷² improved the tax authorities' approach to technical assistance to taxpayers. The letter pays particular attention

¹⁷⁰ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L257 (2014).

¹⁷¹ See BE: Draft Bill 1697/001 available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697001.pdf> (accessed 24 Jan. 2022); BE: Report of the Finance and Budget Commission of the Chamber of Representatives on the Draft Bill 1697/002, available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697002.pdf> (accessed 24 Jan. 2022); BE: Draft Bill 1697/003, as approved by the Finance and Budget Commission of the Chamber of Representatives, available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697003.pdf> (accessed 24 Jan. 2022); BE: Draft Bill 1697/003, as finally approved, available at <https://www.lachambre.be/FLWB/PDF/55/1697/55K1697004.pdf> (accessed 24 Jan. 2022); and F. Mortier, *Belgium Facilitates Electronic Communication Between Administration and Taxpayers* (25 Jan. 2021), News IBFD. See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 6.

¹⁷² See secs. [1.4.](#), [1.6.](#) and [2.](#)

to the electronic communication of tax proceedings, especially through the so-called help desks (*mesas de ayuda*), the safekeeping of information relating to taxpayer emails, the formalities of electronic notifications of administrative acts, so as to avoid forgeries, and consultations of the taxpayer's tax situation through the website or the "MiSii" app.¹⁷³

In addition, the OECD reports the Remote Support and Tax Control in **Chile**, which provides a way of interacting with taxpayers using a remote service model, i.e. any help or support to taxpayers in resolving tax differences, as well as tax inspection and control, are accomplished remotely, without requiring taxpayers to be present at a tax administration office. With the participation of more officials, **Chile** aimed for 80% of their actions to be remote by the end of 2021, and by 2022, they aim to reach 95% coverage. Other benefits include reduced commuting and waiting times for taxpayers, avoiding duplicated requests from taxpayers and providing taxpayers with more flexible hours to engage with the tax administration.¹⁷⁴

The OECD also reports the numerous online services put in place by **China (People's Rep.)** to engage with taxpayers, enhanced using QR codes which link to updated measures and policies undertaken to tackle COVID-19, and the investments of **Portugal** in improving taxpayer assistance channels. These include so-called secure e-front office assistance, a virtual assistant to record missed calls and subsequent contact by the tax authorities, chats for clarifying questions through digital platforms and the creation of social media channels of the tax administration.¹⁷⁵

Another OECD report notes the development of the so-called *Administración Digital Integral* (Integral Digital Administration (ADI)) in **Spain**. The *Agencia Estatal de Administración Tributaria* (AEAT) describes it as its virtual counter to provide customized and remote information and assistance services on a 24/7 basis. It offers a wide range of information and assistance, from the resolution of general queries to information on specific taxpayer files, as well as assistance in complying with tax obligations and the preparation and submission of tax returns. ADI is a multichannel service incorporating many of the different communication tools that modern technology offers (e.g. virtual assistants, instant chats, video-calls and a click-to-call button on the website), integrated into the rest of the AEAT functionalities and procedures.¹⁷⁶

As reported in the OPTR 2020 Yearbook,¹⁷⁷ **India** introduced faceless e-assessment for assessment and appellate proceedings before the Commissioner of Income Tax Appeals, with inbuilt checks and balances to prevent impersonation or interception. However, it has been reported elsewhere that the exceptional circumstances imposed by the current COVID-19 pandemic have exacerbated concerns regarding whether taxpayers have received adequate opportunity to present their case. Courts have ruled in several cases in this regard: lack of opportunity for a personal hearing; lack of sufficient time to present the defence; and failure to

¹⁷³ See Circular No. 12, *supra* n. 18, at chs. 1 and 2. See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 6.

¹⁷⁴ See OECD, *supra* n. 1, at p. 26.

¹⁷⁵ See OECD, *supra* n. 1, at p. 28.

¹⁷⁶ See OECD, *New Ways Of Working Series: Integral Digital Administration (ADI): A new approach to taxpayer service* (OECD 2021), available at <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/spain-new-ways-of-working.pdf> (accessed 27 Jan. 2022).

¹⁷⁷ OPTR, *supra* n. 143 (2020), at sec. 1.5.

consider exceptional circumstances (such as COVID-19 contagion) resulting in the inability to present pleadings,¹⁷⁸ among others. Courts have quashed faceless assessment orders where opportunity for personal hearing was not granted. Indian courts have consistently held that the right to be heard is an essential feature of any adjudication, however, this does not restrict itself to oral hearings. The Supreme Court had noted earlier in *EN Eswariya Iyer v. Registrar, Supreme Court (1980) 4 SCC 680*¹⁷⁹ that where oral persuasiveness is necessary it is unfair to exclude it and therefore, arbitrary too. But where oral presentation is not that essential, its exclusion is not obnoxious.¹⁸⁰

Honduras' *Servicio de Administración de Rentas* (SAR) implemented an Integrated Information System (*Sistema de Información Integrado*) with many features allowing secure electronic communication with taxpayers, including identification and validation requirements. The system also includes an app (AppSAR 3.0) which enables taxpayers to communicate with the tax authorities through their mobile phones.¹⁸¹

In **Slovenia**, several pieces of general (not just tax-related) legislation have been adopted since 2020 reducing formalities in the communication between taxpayers and the tax authorities due to the COVID-19 outbreak. In this regard, the requirement of an e-signature for several procedures is reported to be waived. The online and mobile system eDavki (eTaxes) has been reported to be an effective information tool that enabled paperless procedures even before the pandemic. Amendments to the Financial Administration and Tax Procedure laws are currently being discussed to deepen the scope of these measures.¹⁸²

¹⁷⁸ See IN: HC Delhi, 2 June 2021, *Sanjay Aggarwal v. National Faceless Assessment Centre* [2021], W.P.(C) 5741/2021, available at <https://www.legitquest.com/case/sanjay-aggarwal-v-national-faceless-assessment-centre-delhi/1EACFE> (accessed 20 Jan. 2022); IN: HC Delhi, 12 July 2021, *Naresh Kumar Goyal v. National Faceless Assessment Centre* [2021] W.P.(C) 6245/2021 & CM APPLs. 19753-54/2021, available at <https://www.legitquest.com/case/naresh-kumar-goyal-v-national-faceless-assessment-centre-ors/1F170E> (accessed 20 Jan. 2022); and IN: HC Delhi, 3 June 2021, *Naina Lal Kidwai v. National Faceless Assessment Centre & Anr* [2021] W.P.(C) 5775/2021, available at <https://studycave.in/delhi-high-court-faceless-assessment-request-for-personal-hearing-rejected-100442.html> (accessed 20 Jan. 2021). See also IN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 6.

¹⁷⁹ See IN: SC, 1 Feb. 1980, *EN Eswariya Iyer v. Registrar, Supreme Court* [1980] 4 SCC 680, available at <https://india.lawi.asia/p-n-eswara-iyer-v-the-registrar-supreme-court-of-india/> (accessed 4 May 2022).

¹⁸⁰ See IN: HC Delhi, 10 Mar. 2022, *Omkar Nath v. National Faceless Assessment Centre Delhi* [2022], W.P.(C) 6158/2021 and CM APPL. 19532/2021, available at <https://taxguru.in/wp-content/uploads/2022/03/Omkar-Nath-Vs-National-Faceless-Assessment-Delhi-High-Court.pdf> (accessed 4 May 2022). See also IN: HC Bombay, 25 Oct. 2021, *Shreeji Investment & Advisory Services v. National Faceless Assessment Centre* [2021], W.P.(L) 13235/2021, available at <https://taxguru.in/wp-content/uploads/2021/10/Shreeji-Investment-Advisory-Services-Vs-National-Faceless-Assessment-Centre-Bombay-High-Court.pdf> (accessed 4 May 2022).

¹⁸¹ See the SAR's website, at <https://www.sar.gob.hn/#ServiciosDigitales> (accessed 20 Jan. 2022). See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 6.

¹⁸² See the eDavki website, at <https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageA.aspx> (accessed 20 Jan. 2022). See also Kovač & Klun, *supra* n. 40, at sec. 1; P.T. Sta, *Government proposes changes to Financial Administration and tax procedure*, *Demokracija* (26 Nov. 2021), available at <https://demokracija.eu/slovenia/government-proposes-changes-to-financial-administration-tax-procedure/> (accessed 19 Jan. 2022); and SI: OPTR Report (Academia), Questionnaire 2, Questions 1 and 6. The draft bill (in Slovenian) is available online at <https://imss.dz-rs.si/Imis/ImisAdmin.nsf/ImisnetAgent?OpenAgent&2&DZ-MSS-01/9e885dff9d08adc88f1457fbeb695354d606085d580ba8972c1e561e728999d> (accessed 20 Jan. 2022).

In the **United States**, the IRS launched the Secure Access Digital Identity (SADI) platform, which meets updated digital identity guidelines. Electronic communication with the tax authority remains limited but is improving. The IRS continued supporting online tools related to economic stimulus payments and launched tools related to the child tax credit. However, the utility of IRS online tools is limited, and they are not integrated with each other. The IRS piloted a secure messaging system for taxpayer communications, but its digital communication tools are limited and not easy for taxpayers to use.¹⁸³

1.6. Cooperative compliance

Minimum standard: Where a system of “cooperative compliance” operates, ensure it is available on a non-discriminatory and voluntary basis

Shifted towards/improved the minimum standard:

Chile, Honduras, Mexico, Russia, United Kingdom

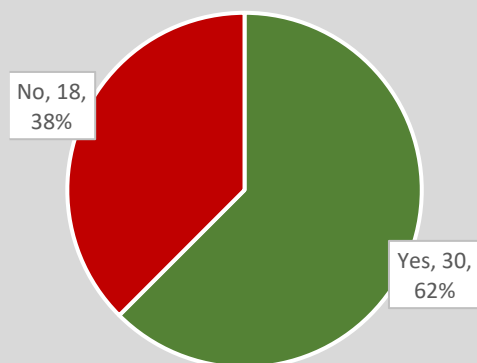
Shifted away from the minimum standard:

None

Cooperative compliance remained on the rise in 2021, partly driven by the continuation of the COVID-19 pandemic.¹⁸⁴

Chart 5. In your country, is there a system of “cooperative compliance”/“enhanced relationship” which applies to some taxpayers only?

56 responses



Yes: Australia, Austria, Belgium, Brazil (1), Brazil (2), China (People’s Rep.), Colombia, Denmark, Finland, Guatemala, Honduras, Italy, Japan, Kazakhstan, Kenya, Lithuania, Mauritius, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Russia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Venezuela

No: Argentina, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Cyprus, Czech Republic, Germany, Greece, India, Luxembourg, Mexico (1), Mexico (2), Peru (1), Peru (2), Peru (3), Serbia, Turkey, Ukraine, Uruguay

Source: OPTR: Questionnaire 1, Question 5.

In **Chile**, Letter 12/2021, mentioned several times in this yearbook,¹⁸⁵ ordered tax authorities to use all available means to facilitate tax compliance without unnecessary delay, demand or waiting. To do so, tax authorities should proceed in the least costly way for the taxpayer, certified by the official in charge, upon receipt of all the information requested and insofar as

¹⁸³ See 2021 NTA ARC, *supra* n. 166, at pp. 117 and 122-135. See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 6.

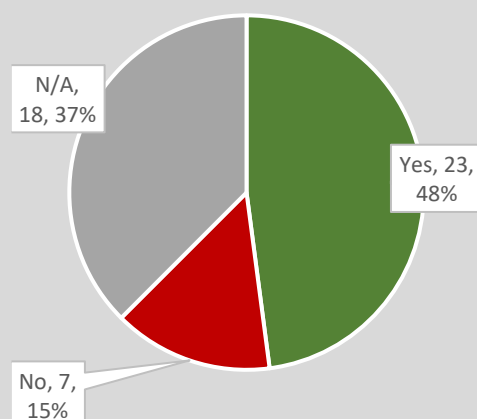
¹⁸⁴ See OPTR, *supra* n. 99 (2019), at sec. 1.6.; and OPTR, *supra* n. 143 (2020), at sec. 1.6.

¹⁸⁵ See secs. [1.4.](#), [1.5.](#) and [2.](#)

it does not imply non-compliance with tax provisions. The letter also develops in detail the administrative action linked to the ex officio review of tax proceedings and voluntary administrative reversal, namely the *Revisión de la Actuación Fiscalizadora* (RAV) and the *Reposición Administrativa Voluntaria* (RAV).¹⁸⁶

Chart 6. 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?

56 responses



Yes: Australia, Austria, Brazil (1), Brazil (2), China (People's Rep.), Colombia, Italy, Kazakhstan, Kenya, Lithuania, Mauritius, Netherlands, Norway, Poland (1), Poland (2), Portugal, Russia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Venezuela

No: Belgium, Denmark, Finland, Guatemala, Honduras, Japan, New Zealand

Not applicable: Argentina, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Cyprus, Czech Republic, Germany, Greece, India, Luxembourg, Mexico (1), Mexico (2), Peru (1), Peru (2), Peru (3), Serbia, Turkey, Ukraine, Uruguay

Source: OPTR: Questionnaire 1, Question 6.

In addition, it has been reported that the tax authorities in **Honduras** are in the process of approving an internal guide on the implementation of a cooperative compliance programme for “large” taxpayers, as part of the cooperative compliance pilot project with the Vienna University of Economics and Business (WU). This process leaves open the possibility for any large taxpayer to enter the programme.¹⁸⁷

For its part, the tax authorities of **Italy** have issued clarifications on their cooperative compliance programme, focusing on the management of the constant, preventive dialogue required between the tax authorities and qualifying taxpayers in order to correctly identify and assess potential tax risks and increase legal certainty.¹⁸⁸

¹⁸⁶ See Circular No. 12, *supra* n. 18, at chs. 1 and 2. See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 7.

¹⁸⁷ See HN: SAR, *El SAR iniciará programa piloto de cumplimiento cooperativo en colaboración con el Centro de Política Tributaria Global de la Universidad de Viena (WU GTPC)* (9 Jul. 2020), available at <https://www.sar.gob.hn/2020/07/el-sar-iniciara-programa-piloto-de-cumplimiento-cooperativo-en-colaboracion-con-el-centro-de-politica-tributaria-global-de-la-universidad-de-viena-wu-gtpc/> (accessed 20 Jan. 2021). See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 7.

¹⁸⁸ See IT: Resolution N. 49-E, *Regime di Adempimento collaborativo – gestione delle interlocuzioni costanti e preventive di cui all'articolo 6, comma 1, del decreto legislativo 5 agosto 2015, n. 128* (22 Jul. 2021), available at <https://www.agenziaentrate.gov.it/portale/documents/20143/3654658/Risoluzione+n.+49+del+22+luglio+2021.pdf/46a4ea32-6d34-9715-7f81-b4cd4f71399d> (accessed 20 Jan. 2022). See also G. Gallo, *Tax Authorities Clarify Cooperative Compliance Programme* (27 July 2021), News IBFD.

In **Mexico**, the mandatory registration of natural persons of legal age (18 years old) in the Federal Taxpayers' Register (*Registro Federal de Contribuyentes*) without punishment for non-compliance has been regarded as a measure to encourage cooperative compliance.¹⁸⁹

Likewise, the Tax Code Act of **Poland** was amended by adding the so-called Interpretation 590. It allows the Minister of Finance to conclude an agreement with anyone who plans or has started an investment in the country of at least PLN 50 million (approximately EUR 12 million) on the tax consequences of an investment planned or initiated in the country. The investment agreements aim to provide investors with certainty and ensure a uniform and consistent interpretation of tax provisions. The agreement may include, inter alia, (i) an assessment that the transfer price of the controlled transaction is set on terms that would be agreed between unrelated entities; (ii) an assessment that the investment does not constitute a tax scheme; and (iii) an understanding on the interpretation of tax law.¹⁹⁰

In **Russia**, new legislation has softened the conditions for the application of the cooperative compliance programme, named "tax monitoring", so that more taxpayers may participate. The threshold for participating in the programme has been reduced to RUB 100 million (approximately EUR 1.152 million). The income and asset thresholds have also been reduced to RUB 1 billion (approximately EUR 11.52 million).¹⁹¹

In the **United Kingdom**, an extra support service is made regularly available to those with particular difficulties in handling their tax affairs.¹⁹²

1.7. Assistance with compliance obligations

Minimum standard: Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remoted areas and those unable or unwilling to use electronic forms of communication

Shifted towards/improved the minimum standard:

Australia, Belgium, Chile, Colombia, Spain, United Kingdom

Shifted away from the minimum standard:

Guatemala, Honduras, Peru, United States

¹⁸⁹ See Código Fiscal de la Federación, *supra* n. 103, at art. 27. See also MX: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 7.

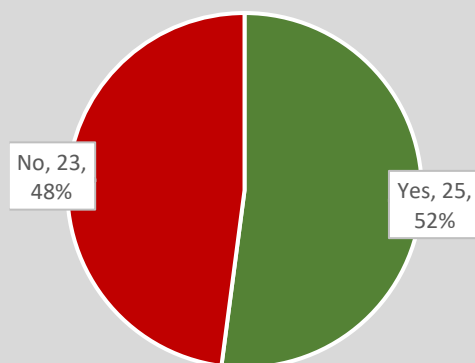
¹⁹⁰ See EY, *Poland Announces Plans To Introduce an Investment Agreement for Strategic Investors* (27 Jul. 2021), available at <https://taxnews.ey.com/news/2021-1422-poland-announces-plans-to-introduce-an-investment-agreement-for-strategic-investors> (accessed 20 Jan. 2022). See also PL: OPTR Report (Judiciary/Academia), Questionnaire 2, Question 7.

¹⁹¹ See K. Trouch, *Federal Tax Service Clarifies New Tax Monitoring Procedure* (30 June 2021), News IBFD. See also RU: OPTR Report (Judiciary/Academia), Questionnaire 2, Question 7.

¹⁹² See HMRC's extra support webpage, at <https://www.gov.uk/get-help-hmrc-extra-support> (accessed 20 Jan. 2022); and Low Incomes Tax Reform Group, *What is the HMRC Extra Support Service?* (18 May 2021), available at <https://www.litr.org.uk/getting-help/what-hmrc-extra-support-service> (accessed 20 Jan. 2022). See also sec. 1.7.

Chart 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?

56 responses



Yes: Australia, Austria, Belgium, China (People's Rep.), Chinese Taipei, Colombia, Cyprus, Denmark, Germany, India, Italy, Japan, Kazakhstan, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Serbia, Slovenia (1), Slovenia (2), South Africa, Sweden, Switzerland, Turkey, United Kingdom, United States

No: Argentina, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Czech Republic, Finland, Greece, Guatemala, Honduras, Kenya, Lithuania, Luxembourg, Netherlands, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Spain, Ukraine, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 7.

As has been the case since the beginning of the COVID-19 pandemic, the trend of increasing tax compliance assistance services for persons with special needs, particularly through electronic means, continued in 2021.

The OECD devotes a whole chapter of its 2021 report *Building Tax Culture, Compliance and Citizenship: A Global Source Book on Taxpayer Education* to providing details on many initiatives put in place by tax administrations to assist taxpayers with familiarizing themselves with and using digital tools and services they have developed. Further, it looks at programmes meant to directly assist taxpayers who face difficulties in fulfilling their tax obligations or in receiving benefits and credits to which they are entitled.¹⁹³

In this regard, the report states, with the support of data, that several administrations provide free tax services for lower income individuals and newly created businesses.¹⁹⁴ For taxpayers with disabilities, the vast majority of tax administrations surveyed by the OECD report having in place special provisions,¹⁹⁵ as has also been reported by the OPTR in previous yearbooks.¹⁹⁶ Among others, the OECD report highlights as examples the dispute assistance and tax consultancy services from **Australia** and **Tanzania**, the mobile tax service centres of **South Africa** and **Georgia**,¹⁹⁷ the Volunteer Income Tax Assistance (VITA) and the Tax Counseling for the Elderly (TCE) programmes of the **United States**, the face-to-face

¹⁹³ See OECD, *Building Tax Culture, Compliance and Citizenship: A Global Source Book on Taxpayer Education* ch. 5 (OECD 2021), available at <https://doi.org/10.1787/18585eb1-en> (accessed 24 Jan. 2022).

¹⁹⁴ See OECD, *Tax Administration 2019: Comparative Information on OECD and other Advanced and Emerging Economies* p. 36 (OECD 2019), available at <https://dx.doi.org/10.1787/74d162b6-en> (accessed 24 Jan. 2022).

¹⁹⁵ See OECD, *supra* n. 190, at pp. 336-339.

¹⁹⁶ See OPTR, *supra* n. 7, at sec. 1.7.; and OPTR, *supra* n. 31, at sec. 1.7.

¹⁹⁷ GE: Georgia Revenue Service, *2018 Annual Report of the Revenue Service of the Ministry of Finance of Georgia*, available at http://www.rs.ge/RsGe.Module/GetDoc/Get_File?doc_id=10602 (accessed 24 Jan. 2022).

workshops and seminars of **Sweden**, the Business Support Units of **Malaysia**, the Special Taxpayer Assistance Programme (STAP) to assist micro and small businesses in completing their income tax returns of **Jamaica** and the Community Volunteer Income Tax Program of **Canada**.¹⁹⁸

When it comes to 2021 developments, in **Australia**, the ATO Tax Help Program, an initiative that assists eligible taxpayers in lodging or amending returns from July to October of each year, was extended to the end of November in 2021 to further assist those impacted by the COVID-19 pandemic. Assistance through this programme was available face-to-face, over the phone or online. Also, there are reports of enhancement of the ATO's telephony capacity by introducing a work from home (WFH)/work from office (WFO) toggle, whereby staff only need one click to let the system know they are working from home and to deliver calls through their smartphone to their headset, allowing the workforce to rapidly return to work from home or return to the office arrangements without an impact on their duties.¹⁹⁹

In **Belgium**, the law on the dematerialization of relations between the tax authorities, citizens, legal persons and certain third parties, mentioned previously in this yearbook,²⁰⁰ allows individuals to benefit from an "opt-in system", according to which they can keep on communicating with the tax administration on paper alone, unless they have expressly chosen to communicate by electronic means. However, professionals and legal persons are obliged to communicate electronically with the tax administration, even in cases in which they act on behalf of an individual.²⁰¹

Likewise, the tax authorities in **Chile** have improved their digital platforms and assistance to taxpayers, as reported in a document issued by the Taxpayer Assistance Department of the SII.²⁰²

In addition, **Colombia** resumed face-to-face assistance to taxpayers to help them comply with their obligations, along with 385,434 video appointments through its scheduling system as of August 2021, providing assistance to 347,869 individual taxpayers in 388,518 transactions nationwide. Moreover, the *Dirección de Impuestos y Aduanas Nacionales* (DIAN) established a national network of 35 "virtual self-management kiosks" in shopping centres, chambers of commerce and universities, places where DIAN does not have a presence through its formal contact points. During the last year, 95,434 taxpayers and more than 175,000 transactions

¹⁹⁸ See OECD, *supra* n. 190, at sec. 5.2.

¹⁹⁹ See AU: ATO, Tax Help Program, available at <https://www.ato.gov.au/Individuals/Your-tax-return/Help-and-support-to-lodge-your-tax-return/Tax-Help-program/> (accessed 20 Jan. 2022); and OECD, *supra* n. 1, at p. 26. See also AU: OPTR Report (Tax Ombudsperson/Academia), Questionnaire 2, Question 7.

²⁰⁰ See sec. 1.5.

²⁰¹ See F. Mortier, *Belgium Facilitates Electronic Communication Between Administration and Taxpayers* (25 Jan. 2021), News IBFD. See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

²⁰² See CL: SII, *Taxpayer Personalized Attention and Support Platform. Structure and Benefits*, available at https://www.sii.cl/sobre_el_sii/beneficios_plataforma_ing.pdf (accessed 20 Jan. 2021). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 8.

were handled through this new channel. Furthermore, a cognitive virtual assistant was developed, along with a chatbot and an app.²⁰³

For its part, **Spain's** Recovery Plan, approved on 27 April 2021, aims to increase assistance to taxpayers and enhance cooperative compliance.²⁰⁴

On the other hand, the challenges to the fulfilment of this standard due to the outbreak of COVID-19 seem not to have ceased.

It has been reported that in **Guatemala**, most of the assistance for compliance was given electronically, despite the large number of remote areas without access to the Internet.²⁰⁵

In addition, most of the assistance for compliance was also provided online in **Honduras**. Furthermore, Mobile Tax Offices in remote areas were not available throughout 2021, although tax officials stated to the press that taxpayers prefer electronic returns and communications with the tax administration.²⁰⁶

Peru improved its assistance and orientation service in sign language for people with hearing disabilities by expanding the premises in which this service is provided. Also, the *Superintendencia Nacional de Aduanas y de Administración Tributaria* (SUNAT) has enabled a virtual assistant named SOFIA, an acronym that stands for *Servicio de Orientación y Facilitación de Información Automatizada* (Automated Information Facilitation and Guidance Service). Furthermore, SUNAT has officials who can provide information in the Quechua language in 11 of the country's regions. Finally, exceptions for compliance have been provided for taxpayers in remote areas with low Internet connectivity: regulations detail which areas qualify as having "low or no Internet connectivity", allowing taxpayers located in those areas to use paper receipts exceptionally. Several subsequent regulations from 2021 use the same annexes to determine who is not required to use the new electronic mechanisms established as mandatory for the rest of the taxpayers.²⁰⁷

²⁰³ See CO: DIAN, *Documento de Rendición de Cuentas 2020-2021* pp. 11 and 25, available at <https://www.dian.gov.co/dian/rendicioncuentas/RendicionCuentasCiudadania/RendicionCuentas2021/Documento-Rendicion-de-Cuentas-2020-2021-DIAN.pdf> (accessed 26 Jan. 2021).

²⁰⁴ See ES: Resolución de 29 de abril de 2021, de la Subsecretaría, por la que se publica el Acuerdo del Consejo de Ministros de 27 de abril de 2021, por el que aprueba el Plan de Recuperación, Transformación y Resiliencia, BOE 2021-7053 (2021), available at <https://www.boe.es/boe/dias/2021/04/30/pdfs/BOE-A-2021-7053.pdf> (accessed 20 Jan. 2021); and ES: *Plan de Recuperación, Transformación y Resiliencia – Componente 27: Medidas y actuaciones de prevención y lucha contra el fraude fiscal* p. 2 (16 Jun. 2021), available at https://sede.agenciatributaria.gob.es/static_files/AEAT/Contenidos_Comunes/La_Agencia_Tributaria/Planificacion/Plan_Recuperacion/Componente27.pdf (accessed 22 Mar. 2022).

²⁰⁵ See GT: SAT, *Ubicación y Horario de Agencias*, available at <https://portal.sat.gob.gt/portal/contacto/> (accessed 24 Jan. 2022). See also GT: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

²⁰⁶ See GT: SAT Press Release, *El 90 % de contribuyentes del SAR presentaron sus declaraciones de forma electrónica* (15 Feb. 2021), available at <https://proceso.hn/el-90-de-contribuyentes-del-sar-presentaron-sus-declaraciones-de-forma-electronica/> (accessed 24 Jan. 2022). In this regard, the OECD data shows that taxpayer uptake of digital contact channels (online, email and digital assistance) is increasing, while usage of traditional channels (telephone, in-person and paper) continues to decrease. See OECD, *supra* n. 190, at Table 5.1. See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 8.

²⁰⁷ See PE: SOFIA, available at https://www.sunat.gob.pe/institucional/contactenos/virtual/preguntale_Sofia.html (accessed 24 Jan. 2022); PE: SUNAT, *Atención en Lengua de Señas Peruana*, available at <https://www.youtube.com/watch?v=9gSypNnrpl> (accessed 14 Feb. 2022); PE: Resolución 254-2018/SUNAT, *que regula nuevos supuestos de concurrencia de la emisión electrónica y de la emisión por otros medios* (26

In the **United States**, while IRS offices and phone lines reopened, backlogs and social distancing requirements, combined with increased taxpayer assistance requests, caused low levels of service, which adversely impacted taxpayers. In-person help remained reduced, with many Taxpayer Assistance Centers going unstaffed for extended periods. Free tax preparation help was limited during the 2021 filing season, with some non-profit sites closed and others only offering online or drop-off service.²⁰⁸

In response to these events in the **United States**, the IRS partnered with professional and community organizations in efforts to help people claim stimulus payments and the advanced child tax credit.²⁰⁹ Also, the IRS publicized resources for visually impaired taxpayers and developed Form 9000, which taxpayers may use to elect post-filing notices in alternate formats beginning 31 January 2022.²¹⁰

In addition, the IRS continued to make progress on language access via Form 1040 (Schedule LP), a request for the taxpayer to indicate language preferences; however, it is not yet issuing translated notices to taxpayers based on those preferences.²¹¹ Form 1040 was provided in Spanish for the first time for tax year 2020, and telephone interpretation was expanded to the main customer service line.²¹²

2. The Issue of Tax Assessment

Best practice: Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on the equality of arms

Shifted towards/matched the best practice:

Chile, Guatemala, Switzerland, Russia

Shifted away from the best practice:

United States

Oct. 2018), available at <https://www.sunat.gob.pe/legislacion/superin/2018/254-2018.pdf> (accessed 14 Feb. 2022); and PE: Annex I of *Resolución 254 -2018/SUNAT*, available at <https://www.sunat.gob.pe/legislacion/superin/2018/anexol-254-2018.pdf> (accessed 14 Feb. 2022). See also PE: OPTR Report (Tax Administration), Questionnaire 2, Question 8.

²⁰⁸ See 2021 NTA ARC, *supra* n. 166, at pp. 66-80. See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

²⁰⁹ See US: ITS, *IRS holds additional weekend events July 23-24 to help people with Child Tax Credit payments and Economic Impact Payments*, IR-2021-156, available at <https://perma.cc/E7PJ-T979> (accessed 24 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

²¹⁰ See US: IRS, *IRS tax resources for the blind and visually impaired*, IRS Tax Tip 2021-154, available at <https://www.irs.gov/newsroom/irs-tax-resources-for-the-blind-and-visually-impaired> (accessed 24 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

²¹¹ See US: Treasury Inspector General for Tax Administration, *Increased Availability of Tax Resources and Information for Limited English Proficient and Visually Impaired Taxpayers Has Enhanced Assistance, but Additional Improvements Are Needed*, Report Number: 2022-40-008, available at <https://www.treasury.gov/tigta/auditreports/2022reports/202240008fr.pdf> (accessed 24 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

²¹² See US: IRS, *To reach out to broader audiences, this year we developed numerous ways to provide information in multiple languages on IRS.gov*, CL-21-03, available at <https://perma.cc/NG6Z-S743> (accessed 24 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

Steps were taken in 2021 to build a constructive dialogue between taxpayers and tax authorities, maintaining the trend towards the fulfilment of the best practice.

In **Chile**, Letter 12/2021, mentioned several times in this yearbook,²¹³ regulated new tax dispute settlement mechanisms, namely the *Revisión de la Actuación Fiscalizadora* (RAV) and the *Reposición Administrativa Voluntaria* (RAV). The ultimate aim is to establish an independent review body that is able to settle disputes swiftly in a context of collaboration and mutual trust, which would provide legal certainty to the taxpayer on the one hand and, on the other hand, ensure tax compliance and safeguard the interest of the revenue.²¹⁴

Costa Rica adopted a new procedure allowing taxpayers to request advanced pricing agreements (APAs).²¹⁵

In **Guatemala**, it has been reported that the tax administration has made efforts to approach different tax organizations, such as the International Fiscal Association (IFA), to establish a dialogue about tax matters and to find common ground regarding tax law interpretation.²¹⁶

Chart 8. 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?

56 responses



Source: OPTR: Questionnaire 1, Question 8.

²¹³ See secs. [1.4.](#), [1.5.](#) and [1.6.](#)

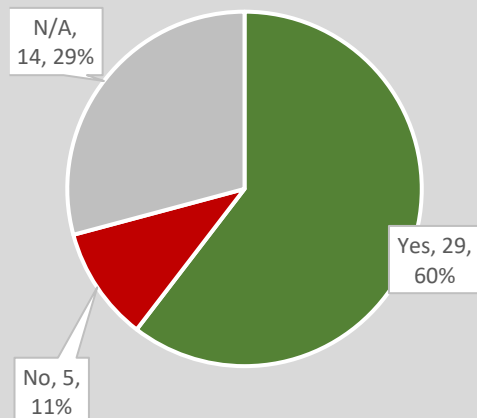
²¹⁴ See Circular No. 12, *supra* n. 18, at ch. 4 (B). See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 9.

²¹⁵ See B. Rodríguez, [Costa Rica Adopts Procedure for Taxpayers to Request APAs](#) (31 Mar. 2021), News IBFD.

²¹⁶ See DataExport, *Mesa de diálogo público-privada hacia la certeza jurídica de los contribuyentes* (3 Feb. 2021), available at <https://dataexport.com.gt/mesa-de-dialogo-publico-privada-hacia-la-certeza-juridica-de-los-contribuyentes/> (accessed 11 Feb. 2022); and S. Curruchich, *Conocen avances de mesas de diálogo lideradas por la SAT* (24 Mar. 2021), available at <https://dca.gob.gt/noticias-guatemala-diario-centro-america/conocen-resultados-de-la-mesa-de-dialogo-para-tributacion-domestica/> (accessed 10 Feb. 2022). See also GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 9.

Chart 9. If yes, can the taxpayer request a meeting with the tax officer?

56 responses



Yes: Austria, Belgium, Bolivia, Chile, China (People's Rep.), Chinese Taipei, Colombia, Denmark, Greece, Guatemala, Italy, Japan, Kazakhstan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (2), Peru (3), Russia, Slovenia (2), Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Germany, Honduras, Lithuania, Portugal, Spain

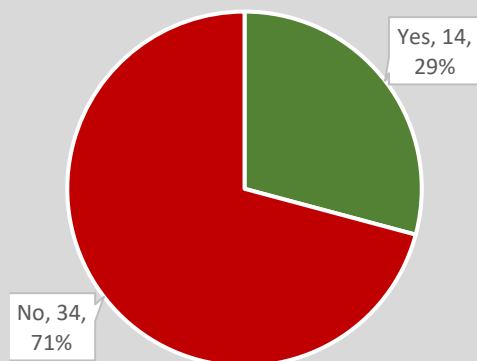
Not applicable: Argentina, Australia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Cyprus, Czech Republic, Finland, India, Peru (1), Poland (1), Poland (2), Serbia, Slovenia (1), South Africa, Sweden

Reports with diverging opinions: Peru, Slovenia

Source: OPTR: Questionnaire 1, Question 9.

Chart 10. 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 ex officio to notify all affected taxpayers and arrange repayments to them?

56 responses



Yes: Australia, Austria, China (People's Rep.), Chinese Taipei, Denmark, Finland, Germany, Greece, Italy, Japan, Norway, Slovenia (1), Slovenia (2), South Africa, United Kingdom

No: Argentina, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia, Cyprus, Czech Republic, Guatemala, Honduras, India, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Spain, Sweden, Switzerland, Turkey, Ukraine, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 10.

Switzerland approved a new code of conduct between taxpayers and tax authorities, which aims to sustainably strengthen the “historically growing” relationship of respect and trust between taxpayers, tax representatives and tax administrations.²¹⁷

²¹⁷ See CH: Code of Conduct Taxation 2021, available at <https://iff.unisg.ch/wp-content/uploads/2021/10/Verhaltenskodex-EN.pdf> (accessed 24 Jan. 2022); Unofficial Translation: [Switzerland Issues Code of Conduct Taxation 2021](#) (5 Oct. 2021), News IBFD. See also S. Paez, [Switzerland Issues Code of Conduct Taxation 2021](#) (5 Oct. 2021), News IBFD; and CH: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 9.

In **Ukraine**, the reduction of the impact of COVID-19 has enabled the tax authorities to propose the resuming of certain audits, previously suspended because of the pandemic.²¹⁸

In **Russia**, the Supreme Court Commercial Disputes Chamber decision of 15 December 2021 in the *Spetskhimprom* case limits the possibility to attribute responsibility for the negligent purchaser as an accessory to tax fraud to the actual amount of the prejudice caused to the revenue as determined through a fair tax assessment, based on the equality of arms and determined on the basis of all relevant circumstances of which the tax authority has become aware through the taxpayer or other sources. According to the decision, tax authorities are not exempt from the obligation, within the framework of tax audits, to take exhaustive measures aimed at establishing the actual amount of the taxpayer's tax liability, which would rule out the possibility of imputing tax in an amount higher than that established by law. Countering tax abuse should not lead to the imposition of tax exceeding the treasury's loss from non-payment of taxes at any stage of the taxpayer's supply chain. Otherwise, a penalty would have been imposed that goes beyond the measures necessary to ensure the universality and equality of taxation.²¹⁹

For its part, pandemic-related service reductions are reported to have led to a shift away from the best practice in the **United States** for the second year in a row. The IRS continued to prematurely assess and collect taxes in some cases, due to correspondence processing delays and a backlog in Tax Court petitions.²²⁰ In spite of this, the IRS manually processed millions of returns with issues relating to pandemic relief legislation, including over 11 million relating to stimulus payments. The IRS automatically corrected accounts and sent refunds to taxpayers affected by the American Rescue Plan Act of 2021's changes to the Premium Tax Credit and unemployment compensation.²²¹

Best practice: Use e-filing to speed up assessments and the correction of errors, particularly systematic errors

Shifted towards/matched the best practice:

Australia, Chile, Chinese Taipei, Guatemala, Mauritius, Peru, Slovenia, Sweden, Switzerland,

Shifted away from the best practice:

None

²¹⁸ See UA: Draft Resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine dated February 3, 2021 No. 89 "On reducing the validity of the restriction in terms of the moratorium on certain types of inspections", available at <https://www.tax.gov.ua/diyalnist-regulyatorna-politika-regulyatorna-politika/2021-rik/75611.html> (accessed 26 Jan. 2022). See also J. Trough, *State Tax Service Announces Proposal to Lift Moratorium on Certain Tax Audits* (28 June 2021), News IBFD.

²¹⁹ See *Spetskhimprom*, *supra* n. 67. See also RU: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 9.

²²⁰ See US: US Tax Court press release (16 Aug. 2021), available at https://www.ustaxcourt.gov/press_releases.html (accessed 24 Jan. 2022); and 2021 NTA ARC, *supra* n. 166, ARC 3. See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 9.

²²¹ See 2021 NTA ARC, *supra* n. 166, at p. 38; US: IRS, *IRS suspends requirement to repay excess advance payments of the 2020 Premium Tax Credit; those claiming net Premium Tax Credit must file Form 8962*, IR-2021-84, available at <https://www.irs.gov/newsroom/irs-suspends-requirement-to-repay-excess-advance-payments-of-the-2020-premium-tax-credit-those-claiming-net-premium-tax-credit-must-file-form-8962> (accessed 26 Jan. 2022); and US: IRS, *IRS suspends requirement to repay excess advance payments of the 2020 Premium Tax Credit; those claiming net Premium Tax Credit must file Form 8962*, IR-2021-212, available at <https://www.irs.gov/newsroom/irs-issues-another-430000-refunds-for-adjustments-related-to-unemployment-compensation> (accessed 26 Jan. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 10.

United Kingdom

The trend towards the use of e-filing to speed up assessments was also on the rise in 2021.

Among several developments, in **Australia**, the ATO extended the use of real-time messaging for those using online services to lodge activity statements, prompting them to self-correct and prevent inadvertent errors prior to lodgement.²²²

The **BES Islands** offered e-filing of 2020 individual income tax returns.²²³ **Burkina Faso** implemented an electronic tax return via an operational platform named *e-liasse*, as well as electronic payment of motor vehicle tax via mobile phones.²²⁴ **Bolivia** enacted rules for registration and e-filing of wealth tax.²²⁵ **Egypt, Ivory Coast** and **Rwanda** implemented, and **Serbia** further regulated, e-invoicing system procedures.²²⁶

In **Colombia**, the DIAN established the requirements for allowing the circulation of electronic invoices as negotiable titles through registration in the electronic registry for e-invoices (RADIAN) and provided detailed rules on the electronic payroll system that taxpayers must implement to support the deduction of payroll expenses for income tax and VAT credit purposes, when applicable.²²⁷

In addition, **Chile** developed the so-called *carpeta tributaria electrónica* (electronic tax folder), aiming for an improvement of the digital platforms of the Chilean tax authorities due to COVID-19.²²⁸ **Ecuador** enacted transitory measures for buyers to explicitly accept (or deny) electronic commercial invoices addressed to them, while tax authorities internally developed an automatic system that allows buyers to accept (or deny) commercial e-invoices.²²⁹ **Guatemala**

²²² See Commissioner of Taxation, *supra* n. 149, at p. 17. See also AU: OPTR Report (Tax Ombudsperson/Academia), Questionnaire 2, Question 10.

²²³ See the electronic portal, available at <https://www.mijncl.nl/>. See also S. van Thol, [BES Islands Offer E-Filing of 2020 Individual Income Tax Returns](#) (23 Mar. 2021), News IBFD.

²²⁴ See W. Kaboré, [General Tax Directorate Implements Tax E-Return](#) (26 Apr. 2021), News IBFD; and W. Kaboré, [General Tax Director Implements Motor Vehicle Tax E-Payment](#) (31 Mar. 2021), News IBFD.

²²⁵ See BO: *Resolución Normativa de Directorio No. 10210000001R-0011-01, Procedimiento Para la Inscripción o Registro, Declaración y Pago para Contribuyentes del IGF* (8 Feb. 2021), available at <https://www.impuestos.gob.bo/ckeditor/plugins/imageuploader/uploads/40971b4b76.pdf> (accessed 26 Jan. 2021). See also A. Villegas, [Tax Authorities Approve Taxpayer Registration Procedure and Tax Filing Deadline for Tax on Large Fortunes](#) (17 Feb. 2021), News IBFD.

²²⁶ See K. Emam, [Egypt Implements E-invoicing System Procedures](#) (23 Mar. 2021), News IBFD; B. Aymard Kokola, [Tax Administration Implements Tax Electronic Procedure](#) (10 May 2021), News IBFD; D. Nzafashwanayo, [Tax Authority to Provide Electronic Invoicing Systems to Taxpayers](#) (20 May 2021), News IBFD; and I. Soldatovic, [Serbia Regulates Electronic Invoicing](#) (17 May 2021), News IBFD.

²²⁷ See CO: *Resolución No. 000015 de la DIAN, por la cual se desarrolla el registro de la factura electrónica de venta como título valor y se expide el anexo técnico de registro de la factura electrónica de venta como título valor*, (11 Feb. 2021), available at <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%2000015%20de%2011-02-2021.pdf> (accessed 26 Jan. 2021). See also M. Bocachica, [Tax Authority Establishes Requirements for Circulation of Electronic Invoices as Negotiable Titles](#) (2 Mar. 2021), News IBFD

²²⁸ See Circular No. 14, *supra* n. 64. See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

²²⁹ See G. Guerra Bello, [Ecuador Enacts Temporary Measures on Commercial E-Invoices](#) (28 Apr. 2021), News IBFD.

developed and fostered the use of *Declaraguat*, an electronic portal through which the tax authorities conduct almost all procedures, and encouraged the use of e-filing to speed up tax compliance.²³⁰ For its part, **Paraguay** developed a system for the e-registration of purchases and sales vouchers,²³¹ and **Peru** launched a pre-populated virtual advanced VAT form based on the information obtained from electronic receipts, aiming to reduce human errors and speed up assessments.²³²

The government of **Bulgaria** has proposed an amendment to the VAT Act to extend the scope of devices through which fiscal receipts can be issued. In addition to cash registers, the VAT Act would also include other printing devices with distance (software) fiscalization,²³³ and **Sweden** implemented the MOSS e-service for declaring and paying VAT from the selling of digital services to non-taxable persons within the European Union.²³⁴ **Ireland** introduced e-reporting for certain share incentive plans,²³⁵ **France** introduced e-filing of VAT refund requests for non-EU businesses²³⁶ and **Luxembourg** announced that family wealth management companies must file the annual subscription tax (*tax d'abonnement*) electronically.²³⁷ **Turkey** officially expanded the scope of its e-documents application to include e-invoicing and e-currency purchase, sale document and e-reckoning applications, mandating taxpayers to switch to said applications.²³⁸ In **Slovenia**, the tax authorities developed e-applications for several tax assessment functions and worked on merging these applications for business-taking taxpayers.²³⁹

²³⁰ See *Declaraguat*, at <https://declaraguat.sat.gob.gt/declaraguat-web/> (accessed 26 Jan. 2022). See also GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

²³¹ See E. Bañuelos, [Taxpayers To Register Purchases and Sales Vouchers Electronically](#) (20 May 2021), News IBFD.

²³² See PE: SUNAT Press Note N. 079, *SUNAT Facilita el Pago de Detracciones Mediante Propuesta Automática de Constancia de Pago* (11 Oct. 2021), available at <https://ww3.sunat.gob.pe/salaprensa/2021/octubre/NotaPrensaN0792021.doc> (accessed 11 Feb. 2022); and Diario Gestión, *Sunat facilita detracciones con propuesta automática de constancia de pago, cómo funciona* (11 Oct. 2021), available at <https://gestion.pe/economia/sunat-facilita-detracciones-con-propuesta-automatica-de-constancia-de-pago-como-funciona-noticia/> (accessed 11 Feb. 2022). See also PE: OPTR Report (Tax Administration), Questionnaire 2, Question 10.

²³³ See S. Krastanov, [Bulgaria Proposes Extension of Scope of Devices for Issuing Fiscal Receipts](#) (26 Apr. 2021), News IBFD.

²³⁴ See SE: VAT on Foreign Trade p. 3, available at <https://www.skatteverket.se/download/18.361dc8c15312eff6fd10583/1461569090868/vat-on-foreign-trade-skv560b-> (accessed 26 Jan. 2022). See also SE: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

²³⁵ See P. Bak, [Revenue Introduces Electronic Reporting for Certain Share Incentive Plans for Tax Year 2020](#) (18 May 2021), News IBFD.

²³⁶ See E. Joannard-Lardant, [France Introduces Electronic Filing for VAT Refund Requests for Non-EU Businesses](#) (10 May 2021), News IBFD.

²³⁷ See R. Offermanns, [Luxembourg Announces that Family Wealth Management Companies Must File Subscription Tax Electronically](#) (8 July 2021), News IBFD.

²³⁸ See TR: Tax Procedural Law Communiqué (No. 526), OG 31390, Article 5 (9 Feb. 2021), available at <https://www.resmigazete.gov.tr/eskiler/2021/02/20210209-5.htm> (accessed 26 Jan. 2022). See also S. Özgenç, [Turkey Expands Scope of E-Documents Application](#) (16 Feb. 2021), News IBFD.

²³⁹ See Kovač & Klun, *supra* n. 40, at pp. 247-248. See also SI: OPTR Report (Academia), Questionnaire 2, Question 10.

For its part, **Spain** approved electronic forms for reporting cross-border arrangements after the implementation of Council Directive (EU) 2018/822 of 25 May 2018²⁴⁰ regarding mandatory automatic exchange of information in the field of taxation relating to reportable cross-border arrangements (DAC6).²⁴¹

Switzerland, approved a new law enabling both the Federation and the cantons to move to a digital tax procedure. However, it does not contain many details, as the digital tax procedure is still a “moving target”.²⁴²

Against this background, the practice of **Chinese Taipei** of offering tax “rewards” for businesses filing account documents electronically is noteworthy. Said prizes include the designation of an ad hoc professional adviser, a waiver of verification certificates and the ability to have tax returns reviewed on paper for up to 2 years. On their side, tax professionals who provide electronically (and “correctly”) books and relevant documents may be included in a list of recommended tax agents.²⁴³ In the same vein, **Thailand** offered tax reductions for e-withholding.²⁴⁴

India updated its e-filing taxpayer portal to make it user-friendly, allowing quicker processing of income tax returns and the issuance of speedier refunds. The portal includes a new functionality feature to ease the compliance burden on taxpayers required to deduct or collect tax at source at higher rates from certain non-filers of income tax returns.²⁴⁵

In the **United Kingdom**, an HMRC consultation document indicates an intention to increase and enhance facilities for e-filing over the next 4 years.²⁴⁶

In the **United States**, several states started using e-filing for sales and other local taxes and processing tax rebates based on the COVID-19 pandemic.²⁴⁷ In addition, the IRS updated

²⁴⁰ Council Directive (EU) 2018/822, *supra* n. 56.

²⁴¹ See ES: Orden HAC/342/2021, de 12 de abril, por la que se aprueba el modelo 234 de «Declaración de información de determinados mecanismos transfronterizos de planificación fiscal», el modelo 235 de «Declaración de información de actualización de determinados mecanismos transfronterizos comercializables» y el modelo 236 de «Declaración de información de la utilización de determinados mecanismos transfronterizos de planificación fiscal» (13 Apr. 2021), available at <https://www.boe.es/boe/dias/2021/04/13/pdfs/BOE-A-2021-5780.pdf> (accessed 26 Jan. 2022); and ES: Resolución de 8 de abril de 2021, del Departamento de Gestión Tributaria de la Agencia Estatal de Administración Tributaria, por la que se aprueban los modelos de comunicaciones entre los intervinientes y partícipes en los mecanismos transfronterizos de planificación fiscal objeto de declaración (13 Apr. 2021), available at <https://www.boe.es/boe/dias/2021/04/13/pdfs/BOE-A-2021-5781.pdf> (accessed 26 Jan. 2022). See also A. de Juan Ledesma, *Spain Approves DAC6 Tax Forms* (19 Apr. 2021), News IBFD.

²⁴² See Bundesgesetz über elektronische Verfahren im Steuerbereich, *supra* n. 5

²⁴³ See Ministry of Finance Press Release, *supra* n. 63. See also MNE Tax, *supra* n. 63.

²⁴⁴ See N. Lingbawan, *Thailand Gazettes Extension of Tax Reduction for E-Withholding* (21 June 2021), News IBFD.

²⁴⁵ See N. Lingbawan, *India Introduces Compliance Check Functionality for Tax Deducted or Collected from Specified Persons* (23 June 2021), News IBFD. See also MNE Tax, *India to launch e-filing taxpayer portal on June 7* (27 May 2022), available at <https://mnetax.com/india-to-launch-e-filing-taxpayer-portal-on-june-7-44379> (accessed 24 Jan. 2022).

²⁴⁶ See HMRC, *supra* n. 66, at secs. 5.3 and 5.5. See also UK: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 10.

²⁴⁷ See S. Basiaga, *Missouri To Require Mandatory Electronic Filing of Certain Sales Tax Returns* (31 May 2021), News IBFD; J. Robles Santos, *New Jersey To Release New Corporate Business Tax Standardized Return for Certain Filers* (27 May 2021), News IBFD; J. Robles Santos, *Indiana Mandates Corporate E-Filing and Amends*

several forms allowing for electronic or digital signatures and publications on e-filing of other forms, and the US Treasury proposed amendments to e-filing requirements for various taxes.²⁴⁸

Along the line of simplification, **China (People's Rep.)** integrated separate tax returns for ten types of taxes into a single return. Furthermore, effective 1 May 2021, taxpayers may file a single return for VAT, consumption tax, urban maintenance and construction tax, the education surcharge and local additional education charges in Hainan province, Shanxi province, Dalian and Xiamen as a pilot project.²⁴⁹

On the other hand, **Greece** was forced to further postpone the operation of its online platform for electronic invoicing,²⁵⁰ and **Italy** had to delay the publication of the pre-filled income tax returns and postponed twice the deadline to adhere to the online service for e-invoicing²⁵¹ due to the pandemic.

3. Confidentiality

3.1. General issues

In 2021, the trend in favour of establishing regulatory safeguards for confidentiality, while seemingly stable in other regions of the world, was dealt a blow in the European Union in the name of transparency.

Indeed, the enactment of Directive 2021/2101, as regards disclosure of income tax information by certain undertakings and branches, entails the public disclosure of country-by-country information on the direct taxation of multinational enterprises doing business in the European Union. It also includes the disclosure of said information regarding investments in every third country on the so-called blacklist or a country that spends 2 years on the so-called grey list. The mandatory reporting also includes information regarding the nature of activities, the number of employees, the total net turnover made, the profit made before tax, the amount of income tax due in the country by reason of the profits made in the country in the year, the amount of tax actually paid during that year and the accumulated earnings.²⁵²

[Code on Various Tax Matters](#) (12 May 2021), News IBFD; J. Robles Santos, [Indiana's Revenue Surplus Triggers Income Tax Credits for 2022 Returns](#) (20 July 2021), News IBFD; J. Robles Santos, [Maine Updates Administrative Rules on Filing State Tax Returns](#) (12 July 2021), News IBFD; and J. Robles Santos, [Idaho To Send Income Tax Rebates to Residents from 2 August 2021](#) (20 July 2021), News IBFD.

²⁴⁸ See W. Choi, [COVID-19 Pandemic: IRS Updates Forms Allowed for Electronic or Digital Signatures](#) (30 Apr. 2021), News IBFD; M. Pavlovic, [US Treasury Proposes Amendments to E-Filing Requirements for Various Taxes](#) (23 July 2021), News IBFD; and W. Choi, [IRS Updates Publication 1187 on E-Filing of Form 1042-S \(Foreign Person's US Source Income Subject to Withholding\)](#) (2 Aug. 2021), News IBFD;

²⁴⁹ See CN: State Administration of Taxation's Public Notice [2021] No. 9 (12 Apr. 2021), available at <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5163487/content.html> (accessed 26 Jan. 2022). See also X. Ma, [China Integrates Tax Returns for Various Taxes](#) (19 Apr. 2021), News IBFD.

²⁵⁰ See V. Dafnomilis, [Greece Further Postpones Operation of Online Platform for Electronic Invoicing](#) (16 Mar. 2021), News IBFD.

²⁵¹ See G. Gallo, [Ministry of Economy and Finance Announces Postponed Publication of Pre-Filled Income Tax Returns](#) (16 Mar. 2021), News IBFD; G. Gallo, [Tax Authorities Postpone Deadline to Adhere to Online Service for Electronic Invoices](#) (2 Mar. 2021), News IBFD; and G. Gallo, [Tax Authorities Further Postpone Deadline for Adhering to Online Service for Electronic Invoices](#) (2 July 2021), News IBFD.

²⁵² See Directive (EU) 2021/2101 *supra* n. 9. See also V. Agianni, [Council of the European Union Analyses Its Reasoning on Approval of Public Country-By-Country Reporting \(CBCR\) Directive](#) (13 Oct. 2021), News IBFD.

This information is disclosed in order – it is intended – to further promote corporate transparency and accountability, thereby contributing to the well-being of society and promoting a better informed public debate regarding the level of compliance of certain multinational enterprises, as well as the impact of tax compliance on the real economy, since – it is believed – this level of corporate income tax transparency serves the general economic interest of the European Union and helps regain citizens' trust in the fairness of national tax systems.

It has been pointed out²⁵³ that this new regulation opens questions regarding the ability of public disclosure of raw data to facilitate the informed public dialogue it is intended to foster, particularly considering the difficulties that country-by-country reporting entails within tax assessments,²⁵⁴ and the proportionality of such a public disclosure with the right to privacy, while having regard to the fact that, according to the ECtHR's *Satakunnan Markkinapörssi* case,²⁵⁵ the fact that information is already in the public domain will not necessarily remove the protection to privacy granted by article 8 of the European Convention on Human Rights.

Public country-by-country reporting has also been proposed by members of the **United States** Congress through the Disclosure of Tax Havens and Offshoring Act proposal, introduced in the House of Representatives on 5 May 2021.²⁵⁶

3.2. Guarantees of privacy in the law

Minimum standard: Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorized disclosures (and ensure sanctions are enforced)

Shifted towards/improved the minimum standard:

Brazil, Bolivia, Chile

Shifted away from the minimum standard:

None

Minimum standard: Introduce an offence for tax officials covering up unauthorized disclosure of confidential information

²⁵³ See K. Perrou, *Recent CJEU Developments*, Presentation at the 6th International Conference on Taxpayer Rights p. 11, available at <https://taxpayer-rights.org/wp-content/uploads/2021/10/Baker-Perrou-Pistone-presentation-07102021-final39-Read-Only.pptx> (accessed 1 Feb. 2022); M. Lagarden et al., *Country-by-Country Reporting Goes Public – Cui Bono?*, 27 Intl. Transfer Pricing J. 2 (2020), Journal Articles & Opinion Pieces IBFD; and M. Lagarden, *Behavioural Transfer Pricing – Towards Enhanced Transparency and Compliance?*, 26 Intl. Transfer Pricing J. 3 (2019), Journal Articles & Opinion Pieces IBFD.

²⁵⁴ See S. Picariello & V. Chand, *The Use of Country-by-Country Reporting for Tax Risk Assessment: Challenges and Potential Solutions*, 3 Intl. Tax Stud. 1 (2020), Journal Articles & Opinion Pieces IBFD.

²⁵⁵ See FI: ECtHR, 27 June 2017, App. No. 931/13, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, para. 134, available at <https://hudoc.echr.coe.int/eng?i=001-175121> (accessed 1 Feb. 2022). See also Observatory on the Protection of Taxpayers' Rights (OPTR), *2015-2017 General Report on the Protection of Taxpayers' Rights* sec. 4.6.2. (IBFD 2018), available at https://www.academia.edu/41094901/2015_2017_General_Report_on_the_Protection_of_Taxpayers_Rights (accessed 1 Feb. 2022).

²⁵⁶ See Axne, *Van Hollen Introduce Bicameral Legislation to Provide Transparency on Corporate Use of Tax Havens, Offshoring of Jobs*, 11 May 2021, available at <https://axne.house.gov/media/press-releases/axne-van-hollen-introduce-bicameral-legislation-provide-transparency-corporate> (accessed 3 Feb. 2022). See also US: H.R.3007 – Disclosure of Tax Havens and Offshoring Act, available at <https://www.congress.gov/bill/117th-congress/house-bill/3007/text> (accessed 3 Feb. 2022).

Shifted towards/improved the minimum standard:

Bolivia

Shifted away from the minimum standard:

None

Beyond the public country-by-country reporting in the European Union, the trend in favour of establishing regulatory safeguards for confidentiality seems to have remained stable in other regions of the world and keeps going forward in Latin America.

In **Bolivia**, the “large” wealth tax law (*Ley de Impuesto a las Grandes Fortunas*) provides for the confidentiality of the information obtained from taxpayers and third parties. Said information may only be used for tax assessment purposes, and it cannot be transferred to third parties without order of the competent authority. The law also punishes officials who violate these provisions with administrative, civil and criminal liabilities.²⁵⁷

In **Brazil**, the *Receita Federal* (Federal Revenue Service) enacted the *Portaria* (Ordinance) 4/2021, establishing the conditions under which data protected by tax secrecy may be shared, through a secured and controlled virtual system, with other authorities of the Federal Accounting Court and the Office of the Federal Controller General. In addition, regarding data not covered by confidentiality, Ordinance 34/2021 details the procedure for requests made by federal authorities. In the latter case, the lack of protection as tax secrecy seems to lead to a lower standard of protection, although such data may also entail sensitive personal information.²⁵⁸

In **Chile**, an amendment to the Tax Code is reported to have improved taxpayers’ access to private information, as well as its collection through digital platforms. Specifically, the code provides for a *sitio personal* (personal site), a *carpeta electrónica* (electronic folder) and an *expediente electrónico* (electronic file), in which the tax authorities will safeguard all the information related to the taxpayer. Taxpayers have free and secure access to said files through the SII’s website. Also, according to the Tax Code, service officials who access or use the information contained in those electronic files must guarantee taxpayers’ privacy according to the Chilean legislation that establish the confidentiality or secrecy of the actions or information contained in electronic files.²⁵⁹

In the **Dominican Republic**, the Directorate General of Internal Revenue (*Dirección General de Impuestos Internos* (DGII)) announced technical improvements made to “third party” data queries on the Dominican state’s virtual office (intranet). Third-party data queries allow for

²⁵⁷ See BO: Ley de 28 de diciembre de 2020 No. 1.357, Impuesto a las Grandes Fortunas, available at <https://web.senado.gob.bo/sites/default/files/LEY%20N%C2%B0%201357-2020.PDF> (accessed 2 Feb. 2022). See also BO: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 11.

²⁵⁸ See BR: Portaria (Ordinance) RFB No. 4, which provides on the Protocol of Auditability of the Tax and Customs Administration, used to enable the sharing of data and information protected by tax secrecy, 22 Jan. 2021, available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=115082> (accessed 1 Feb. 2022); and BR: Portaria (Ordinance) RFB No. 34, which provides for the sharing of data not protected by tax secrecy with agencies and entities of the direct federal public administration, independent and foundational, and of the other branches of government, 18 May 2021, available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=117598> (accessed 1 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 11.

²⁵⁹ See CL: Código Tributario (Tax Code), Decree-Law No. 830, available at https://www.sii.cl/normativa_legislacion/dl830.pdf (accessed 2 Feb. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 11.

viewing the operations reported by third parties, including: income from credit/debit cards; income from purchases of goods and services sent by third parties; sales of tickets and payment of commissions; tax withholdings of the Dominican state; payment of commissions of insurers and health risk administrators; and income from wages according to the social security (TSS) database. All these queries can be made for the current fiscal year and for up to 10 past fiscal years.²⁶⁰

Finally, in **Ukraine**, the Law about the Economic Security of Ukraine has been regarded as introducing a legal framework for better confidentiality, privacy protection and cyber security within the government and local authorities.²⁶¹

3.3. Encryption – Control of access

Best practice: Encrypt information held by a tax authority about taxpayers to the highest level attainable

Shifted towards/matched the best practice:

Brazil, Chile

Shifted away from the best practice:

None

Minimum standard: Restrict access to data to those officials authorized to consult it. For encrypted data, use digital access codes

Shifted towards/improved the minimum standard:

Brazil, Chile

Shifted away from the minimum standard:

None

Best practice: Ensure an effective firewall to prevent unauthorized access to data held by revenue authorities

Shifted towards/matched the best practice:

Brazil, Chile

Shifted away from the best practice:

None

In 2021, the regulatory enshrinement of enhanced confidentiality guarantees in Latin America was accompanied by specific measures to ensure the integrity of data held by the tax administration, according to reports.

As mentioned above, a secure and controlled virtual system was created in **Brazil** to avoid data misuse and leaking when tax secrecy-protected information is disclosed by the Federal Revenue Service to authorities of the Federal Accounting Court and the Office of the Federal Controller General, pursuant to Ordinance 4/2021.²⁶²

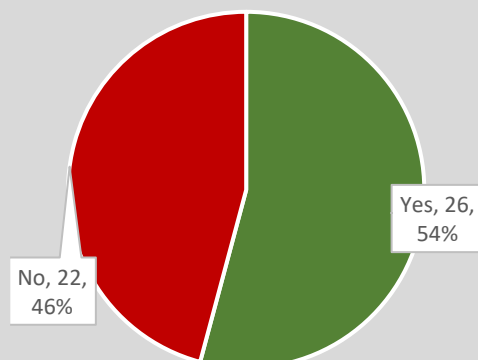
²⁶⁰ See M. Corral, [Dominican Republic Improves Query of Third-Party Data for Tax Purposes](#) (7 June 2021), News IBFD.

²⁶¹ See UA: Law 1150-IX, on the Bureau of Economic Security of Ukraine (28 Jan. 2021), available at <https://zakon.rada.gov.ua/laws/show/1150-20#Text> (accessed 2 Feb. 2022). See also UA: OPTR Report (Academia), Questionnaire 2, Question 15.

²⁶² See sec. [3.2](#). See also BR: OPTR Report (Academia), Questionnaire 2, Question 13.

Chart 11. Is information held by your tax authority automatically encrypted?

56 responses



Yes: Argentina, Austria, Bolivia, Brazil (1), Brazil (2), Chile, China (People’s Rep.), Chinese Taipei, Denmark, Germany, Greece, Honduras, India, Italy, Japan, Lithuania, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Peru (2), Peru (3), Poland (1), Poland (2), Serbia, Slovenia (1), Slovenia (2), Spain, Sweden, Turkey, United States

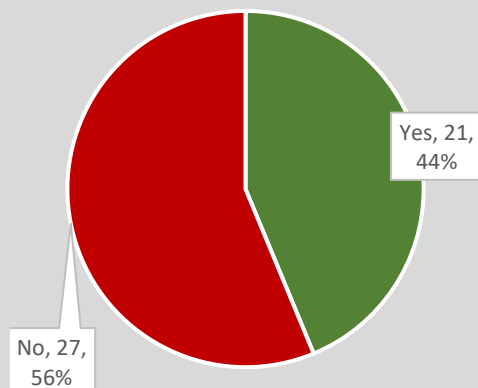
No: Australia, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Colombia, Cyprus, Czech Republic, Finland, Guatemala, Kazakhstan, Kenya, Luxembourg, Netherlands, Peru (1), Portugal, Russia, South Africa, Switzerland, Ukraine, United Kingdom, Uruguay, Venezuela

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 11.

Chart 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?

56 responses



Yes: Argentina, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Cyprus, Czech Republic, Germany, Greece, India, Japan, Mauritius, Mexico (1), Mexico (2), New Zealand, Serbia, Slovenia (2), Spain, Turkey, United States, Venezuela

No: Australia, Bolivia, Bosnia and Herzegovina, Chinese Taipei, Colombia, Denmark, Finland, Guatemala, Honduras, Italy, Kazakhstan, Kenya, Lithuania, Luxembourg, Netherlands, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Slovenia (1), South Africa, Sweden, Switzerland, Ukraine, United Kingdom, Uruguay

Reports with diverging opinions: Slovenia

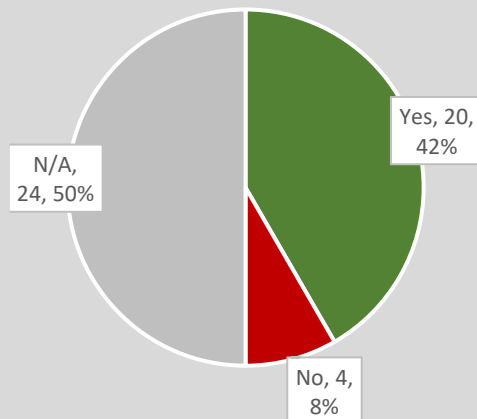
Source: OPTR: Questionnaire 1, Question 12.

In addition, **Chile** reports a general improvement of the tax administration’s digital platforms in 2021, a process that will continue in 2022, as announced by the SII. However, the intention to use webscraping (software for extracting information automatically from websites for storage and processing) and machine learning to detect non-compliance is noteworthy.²⁶³

²⁶³ See CL: *Plan de Gestión de Cumplimiento Tributario 2022*, pp. 19, 46 and 62, available at https://www.sii.cl/sobre_el_sii/pgct2022.pdf (accessed 2 Feb. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 13.

Chart 13. If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?

56 responses



Yes: Argentina, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Czech Republic, Germany, Greece, Honduras, India, Japan, Mauritius, Mexico (1), Mexico (2), New Zealand, Serbia, Slovenia (2), Spain, Turkey, United States

No: Cyprus, Kenya, Switzerland, Venezuela

Not applicable: Australia, Bolivia, Bosnia and Herzegovina, Chinese Taipei, Colombia, Denmark, Finland, Guatemala, Italy, Kazakhstan, Lithuania, Luxembourg, Netherlands, , Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Slovenia (1), South Africa, Sweden, Ukraine, United Kingdom, Uruguay

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 13.

3.4. Auditing of access

Minimum standard: Audit data access periodically to identify cases of unauthorized access

Shifted towards/improved the minimum standard:

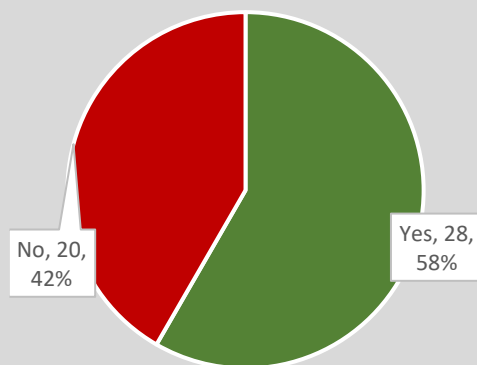
None

Shifted away from the minimum standard:

Chinese Taipei

Chart 14. Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia, Czech Republic, Denmark, Germany, Greece, Honduras, India, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Norway, Peru (2), Peru (3), Portugal, Serbia, Slovenia (2), Spain, Sweden, Turkey, United States

No: Bolivia, Bosnia and Herzegovina, Chinese Taipei, Cyprus, Finland, Guatemala, Italy, Kazakhstan, Kenya, Lithuania, Mexico (1), Mexico (2), Peru (1), Poland (1), Poland (2), Russia, Slovenia (1), South Africa, Switzerland, Ukraine, United Kingdom, Uruguay, Venezuela

Reports with diverging opinions: Peru, Slovenia

Source: OPTR: Questionnaire 1, Question 14.

The only development reported regarding situations of unauthorized access is that of **Chinese Taipei**. In 2021, a major national tax bureau official accidentally leaked large amount of tax

agents' personal data online. An officer of the Internal Revenue Service of the Central District of the Ministry of Finance was suspected of negligence when building the bookkeeping agents' list and mistakenly uploaded the personal information file of the bookkeepers to the Internet, which resulted in the disclosure of personal information such as ID numbers, addresses and dates of birth. No measure has been taken since to prevent data leaks.²⁶⁴

3.5. Administrative measures to ensure confidentiality

Minimum standard: Introduce administrative measures emphasizing confidentiality to tax officials

Shifted towards/improved the minimum standard:

Colombia, Honduras

Shifted away from the minimum standard:

None

Unlike in 2020,²⁶⁵ a slight trend towards introducing administrative measures to ensure confidentiality to tax officials in 2021 may be identified through the reported developments.

First, the new structure of the National Tax and Customs Directorate (DIAN) of **Colombia** was implemented in 2021. Article 10 of Decree 1742 maintains the Information Security Office and grants it greater autonomy in the adoption of policies related to the security and privacy of information, as well as the definition of the handling policy and protocols for the delivery and receipt of information arising from compliance with the agreements signed by the entity.²⁶⁶

In addition, in **Honduras**, the reform of the civil service regime in tax matters expressly added confidentiality as mandatory for tax officials. Furthermore, a Code of Probity and Ethics for SAR collaborators and an anti-corruption policy was approved in 2021, reinforcing the confidentiality obligations of public servants.²⁶⁷

3.6. Official responsibility for data confidentiality

Best practice: Appoint data protection officers at senior level and local tax offices

Shifted towards/matched the best practice:

Colombia, Honduras, Lithuania, Kazakhstan, Spain, Ukraine, United States

Shifted away from the best practice:

Chinese Taipei

A few developments were reported regarding the appointment of data protection officers at

²⁶⁴ See L. Bao, *supra* n. 7. See also TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Questions 14 and 15.

²⁶⁵ See OPTR, *supra* n. 143 (2021), at sec. 3.5.

²⁶⁶ See CO: Decreto No. 1742, *supra* n. 84. See also CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 15.

²⁶⁷ See HN: Acuerdo No. SAR-No. 291-2020, de reforma del Régimen de Carrera de Empleados y Funcionarios en el Servicio de Administración de Rentas, available at <https://tzibalnaah.unah.edu.hn/xmlui/bitstream/handle/123456789/13676/20210210.pdf?sequence=2> (accessed 2 Feb. 2022); and HN: Acuerdo No. SAR-222-2021, contenido del Código de Probidad y Ética para los Colaboradores del Servicio de Administración de Rentas, available at https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=MTI3ODIzNzg5MzQ3NjM0ODcxMjQ2MTk4NzIzNDI= (accessed 2 Feb. 2022). See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 15.

senior level and local tax offices in 2021, unlike in 2020.²⁶⁸

In **Colombia**, the reform of the DIAN's structure, previously mentioned in section 3.5. of this yearbook, maintains the Information Security Office and grants it greater autonomy in the adoption of policies related to the security and privacy of information, as well as the definition of the handling policy and protocols for the delivery and receipt of information arising from compliance with the agreements signed by the entity.²⁶⁹

In **Kazakhstan**, a reform to Law 94-V, On Personal Data and Its Protection, required the appointment of data protection officers in all state agencies, including the tax administration. Such a person is entrusted, inter alia, with the following duties: to exercise internal control over compliance with legislation on the protection of personal data; to inform employees of the provisions of the legislation on the protection of personal data; and to control the reception and processing of appeals of entities or their legal representatives.²⁷⁰

Also, **Lithuania** reports that the State Tax Inspectorate has appointed a data protection officer, along with strengthening its team, to better comply with the requirements of the EU General Data Protection Regulation (GDPR).²⁷¹

In **Spain**, the functions of the Data Protection Officer (DPO) at the Spanish Ministry of Finance and Civil Service have been carried out by the General Technical Secretary since August 2021.²⁷²

Finally, in the **United States**, the IRS Commissioner appointed a permanent Chief Information Officer in February 2021.²⁷³

3.7. Breaches of confidentiality – Investigations

Minimum standard: If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges)

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

Chinese Taipei

²⁶⁸ See OPTR, *supra* n. 143 (2021), at sec. 3.6.

²⁶⁹ See CO: Decreto No. 1.742, *supra* n. 84. See also CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 15.

²⁷⁰ See KZ: Law No. 94-V, On Personal Data and Its Protection, available at <https://www.parlam.kz/ru/Legislative/DownloadDocument/9052> (accessed 22 Mar. 2022). See also KZ: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

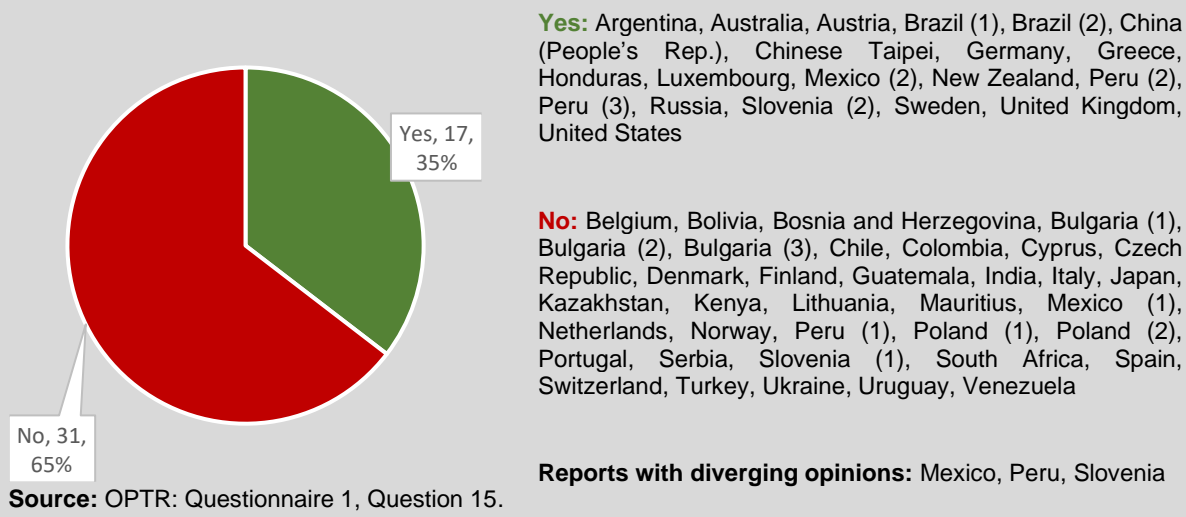
²⁷¹ See LT: Data Protection Officer, available at <https://www.vmi.lt/evmi/en/duomenu-apsaugos-pareigunas> (accessed 2 Feb. 2022); and EU: Regulation (EU) 2016/679, *supra* n. 75. See also LT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

²⁷² See ES: Real Decreto 682/2021, de 3 de agosto, por el que se desarrolla la estructura orgánica básica del Ministerio de Hacienda y Función Pública y se modifica el Real Decreto 139/2020, de 28 de enero, por el que se establece la estructura orgánica básica de los departamentos ministeriales, available at <https://www.boe.es/eli/es/rd/2021/08/03/682/con#a2-2> (accessed 2 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/Tax Ombudsperson/Academia), Questionnaire 2, Question 15.

²⁷³ See US: *Treasury Inspector General for Tax Administration Report 2021-25-058* p. 2 (29 Sept. 2021), available at <https://perma.cc/2KG8-HSJQ> (accessed 2 Feb. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 15.

Chart 15. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?

56 responses



There have been no investigations of the only confidentiality breach reported in 2021, that of **Chinese Taipei**, mentioned in section [3.4.](#) of this yearbook.²⁷⁴

3.8. Breaches of confidentiality – Remedies

Minimum standard: Provide remedies for taxpayers who are victims of unauthorized disclosure of confidential information

Shifted towards/improved the minimum standard:

Chile

Shifted away from the minimum standard:

Chinese Taipei

In addition, very few developments were reported in 2021 regarding the provision of remedies to the victims of unauthorized disclosure of confidential information, so the situation remains stable in this regard.

In **Chile**, Letter 12/2021, in which the tax administration is instructed on the procedures to be followed to safeguard taxpayers' rights, mentioned many times in this yearbook,²⁷⁵ regulates – along with the Tax Code – general remedies, but there is no specific remedy for unauthorized disclosure.²⁷⁶

Regretfully, as mentioned in sections [3.4.](#) and [3.7.](#) of this yearbook, no remedies have been granted in regard to the major data leak reported in **Chinese Taipei**.²⁷⁷

²⁷⁴ See TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 16.

²⁷⁵ See secs. [1.4.](#), [1.5.](#) and [1.6.](#)

²⁷⁶ See CL: Circular No. 12, *supra* n. 18. See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 17.

²⁷⁷ See TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 17.

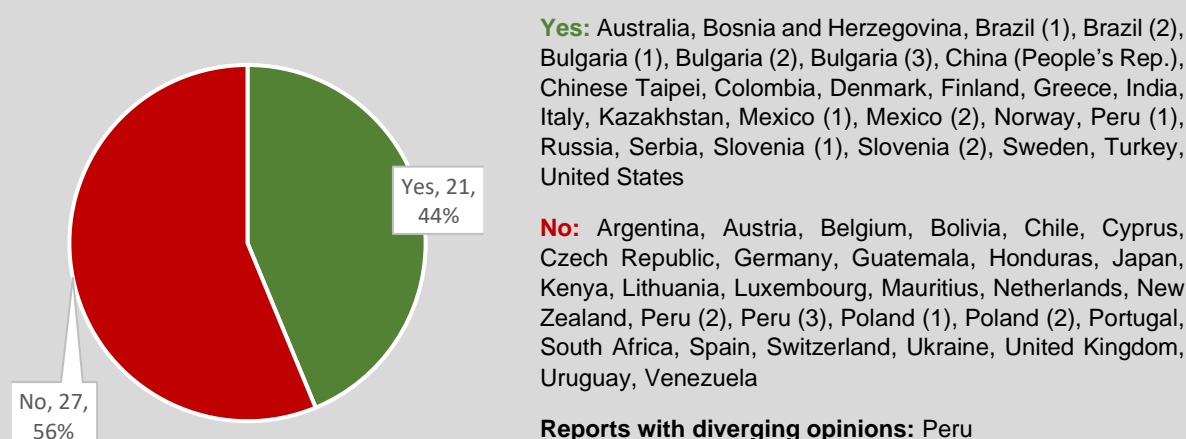
3.9. Exceptions to confidentiality – The general principle

Minimum standard: Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted

<p>Shifted towards/improved the minimum standard: Brazil</p>	<p>Shifted away from the minimum standard: None</p>
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Chart 16. Is information about the tax liability of specific taxpayers publicly available in your country?

56 responses



Source: OPTR: Questionnaire 1, Question 16.

Some important developments regarding exceptions to the general rule of occurred in 2021, particularly in Europe, mostly leaning towards the fulfilment of the minimum standard. In general, proportionality was put to the test, allowing tax authorities to access greater quantities of information given sufficient guarantees for taxpayers.

Regarding whistle-blower protection, EU Member States had until 17 December 2021 to transpose the so-called EU Whistleblowing Directive, on the protection of persons who report breaches of Union law, including tax law.²⁷⁸ To date, only seven of the EU Member States, namely **Austria, Bulgaria, Cyprus, Denmark, France, Lithuania, Malta, Portugal** and **Sweden**, appear to have transposed said directive into domestic law.²⁷⁹

²⁷⁸ EU Directive 2019/1937, *supra* n. 86.

²⁷⁹ See the EU Whistleblowing Monitor, available at <https://www.whistleblowingmonitor.eu/> (accessed 21 Mar. 2022); and EURLex, *National transposition measures communicated by the Member States concerning Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law*, available at <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX%3A32019L1937> (accessed 3 Feb. 2022). See also A. Taylor, *EU countries miss deadline to implement whistleblower directive*, Euractive, 29 Dec. 2021, available at <https://www.euractiv.com/section/digital/news/all-eu-countries-miss-deadline-to-implement-whistleblower-directive/> (accessed 3 Feb. 2022).

Although not directly related to tax matters, in the context of exceptions to the right to privacy, it is worth mentioning the two landmark ECtHR Grand Chamber rulings on the interception of communications by national security services.

In the *Big Brother Watch and Others* and the *Centrum För Rättvisa* cases, the court held that the mass surveillance bulk interception regimes of **Sweden** and the **United Kingdom** violated the right to privacy for, first, their lack of sufficient oversight of the selection of bearers for interception, the selectors used for filtering intercepted communications and the process by which analysts selected intercepted communications for examination; and, second, the absence of any real safeguards applicable to the searching and selection for examination of related communications data. In the *Centrum För Rättvisa* case, the court held that the system allowed the risk of mass interception and examination of mass communications by way of signals intelligence, namely intercepting, processing, analysing and reporting intelligence from electronic signals.²⁸⁰

In this regard, the court determined that, in terms of privacy, bulk interception regimes should be assessed against eight safeguards, namely: (i) the circumstances in which an individual's communications may be intercepted; (ii) the procedure to be followed for granting authorisation; (iii) the procedures to be followed for selecting, examining and using intercept material; (iv) the precautions to be taken when communicating the material to other parties; (v) the limits on the duration of interception, the storage of intercept material and the circumstances in which such material must be erased and destroyed; (vi) the procedures and modalities for supervision by an independent authority of compliance with the above safeguards and its powers to address non-compliance; (vii) the procedures for independent ex post facto review of such compliance and (viii) the powers vested in the competent body in addressing instances of non-compliance.²⁸¹

Also regarding the limits to the exceptions on confidentiality, the Supreme Court of **Spain** has strictly interpreted the Spanish general rule of confidentiality²⁸² in an interesting series of decisions. According to the court, the tax authorities are only allowed to use taxpayer information for tax purposes, as listed in the text of the law. It is therefore prohibited to use taxpayer information for other purposes, such as to serve as evidence for the commission of a non-tax administrative offence. In the case of the transfer of data to other administrations for non-tax purposes, the express authorization of the data subject must be stated.²⁸³

²⁸⁰ *Big Brother Watch and Others*, *supra* n. 10; and SE: ECtHR, Grand Chamber, 25 May 2021, App. No. 35252/08, *Centrum För Rättvisa v. Sweden*, available at <https://hudoc.echr.coe.int/eng?i=001-210078> (accessed 3 Feb. 2022).

²⁸¹ *Big Brother Watch and Others*, *supra* n. 10, at para. 361.

²⁸² See ES: Ley 58/2003, de 17 de diciembre, General Tributaria, art. 95, available at <https://www.boe.es/eli/es/l/2003/12/17/58/con> (accessed 2 Feb. 2022); and Orden de 18 de noviembre de 1999 por la que se regula el suministro de información tributaria a las Administraciones Públicas para el desarrollo de sus funciones, así como los supuestos contemplados en el artículo 113.1 de la Ley General Tributaria, BOE 286, 30 Nov. 1999, available at [https://www.boe.es/eli/es/o/1999/11/18/\(5\)](https://www.boe.es/eli/es/o/1999/11/18/(5)) (accessed 2 Feb. 2022).

²⁸³ See ES: STS 4788/2021 [ECLI:ES:TS:2021:4788], 22 Dec. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/a08a1a387792cbb/20220104> (accessed 2 Feb. 2022); STS 2528/2021 [ECLI:ES:TS:2021:2528], 24 Jun. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/b59039f61afa0344/20220128> (accessed 2 Feb. 2022); STS 2340/2021 [ECLI:ES:TS:2021:2340], 10 Jun. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/e09fdbecf17ff765/20210622> (accessed 2 Feb. 2022); STS 2340/2021 [ECLI:ES:TS:2021:2340], available at

For its part, in the aftermath of the adoption of the seventh modification of Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7), which introduced a reporting obligation for digital platforms on revenues generated by sellers on these platforms as of 1 January 2023,²⁸⁴ a series of interesting cases are currently before the ECJ regarding the proportionality of requests for information by (tax) authorities in **Belgium**.

Indeed, the *Cour Constitutionnelle* raised a preliminary question to determine the tax nature and, therefore, the scope of the duty to provide information to be supplied by digital platforms on the details of the operator and contact details of tourist accommodation establishments, as well as the number of overnight stays and accommodation units operated during the previous year, in order to identify the taxable persons liable to a regional tax on tourist accommodation establishments and their taxable income.²⁸⁵ An additional preliminary question in this matter, related to the VAT Directives applicable to intermediary digital platforms, has been raised by the First-Tier Tribunal (Tax Chamber) of the **United Kingdom**.²⁸⁶

Also, the Court of Appeals of Liège raised a preliminary question in two cases to determine the proportionality of a measure according to which cross-border service users are required, in order to avoid a corporation tax levy of 100% or 50% of the sums invoiced by their providers, to complete and submit to the tax authorities individual fee forms and summary statements relating to those expenses, whereas, if they use the services of resident companies, they are under no such obligation in order to avoid that levy.²⁸⁷

<https://www.poderjudicial.es/search/AN/openDocument/e09fdebef17ff765/20210622> (accessed 2 Feb. 2022); STS 1818/2021 [ECLI:ES:TS:2021:1818], 13 May 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/c9464e1515e2902e/20210524> (accessed 2 Feb. 2022); STS 1002/2021 [ECLI:ES:TS:2021:1002], 15 Mar. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/1015f3b26b045fbc/20210329> (accessed 2 Feb. 2022); and STS 894/2021 [ECLI:ES:TS:2021:894], 11 Mar. 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/fab4450daa63bc03/20210323> (accessed 2 Feb. 2022).

²⁸⁴ Council Directive (EU) 2021/514, *supra* n. 37. See also T. Morales, [European Union Introduces New Reporting Obligations for Digital Platforms and Other Amendments to the Exchange of Information \(DAC7\) – Details](#) (24 Mar. 2021), News IBFD

²⁸⁵ See BE: ECJ, Case C-674/20, Request for a preliminary ruling from the *Cour constitutionnelle* (Belgium) lodged on 10 December 2020 – *Airbnb Ireland UC v. Région de Bruxelles-Capitale*, OJ C 128 (2021), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62020CN0674> (accessed 3 Feb. 2022).

²⁸⁶ See UK: ECJ, Case C-695/20, Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) made on 22 December 2020 – *Fenix International Limited v. Commissioners for Her Majesty's Revenue and Customs*, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=239459&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=358287> (accessed 3 Feb. 2022). See also Z. Szatmari, [CJEU Preliminary Ruling Request \(VAT\): Fenix International \(Case C-695/20\) – First-tier Tribunal \(Tax Chamber\) Submits Referral on Interpretation of Intermediated Services in Relation to Electronic Platforms](#) (29 Mar. 2021), News IBFD.

²⁸⁷ See BE: ECJ, Case C-52/21, Request for a preliminary ruling from the *Cour d'appel de Liège* (Belgium) lodged on 10 December 2020 – *Pharmacie Populaire – La Sauvegarde SCRL*, OJ C 128 (2021), available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=239723&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2598164> (accessed 3 Feb. 2022); and BE: ECJ, Case C-53/21, Request for a preliminary ruling from the *Cour d'appel de Liège* (Belgium) lodged on 28 January 2021 – *Pharma Santé – Réseau Solidaris SCRL v. État belge – SPF Finances*, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=239734&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1527971> (accessed 3 Feb. 2022).

In the same vein, AG Bobek opined that the General Data Protection Regulation (GDPR)²⁸⁸ does not prohibit requests for information addressed by the tax authority to internet service providers insofar as the request is linked to the determination of advertisers' tax obligations and there is a clear legal basis in national law for such a type of data transfer and the data requested are suitable and necessary for the tax authority to complete its official tasks.²⁸⁹

In this latter regard, it should be reported that **Italy** amended its implementing rules on the electronic storage and daily transmission of data, so these are only shared through the latest approved version of the electronic transmission system, taking also into account the difficulties caused by the COVID-19 pandemic.²⁹⁰

In addition, the **Netherlands** officially announced that, as from 1 January 2022, the obligation to disclose data and information to the Dutch tax authorities will be extended to withholding agents that make payments to an individual for work and services performed for the withholding agent itself or a company affiliated with the withholding agent and collective management organizations (CBOs), i.e. organizations that act on behalf of a group of rightsholders in collecting and distributing fees for a copyright or related right on a non-profit basis.²⁹¹

Complementary Law 187/2021 of **Brazil** amended the National Tax Code (article 198) to expressly authorize the disclosure of tax benefits and other special treatments, based on which some states have already been disclosing such information.²⁹²

Along the same lines, the Federal Court upheld the **Canada** Revenue Agency (CRA) request for data from Coinsquare Ltd, one of Canada's largest cryptocurrency exchanges, allowing it to compare it with a similar IRS data request. Nonetheless, the request was significantly reduced by the court after an agreement was reached between Coinsquare and the tax authority.²⁹³

However, the **United States'** Supreme Court (SCOTUS) took a different direction. SCOTUS invalidated a California law requiring charitable organizations to disclose donor information to the California Office of the Attorney General, used as a means against tax fraud, on the grounds that the law overburdens donors' freedom of speech rights and "indiscriminately sweep[s] up the information of every major donor with reason to remain anonymous". In

²⁸⁸ Regulation (EU) 2016/679, *supra* n. 75.

²⁸⁹ LV: ECJ, Case C-175/20, AG Bobek Opinion delivered on 2 September 2021, request for a preliminary ruling from the *Administratīvā apgabaltiesa* (Regional Administrative Court, Latvia) – *SIA 'SS' v. Valsts ieņēmumu dienests* (Latvia) lodged on 14 April 2020, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=245557&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2516384> (accessed 7 Feb. 2022).

²⁹⁰ See G. Gallo, *Tax Authorities Amend Implementing Rules on Electronic Storage and Transmission of Data on Daily Considerations* (31 Mar. 2021), News IBFD.

²⁹¹ See R. Offermanns, *Netherlands Extends Obligation to Disclose Data and Information to Tax Authorities* (16 July 2021), News IBFD.

²⁹² See BR: Lei Complementar No. 187, 2021, available at https://www.planalto.gov.br/ccivil_03/leis/lcp/Lcp187.htm (accessed 2 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 18.

²⁹³ See CA: FC, 19 Mar. 2021, *Minister of National Revenue v. Coinsquare Ltd*, T-1114-20, available at <https://bit.ly/3LfrQnO> (accessed 7 Feb. 2022). See also J. Bernstein & S. Fedun, *Canada Revenue Agency Demands Cryptocurrency Exchange's Customer Files*, 102 Tax Notes International 9, pp. 1179-1182 (2021).

addition, SCOTUS unanimously permitted CIC Services LLC to sue the IRS to set aside an IRS notice containing reporting requirements that are enforced through a tax penalty, thereby circumventing the Anti-Injunction Act, which prevents pre-payment litigation to contest tax assessment and collection, by holding that CIC’s suit does not trigger the AIA, because it targets the IRS’s reporting mandate itself, not the tax penalty.²⁹⁴

3.10. Exceptions to taxpayer confidentiality – Disclosure in the public interest: Naming and shaming

Minimum standard: If “naming and shaming” is employed, ensure adequate safeguards (e.g. judicial authorization after proceedings involving the taxpayer)

Shifted towards/improved the minimum standard:

China (People’s Rep.), Spain

Shifted away from the minimum standard:

Russia

Best practice: Require judicial authorization before any disclosure of confidential information by revenue authorities

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

Naming and shaming was under scrutiny in 2021, as it was in 2020.²⁹⁵

The ECtHR’s Fourth Chamber issued its judgment in the *L.B. v. Hungary* case, endorsing the measure as legitimate, rational and proportionate in the framework of a democratic society to improve tax discipline, protect the economic well-being of a country and protect the interest of third parties regarding the tax situation of potential business partners, insofar as it was within the margin of appreciation enjoyed by the state in the exercise of its tax collection powers and in balance with the limits imposed on that margin by the taxpayer’s right to privacy. However, the dissenting vote stated strongly that naming and shaming was “modern pillory”. The case was referred to the Grand Chamber.²⁹⁶

Along the lines of the *L.B. v. Hungary* ECtHR ruling, naming and shaming has been endorsed by the decision of the Commercial Court of the West Siberian District of **Russia** in the

²⁹⁴ See US: SCOTUS, 1 July 2021, Case 19-251 (2021), *Americans for Prosperity Foundation v. Bonta*, 19-251, available at https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf (accessed 7 Feb. 2022); and US: SCOTUS, 17 May 2021, Case 19-930 (2021), *CIC Services, LLC v. Internal Revenue Service et al.*, 19-930, available at https://www.supremecourt.gov/opinions/20pdf/19-930_d1o3.pdf (accessed 7 Feb. 2022). See also A. Ramesh, *A Big Win for Big Donors: US Supreme Court Invalidates California Donor Disclosure Law* (7 July 2021), News IBFD; and W. Choi, *Score One for Tax Advisors: Supreme Court Green-Lights Challenge to Reporting Requirements Backed by Tax Penalty* (18 May 2021), News IBFD.

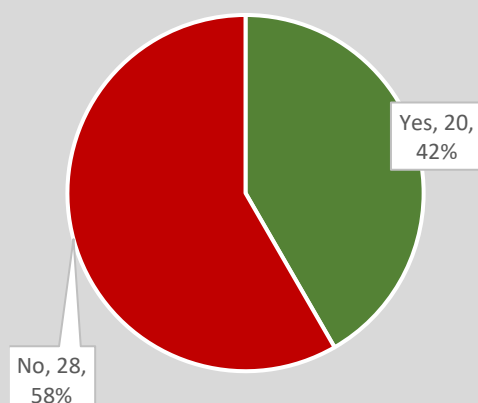
²⁹⁵ See OPTR, *supra* n. 143 (2021), at sec. 3.10.

²⁹⁶ See HU: ECtHR, Fourth Chamber, 12 Jan. 2021, *L.B. v. Hungary*, App. no. 36345/16, available at <https://hudoc.echr.coe.int/eng?i=001-207132> (accessed 7 Feb. 2022). See also C.E. Weffe H., *Highlights and Trends in Global Taxpayers’ Rights 2020*, 75 Bull. Intl. Taxn. 7, sec. 3.3. (2021), Journal Articles & Opinion Pieces IBFD.

AgroKorm case, on the grounds that the tax authorities may disclose taxpayer information under their legal prerogative to protect the public interest involved in tax collection.²⁹⁷

Chart 17. Is “naming and shaming” of non-compliant taxpayers practised in your country?

56 responses



Yes: Australia, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep.), Chinese Taipei, Greece, Guatemala, Kazakhstan, Mauritius, Mexico (1), Mexico (2), Peru (1), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Turkey, United Kingdom

No: Argentina, Austria, Belgium, Chile, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Honduras, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Peru (2), Peru (3), Poland (1), Poland (2), Slovenia (1), Sweden, Switzerland, Ukraine, United States, Uruguay, Venezuela

Reports with diverging opinions: Peru, Slovenia

Source: OPTR: Questionnaire 1, Question 17.

Mexico regularly publishes and updates a list of taxpayers presumed to have entered into non-existent transactions, regardless of the absence of an assessment procedure against them.²⁹⁸

However, moving towards the fulfilment of the minimum standard, the General Administration of Taxation of **China (People’s Rep.)** adopted administrative measures for the publication of information on major tax debtors, further strengthening taxpayers’ protection by stipulating that the tax authorities need to inform taxpayers before releasing their information so that the latter may exercise their rights beforehand and apply for the early suspension of the publication of information on breach of trust. Likewise, the new Measures for the Administration of Disclosure of Violating Tax Law and Dishonesty grant taxpayers the rights to be informed of and to defend against the naming-and-shaming decision. The new rules will come into force in 2022.²⁹⁹

²⁹⁷ See RU: Commercial Court of the West Siberian District, 3 Sept. 2021, F04-4524/2021, *AgroKorm*, available at <https://www.v2b.ru/documents/postanovlenie-arbitrazhnogo-suda-zapadno-sibirskogo-okruga-ot-03-09/> (accessed 7 Feb. 2022). See also RU: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 19.

²⁹⁸ See E. Orellana Polo, *Tax Administration Updates Definitive Lists of Taxpayers Presumed to Have Entered into Non-Existent Transactions* (5 Oct. 2021), News IBFD; E. Orellana Polo, *Tax Administration Updates Definitive Lists of Taxpayers Presumed To Have Entered Into Non-Existent Transactions* (8 Nov. 2021), News IBFD; E. Orellana Polo, *Tax Administration Updates Definitive Lists of Taxpayers Presumed To Have Entered Into Non-Existent Transactions* (2 June 2021), News IBFD; and E. Orellana Polo, *Tax Administration Updates Definitive Lists of Taxpayers Presumed To Have Entered Into Non-Existent Transactions* (6 Oct. 2020), News IBFD, *et passim*.

²⁹⁹ See CN: Decree No. 54 of the State Administration of Taxation. Measures for the Administration of Publication of Information on Subjects with Significant Tax Violations and Breach of Trust, available at <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5171862/content.html> (accessed 7 Feb. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 19.

In addition, along with a modification of the legal basis for naming and shaming, broadening the scope of the measure by diminishing its monetary threshold, the Supreme Court of **Spain** admitted a case in which the proportionality of naming and shaming will be under review. According to the court, in naming and shaming,

information is being published that, although it does not show completely and in its entirety the economic situation of the taxpayer by describing only the debit existing with a certain subject, can provide indications about the economic level of those taxpayers included in the aforementioned list, which could conflict with the right to privacy of debtor taxpayers and, therefore, would require a judgment of proportionality that would make it possible to assess whether the benefits or advantages reported by restricting the rights to privacy and data protection are greater than the damages that such restriction would cause.³⁰⁰

3.11. Exceptions – Disclosure in the public interest: Supply to other government departments

Minimum standard: No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

South Africa

Best practice: Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data and then reporting to Parliament.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

2021 Relevant Precautionary Measures Decisions – Inter-American Commission of Human Rights

Case	<i>Journalists of Digital Newspaper “El Faro” v. El Salvador</i> ³⁰¹
Date	4 February 2021
ACHR articles	Article 4 and Article 13

³⁰⁰ See ES: Ley 11/2021, de 9 de julio, de medidas de prevención y lucha contra el fraude fiscal, de transposición de la Directiva (UE) 2016/1164, del Consejo, de 12 de julio de 2016, por la que se establecen normas contra las prácticas de elusión fiscal que inciden directamente en el funcionamiento del mercado interior, de modificación de diversas normas tributarias y en materia de regulación del juego, BOE 164 (10 Jul. 2021), available at <https://www.boe.es/eli/es/l/2021/07/09/11/con> (accessed 7 Feb. 2022); ES: ATS 6976/2021 [ECLI:ES:TS:2021:6976A], 27 May 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/65ccac7db3707508/20210607> (accessed 7 Feb. 2022); and N. Díaz Ravn, *Fiscalidad y Derechos Humanos*, 977 Actualidad Jurídica Aranzadi (2021), available at <https://www.legaltoday.com/revista-aja/977/articulos/11/index.html> (accessed 7 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 19.

³⁰¹ See Inter-American Commission of Human Rights, 4 Feb. 2021, Medidas cautelares No. 1051-20, 34 *Miembros identificados del Periódico Digital El Faro v. El Salvador*, available at http://www.oas.org/es/cidh/decisiones/pdf/2021/res_12-2021_mc-1051-20_es.pdf (accessed 9 Feb. 2022).

Facts	Decision	Comments
<p>On 6 November 2020, the Inter-American Commission on Human Rights received a request for precautionary measures urging the Commission to request that the State of El Salvador adopt the necessary measures to protect the rights of 34 members of the digital newspaper, El Faro.</p> <p>According to the request, said journalists were being subjected to threats, harassment, intimidation, as well as criminalization and stigmatization by high government authorities, as a result of their work.</p> <p>Among other actions of alleged censorship, on 20 July 2020, the Attorney General's Office opened an investigation related to an audit on the accountancy records of the referred newspaper carried out by the Department of Criminal Investigation and Tax Regulations of the Ministry of Finance. In the opinion of the applicants, a series of abuses and irregularities would have been committed by the Ministry of Finance against the newspaper.</p> <p>Furthermore, according to the applicants, the governmental authorities had extensively used social media and other platforms under their control to target El Faro's journalists. They highlighted that the government used a nationwide television broadcast to advertise the fact that the above newspaper was being investigated for tax evasion.</p> <p>The applicants also stated that on 11 November 2020, the President of El Salvador, Mr Nayib Bukele, started a thread on his Twitter account against El Faro. The messages stated "pay your taxes you crybabies" and "you damned liars the day will come when you will not even have money to pay your internet bills".</p> <p>The applicants considered that all these actions were a response to their investigative work and critical stance towards the current government.</p> <p>In its response, the Salvadorian</p>	<p>Resolution No. 12/21 on Precautionary Measures, Inter-American Commission on Human Rights</p> <p>In light of the corresponding context, the Inter-American Commission on Human Rights considered that the information provided by the applicants showed prima facie that not only the freedom of thought and expression, but also the rights to life and personal integrity of the 34 members of the digital newspaper, were in a serious and urgent situation.</p> <p>Consequently, and in accordance with article 25 of the Rules of Procedure, the Commission requested that the State of El Salvador (a) adopt the necessary measures to preserve the life and personal integrity of the journalists; (b) take the necessary measures so such journalists can carry out their journalistic activities in exercise of their right to freedom of expression, without being subjected to acts of intimidation, threats and harassment; and (c) investigate the alleged facts that led to the adoption of the precautionary measures, so as to prevent them from reoccurring.</p>	<p>This case reminds us of a judgment issued in 2002 by the Inter-American Court of Human Rights in the <i>José María Cantos v. Argentina</i> case.</p> <p>Mr Cantos had filed a legal action against the provincial tax office of Santiago del Estero (in Argentina), in an effort to collect damages because of certain irregularities committed at the time of auditing his companies. More specifically, he claimed the payment of approximately USD 2,780,000,000. The Argentinian Supreme Court of Justice required from the claimant the payment of a judicial tax (<i>tasa judicial</i>) in the amount of USD 83,400,000 (i.e. 3% of the claimed damages). The Inter-American Court found that, by imposing such requirement, the Argentinian state had violated articles 8 and 25 of the American Convention, which respectively recognize the taxpayer's right to a fair trial and judicial protection. Therefore, the court ordered the state to refrain from collecting such judicial tax.</p> <p>Despite the apparent similarities, it should be noted that, in such case, the Inter-American Court of Human Rights also recognized that the right of access to a domestic court is not an absolute and, therefore, may be subject to certain limitations. At the end of the day, the Inter-American Court based its judgment only on the grounds that the intention to collect the above sum of money was excessive and not proportional, both of which must be analysed and determined on a case-by-case basis.</p> <p>That said, and in accordance with the Commission's recent report, the protection of the right to a fair trial appears to have been affected insofar as no effective mechanism would have been implemented to suspend the payment of the bonds and to provide the taxpayer access to justice. If it is true that the taxpayer had no financial capacity to post such bonds, the tax court should have acknowledged this special situation.</p>

<p>state pointed out that although journalists are protected under the freedom of expression, they must perform their work obeying the principles of responsible journalism, (that is, acting in good faith, providing accurate and reliable information, reflecting the opinions of all those involved in public debate with objectivity and refraining from falling into sensationalism).</p> <p>Along these lines, the Salvadorian state declared that it rejected any claims of it impeding journalistic work and that, in such country, there is a solid institutional and constitutional framework.</p> <p>Regarding the audit on El Faro, the state asserted that the power for evaluation corresponding to the Ministry of Finance is related to the fulfilment of the formal and substantive obligations that are inherent to tax legislation. The exercise of this power is independent of the subject to whom it is addressed. The state declared to be against the comments referring to the audit on El Faro as arbitrary and malicious.</p>		
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After the *Commissioner v. Public Protector* ruling of 23 March 2020, in which the Gauteng Division of the High Court of **South Africa** denied the public prosecutor access to taxpayer information, which was held by the South African Revenue Service (SARS), about the country’s former president based on the minimum standard banning disclosures to politicians,³⁰² it is surprising that the same Court ruled in a later decision – related to the same taxpayer – that the rights to freedom and speech and access to information override the taxpayer’s right to secrecy “when the exercise of those rights are in the public interest”. In other words, according to the court, public interest overrides a possible encroachment or limitation of taxpayer confidentiality. SARS will appeal the case.³⁰³

3.12. The interplay between taxpayer confidentiality and freedom of information legislation

³⁰² See ZA: High Court, Gauteng Division, 23 Mar. 2020, Case 84074/19, *Commissioner for the South African Revenue Service v. Public Protector and others*, [2020], ZAGPPHC 33; [2020] 2 All SA 427 (GP); 2020 (4) SA 133 (GP), available at www.saflii.org/za/cases/ZAGPPHC/2020/33.html (accessed 7 Feb. 2022). See also OPTR, *supra* n. 143 (2021), at sec. 3.11.; and Weffe, *supra* n. 11, at sec. 3.4.

³⁰³ See ZA: High Court, Gauteng Division, Case 88359/2019, *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v. South African Revenue Service and Others* (16 Nov. 2021), available at <https://www.saflii.org/za/cases/ZAGPPHC/2021/779.pdf> (accessed 7 Feb. 2022). See also ZA: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 20.

Minimum standard: 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, namely only if an independent tribunal concludes that, in disclosing, the public interest outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard.

Shifted towards/improved the minimum standard:

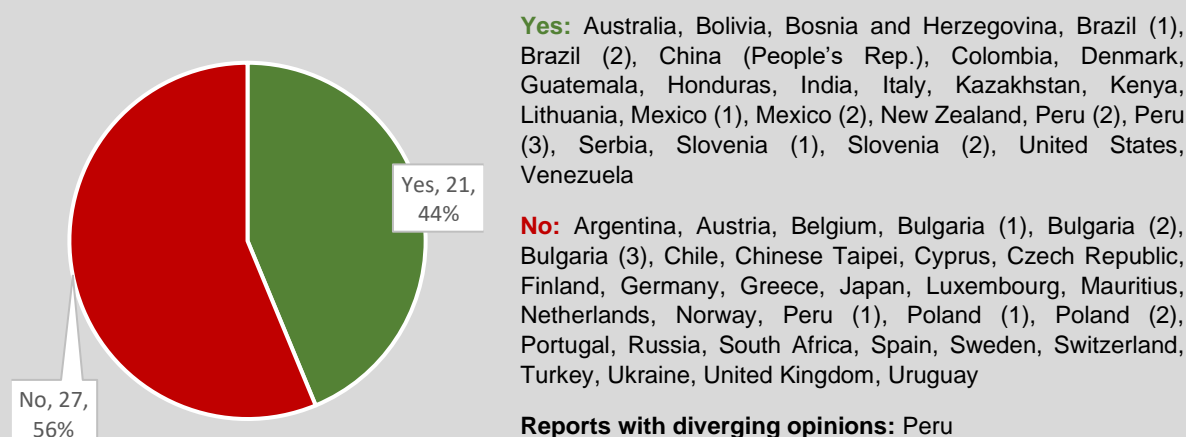
Brazil, Chile

Shifted away from the minimum standard:

United Kingdom

Chart 18. Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. *habeas data* or freedom of information)?

56 responses



Source: OPTR: Questionnaire 1, Question 18

2021 Relevant Case Law – European Court of Human Rights

Case	<i>L.B. v. Hungary</i> , no. 36345/16 ³⁰⁴	
Date	28 May 2020	
ECHR Articles	Article 1 of Protocol no. 1	
Facts	Decision	Comments
Publication of applicant's identifying data, including home address, on the tax authority's website portal for failing to fulfil his tax obligations.	No violation of article 8 of the ECHR; case referred to the Grand Chamber on 31 May 2021.	In the present case, the purpose and the principal effect of publication were to inform the public, and the main reason for making such data available online was to make the information easily

³⁰⁴ See HU: ECtHR, 12 Jan. 2021, no. 36345/16, *L.B. v. Hungary*, available at <https://hudoc.echr.coe.int/eng?i=001-207132> (accessed 9 Feb. 2022). See also Weffe, *supra* n. 11, at sec. 3.3.

		<p>available and accessible to those concerned, irrespective of their place of residence.</p> <p>The tax authority's website did not provide the public with a means of shaming the applicant, for example, a way of posting comments underneath the lists in question.</p> <p>Given the specific context in which the information at issue was published, the fact that the publication was designed to secure the availability and accessibility of information in the public interest and the limited effect of the publication on the applicant's daily life, the Court considers that the publication fell within the respondent state's margin of appreciation.</p>
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On 20 April 2021, the Helsinki Administrative Court (Helsingin hallinto-oikeus) in **Finland** gave decisions in seven cases regarding appeals filed by different media companies against the tax administration, which had refused to give them income information of individuals who had asked their income information to be kept secret. The media had requested a list of names of those taxpayers, which the tax authorities denied on the grounds of confidentiality. However, the court upheld that details on the use of taxpayers' right to object the disclosure of tax relevant information is not protected by secrecy.³⁰⁵

For its part, in the context of the implementation of the General Law for Protection of Personal Data, the *Receita Federal* (Federal Revenue Service) of **Brazil** enacted the *Portaria* (Ordinance) No. 81/2021, allowing a taxpayer to authorize the sharing of specific data to third parties specifically indicated by the former.³⁰⁶

However, the introduction of the so-called financial institution notices in the **United Kingdom**, a request to financial institutions to provide documents to the tax authorities for assessing a given taxpayer or collecting outstanding debts, shifts away from the minimum standard as long as there is no requirement for an officer to seek the taxpayer's consent or the approval of a

³⁰⁵ See FI: Helsinki Administrative Court Press Release, *Information on the identities of those who objected to the disclosure of their tax information was not confidential* (20 Apr. 2021), available at <https://oikeus.fi/hallintooikeudet/helsinginhallinto-oikeus/fi/index/tiedotteet/2021/tietoverotietojensaluovuttamistavustaneidenhenkilollisyksistaetiollutsalassa pidettava.html> (accessed 7 Feb. 2022). See also L. Ambagtsheer-Pakarinen, *Helsinki District Administrative Court: Tax Administration May Not Refuse to Give Media Names of Taxpayers Using Right to Object Under GDPR* (22 Apr. 2021), News IBFD.

³⁰⁶ See BR: Lei No. 13.709, *Geral de Proteção de Dados Pessoais* (General Law for Protection of Personal Data) (14 Aug. 2018), available at http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Lei/L13709compilado.htm (accessed 7 Feb. 2022); and BR: Portaria (Ordinance) RFB No. 81, *Aprova o sistema Compartilha Receita Federal e estabelece regras para o fornecimento, a terceiros, de dados e informações no interesse de seus titulares* (11 Nov. 2021), available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=121890> (accessed 7 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 20.

court before issuing a financial institution notice, and the third party's right of appeal has been removed and replaced by a requirement that the officer reasonably believes that providing the information or producing the document would not be unduly onerous.³⁰⁷

3.13. Anonymized judgments and rulings

Minimum standard: If published, tax rulings should be anonymized and details that might identify the taxpayer should be removed.

Shifted towards/improved the minimum standard:

Spain

Shifted away from the minimum standard:

None

Best practice: Anonymize all tax judgments and remove details that might identify the taxpayer.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

No relevant facts have been reported regarding the anonymization of tax rulings in 2021. Incidentally, **Spain** reports that its Supreme Court has confirmed the applicability of the principle of legitimate expectations to tax rulings, following the minimum standards discussed in section [11.4](#) of this yearbook, which should be considered by both tax authorities and judges.³⁰⁸

3.14. (Legal) professional privilege

Minimum standard: Legal professional privilege should apply to tax advice.

Shifted towards/improved the minimum standard:

Brazil, Belgium

Shifted away from the minimum standard:

Luxembourg

Best practice: Privilege from disclosure should apply to all tax advisers (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

Mexico, Netherlands

Minimum standard: Where tax authorities enter premises that may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege.

Shifted towards/improved the minimum standard:

Belgium

Shifted away from the minimum standard:

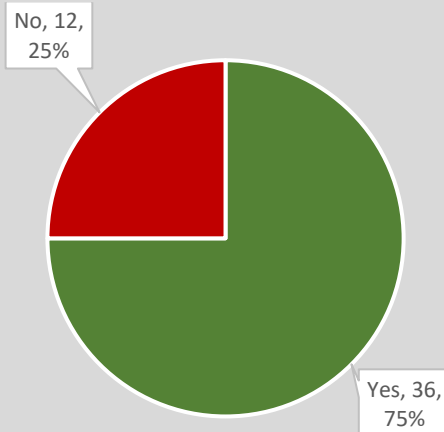
None

³⁰⁷ See UK: Finance Act 2021, available at <https://www.legislation.gov.uk/ukpga/2021/26/contents/enacted> (accessed 9 Feb. 2022); and HMRC, *Compliance checks: financial institution notice – CC/FS60* (26 Aug. 2021), available at <https://www.gov.uk/government/publications/compliance-checks-financial-institution-notice-ccfs60> (accessed 7 Feb. 2022). See also UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 20 and Annex.

³⁰⁸ See ES: STS 4108/2021, 2 June 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/46cd0847047cd940/20211122> (accessed 7 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 20 and Annex.

Chart 19. Is there a system of protection of legally privileged communications between the taxpayer and its advisers?

56 responses



Yes: Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia, Denmark, Germany, Greece, Guatemala, Honduras, Italy, Kazakhstan, Kenya, Luxembourg, Mauritius, Netherlands, New Zealand, Norway, Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela

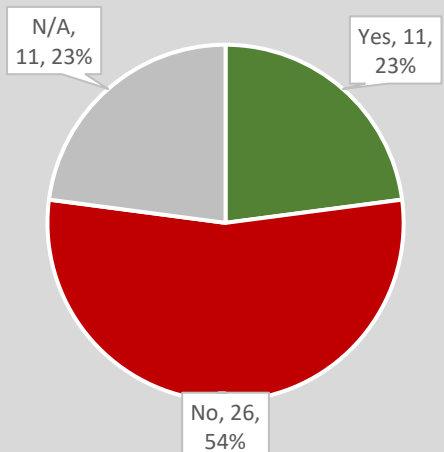
No: Argentina, Bosnia and Herzegovina, Chinese Taipei, Cyprus, Czech Republic, Finland, India, Japan, Lithuania, Mexico (1), Mexico (2), Peru (1), Switzerland, Ukraine

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 19

Chart 20. If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants, tax advisers)?

56 responses



Yes: Colombia, Germany, Honduras, Netherlands, Russia, Serbia, Slovenia (2), Spain, United States, Uruguay, Venezuela

No: Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Denmark, Greece, Guatemala, Italy, Kazakhstan, Kenya, Luxembourg, Mauritius, New Zealand, Norway, Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Slovenia (1), South Africa, Sweden, Switzerland, Turkey, United Kingdom

Not applicable: Argentina, Bosnia and Herzegovina, Chinese Taipei, Cyprus, Czech Republic, Finland, India, Japan, Lithuania, Mexico (1), Mexico (2), Peru (1), Ukraine

Reports with diverging opinions: Peru, Slovenia

Source: OPTR: Questionnaire 1, Question 20

2021 Relevant Requests for a Preliminary Ruling – Court of Justice of the European Union

Case	C-398/21, <i>Conseil National des Barreaux and Others</i> ³⁰⁹	
Date	28 June 2021	
EU Charter Articles	7, 8, 47	
Facts	Questions	
Not available.	Whether article 8ab(5) of Directive 2011/16 infringes on - article 47 of the Charter by not excluding, in principle, lawyers participating in judicial proceedings from the scope of intermediaries who must supply information or notify another intermediary of that obligation; or - articles 7 and 8 of the Charter, by not excluding lawyers assessing their clients' legal situation from the scope of intermediaries who must supply information or notify another intermediary of that obligation.	

Legal professional privilege continued to go back and forth in 2021.

In Europe, **Spain** transposed Council Directive (EU) 2018/822 (DAC6) while expanding the scope of legal professional privilege to in-house counsel.³¹⁰

In addition, the Constitutional Court of **Belgium** suspended the Flemish, the Walloon and the Brussels transposition of the directive, insofar as it relates to certain aspects of the reporting obligation of cross-border tax arrangements as imposed on lawyers.³¹¹ The court wished to have an answer first to the preliminary question raised to the ECJ on whether Directive 2018/822 is compatible with the right to a fair trial and the right to respect for private life, as it forces Member States to provide for an exception to the “legal privilege under the national law of that Member State” when an intermediary is required to inform another intermediary. In particular, the court asked whether the duty of the intermediary “lawyer” to disclose information that he has learned in the course of exercising the essential activity of his profession to another

³⁰⁹ See FR: ECJ, Case C-398/21, *Conseil national des barreaux, Conférence des bâtonniers, Ordre des avocats du barreau de Paris v. Premier ministre, Ministre de l'Economie, des Finances et de la Relance*, Case Law IBFD.

³¹⁰ EU Council Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (2018), Primary Sources IBFD. See also A. De Juan Ledesma, *Spain Approves DAC6 Regulations* (13 Apr. 2021), News IBFD, and ES: Real Decreto 135/2021, *por el que se aprueba el Estatuto General de la Abogacía Española* (2 Mar. 2021), available at <https://www.boe.es/eli/es/rd/2021/03/02/135> (accessed 9 Feb. 2022).

³¹¹ See BE: Cour Const., 17 Dec. 2020, No. 167/2020, *Orde van Vlaamse balies, Alain Claes, Belgian Association of Tax Lawyers and others v. Flemish Region*, available at <https://www.const-court.be/public/f/2020/2020-167f.pdf> (accessed 9 Feb. 2022); Cour Const., 11 Mar. 2021, No. 45/2021, *Belgian Association of Tax Lawyers and others v. Walloon Region*, available at <https://www.const-court.be/public/f/2021/2021-045f.pdf> (accessed 9 Feb. 2022); Cour Const., 11 Mar. 2021, No. 46/2021, *Belgian Association of Tax Lawyers and others v. Brussels Region*, available at <https://www.const-court.be/public/f/2021/2021-046f.pdf> (accessed 9 Feb. 2022). See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 23.

intermediary, even outside any court proceeding, is compatible with the rights to a fair trial and respect for private life.³¹²

Also, in **Belgium**, the Court of Appeal of Antwerp confirmed the crucial importance of lawyers' professional secrecy and the central role that the President of the Bar plays in safeguarding it. The President of the Bar must filter the documents and data copied or taken away by the tax authorities in the context of a search of premises, i.e. check that nothing is included that would violate professional secrecy if the tax authorities became aware of it. It must also be possible to do this *post factum*, when the data is already in the possession of the tax authorities. In this specific case, the taxpayer, who only found out afterwards that the tax authorities had copied confidential emails with his lawyer during a search of the premises, won and the tax authorities had to hand over all copied data to the President of the Bar (via sequestration).³¹³

2021 also provided a few developments regarding the relationship between professional secrecy, public consultation and taxpayer involvement in the making of tax policy and tax law.³¹⁴

In the **Netherlands**, continuing with the ongoing debate about the scope of legal privilege – and despite recent decisions from the judiciary (although unrelated to tax matters) upholding it against a presumed public interest in disclosure³¹⁵ – there was public consultation for a legislative proposal that, if approved, would result in lawyers, notaries and legal professionals being limited in their privilege regarding information that a tax adviser would also have to disclose, considering the fair play principle. It is expected that the consultation will lead to a legislative proposal in 2022.³¹⁶

In the Americas, in a very interesting development, the *Supremo Tribunal Federal* (Supreme Federal Court) of **Brazil** declared a series of state laws extending liability for tax offences committed by taxpayers to their advisers to be unconstitutional. The judicial declaration overturned the thesis according to which liability for tax offences can be extended to third

³¹² See T. Morales, [CJEU Preliminary Ruling Request: Orde van Vlaamse Balies and Others \(Case C-694/20\) – Grondwettelijk Hof Submits Referral on DAC6 Reporting Obligation of Cross-Border Arrangements](#) (12 Apr. 2021), News IBFD.

³¹³ See BE: HvB Antwerp, No. 2021/RK/6, 7 Sept. 2021. See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 23 and Annex.

³¹⁴ See sec. 10.3.

³¹⁵ See NL: HR, Case No. 19/01958, 3 Apr. 2020, *F. J. Gerlach Maria Cremers, F. D. Stibbe, E.M. Jansen Schoonhoven and others v. SRH N.V., De Volksbank N.V. and others*, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2020:600> (accessed 9 Feb. 2022); and NL: District Court of Rotterdam, Case No. 10/997376-16, 28 Jan. 2021, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2021:527> (accessed 9 Feb. 2022). See also InhouseLegal, *Independence and legal privilege for domestic and foreign in-house counsel affirmed by Dutch District Court* (16 Feb. 2021), available at <https://inhouse-legal.eu/legal-privilege/independence-and-legal-privilege-for-domestic-and-foreign-in-house-counsel-affirmed-by-dutch-district-court/> (accessed 9 Feb. 2022).

³¹⁶ See NL: Consultatie Wetsvoorstel aanpassing wettelijk fiscaal verschoningsrecht, available at <https://www.internetconsultatie.nl/verschoningsrecht> (accessed 10 Feb. 2022). See also NL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 23.

parties based on the vicariousness inherent to tort liability, a criterion followed by a few Latin American countries.³¹⁷

However, the latest reform of the Federal Tax Code of **Mexico** classifies, as a tax offence, failure to report the omission of taxes collected, withheld, transferred or the taxpayer's own taxes, punishable by a fine for the auditor who certifies the financial statements. Thus, Mexican tax advisers appear to be legally obliged to serve as whistle-blowers for the activities that are at the core of their practice.³¹⁸

4. Normal Audits

4.1. Tax audits and its foundation principles

Facts and legal qualifications are an essential part of correct tax assessments; therefore, they are also a fundamental part of the tax administration's means to enforce the law. Today, much tax reporting is pre-populated for the tax returns, but additional investigation is often required in order to determine potential tax liability and, if so, the appropriate amount. As a crucial part of the tax authorities' practical enforcement of the tax code, these investigations require that the authorities abide by the law, just as it necessitates that taxpayers' rights are adequately addressed and protected.

From a procedural aspect, tax audits should be conducted around four fundamental principles of general procedural law, namely (i) proportionality; (ii) *non bis in idem*, or the prohibition of double jeopardy; (iii) *audi alteram partem*, or the right to be heard before any decision is taken; and (iv) *nemo tenetur se detegere*, or the principle against self-incrimination.

If a tax assessment is conducted and an audit is carried out contrary to these four principles, it should be considered null and void.

Against this background, it is important to stress that, whereas good tax governance is converging towards the minimum standards, it is not enough by itself. As Baker and Pistone have said, making tax governance prevail over taxpayers' rights endangers the possibility of the latter's access to an effective legal remedy securing consistency when tax authorities do not do what they are supposed to do to comply with the good tax governance standards.³¹⁹

In this regard, the growing trend towards allowing the participation of independent technical experts in the framework of tax audits (as is the case in 92% of the surveyed jurisdictions,

³¹⁷ See BR: STF, ADI 6284/GO, 15 Sept. 2021, available at <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=757432824> (accessed 8 Feb. 2022); BR: Progresistas-PP, Ação Direta de Inconstitucionalidade (ADI) No. 6.284, com pedido de Medida Cautelar em face do art. 45, XII-A e § 2º da Lei nº 11.651/1991 do estado de Goiás (com redação dada pela Lei nº 17.519 de 29 de dezembro de 2011), available at <http://www.agfadvice.com.br/wp-content/uploads/2021/09/ADI-6.284.pdf> (accessed 8 Feb. 2022), and C.E. Weffe, *Culpabilidad, Infracciones Tributarias y Delitos Fiscales* pp. 277-285 (Thomson Reuters 2018). See also BR: OPTR Report (Academia), Questionnaire 2, Question 23.

³¹⁸ See MX: Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley del Impuesto sobre la Renta, de la Ley del Impuesto al Valor Agregado, de la Ley del Impuesto Especial sobre Producción y Servicios, de la Ley Federal del Impuesto sobre Automóviles Nuevos, del Código Fiscal de la Federación y otros ordenamientos, GO 12 nov. 2021, available at https://www.diputados.gob.mx/LeyesBiblio/ref/cff/REF60_12nov21.pdf (accessed 8 Feb. 2022). See also MX: OPTR Report (Academia), Questionnaire 2, Question 23.

³¹⁹ Baker & Pistone, *supra* n. 16, at sec. 4.1.

according to Chart 28) is promising.³²⁰ In 2015, it was reported that the practice of **Denmark** involving professional associations in the appointment of independent experts was particularly interesting in this respect.³²¹

Minimum standard: Audits should respect the following principles: (i) proportionality; (2) *non bis in idem* (prohibition of double jeopardy); (3) *audi alteram partem* (right to be heard before any decision is taken); and (4) *nemo tenetur se detegere* (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void.

Shifted towards/improved the minimum standard:

Chile, Slovenia

Shifted away from the minimum standard:

Guatemala, United Kingdom

In terms of the states respecting these four principles when conducting tax audits, some progress has been reported in **Chile**, where the Servicio de Impuestos Internos Letter No. 12 (mentioned in several sections of this yearbook³²²) has been regarded as producing a general improvement of administrative procedures in favour of taxpayers and making administrative dispute resolution mechanisms more effective under the four basic principles.³²³

In **Slovenia**, the Constitutional Court declared a surcharge tax of 70% on undeclared income fully applicable just by the commencement of an ex officio assessment to be unconstitutional. The Constitutional Court asserted that by enacting a surcharge, the legislature did not pursue the objective of financing public spending or any socio-political objective but rather a measure intended to either (i) remedy the damage sustained by public finances and its incomes due to a violation of the obligation to declare income; (ii) nullify the benefits that the taxable persons had as a result of such violations (i.e. a restitutive measure); or (iii) punish the taxable persons for such violations (i.e. a punitive measure). As long as the procedure for imposing said surcharge did not abide by the minimum procedural guarantees, the court declared it unconstitutional.³²⁴

At the same time, the introduction of financial institution notices in the **United Kingdom** (as commented on in section 3.12 of this yearbook) departs from the *audi alteram partem* minimum standard by not requiring court approval before its issuance and the removal of the rights to appeal of affected third parties.³²⁵

³²⁰ See Chart 28, at sec. 4.4.

³²¹ Baker & Pistone, *supra* n. 16, at sec. 4.4.

³²² See secs. 1.4., 1.5., 1.6. and 3.8.

³²³ See CL: Circular No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 25.

³²⁴ See SI: Constitutional Court, 30 Sept. 2020, U-I-113/17, available at <https://www.us-rs.si/decision/?lang=en&q=113%2F17&caseld=U-I-113%2F17&df=&dt=&af=&at=&pri=1&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=116202> (accessed 16 Feb. 2022). See also SI: OPTR Report (Academia), Questionnaire 2, Question 25.

³²⁵ See UK: Finance Act 2021, available at <https://www.legislation.gov.uk/ukpga/2021/26/contents/enacted> (accessed 9 Feb. 2022); and HRMC, *Compliance checks: financial institution notice – CC/FS60* (26 Aug. 2021), available at <https://www.gov.uk/government/publications/compliance-checks-financial-institution-notice-ccfs60> (accessed 7 Feb. 2022). See also UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 25 and Annex.

Minimum standard: In the application of proportionality, tax authorities may only request information that is strictly needed, not otherwise available and that imposes the least burdensome impact on taxpayers.

Shifted towards/improved the minimum standard:

Chile, Slovenia, Denmark

Shifted away from the minimum standard:

Belgium, Guatemala

The principle of proportionality – as a minimum standard for ensuring that tax authorities may only request information that is strictly needed, not otherwise available and that imposes the least burdensome impact on taxpayers – has seen both improvements and setbacks.

In **Chile**, the improvement forms part of a general enhancement of the taxpayer bill of rights due to an amendment of the Tax Code, as developed by the Servicio de Impuestos Internos Letters No. 12 and 41, mentioned throughout this yearbook. Particularly, Letter No. 12 enhances the protection of taxpayers regarding the statute of limitations, *non bis in idem* (by prohibiting multiple audits over the same taxpayer for the same taxable events), etc.³²⁶

In **Denmark**, an obligation to provide transfer pricing documentation for domestic Danish transactions under section 39(1) of the Danish Tax Control Act was repealed, as it was considered to be particularly burdensome and without any real purpose since internal Danish transactions do not entail a risk of profit shifting. The bill specifically motivated this amendment by referring to the principle that taxpayers should face as few burdens as possible.³²⁷

On the other hand, it became increasingly common during the COVID-19 pandemic for the authorities in **Belgium** to initiate the audit of a taxpayer by requesting that the taxpayer, or his/her accountant, provide a digital backup file containing the entire bookkeeping/accounts of the taxpayer. This raises questions regarding the proportionality of such practices.³²⁸

Also regarding proportionality, an administrative practice has been reported in **Guatemala**, according to which the *Servicio de Administración Tributaria* (SAT) claims to have the right to receive all information requested within 3 days.³²⁹

³²⁶ See secs. [1.4.](#), [1.5.](#), [1.6.](#), [3.8.](#) and [7.2.](#); CL: *Circular No. 41, Imparte instrucciones sobre modificaciones introducidas por la Ley N° 21.210 al Código Tributario, en relación con las normas que regulan la relación de los contribuyentes con el Servicio de Impuestos Internos, incluyendo normas sobre sitio electrónico, facilitación del cumplimiento tributario, ciclo de vida y fiscalización de los contribuyentes*, available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu41.pdf (accessed 15 Feb. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

³²⁷ See DK: Law No. 2194 of 30 November 2021, Act amending the Tax Control Act and the Equalisation Act, available at <https://www.retsinformation.dk/eli/ta/2021/2194> (accessed 16 Feb. 2022); and DK: Proposal to Act amending the Tax Control Act and the Equalisation Act L-7-2021/1, available at <https://www.retsinformation.dk/eli/ft/202112L00007> (accessed 16 Feb. 2022). See also DK: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 26.

³²⁸ See Aternio, *Fiscale controle: graag een back-up van uw digitale boekhouding* (15 June 2021), available at <https://atern.io/fiscale-controle-graag-een-back-up-van-uw-digitale-boekhouding/?printoje=81711> (accessed 17 Feb. 2022). See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 26.

³²⁹ See GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26 and Annex.

Finally, as reported previously in sections [3.12](#), and [4.1](#), of this yearbook, the introduction of financial institution notices in the **United Kingdom** shifts away from *audi alteram partem*.³³⁰

Best practice: In application of *non bis in idem*, the taxpayer should only receive one audit per taxable period, except when facts become known after the audit was completed.

Shifted towards/matched the best practice:

Spain

Shifted away from the best practice:

Guatemala

2021 Relevant Case Law – European Court of Human Rights

Case	<i>Milošević v. Croatia</i> , no. 12022/16 ³³¹	
Date	31 August 2021	
ECHR Articles	Article 4 of Protocol no. 7	
Facts	Decision	Comments
The case concerns the applicant's punishment in minor offence proceedings for using prohibited heating oil as fuel in his truck and the subsequent imposition of excise duties for the use of that oil increased one hundred times.	Violation of article 4 of Protocol No. 7 to the ECHR	The court concluded that the present case did not address different aspects of the wrongdoing in a manner forming a coherent whole, so that the individual concerned is not thereby subjected to injustice. In addition, court observed that the fine imposed on the applicant in the minor offence proceedings was not taken into account in subsequent administrative (tax) proceedings. Notwithstanding their foreseeability, the two sets of proceedings had not been sufficiently linked.

2021 Relevant Communicated Cases – European Court of Human Rights

³³⁰ See UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26 and Annex.

³³¹ See HR: ECtHR, No. 12022/16, *Milošević v. Croatia*, available at <https://hudoc.echr.coe.int/eng/?i=001-211596> (accessed 16 Feb. 2022).

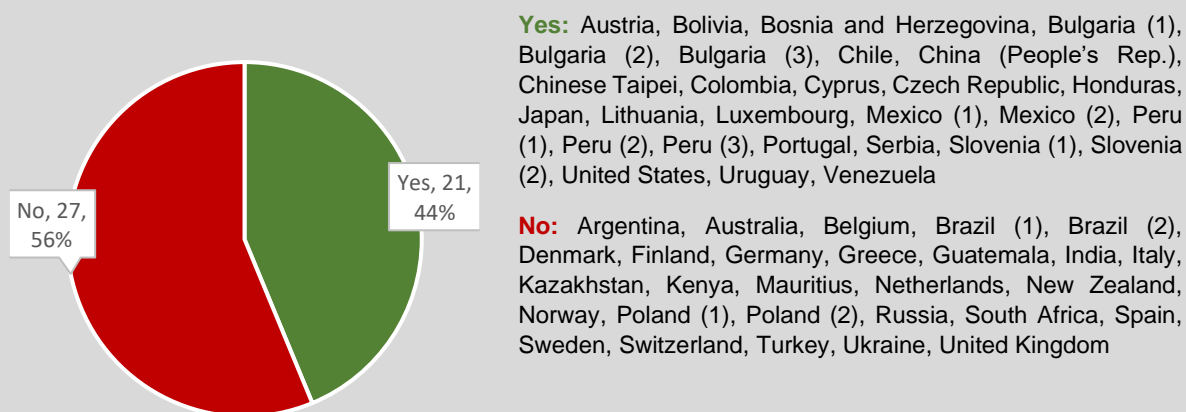
Case	<i>ELINOIL AE v. Greece</i> , No. 2030/15 ³³²
Date	23 June 2021
ECHR Articles	Article 6(2), Article 7
Facts	<p>The company buys petrol from refineries. It was imposed with a fine for contraband fuel, as part of tax-free fuel was illegally consumed in Greece, as a result of a transaction between third parties, in which the taxpayer was not a party.</p> <p>The taxpayer complained that the law establishes a presumption of guilt for smuggling that was allegedly committed by third parties, unrelated to the taxpayer.</p>

The *non bis in idem* principle represents a further guarantee of proportionality and an assurance of certainty for taxpayers. This principle is fundamental in every state's intervention in its citizens' private sphere, including for tax audits. The principle provides a proportionate limit to the authorities' interference and, in terms of certainty, the principle grants taxpayers certitude on their tax matters for a specific period or a given tax.

For tax proceedings, *non bis in idem* means that the taxpayer must only be subject to one audit per taxable period, comprehensively covering all possible issues that might arise from the underlying investigation. The sole exception is facts that become known after the audit is completed.

Chart 21. Does the principle *non bis in idem* apply to tax audits (i.e. the taxpayer can only receive one audit in respect of the same taxable period)?

56 responses

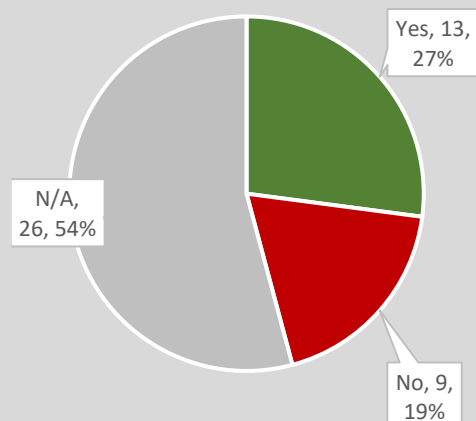


Source: OPTR: Questionnaire 1, Question 21

³³² See GR: ECtHR, No. 2030/15, *ELINOIL A.E. v. Greece*, available at <https://hudoc.echr.coe.int/eng/?i=001-211062> (accessed 24 Feb. 2022).

Chart 22. If yes, does this mean only one audit per tax per year?

56 responses



Yes: Austria, Bolivia, Bosnia and Herzegovina, China (People's Rep.), Colombia, Cyprus, Honduras, Japan, Lithuania, Mexico (1), Mexico (2), Portugal, United States, Venezuela

No: Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Czech Republic, Luxembourg, Peru (1), Peru (2), Peru (3), Serbia, Slovenia (1), Slovenia (2), Uruguay

Not applicable: Argentina, Australia, Belgium, Brazil (1), Brazil (2), Denmark, Finland, Germany, Greece, Guatemala, India, Italy, Kazakhstan, Kenya, Mauritius, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Russia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom

Source: OPTR: Questionnaire 1, Question 22

Regarding *non bis in idem*, the judgment of the National Court (*Audiencia Nacional*) of **Spain** dated 3 June 2021 set an important precedent. According to the decision, once a limited audit has been carried out for a given tax and period, which ended without any additional assessments, it is not possible to subsequently initiate another limited verification procedure for the same tax and tax period, in order to request additional documentation, if there are no new facts or data that justify such a procedure.³³³

Additionally, as mentioned several times in this yearbook, the Servicio de Impuestos Internos Letter No. 12 in **Chile** expressly prohibits the initiation of a new audit procedure, either in the same financial year or in subsequent periods, in respect of items or events that have already been the subject of an audit procedure.³³⁴

Although *non bis in idem* is reported to be applicable in the **United States**, the tax authority may engage in repeat audits that it deems necessary. Also, the IRS has several summary assessments and return review processes that appear to taxpayers and function substantially as correspondence audits but do not trigger the corresponding protections, under the so-called “unreal” audits. These unreal audits constitute most IRS compliance contacts and include mathematical error corrections and automated underreported (document matching) notices, among others.³³⁵

³³³ See ES: SAN 3391/2021, 3 June 2021, available at <https://www.poderjudicial.es/search/AN/openDocument/8e0d6deef7bad41c/20210806> (accessed 17 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 27.

³³⁴ See secs. 1.4., 1.5., 1.6., 3.8. and 4.1.

³³⁵ See US: NTA Blog, “Real” vs. “Unreal” Audits and Why This Distinction Matters (6 July 2018), available at <https://www.taxpayeradvocate.irs.gov/news/ntablog-real-vs-unreal-audits-and-why-this-distinction-matters/> (accessed 21 Feb. 2022); and L. Book, *The Conduct of Audits and Intersection with Taxpayer Rights: Case Study of US Tax System*, Presentation at the 6th International Conference on Taxpayer Rights, available at <https://taxpayer-rights.org/wp-content/uploads/2021/05/Book5th-Intl-TP-Rights90-Read-Only.pptx> (accessed

Minimum standard: In application of *audi alteram partem*, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisers), as well as the right to provide factual information and present their views before decisions of the tax authorities become final.

Shifted towards/improved the minimum standard:

Guatemala, Poland, Spain

Shifted away from the minimum standard:

United Kingdom

2021 Relevant Case Law – Court of Justice of the European Union

Case	C-437/19, <i>État du Grand-duché de Luxembourg v. L</i> ³³⁶	
Date	25 November 2021	
EU Charter Articles	47, 52(1)	
Facts	Decision	Comments
The case concerns the legality of a financial penalty that was imposed on a company for refusing to provide certain information following a request for exchange of information between Member States in tax matters.	In order to ensure the efficacy of the right to an effective remedy protected under article 47 of the Charter, the addressee of the information order must – if the legality of that order is upheld by the court – be given the opportunity to comply with that order within the time limit initially prescribed for that purpose by national law, without that entailing the continued application of the penalty that person had to incur in order to exercise his or her right to an effective remedy. It is only if the addressee does not comply with the order within that time limit that the penalty imposed would legitimately become payable.	Opinion of AG Kokott delivered on 3 June 2021: Article 47 of the Charter of Fundamental Rights of the European Union requires that the addressee of the information order should either be given access to the information stipulated in article 20(2) of Directive 2011/16 already together with that order or, at the very least, be given an appropriate period of time under procedural law following receipt of that information in which to review and comply with the order without incurring any costs or penalty. In that case, there is no need for an additional period of grace for payment.

2021 Relevant Request for a Preliminary Ruling – Court of Justice of the European Union

21 Feb. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 27.

³³⁶ See LU: ECJ, 25 Nov. 2021, Case C-437/19, *État du Grand-duché de Luxembourg v. L*, Case Law IBFD.

Case	C-512/21, Aquila Part Prod Com SA³³⁷	
Date	17 August 2021	
EU Charter Articles	47	
Facts	Questions	
<p>The Hungarian tax authority found that the taxpayer had participated in a classic “carousel” type fraud and imposed fines. The tax authority found that the taxpayer had infringed the provisions governing food safety, thus showing lack of due diligence, and led it to conclude that the taxpayer had participated knowingly in the fraud.</p> <p>The taxpayer argues that it is not subject to the Hungarian provisions on food safety and that the tax authority did not indicate the provision under which the applicant should have obtained and kept the certificates of quality it was alleged not to have.</p>	<p>Q5: Is a practice of a tax authority pursuant to which that authority bases its ruling on an alleged infringement of provisions governing the safety of the food supply chain which have no bearing on compliance by the taxable person with his tax obligations or on the circulation of his invoices, which the tax legislation does not provide for in any way in relation to the taxable person and which have no effect on the actual facts of the transactions inspected by the tax authority and on the taxable person’s awareness examined in the tax proceedings, compatible with articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial (recognized as a general principle in article 47 of the Charter of Fundamental Rights of the European Union) and with the principle of legal certainty?</p> <p>In the event the previous question is answered in the affirmative:</p> <p>Q6: Is a practice of a tax authority whereby that authority, without the involvement of the official body responsible for the safety of the food supply chain, which has material and territorial competence, sets out in its ruling findings concerning the taxable person which come within that official body’s sphere of competence, such that, based on infringements identified in relation to the safety of the food supply chain – a matter outside its sphere of competence – it draws tax consequences for the taxable person, without that person being able to dispute the finding that he infringed the provisions on food supply chain safety in proceedings that are separate from the tax proceedings and which respect the fundamental guarantees and the parties’ rights, compatible with articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial (recognized as a general principle in article 47 of the Charter) and with the principle of legal certainty?</p>	

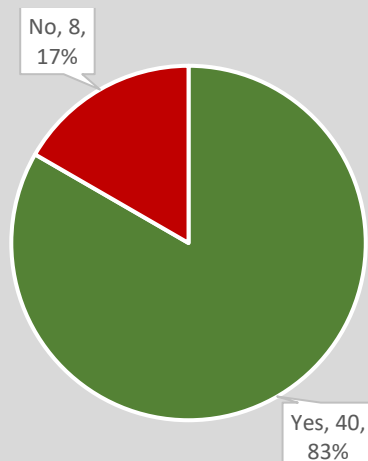
Regarding *audi alteram partem*, a major development was seen in **Spain**, where the Supreme Court prevented tax authorities from extending the scope of the audit by notifying a second assessment proposal and opening a new period of time for observations before the end of the audit procedure previously opened for the same matter.³³⁸

³³⁷ See HU: ECJ, 17 Aug. 2021, Case 512/21, *Aquila Part Prod Com S.A. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, Case Law IBFD.

³³⁸ See ES: STS 839/2021, 24 Mar. 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/9895cb10cf224d78/20210322> (accessed 22 Feb. 2022); ES: STS 412/2021, 24 Mar. 2021, available at <https://www.poderjudicial.es/search/documento/TS/9423282/tributario/20210223> (accessed 22 Feb. 2022);

Chart 23. Does the principle *audi alteram partem* 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 finalized)?

56 responses



Yes: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Chile, China (People's Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Australia, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Finland, Kazakhstan, Sweden, Switzerland

Source: OPTR: Questionnaire 1, Question 23

At the same time, as reported in section 3.12 of this yearbook, a shift away from the minimum standard has been reported in the **United Kingdom** with the introduction of financial institution notices permitting an authorized officer to issue a notice without the right of the taxpayer to be heard or for the financial institution to appeal on the grounds complying with the notice would be unduly burdensome.³³⁹

Minimum standard: In application of *nemo tenetur*, the right to remain silent should be respected in all tax audits.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

None

There were no reported changes regarding *nemo tenetur* in 2021, as was the case in 2020. This situation seems to confirm the decelerating of the trend towards limiting the principle that

and J.M. Tovillas Morán, *El principio de especialidad atribuye en exclusiva al procedimiento de inspección desarrollado por los órganos de inspección la potestad para comprobar los beneficios fiscales y regímenes especiales: Sentencia del Tribunal Supremo de 23 de marzo de 2021*, Taxlandia (5 Aug. 2021), available at https://www.politica-fiscal.es/el-principio-de-especialidad-sentencia-del-tribunal-supremo-de-23-de-marzo-de-2021?utm_source=newsletter_176&utm_medium=email&utm_campaign=el-principio-de-especialidad-sentencia-del-tribunal-supremo-de-23-de-marzo-de-2021-un-lustro-de-la-nueva-casacion-de-nuevo-el-establecimiento-permanente-typical-spanish-approach (accessed 22 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 28.

³³⁹ See UK: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 28 and Annex.

the OPTR has been reporting since 2018,³⁴⁰ although not curtailing it. Only the **United States** reports the current status of the matter in the country; based on the *United States v. Neff* case, it is stated that there is a right against self-incrimination in criminal proceedings and with respect to crimes. However, one cannot refuse to file a tax return on that basis.³⁴¹

4.2. The structure and content of tax audits

Best practice: Tax audits should follow a pattern that is set out in published guidelines.

Shifted towards/matched the best practice:

Chile, Spain

Shifted away from the best practice:

None

The Australian Taxation Office (ATO) issued guidance on whether the presence of employees in the country, due to the COVID-19 pandemic, creates a permanent establishment for the employer. The ATO decided not to conduct audits to determine the existence of a permanent establishment until 30 June 2021, provided that the employee's presence is directly caused by the restrictions imposed by the pandemic and the employee's activity is not considered to be sourced in **Australia** for income tax purposes in another jurisdiction.³⁴²

As previously reported several times in this yearbook, in **Chile**, the tax authorities extensively regulated their own actions in the context of tax assessments, aiming to better protect taxpayers' rights through Servicio de Impuestos Internos Letters No. 12 and 41. In this regard, Letter No. 12 gives instructions on taxpayers' rights, appearance, notifications, administrative and judicial appeal procedures, while Letter No. 41 instructs tax authorities regarding the application of the rules governing their relationship with taxpayers, including rules on the website, facilitation of tax compliance, life cycle and taxpayer control.³⁴³

Likewise, in **Spain**, the Directorate General of the State Tax Administration Agency issued the general guidelines for the Annual Tax and Customs Control Plan 2021. Among other aspects, the Plan highlights the need to use digital communication to "bring taxpayers closer" to the Tax Administration office without them necessarily having to travel to the physical headquarters. At this point in time, however, the complementary nature of these type of actions should be considered in relation to ordinary actions, which are by nature face-to-face.³⁴⁴

The **Maldives** Inland Revenue Authority (MIRA) issued new tax administration regulations, adding (i) further details on the list of records to be kept by taxpayers; (ii) rules to be followed

³⁴⁰ See OPTR, *supra* n. 143 (2021), at sec. 5.5.2.; OPTR, *supra* n. 143 (2020); and Wefte, *supra* n. 11, at sec. 2.4.4.

³⁴¹ See US: 28 Feb. 1980, USTC P 9397, *United States v. Neff*, 615 F.2d 1235, available at <https://openjurist.org/615/f2d/1235/united-states-v-neff> (accessed 22 Feb. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 29.

³⁴² See AU: ATO Press Release, *COVID-19 and Permanent Establishments* (25 May 2021), available at <https://www.ato.gov.au/Business/Business-bulletins-newsroom/International/COVID-19-and-permanent-establishments/> (accessed 22 Feb. 2022).

³⁴³ See secs. [1.4.](#), [1.5.](#), [1.6.](#), [3.8.](#) and [4.1.](#) See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 30.

³⁴⁴ See ES: Resolución de 19 de enero de 2021, de la Dirección General de la Agencia Estatal de Administración Tributaria, por la que se aprueban las directrices generales del Plan Anual de Control Tributario y Aduanero de 2021, BOE-A-2021-1379, available at [https://www.boe.es/eli/es/res/2021/01/19/\(3\)](https://www.boe.es/eli/es/res/2021/01/19/(3)) (accessed 22 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 30.

by the MIRA during tax audits; and (iii) other administrative details. Among other features, the regulations specify new rules to be followed by the MIRA in carrying out audits of taxpayers' accounts (these do not apply if the taxpayer has failed to submit a tax return for the period being audited) and add items to the list to be factored in by the MIRA when issuing an amended assessment, such as information contained in the bank statements, other documents that show transactions made through banks, etc. Also, they specify that, where the MIRA makes a decision in respect of a period for which the taxpayer has filed a tax return, the taxpayer may not amend the return in such a way that it alters a decision of the MIRA, and repeal the provision stating that a taxpayer may not object to a decision of the MIRA pursuant to a request by the taxpayer for an extension of the period to fulfil an obligation under a tax law, or a request for the relief of fines outstanding due to the failure to fulfil such obligation during that period.³⁴⁵

In the **United States**, the IRS has issued an alert stating that it will continue to audit improper amended returns and refund claims for the domestic production activities deduction (DPAD) under the repealed section 199 of the US Internal Revenue Code.³⁴⁶

Best practice: A manual of good practice in tax audits should be established at the global level.

Shifted towards/matched the best practice:

Chile, Honduras

Shifted away from the best practice:

None

In parallel with the comprehensive guidance on tax procedures issued in **Chile** (discussed in several sections of this yearbook³⁴⁷), **Honduras** reports that its tax authorities' audit practice is supported by an internal guide of global application. Honduran tax authorities also issued a short guide on taxpayers' rights and obligations during audit procedures that was published on the tax administration's website, and it outlines chronologically the rights and obligations of the taxpayer at each stage of the audit process.³⁴⁸

Best practice: Taxpayers should be entitled to request the start of a tax audit (to obtain finality).

Shifted towards/matched the best practice:

Chile

Shifted away from the best practice:

None

³⁴⁵ See MV: Tax Administration Regulations (2021/R-40), 15 Mar. 2021, available at <https://www.mira.gov.mv/TaxLegislation/fourth-amendment-to-tar-english-final-pdf> (accessed 22 Feb. 2022). See also A. Ibrahim, *Maldives Amends Tax Administration Regulations* (12 Apr. 2021), News IBFD.

³⁴⁶ See US: IRS News Release (IR-2021-45), 25 Feb. 2021, available at <https://www.irs.gov/newsroom/irs-issues-alert-on-improper-corporate-domestic-production-activities-deduction-refund-claims> (accessed 22 Feb. 2022). See also W. Choi, *IRS To Continue To Audit Repealed Domestic Production Activities Deduction* (26 Feb. 2021), News IBFD.

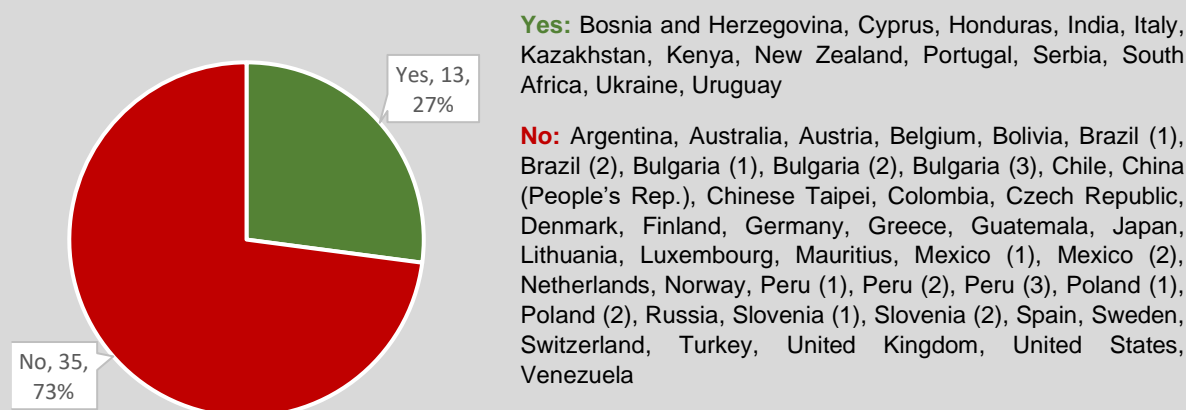
³⁴⁷ See secs. 1.4, 1.5, 1.6, 3.8, and 4.1.; and CL: Letter No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 31.

³⁴⁸ See Servicio de Administración de Rentas (Honduran Tax Administration), *Derechos y Obligaciones del Obligado Tributario*, available at <https://www.sar.gob.hn/derechos-y-obligaciones/> (accessed 22 Feb. 2022). See also HN: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 31 and Annex.

In **Chile**, the general improvement of tax procedures and safeguards for taxpayers' rights, arising out of the Servicio de Impuestos Internos Letters No. 12 and 41, includes the possibility for taxpayers to request the start of a tax audit, particularly in the cases of the so-called *reposición administrativa voluntaria* (voluntary administrative replenishment).³⁴⁹

Chart 24. 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)?

56 responses



Source: OPTR: Questionnaire 1, Question 24

Minimum standard: Where tax authorities have resolved to start an audit, they should inform the taxpayer.

Shifted towards/improved the minimum standard:

Chile

Shifted away from the minimum standard:

Uruguay

Best practice: Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they discuss the aims and procedure, together with the time scale and targets. They should then disclose any additional evidence in their possession to the taxpayer.

Shifted towards/matched the best practice:

Spain

Shifted away from the best practice:

Colombia, Uruguay

The general improvement of taxpayers' rights in **Chile**, according to the Servicio de Impuestos Internos Letter No. 12, includes the obligation of notifying the taxpayer of the commencement of any action by the tax authorities that may affect the taxpayer in any way.³⁵⁰

³⁴⁹ See secs. [1.4](#), [1.5](#), [1.6](#), [3.8](#), and [4.1](#); and CL: Letter No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 32.

³⁵⁰ See secs. [1.4](#), [1.5](#), [1.6](#), [3.8](#), and [4.1](#); and CL: Letter No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 33.

At the same time, a shift away from the minimum standard has been reported in **Uruguay**, where some municipal governments have engaged private companies to collect taxes owed for advertising activities. These activities, which should be characterized as tax audits, have been conducted without first informing the alleged taxpayers.³⁵¹

Concerning the best practice that there should be an initial meeting with the taxpayer, a judgement of the Supreme Court of **Spain** of 22 April 2021 established an obligation for the tax administration to verify not only what is harmful to the taxpayer but also what is favourable. In addition, a judgment of the Supreme Court of 26 May 2021 stated that the tax administration should analyse all necessary requirements in order to declare, as unduly paid, the input VAT subject to a refund claim.³⁵²

On the other hand, a shift away from the best practice was reported in **Colombia**, where article 14 of Law 2155 of 2021 established that the official determination of income tax will be made by invoicing based on information obtained from third parties and the e-invoice system. The invoice must be notified to the taxpayer. If the taxpayer does not agree with the income tax invoice, he/she must file the respective tax return and pay within 2 months following the notification. Otherwise, the invoice will become final and enforceable, without the need for a prior audit or meeting. If the taxpayer files the tax return, the tax administration may issue a provisional official assessment or an official assessment.³⁵³

Minimum standard: Taxpayers should be informed of information gathering from third parties.

Shifted towards/improved the minimum standard:

Lithuania

Shifted away from the minimum standard:

Russia, United Kingdom

Russia has reported a shift away from this minimum standard under the Russian Tax Code. According to article 100(3.1.), tax authorities are obliged to disclose any evidence used against the taxpayer, and the rule is applied for refusing to disclose any evidence that is not used against the taxpayers, even if it may be in their favour. This view has been upheld in practice, as well in the *NelidovPressMash* case from the Russian Supreme Court (judgment dated 1 April 2021).³⁵⁴

³⁵¹ See Correo de Punta del Este, *Tasa: empresa que posee más de 1300 carteles en la zona apeló a un estudio de abogados*, available at <https://correopuntadeleste.com/tasa-empresa-que-posee-mas-de-1300-carteles-en-la-zona-apelo-a-un-estudio-de-abogados/> (accessed 25 Feb. 2022). See also UY: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 33.

³⁵² See ES: STS 1557/2021, 22 Apr. 2021, available at <https://www.poderjudicial.es/search/documento/TS/9423282/tributario/20210223> (accessed 22 Feb. 2022); and ES: STS 2242/2021, 26 May 2021, available at <https://www.poderjudicial.es/search/documento/TS/9423282/tributario/20210223> (accessed 22 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 33.

³⁵³ See CO: Ley 2155/2021, de Inversión Social y Otras Disposiciones (14 Sep. 2021), available at <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=170902> (accessed 22 Feb. 2022). See also CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 33.

³⁵⁴ See RU: Supreme Court, 1 Apr. 2021, No. A40-296804/2019, *NelidovPressMash*, available at https://kad.arbitr.ru/Document/Pdf/af8c56cc-c207-492e-bca4-1ac00c6e3ef9/86811471-a100-4f88-95ed-bde6f0f039c6/A40-296804-2019_20210401_Opredelenie.pdf?isAddStamp=True (accessed 25 Mar. 2022). See also RU: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 35.

Likewise, the **United Kingdom** reported a shift away from the minimum standard, as the new financial institution notice procedure (mentioned several times in this yearbook) allows the tax authority to require a financial institution to produce information or documents relating to a named taxpayer in certain circumstances, without seeking the consent either of the named taxpayer or of the tribunal.³⁵⁵

4.3. Time limits for normal audits

Best practice: Reasonable time limits should be fixed for the conduct of audits.

Shifted towards/matched the best practice:

Chile, China (People’s Rep.), Russia

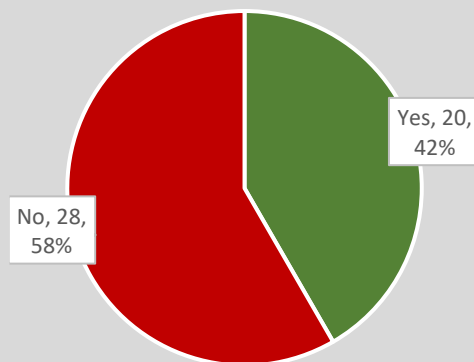
Shifted away from the best practice:

Lithuania

Certainty for taxpayers is a fundamental right, and part of this right includes a reasonable time limit for audits. Interestingly, this best practice is not present in most surveyed jurisdictions, as only 42% of surveyed countries reported time constraints applicable for tax audits.

Chart 25. 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)?

56 responses



Yes: Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Colombia, Honduras, India, Kazakhstan, Kenya, Mauritius, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Peru (3), Portugal, Russia, Slovenia (2), Spain, Turkey, Ukraine, United States, Venezuela

No: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Cyprus, Chinese Taipei, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Italy, Japan, Lithuania, Luxembourg, Netherlands, New Zealand, Poland (1), Poland (2), Serbia, Slovenia (1), South Africa, Sweden, Switzerland, United Kingdom, Uruguay

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 25

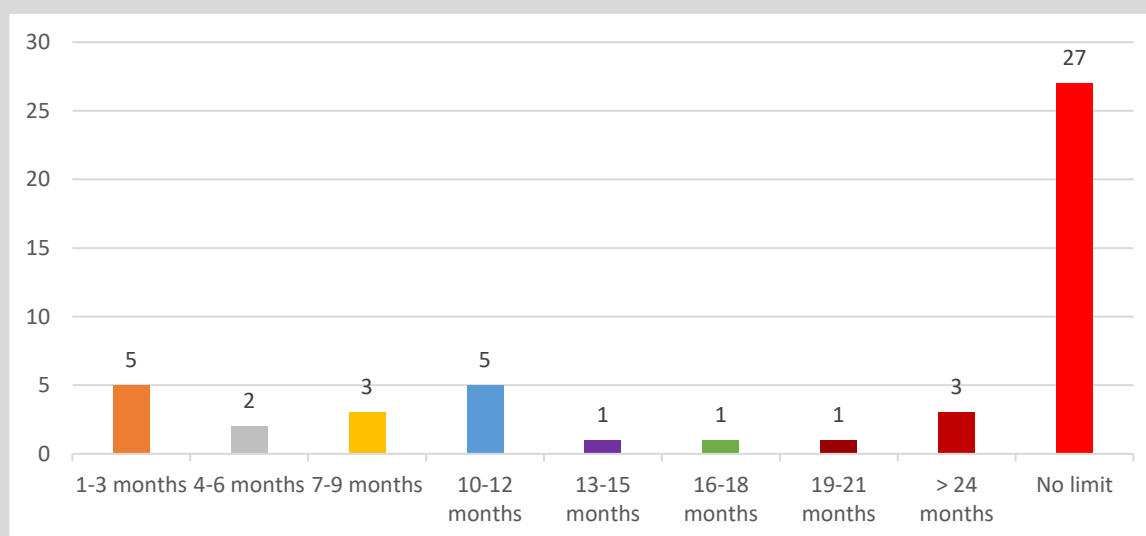
The notion of a “reasonable” time limit is not easily determined and varies greatly between jurisdictions based on their specific legal context and background, in terms of a formal timeline and efforts to reduce the average time spent on a tax audit.

³⁵⁵ See secs. 3.12. and 4.1. See also UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 35.

Alongside the reported developments in the protection of taxpayers' rights arising from Letters No. 12 and 41 in **Chile**, which include the minimization of time limits for tax audits,³⁵⁶ the State Administration of Taxation of **China (People's Rep.)** has issued guidance rules on the procedures for handling tax audits that reinforce the supervision and restraint mechanism and protect taxpayers' rights, including the reduction of the time for tax audits.³⁵⁷

Chart 26. If yes, what is the normal limit in months?

56 responses



Source: OPTR: Questionnaire 1, Question 26

1-3 months:

Bosnia and Herzegovina, China (People's Rep.), Kenya, Slovenia (2), Ukraine, Venezuela

4-6 months:

Bulgaria (1), Bulgaria (2), Bulgaria (3), Portugal

7-9 months:

Chile, Honduras, Mauritius

10-12 months:

Bolivia, Kazakhstan, Mexico (1), Mexico (2), Peru (1), Peru (2), Peru (3), Turkey

13-15 months:

Russia

16-18 months:

Spain

19-21 months:

India

More than 24 months:

Colombia, Norway, United States

No limit:

Argentina, Australia, Austria, Belgium, Brazil (1), Brazil (2), Chinese Taipei, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Italy, Japan, Lithuania, Luxembourg, Netherlands, New Zealand, Poland (1), Poland (2), Serbia, Slovenia (1), South Africa, Sweden, Switzerland, United Kingdom, Uruguay

Reports with diverging opinions:

Slovenia

³⁵⁶ See secs. [1.4.](#), [1.5.](#), [1.6.](#), [3.8.](#), [4.1.](#), and [4.2.](#); and CL: Letter No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 35.

³⁵⁷ See CN: Order no. 52, *supra* n. 14. See also CN: OPTR Report (Academia), Questionnaire 2, Question 35.

Likewise, in **Russia**, the Supreme Court Chamber on Commercial Disputes ruled in the *Neringa* case (judgement of 5 July 2021) that tax audits may stretch outside the determined time limits, but not outside the general 2-year tax collection time limit.³⁵⁸ However, in **Lithuania**, amendments to the Tax Code, applicable from 1 December 2021, mean that the duration of the tax investigation will no longer be regulated and that, going forward, time limits are not fixed except for audit in the premises of taxpayers.³⁵⁹

4.4. Technical assistance (representation) and the involvement of independent experts

Minimum standard: Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.

Shifted towards/improved the minimum standard:

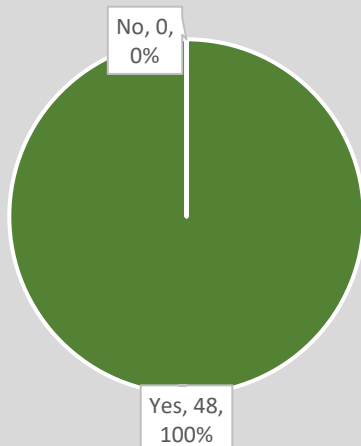
Chile

Shifted away from the minimum standard:

Slovenia

Chart 27. Does the taxpayer have the right to be represented by a person of its choice in the audit process?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: None

Source: OPTR: Questionnaire 1, Question 27

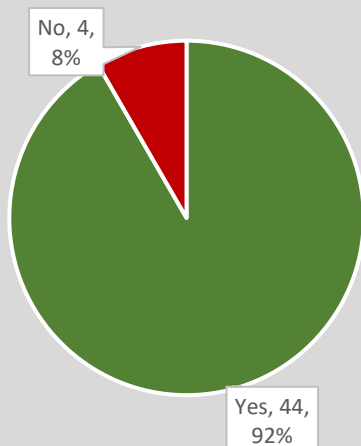
³⁵⁸ See RU: 5 July 2021, Supreme Court, Comm. Disp. Ch., No. 307-ES21-2135 in case No. A21-10479/2019, available at https://kad.arbitr.ru/Document/Pdf/ab986975-98c1-40c1-933d-dbae2fb152f2/25107189-a401-4113-9029-3ab5eca48c18/A21-10479-2019_20210705_Opredelenie.pdf?isAddStamp=True (accessed 22 Feb. 2022); S. Andrey, *Если налоговая проверка затянулась...*, Lawyers Newspaper, Federal Chamber of Lawyers of the Russian Federation (17 Aug. 2021), available at <https://www.advgazeta.ru/mneniya/esli-nalogovaya-proverka-zatyanulas/> (accessed 22 Feb. 2022). See also RU: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 35.

³⁵⁹ See LT: Order VA-108 of the Head of the State Tax Inspectorate (30 Aug. 2021), available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/5b265cc009c911ecb4af84e751d2e0c9?jfwid=-qv8w2r541> (accessed 7 Mar. 2022); and LT: On the amendment of Order No VA-108 of 28 May 2004 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (7 Sept. 2021), available at <https://www.vmi.lt/evmi/en/-/d-c4-97l-valstybin-c4-97s-mokes-c4-8di-c5-b3-inspekcijos-prie-lietuvos-respublikos-finans-c5-b3-ministerijos-vir-c5-a1ininko-2004-m.-gegu-c5-be-c4-9-2> (accessed 7 Mar. 2022). See also LT: OPTR Report (Taxpayers/Tax Practitioners, Law Firm), Questionnaire 2, Question 35.

As all surveyed countries report fulfilment of the minimum standard, an improvement compared to 2020, only **Chile** reports further progress, which derives from the Servicio de Impuestos Internos letters no. 12 and 41 (mentioned several times throughout this yearbook³⁶⁰).

Chart 28. May the opinion of independent experts be used in the audit process?

56 responses



Yes: Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Honduras, India, Italy, Japan, Kazakhstan, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Argentina, Bosnia and Herzegovina, Guatemala, Kenya, Slovenia (1)

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 28

4.5. The audit report

Minimum standard: The completion of a tax audit should be accurately reflected in a document and provided, in its full text, to the taxpayer.

Shifted towards/improved the minimum standard:

Belgium, Chile,

Shifted away from the minimum standard:

None

Best practice:

The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct factual inaccuracies and to express the taxpayer's view.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

Best practice:

Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.

Shifted towards/matched the best practice:

Shifted away from the best practice:

³⁶⁰ See secs. 1.4., 1.5., 1.6., 3.8., 4.1. and 4.2.; and CL: Letter No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 36.

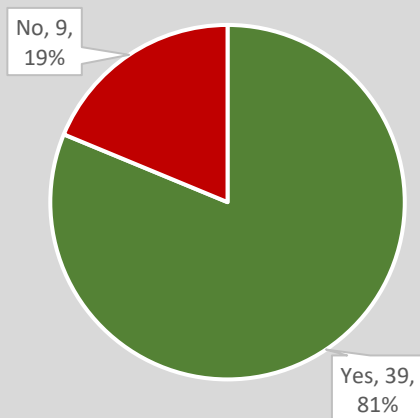
None

None

Besides the reported progress produced by the issuance of Letters No. 12 and 41 in **Chile**, which also include the finalization of tax audits with administrative acts for which taxpayers' rights of participation and notification must be ensured,³⁶¹ there were developments towards the fulfilment of the minimum standards and best practices related to the termination of tax assessment in **Belgium**. In 2021, taxpayers who were subject to a tax audit could already consult the audit report on their personal file in MyMinfin. In a recent press release, the tax authorities announced that for audits closed after 14 October 2021, also the intermediaries with a mandate for certain electronic applications (MyMinfin, Biztax or Intervat) will have access to the audit reports of their clients in MyMinfin.³⁶²

Chart 29. Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?

56 responses



Yes: Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Chinese Taipei, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Argentina, Australia, Bosnia and Herzegovina, Chile, Colombia, Guatemala, Netherlands, Switzerland

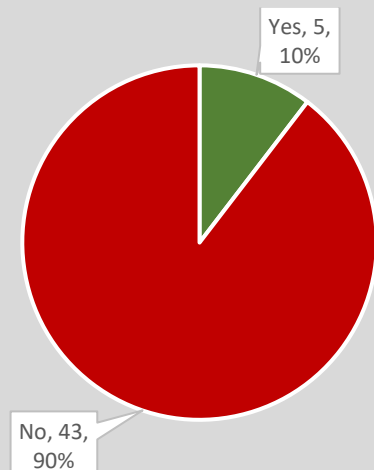
Source: OPTR: Questionnaire 1, Question 29

³⁶¹ See secs. [1.4.](#), [1.5.](#), [1.6.](#), [3.8.](#), [4.1.](#), [4.2.](#), [4.3.](#) and [4.4.](#); and CL: Letter No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 37.

³⁶² See Business Database, *Consulter le rapport d'un contrôle fiscal?* (21 Nov. 2021), available at https://businessdatabase.indicator.be/impots_controle/consulter_le_rapport_d_un_controle_fiscal_WAAC_PCAR_EU30060601/158/search? (accessed 22 Feb. 2022). See also BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 37.

Chart 30. Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?

56 responses



Yes: China (People's Rep.), Lithuania, Luxembourg, Russia, Ukraine

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 30

5. More Intensive Audits

5.1. The general framework

Best practice: More intensive audits should be limited and only occur when strictly necessary to ensure an effective reaction to non-compliance.

Shifted towards/matched the best practice:

China (People's Rep.)

Shifted away from the best practice:

None

While 2021 was characterized by notable activity in terms of criminal prosecutions and penalties imposed for the commission of tax offences, as indicated in section 7.1., this did not make an appreciable difference to the level of compliance with minimum standards and best practices relating to the most intensive audits.

As regards the limited nature of the powers of the tax administration in the context of these audits, only **China (People's Rep.)** reported a shift towards the fulfilment of the best practice. The tax authorities revised the Regulations on Tax Audit Work in 2021 and renamed them as the Regulations on Procedures for Handling Tax Audit Cases (also reported in section 4.3. of this yearbook). The Regulations, while continuing the regulations on the selection of cases for audit, clarify the need to strengthen the management of case sources and add new provisions that the inspection bureau may conduct inspections before filing a case in accordance with the law if necessary. Criminal investigation authority usually acts based on the cases handed over by tax agencies or other governmental institutions.³⁶³

³⁶³ See CN: Order no. 52, *supra* n. 14; CN: Criminal Procedure Law of the People's Republic of China (2018), available at http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065631.htm (accessed 22 Feb. 2022); and CN: Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs (State Council No. 730), available at <http://www.gov.cn/zhengce/content/2020->

On the other hand, the government of **Malta** adopted Act VIII of 2021 to strengthen the powers of the Commissioner for Revenue in combatting tax evasion by granting more powers of investigation and allowing for the sharing of information. The amendments also place additional mechanisms at the disposal of the Commissioner for Revenue when there are reasonable grounds to suspect the evasion of tax due, including the right to request assistance from the local police force.³⁶⁴

5.2. The implications of the *nemo tenetur* principle in connection with subsequent criminal proceedings

Minimum standard: If, in the course of an audit, it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that point, the taxpayer should have stronger protection of his right to silence and his statements should not be used in the audit procedure.

Shifted towards/improved the minimum standard:

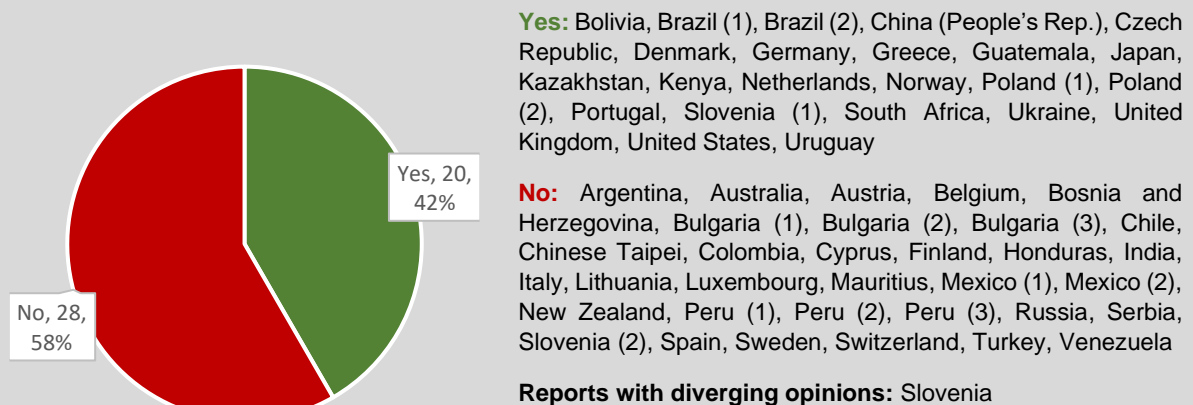
None

Shifted away from the minimum standard:

Mexico

Chart 31. Is the principle *nemo tenetur* applied in tax investigations (i.e. the principle against self-incrimination?)

56 responses



Source: OPTR: Questionnaire 1, Question 31

Trends in the recognition of *nemo tenetur* in the context of intensive audits seem to have stabilized in 2021, considering no major developments were reported. However, the only development reported in this regard maintains the downward trend that the OPTR has been reporting regarding taxpayers’ right to not self-incriminate since 2018.³⁶⁵

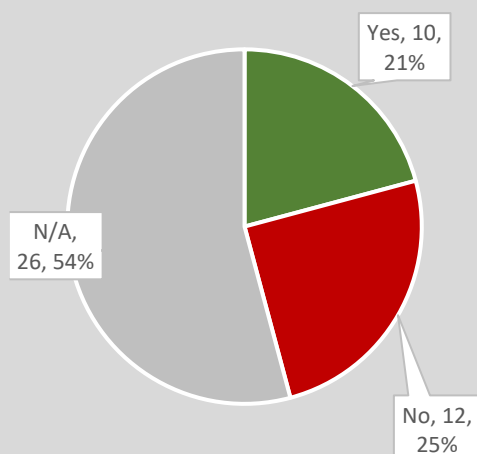
[08/14/content_5534841.htm](https://www.ibfd.org/08/14/content_5534841.htm) (accessed 22 Feb. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 39.

³⁶⁴ See MT: Act No. VIII of 2021 (7 Mar. 2021), available at <https://legislation.mt/eli/act/2021/8/eng> (accessed 22 Feb. 2022). See also T.B. Olivier, *Malta Amends Tax Penalty Regime* (17 Mar. 2021), News IBFD.

³⁶⁵ See OPTR, *The IBFD Yearbook on Taxpayers’ Rights 2019* sec. 5.5.2. (IBFD 2020), Books IBFD.

Chart 32. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?

56 responses



Yes: Bolivia, China (People’s Rep.), Czech Republic, Denmark, Greece, Kazakhstan, Kenya, Netherlands, Portugal, Slovenia (2), South Africa

No: Brazil (1), Brazil (2), Germany, Guatemala, Japan, Lithuania, Norway, Poland (1), Poland (2), Slovenia (1), Ukraine, United Kingdom, United States, Uruguay

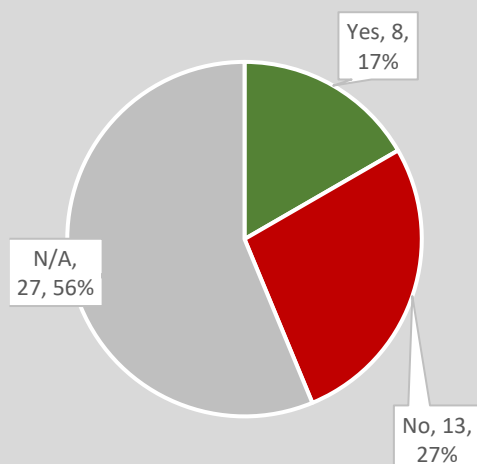
Not applicable: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Finland, Honduras, India, Italy, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Peru (3), Russia, Serbia, Spain, Sweden, Switzerland, Turkey, Venezuela

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 32

Chart 33. If yes to *nemo tenetur*, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?

56 responses



Yes: Czech Republic, Germany, Greece, Kazakhstan, Kenya, Norway, United Kingdom, Uruguay

No: Bolivia, Brazil (1), Brazil (2), China (People’s Rep.), Denmark, Guatemala, Japan, Netherlands, Poland (1), Poland (2), Portugal, Slovenia (1), Slovenia (2), South Africa, Ukraine, United States

Not applicable: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Finland, Honduras, India, Italy, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Peru (3), Russia, Serbia, Spain, Sweden, Switzerland, Turkey, Venezuela

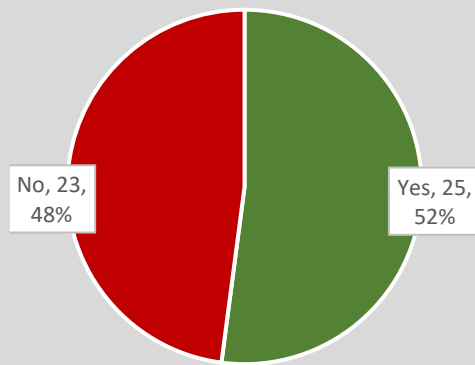
Source: OPTR: Questionnaire 1, Question 33

Indeed, **Mexico** has reported a shift away from the minimum standard in this area, as an amendment to the Federal Tax Code now requires certified public accountants preparing the report on audit of financial statements for tax purposes to report to the tax authorities if they become aware of a possible criminal conduct incurred by the taxpayer, affecting the latter’s right to professional advice (as analysed in section [3.14](#) of this yearbook), the presumption of innocence and, naturally, *nemo tenetur*.³⁶⁶

³⁶⁶ See MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 40.

Chart 34. 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 recognized?

56 responses



Yes: Austria, Bolivia, China (People's Rep.), Cyprus, Czech Republic, Denmark, Germany, India, Japan, Kazakhstan, Luxembourg, Netherlands, New Zealand, Norway, Peru (2), Peru (3), Poland (1), Poland (2), Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States, Venezuela

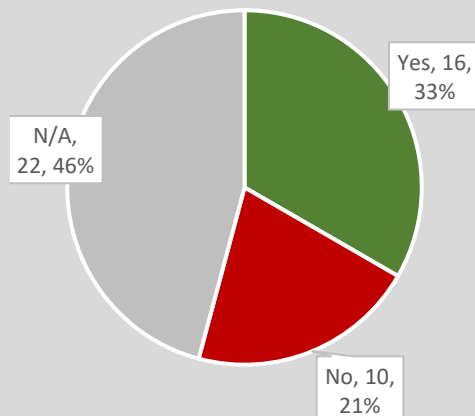
No: Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Finland, Greece, Guatemala, Honduras, Italy, Kenya, Lithuania, Mauritius, Mexico (1), Mexico (2), Peru (1), Portugal, Russia, Serbia, Turkey, Uruguay

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 34

Chart 35. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?

56 responses



Yes: Austria, Czech Republic, Denmark, Germany, Kazakhstan, Luxembourg, Netherlands, Norway, Poland (1), Poland (2), Slovenia (1), Slovenia (2), Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay

No: Bolivia, China (People's Rep.), Cyprus, Japan, Mexico (1), Mexico (2), New Zealand, Peru (2), Peru (3), South Africa, Ukraine, Venezuela

Not applicable: Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Finland, Greece, Guatemala, Honduras, India, Italy, Kenya, Lithuania, Mauritius, Peru (1), Portugal, Russia, Serbia, Turkey

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 35

For their part, in the **United States**, the practices for the inquiry of taxpayers potentially involved in criminal activity appear to be geared towards the full protection of the right against self-incrimination. Witnesses must be informed ex ante of their option to not testifying based on this right, which must be expressly exercised. Subjects who make verbal statements or give testimony to special agents during an investigation or at a US tax court trial may still rely upon their constitutional protections and refuse to testify at trial of their indictment for tax

evasion. However, any statements made by the subject to anyone may be used against them if acquired legally and not subject to privilege.³⁶⁷

5.3. Court authorization or notification

Minimum standard: The entering of premises or interception of communications should be authorized by the judiciary.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

Brazil

Minimum standard: Authorization within the revenue authorities should only be granted in urgent cases and should be subsequently reported to the judiciary for ex-post ratification.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

None

Minimum standard: Inspection of the taxpayer's home should require authorization by the judiciary and should only be given in exceptional cases.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

Brazil

Best practice: Where tax authorities intend to search a taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, unless there is evident danger of documents being removed or destroyed.

Shifted towards/matched the best practice:

Spain

Shifted away from the best practice:

Brazil

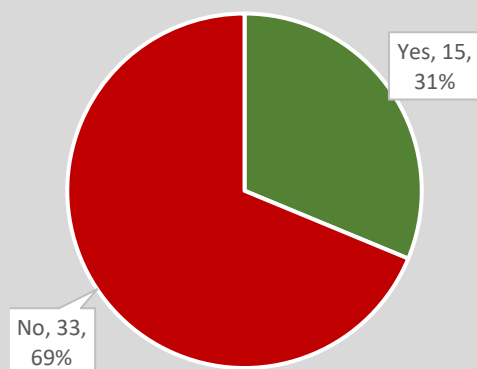
Shifting away from the minimum standards and best practices, the State Court of Appeals of Minas Gerais, **Brazil**, found prior authorization by the judiciary to enter premises (an accounting office) unnecessary since such an activity would represent – in the view of the court – a mere exercise of the police power by tax authorities. An extraordinary appeal against this decision was not entertained by the Supreme Federal Court. The decision is debatable, considering the guarantee of inviolability of the home, as the Supreme Federal Court has previously recognized that any evidence obtained in non-authorized on-site inspections is illegal and not permitted for use in a trial. Despite this constitutional guarantee, infra-

³⁶⁷ See US: IRS Internal Revenue Manual, Part 9 (Criminal Investigation), ch. 4., sec. 5 (12 May 2020), available at https://www.irs.gov/irm/part9/irm_09-004-005 (accessed 23 Feb. 2022); and US: 2019 National Taxpayer Advocate Annual Report to Congress, available at https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1.pdf (accessed 23 Feb. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 40.

constitutional legislation authorizes the access of taxpayers' premises by tax authorities without prior judicial authorization.³⁶⁸

Chart 36. Is authorization by a court always needed before the tax authority may enter and search premises?

56 responses



Yes: Bolivia, Brazil (1), Brazil (2), Chinese Taipei, Cyprus, Germany, Guatemala, Japan, Kenya, Lithuania, Norway, Peru (1), Peru (2), Peru (3), Slovenia (2), South Africa, Sweden, Switzerland, Turkey

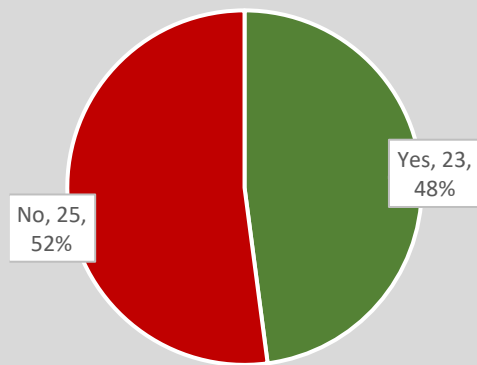
No: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia, Czech Republic, Denmark, Finland, Greece, Honduras, India, Italy, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Spain, Ukraine, United Kingdom, United States, Uruguay, Venezuela

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 36

Chart 37. May the tax authority enter and search the dwelling places of individuals?

56 responses



Yes: Australia, Austria, Belgium, Brazil (1), Brazil (2), Cyprus, Denmark, Finland, Germany, Greece, India, Italy, Kenya, Luxembourg, Mauritius, New Zealand, Poland (1), Poland (2), Serbia, Slovenia (1), Spain, Sweden, Turkey, United States, Uruguay, Venezuela

No: Argentina, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Chinese Taipei, Colombia, Czech Republic, Guatemala, Honduras, Japan, Kazakhstan, Lithuania, Mexico (1), Mexico (2), Netherlands, Norway, Peru (1), Peru (2), Peru (3), Portugal, Russia, Slovenia (2), South Africa, Switzerland, Ukraine, United Kingdom

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 37

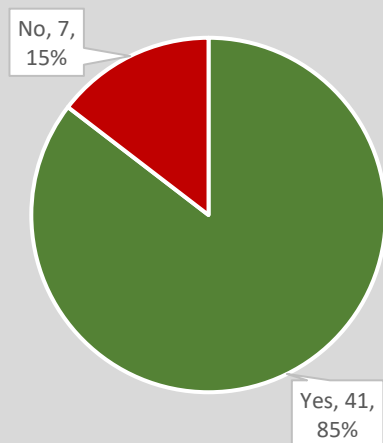
On the other hand, in **Spain**, it follows from a Supreme Court judgment of 14 July 2021 that the tax administration cannot conduct investigations, determine settlements or impose sanctions on a taxpayer based on documents or evidence seized as a result of a search

³⁶⁸ See BR: 27 July 2020, STF, ARE 1279182/MG, available at <https://stf.jusbrasil.com.br/jurisprudencia/1106752172/recurso-extraordinario-com-agravo-are-1279182-mg-0350112-6820138130433/inteiro-teor-1106752191> (accessed 23 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 41.

practiced in the home of third parties, when such documents were considered invalid in a final criminal judgment because they were obtained in violation of fundamental rights, even if the entry and registration has been authorized by a judge. Also, another Supreme Court judgment, this time of 23 September 2021, stated that the tax authorities cannot enter premises without first notifying the beginning of the audit procedure.³⁶⁹

Chart 38. Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?

56 responses



Yes: Argentina, Australia, Austria, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, United States, Uruguay, Venezuela

No: Belgium, China (People’s Rep.), Czech Republic, Netherlands, Russia, Slovenia (1), Ukraine, United Kingdom

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 38

In this regard, it is worth mentioning that the **United States’** District Court for the Southern District of New York has entered an order authorizing the IRS to issue summonses requiring multiple couriers and financial institutions to submit information about US taxpayers who may have used the services of Panama Offshore Legal Services (POLS) and its associates to evade US federal income taxes. The IRS summonses seek to trace courier deliveries and electronic fund transfers between POLS and its clients, in order to identify POLS’s US taxpayer clients who have used its services to create or control foreign assets and entities in order to avoid complying with their US tax obligations.³⁷⁰

Best practice: Access to bank information should require judicial authorization.

Shifted towards/matched the best practice:

Shifted away from the best practice:

³⁶⁹ See ES: STS 2982/2021, 14 July 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/018f7cf37885acb1/20210727> (accessed 23 Feb. 2022); and ES: STS 3502/2021, 23 Sept. 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/36fc512f06556163/20211011> (accessed 23 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 43.

³⁷⁰ See US: DoJ Press Release, *IRS Obtains Court Order Authorizing Summonses For Records Relating To U.S. Taxpayers Who Used Panamanian Offshore Service Providers To Hide Assets And Evade Taxes* (29 July 2021), available at <https://www.justice.gov/usao-sdny/pr/irs-obtains-court-order-authorizing-summonses-records-relating-us-taxpayers-who-used> (accessed 23 Feb. 2022). See also W. Choi, *US District Court Greenlights IRS Summonses Concerning Tax Evasion through Panamanian Law Firm* (30 July 2021), News IBFD.

None

Bolivia, Chinese Taipei, United Kingdom

The downward trend in judicial protection of bank secrecy continued in 2021, with renewed vigour.

In **Bolivia**, the “large” wealth tax law (*Ley de Impuesto a las Grandes Fortunas*) mentioned in section [3.2](#) of this yearbook allows the tax authorities, when investigating the source of fortunes in money laundering cases, to request a taxpayer’s bank information directly from the financial entities instead of through the regulatory authority, which is otherwise the standard.³⁷¹

Finally, the introduction of financial institution notices in the **United Kingdom**, mentioned several times throughout this yearbook, enables an authorized officer to require a financial institution to provide information or documents about a taxpayer, in most cases without the need to seek the taxpayer’s consent or authorization from a tribunal.³⁷²

Best practice: Authorization by the judiciary should be necessary for the interception of telephone communications and monitoring of online activity. Specialized offices within the judiciary should be established to supervise these actions.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

No developments were reported regarding this best practice in 2021.

Minimum standard: The seizure of documents should be subject to a requirement to give reasons why it is necessary, along with a set time frame in which the documents must be returned.

Shifted towards/improved the minimum standard:

Chile

Shifted away from the minimum standard:

Mexico

The seizure of documents is subject to extensive regulation in Letter No. 12 of the Internal Revenue Service of **Chile** (as mentioned several times in this yearbook). The regulation requires the tax authorities to provide sufficient motivation for accessing the documentation and prior notification to the taxpayer of all administrative actions in this regard.³⁷³

However, shifting away from the minimum standard, the latest amendment to the Federal Tax Code in **Mexico** allows the tax authorities to seize bank deposits without prior judicial hearing when a tax assessment has become “due”. However, the Federal Tax Code does not provide

³⁷¹ See BO: Ley de 28 de diciembre de 2020 No. 1.357, Impuesto a las Grandes Fortunas, available at <https://web.senado.gob.bo/sites/default/files/LEY%20N%C2%B0%201357-2020.PDF> (accessed 2 Feb. 2022). See also BO: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

³⁷² See secs. [3.12](#), [4.1](#), and [4.2](#). See also UK: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 44.

³⁷³ See secs. [1.4](#), [1.5](#), [1.6](#), [3.8](#), [4.1](#), [4.2](#), [4.3](#), [4.4](#), and [4.5](#); and CL: Letter No. 12, *supra* n. 18, at sec. IV. See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 45.

a definition of a “due” tax assessment, and in accordance with the general interpretation of various provisions of the Code, a due tax assessment arises when the assessment is not paid. This concept is different from a “final assessment”, where the period to challenge on an administrative stage or via the judiciary, has expired. In practice, this provision is reported to allow the authorities to seize property, including bank accounts, without giving taxpayers an opportunity to be heard.³⁷⁴

5.4. Treatment of privileged information

Best practice: If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer’s advisers and the original left with the taxpayer.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

Minimum standard: Where invasive techniques are applied, they should be limited in time to avoid a disproportionate impact on taxpayers.

Shifted towards/matched the best practice:

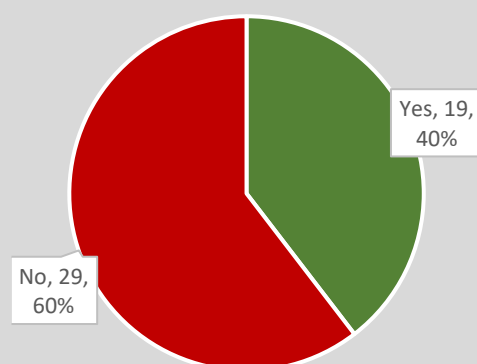
None

Shifted away from the best practice:

None

Chart 39. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?

56 responses



Yes: Australia, Austria, Bolivia, Colombia, Czech Republic, Denmark, Greece, Italy, Kazakhstan, New Zealand, Norway, Poland (1), Poland (2), Portugal, Slovenia (2), South Africa, Sweden, Switzerland, Turkey, United Kingdom, United States

No: Argentina, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Chinese Taipei, Cyprus, Finland, Germany, Guatemala, Honduras, India, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, Peru (1), Peru (2), Peru (3), Russia, Serbia, Slovenia (1), Spain, Ukraine, Uruguay, Venezuela

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 39

To ensure the taxpayers’ rights to (i) a proper defence; (ii) pay the right amount of tax; and (iii) privacy, the communication between the taxpayers’ and their advisers must be duly protected.

³⁷⁴ See MX: Federal Tax Code (*Código Fiscal de la Federación*), art. 144, D.O.F. 12 Nov. 2021, available at http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 23 Feb. 2021). See also MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 45.

Only in cases where the tax administration has already gathered indicia of actual wrongdoing should access to this communication be granted to the authorities.³⁷⁵

No developments were reported regarding these minimum standards and best practices in 2021.

6. Reviews and Appeals

6.1. The remedies and their function

Best practice: There should be e-filing of requests for internal review to ensure the effective and speedy handling of the review process.

Shifted towards/matched the best practice:

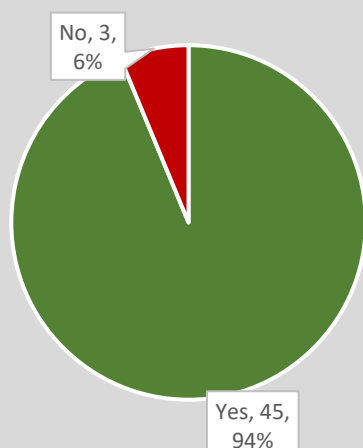
Mauritius, Peru, Slovenia

Shifted away from the best practice:

None

Chart 40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Bolivia, India, Slovenia (1), Turkey

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 40

E-filing, both for the filing of tax returns (as discussed in section 2 of this yearbook) and for the filing of reviews and appeals has received a definite boost as a result of the needs generated by the COVID-19 pandemic.

During 2021, **Colombia** opted for full digitalization of all tax proceedings (e.g. e-notifications, obligation to email lawsuit to defendant, digital notifications, virtual hearings, e-files) as part of the amendments introduced to the Administrative Procedure Code, which includes specific provisions related to tax litigation procedures, in parallel with a similar regulation for tax administrative procedures.³⁷⁶ Such a development has also been implemented in **Peru**, where

³⁷⁵ P. Baker & P. Pistone, [General Report](#), in *The Practical Protection of Taxpayers' Fundamental Rights* sec. 5.4., p. 48 (IFA Cahiers vol. 100B, IBFD 2015), Books IBFD.

³⁷⁶ See CO: Ley 2080 de 2021, por medio de la cual se reforma el Código de Procedimiento Administrativo y de lo Contencioso Administrativo -Ley 1437 de 2011- y se dictan otras disposiciones en materia de descongestión en los procesos que se tramitan ante la jurisdicción (25 Jan. 2021), available at

e-filing of claims to the Peruvian tax administration has been implemented through the so-called Table of Virtual Parties (*Mesa de Partes Virtuales*) and allows taxpayers to present an appeal, respond to information requests and send requests related to the process.³⁷⁷

Minimum standard: The right to appeal should not depend upon prior exhaustion of administrative reviews.

Shifted towards/matched the best practice:

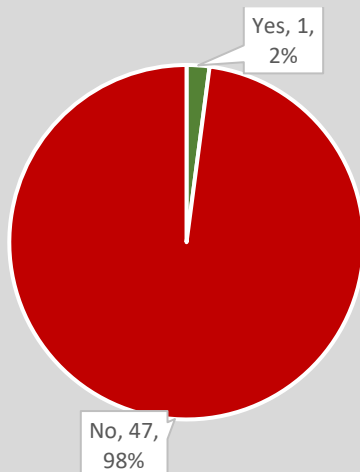
None

Shifted away from the best practice:

None

Chart 41. Does the taxpayer need permission to appeal to the first instance tribunal?

56 responses



Yes: Kazakhstan

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

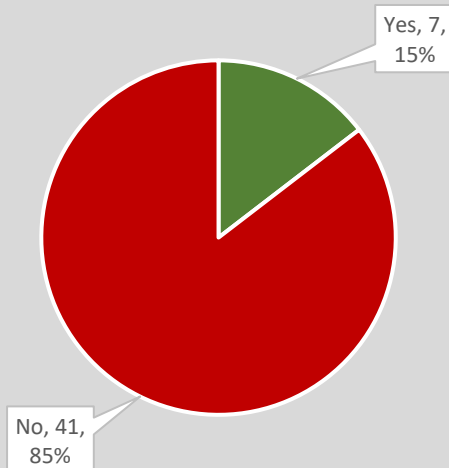
Source: OPTR: Questionnaire 1, Question 41

https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=156590 (accessed 23 Feb. 2022); CO: Resolución DIAN No. 000056, por la cual se implementa la presentación electrónica de los recursos de reconsideración que deban presentarse ante la Dirección de Impuestos y Aduanas Nacionales, en cumplimiento de lo establecido en el artículo 559 del Estatuto Tributario (12 July 2021), available at <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%c3%b3n%20000056%20de%2012-07-2021.pdf> (accessed 23 Feb. 2022); M. Bocachica, *Congress Establishes Mandatory Use of Electronic Means in Tax Proceedings* (22 Feb. 2021), News IBFD; and M. Bocachica, *Taxpayers May File Reconsideration Claims Electronically* (28 July 2021), News IBFD. See also CO: OPTR Report ((Tax) Ombudsman), Questionnaire 2, Question 8.

³⁷⁷ See PE: Resolución No. 000031-2021/SUNAT, respecto a la presentación de escritos de reclamación, otros escritos y de solicitudes vinculadas a expedientes electrónicos de reclamación, a través de la mesa de partes virtual de la SUNAT (24 Feb. 2021), available at <https://sunat-pe.com/legislacion/superin/2021/031-2021.pdf> (accessed 23 Feb. 2022); and PE: e-portal *Mesa de Partes*, available at <https://www.gob.pe/20416-acceder-a-mesa-de-partes?child=8878> (accessed 23 Feb. 2022). See also PE: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 49.

Chart 42. Does the taxpayer need permission to appeal to the second (or higher) instance tribunals?

56 responses



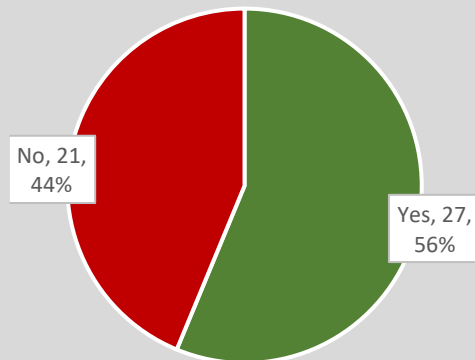
Yes: Bosnia and Herzegovina, Denmark, Finland, Germany, Mauritius, Sweden, United Kingdom

No: Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Switzerland, Turkey, Ukraine, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 42

Chart 43. 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?

56 responses



Yes: Argentina, Austria, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep.), Chinese Taipei, Cyprus, Finland, Germany, Greece, Guatemala, Honduras, India, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Russia, Serbia, Slovenia (1), Spain, Turkey

No: Australia, Belgium, Bolivia, Brazil (1), Brazil (2), Chile, Colombia, Czech Republic, Denmark, Italy, Netherlands, New Zealand, Norway, Portugal, Slovenia (2), South Africa, Sweden, Switzerland, Ukraine, United Kingdom, United States, Uruguay, Venezuela

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 43

No developments were reported regarding this minimum standard in 2021.

6.2. Length of the procedure

Best practice: Reviews and appeals should not exceed 2 years.

Shifted towards/matched the best practice:

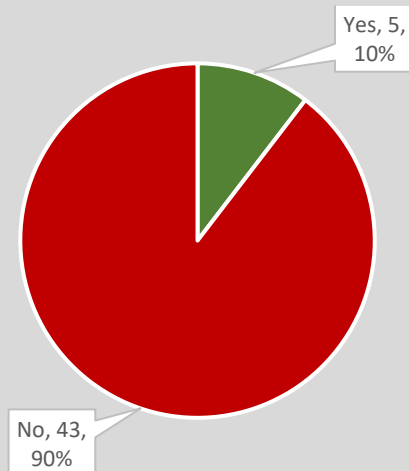
Colombia, Chile, Denmark, Lithuania

Shifted away from the best practice:

Bolivia, Brazil, Guatemala

Chart 44. Are there time limits applicable for a tax case to complete the judicial appeal process?

56 responses



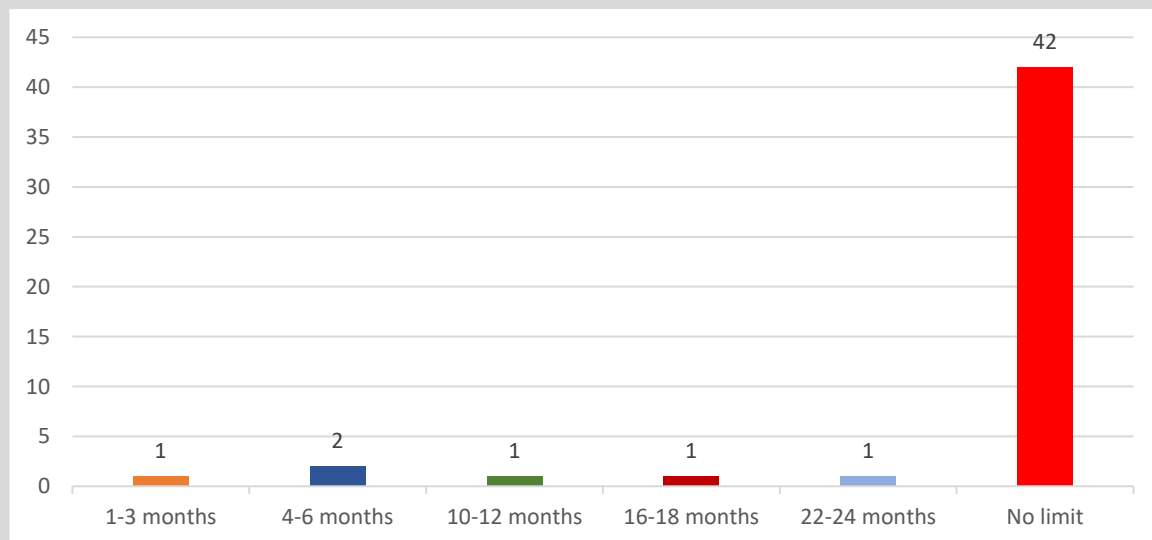
Yes: China (People's Rep.), Honduras, Kazakhstan, Russia, Ukraine

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 44

Chart 45. If yes, what is the normal time it takes for a tax case to be concluded on appeal?

56 responses



Source: OPTR: Questionnaire 1, Question 45

1-3 months:

Ukraine

4-6 months:

China (People's Rep.), Russia

10-12 months:

Kazakhstan

16-18 months:

No limit:

Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Serbia, Slovenia (1), South Africa, Spain, Sweden, Switzerland,

Slovenia (2)

22-24 months:

Honduras

Turkey, United Kingdom, United States, Uruguay,
Venezuela

Reports with diverging opinions: Slovenia

2021 Relevant Case Law – European Court of Human Rights

- See *VEGOTEX International S.A. v. Belgium*, App. No. 49812/09, at sec. [10.2](#).³⁷⁸

Reviews and appeals in tax cases need to be swift to ensure effective tax collection and improve the efficiency of tax systems. At the same time, speedy procedures are part of taxpayers' right to certainty about their tax liability, and achieving this in practice can be difficult. Indeed, 2021 has been a year of highs and lows: the pandemic has raised awareness of the need for faster responses, and action has been taken in this regard, but, at the same time, it has presented challenges that are not easily solvable.

Going towards the fulfilment of the best practice, the diminishing effects of the COVID-19 pandemic in **Colombia** allowed the DIAN to lift the suspension of administrative terms decreed due to the quarantine measures adopted by the government.³⁷⁹ The specific measures introduced during the pandemic in **Lithuania** have been reported to encourage faster dispute resolution (e.g. remote hearings, more efficient written procedures, wider use of electronic means), although exceptional cases may still exceed 2 years.³⁸⁰

Also, in **Denmark**, after an investigation was launched in 2016 following scrutiny of the lengthy appeal process of the Danish Tax Appeals Agency, 2021 has finally reported shorter average times. At the same time, the National Audit Office criticized the declining productivity of the Danish Tax Appeals Agency since the costs of handling tax appeals have increased.³⁸¹ Mainly

³⁷⁸ See BE: ECtHR, No. 49812/09, *VEGOTEX International S.A. v. Belgium*, available at <https://hudoc.echr.coe.int/eng/?i=001-206214> (accessed 24 Feb. 2022).

³⁷⁹ See CO: Resolución DIAN No. 000055, por la cual se adoptan medidas de urgencia para garantizar la atención y la prestación de los servicios por parte de la Unidad Administrativa Especial Dirección de Impuestos y Aduanas Nacionales -DIAN, en el marco del Estado de Emergencia Económica, Social y Ecológica (29 May 2020), available at <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%2000055%20de%2029-05-2020.pdf> (accessed 23 Feb. 2022); CO: Resolución DIAN No. 000048, por la cual se modifica la Resolución 00043 de fecha 18 de mayo de 2021, por la cual se suspenden los términos en los procesos y actuaciones administrativas en materia tributaria, aduanera, cambiaria y administrativa de competencia de la UAE Dirección de Impuestos y Aduanas Nacionales – DIAN (1 June 2021), available at <https://cijuf.org.co/node/21596> (accessed 23 Feb. 2022); CO: Resolución DIAN No. 000079, por la cual se levanta parcialmente la suspensión de términos prevista en el literal a) del artículo 2º de la Resolución 55 de 2020, modificado por el artículo 1º de la Resolución 62 de 2020 (24 Aug. 2021), available at <https://cijuf.org.co/sites/cijuf.org.co/files/normatividad/2021/RESOLUCION%2079.pdf> (accessed 23 Feb. 2022); and CO: Resolución DIAN No. 000104, por la cual se levanta la suspensión de términos prevista en el literal a) del artículo 2º de la Resolución 55 de 2020, modificado por los artículos 1º de la Resolución 62 de 2020 y 1 y 2 de la Resolución 079 de 2021 (29 Sept. 2021), available at <https://cijuf.org.co/node/22183> (accessed 23 Feb. 2022). See also CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 51.

³⁸⁰ See LT: Law on Tax Administration (16 June 2005), available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.276549?jfwid=q8i88lr3sArticle> (accessed 7 Mar. 2022). The reported statements are based mostly on practical experience. The COVID-19 pandemic encouraged tax authorities to use other opportunities in practice, which turned out to be more efficient, as reported. See also LT: OPTR Report (Taxpayers/Tax Practitioners, Law Firm), Questionnaire 2, Question 51.

³⁸¹ See DK: Notat om beretning om Skatteankestyrelsens sagsbehandlingstider og produktivitet (2021), available at <https://rigsrevisionen.dk/Media/637744653367185996/1110-21.pdf> (accessed 23 Feb. 2022); and DK:

due to the situation provoked by the pandemic, **Ecuador** suspended the deadlines in tax administrative procedures and the statute of limitations on tax collection procedures from 26 April until 20 May 2021.³⁸²

Shifting away from the best practice, **Bolivia** reports that judicial appeals are over 6 years long in practice.³⁸³ Reviews and appeals may take over 5 years in **Guatemala**, and it can take more than 15 years in courts, according to reports.³⁸⁴ In **Brazil**, most second-tier federal administrative proceedings have been suspended for the last few years, resulting in longer proceedings.³⁸⁵

6.3. Alternative dispute resolution

Tax assessment conflicts between tax administrations and taxpayers are inevitable, despite both parties' best efforts. Even with a good administration where good faith governs the relationship between taxpayers and authorities, alternative dispute resolution (ADR) can be necessary to resolve conflicts efficiently. In the end, this provides certainty for both parties and offers the possibility to provide better results in terms of tax policy.

Although few, some positive developments are reported in the field, hand in hand with digitization and the needs arising from the COVID-19 pandemic.

The United Nations Committee of Experts on International Cooperation in Tax Matters has approved Chapter 1 of the Handbook on Dispute Avoidance and Resolution, resulting in the approval of the entire Handbook. The document is divided into two parts: Part 1 has a broad focus and deals with mechanisms for avoiding and resolving tax disputes that could arise in a purely domestic context and cross-border tax disputes (including those related to the application of tax treaties). Part 2 focuses exclusively on the mutual agreement procedure, which is included in tax treaties and enables certain tax officials of the treaty countries to resolve bilaterally cross-border issues related to the application or interpretation of treaty provisions, including possible resolutions of disputes via binding arbitration and possible ways to improve the dispute avoidance and resolution procedure (e.g. capacity building through

Report 6/2016 - Rigsrevisionens beretning om Skatteankestyrelsens sagsbehandlingstider og produktivitet afgivet til Folketinget med Statsrevisorernes bemærkninger (2016), available at <https://rigsrevisionen.dk/Media/C/D/sr0616.pdf> (accessed 23 Feb. 2022). See also DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 51.

³⁸² See EC: SRI Resolution No. NAC-DGERCGC21-00000021 (23 Apr. 2021), available at <https://www.sri.gob.ec/o/sri-portlet-biblioteca-alfresco-internet/descargar?id=3707e7e1-6953-4870-a72e-3a26c34647e0&nombre=NAC-DGERCGC21-00000021-signed.pdf> (accessed 23 Feb. 2022). See also G. Guerra Bello, *Ecuador Suspends Deadlines in Tax Administrative Procedures* (28 Apr. 2021), News IBFD.

³⁸³ See BO: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 51.

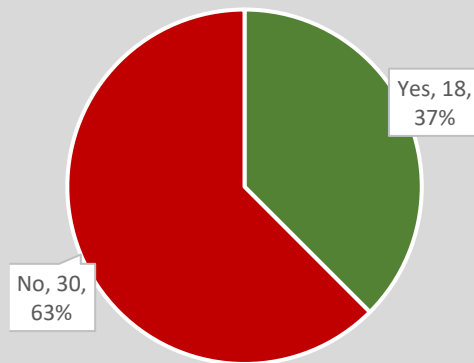
³⁸⁴ See GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 51.

³⁸⁵ See BR: Portaria CARF No. 10786 (28 Apr. 2020), available at <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=108942> (accessed 9 Mar. 2022); BR: Portaria No. 19.336 (14 Aug. 2020), available at <https://in.gov.br/en/web/dou/-/portaria-n-19.336-de-14-de-agosto-de-2020-272506380> (accessed 9 Mar. 2022); BR: Portaria CARF/ME No. 690 (15 Jan. 2021), available at <https://in.gov.br/en/web/dou/-/portaria-carf/me-n-690-de-15-de-janeiro-de-2021-299289553> (accessed 9 Mar. 2022); BR: Portaria CARF/ME No. 3.249 (18 Mar. 2021), available at <https://www.in.gov.br/en/web/dou/-/portaria-carf/me-n-3.249-de-18-de-marco-de-2021-309279714> (accessed 9 Mar. 2022); and BR: Portaria CARF/ME No. 421 (19 Jan. 2022), available at <https://www.in.gov.br/en/web/dou/-/portaria-carf/me-n-421-de-19-de-janeiro-de-2022-375000131> (accessed 9 Mar. 2022). See also BR: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/Academia), Questionnaire 2, Question 51.

cooperation in the Tax Inspectors Without Borders projects), as well as alternative dispute resolution approaches.³⁸⁶

Chart 46. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?

56 responses



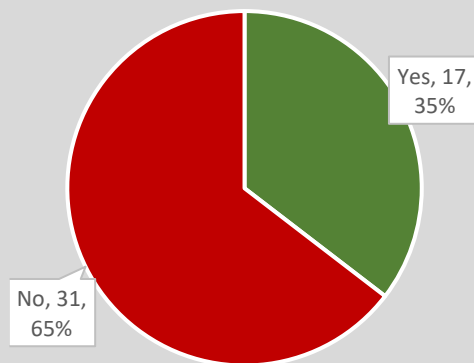
Yes: Australia, Belgium, Brazil (1), Brazil (2), Chile, China (People’s Rep.), Colombia, Italy, Kenya, Lithuania, Mauritius, Mexico (1), Mexico (2), Netherlands, Norway, Poland (1), Poland (2), South Africa, United Kingdom, United States, Venezuela

No: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chinese Taipei, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Japan, Kazakhstan, Luxembourg, New Zealand, Peru (1), Peru (2), Peru (3), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Spain, Sweden, Switzerland, Turkey, Ukraine, Uruguay

Source: OPTR: Questionnaire 1, Question 46

Chart 47. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file or by e-filing)?

56 responses



Yes: Australia, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep.), Denmark, Germany, Greece, Honduras, Italy, Kazakhstan, Lithuania, Mauritius, Poland (1), Poland (2), Slovenia (1), South Africa, Turkey, Ukraine, United Kingdom, United States

No: Argentina, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, Chinese Taipei, Colombia, Cyprus, Czech Republic, Finland, Guatemala, India, Japan, Kenya, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Portugal, Russia, Serbia, Slovenia (2), Spain, Sweden, Switzerland, Uruguay, Venezuela

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 47

The OECD reports that the **Georgia** Revenue Service (GRS) introduced remote, electronic tax dispute hearings during which taxpayers were offered the chance to have a remote hearing for their ongoing disputes. This option was further embedded when taxpayers had the possibility to indicate in advance their willingness to participate in a remote hearing for future

³⁸⁶ See S. Marsit, [UN Tax Committee Approves Handbook on Dispute Avoidance and Resolution](#) (22 Apr. 2021), News IBFD.

dispute resolution proceedings. The GRS decided to build a system using a video-conferencing platform that allowed taxpayers to connect both via computer and phone. Taxpayers receive reminders of hearings through their personalized websites as well as via SMS, which also provides detailed instructions on how to use the platform. The e-hearing system has now been incorporated into the tax code of **Georgia**, meaning that it will be maintained after the pandemic is over.³⁸⁷

In **Mexico**, the rules regulating the so-called *acuerdos conclusivos* (conclusive agreements) were modified with the aim of speeding up the procedures by establishing maximum limitations to their duration. Consequently, the Guidelines regulating the exercise of the substantive powers of the Tax Ombudsman (*Procuraduría de la Defensa del Contribuyente*) were modified to reflect the body's adjustments to the new legal deadlines.³⁸⁸

Meanwhile, in an interesting development regarding the enforcement of arbitration awards, the **United Kingdom's** energy corporation Cairn Energy PLC filed a petition in a US district court to confirm a foreign arbitration award under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards that arose from an investment dispute regarding a retroactive tax assessment by the government of **India** against Cairn Energy. At the same time, the company secured a court order in **France** to seize some 20 government properties in Paris to recover a part of the award. The petition was dropped in early 2022, in exchange for a tax refund of approximately INR 79 billion (around USD 1.06 billion).³⁸⁹

Malawi enacted a new tax administration bill, the primary focus of which is to provide (to the greatest extent practicable) a common set of simplified rules for administration of written tax laws with the aim of promoting a business approach to tax administration.³⁹⁰

6.4. *Audi alteram partem* and the right to a fair trial

³⁸⁷ See OECD, *Tax Administration: Towards Sustainable Remote Working in a Post COVID-19 Environment* p. 28 (OECD 2021), available at https://read.oecd-ilibrary.org/view/?ref=1100_1100317-s1ht91tyt0&title=Tax-Administration-Towards-sustainable-Remote-Working-in-a-post-COVID-19-Environment (accessed 24 Feb. 2022). See also GE: Tax Code of Georgia, art. 302(10), available at <https://matsne.gov.ge/en/document/download/1043717/93/en/pdf> (accessed 24 Feb. 2022).

³⁸⁸ See MX: Federal Tax Code (*Código Fiscal de la Federación*), arts. 69-C and 69-G, D.O.F. 12 Nov. 2021, available at http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 24 Feb. 2022); and MX: Lineamientos que regulan el ejercicio de las atribuciones sustantivas de la Procuraduría de la Defensa del Contribuyente, D.O.F. 27 Dec. 2021, available at <https://www.gob.mx/prodecon/documentos/lineamientos-que-regulan-el-ejercicio-de-las-atribuciones-sustantivas-de-la-procuraduria-de-la-defensa-del-contribuyente> (accessed 24 Feb. 2022). See also L.M. Romero Flor & I. Santos Flores, *Los acuerdos conclusivos en México*, 19 Quincena Fiscal, p. 16 (2021), available at https://library.ibfd.org/custom/web/SD_PDF/scans/2021/O-Q/QUINFI/19_Acuerdos.pdf?_ga=2.218216921.1933723563.1645693727-574979399.1627633795 (accessed 24 Feb. 2022).

³⁸⁹ See [Cairn Energy Seeks Confirmation of Award in India Tax Dispute](#) (17 Feb. 2021), News Tax Analysts; K. Strocko, [India Seeks to Dismiss Cairn Energy's U.S. Federal Lawsuit](#) (17 Aug. 2021), News Tax Analysts; The Tribune India, [Britain's Cairn gets French court order to seize 20 Indian properties in Paris](#) (8 July 2021), available at <https://www.tribuneindia.com/news/nation/britains-cairn-gets-french-court-order-to-seize-20-indian-properties-in-paris-280027> (accessed 24 Feb. 2022); and M. Smith, [Cairn Energy to Drop Suits, Receive \\$1 Billion Indian Tax Refund](#) (7 Jan. 2022), News Tax Analysts. See also N. Jalan & A. Rao, [The Cairn Arbitration Award: Retrospective Taxation of Indirect Share Transfers in India Breaches Bilateral Investment Treaty](#), 75 Bull. Intl. Taxn. 5 (2021), Journal Articles & Opinion Pieces IBFD.

³⁹⁰ See W. Pearson, [Malawi Proposes Laws Improving Dispute Resolution](#) (17 June 2021), News IBFD.

Minimum standard: *Audi alteram partem* should apply in administrative reviews and judicial appeals.

Shifted towards/improved the minimum standard:

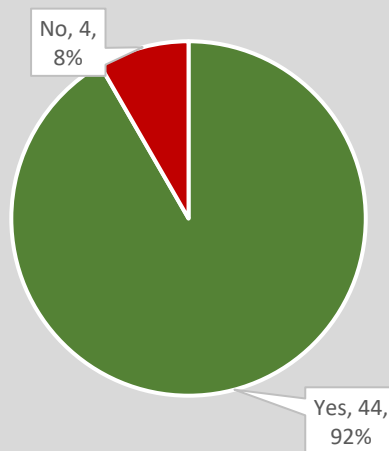
Spain

Shifted away from the minimum standard:

None

Chart 48. Is the principle *audi alteram partem* (i.e. each party has a right to a hearing) applied in all tax appeals?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: China (People's Rep.), Mauritius, Mexico (1), Mexico (2), Switzerland

Source: OPTR: Questionnaire 1, Question 48

In **Spain**, a positive development (continued since 2020) has been reported with a judgement from the Supreme Court of 27 July 2021, making it possible to admit documentation that has not been contributed in audit procedures in administrative reviews. This is in accordance with the right to an effective judicial protection.³⁹¹

6.5. *Solve et repete*

Minimum standard: Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing the interim suspension of payment.

Shifted towards/improved the minimum standard:

Portugal

Shifted away from the minimum standard:

None

Best practice: An appeal should not require prior payment of tax in all cases.

Shifted towards/matched the best practice:

None

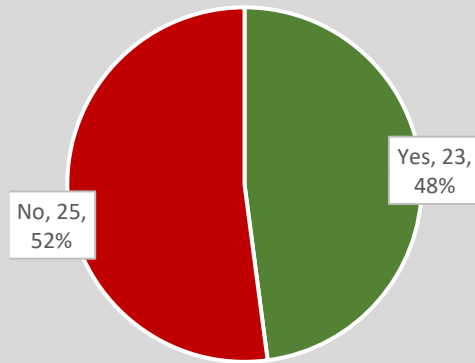
Shifted away from the best practice:

None

³⁹¹ See ES: STS 3251/2021, 27 July 2021, available at <https://www.poderjudicial.es/search/TS/openDocument/1f329eb618684589/20210816> (accessed 24 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 52.

Chart 49. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve et repete)?

56 responses



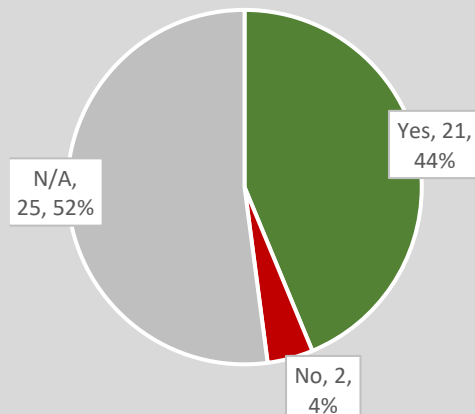
Yes: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep.), Cyprus, Finland, Germany, Greece, India, Italy, Luxembourg, Mauritius, Netherlands, Norway, Poland (1), Poland (2), Portugal, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, United Kingdom

No: Australia, Belgium, Brazil (1), Brazil (2), Chile, Chinese Taipei, Colombia, Czech Republic, Denmark, Guatemala, Honduras, Japan, Kazakhstan, Kenya, Lithuania, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Peru (3), Russia, Sweden, Switzerland, Turkey, Ukraine, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 49

Chart 50. If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. obtain an interim suspension of the tax debt)?

56 responses



Yes: Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep.), Finland, Germany, Greece, India, Italy, Luxembourg, Mauritius, Netherlands, Norway, Poland (1), Poland (2), Portugal, Serbia, Slovenia (2), South Africa, Spain, United Kingdom

No: Argentina, Cyprus, Slovenia (1)

Not applicable: Australia, Belgium, Brazil (1), Brazil (2), Chile, Chinese Taipei, Colombia, Czech Republic, Denmark, Guatemala, Honduras, Japan, Kazakhstan, Kenya, Lithuania, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Peru (3), Russia, Sweden, Switzerland, Turkey, Ukraine, United States, Uruguay, Venezuela

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 50

2021 Relevant Communicated Cases – European Court of Human Rights

Case	<i>Ekklesia tis Ellados v. Greece, No. 44547/15</i> ³⁹²
Date	23 June 2021
ECHR Articles	Article 6(1)
Facts	<p>A domestic law provision provides that a law suit before the civil courts concerning rights on real property is inadmissible if the taxpayer filing the law suit does not submit before the civil court the tax declaration in which the real property that is the subject of the law suit is declared (and based on which real estate tax is due every year).</p> <p>The taxpayer has not included the real property that is the subject of the law suit in such a tax return, as this would require it to pay an annual real property tax of EUR 95,700; accordingly, the law suit was dismissed as inadmissible. The taxpayer complained that this requirement is in breach of his right of access to a court.</p>

Case	<i>OOO Ganesh v. Russia, No. 12372/20</i> ³⁹³
Date	4 October 2021
ECHR Articles	Article 6(1)
Facts	<p>The application concerns the right of access to a court. The applicant company has brought a legal action against an individual. In view of its difficult financial situation, she requested a period of payment of a judicial tax that she had to pay, in accordance with the tax code. The court rejected this application on the grounds that the requesting company had real estate that it was leasing. The complainant objected, explaining that she did not derive any income from it. The decision was upheld by the courts of three levels of jurisdiction. The requesting company considers that the refusal to enlist its application has infringed its right to access a court guaranteed by article 6 of the European Convention on Human Rights (ECHR).</p>

The only reported development in this regard happened in **Portugal**, where a new provision (Law 7/2021, of 26 February) entails that guarantees provided to suspend tax enforcement procedures may expire, upon request, if the judicial appeal is not decided within 4 years.³⁹⁴

6.6. Costs of proceedings

Best practice: The state should bear some or all of the costs of an appeal, whatever the outcome.

³⁹² See GR: ECtHR, No. 44547/15, *Ekklesia tis Ellados v. Greece*, available at <https://hudoc.echr.coe.int/eng/?i=001-211276> (accessed 24 Feb. 2022).

³⁹³ See RU: ECtHR, No. 12372/20, *OOO Ganesh v. Russia*, available at <https://hudoc.echr.coe.int/eng/?i=001-212936> (accessed 24 Feb. 2022).

³⁹⁴ See PT: Lei No. 7/2021, *Reforça as garantias dos contribuintes e a simplificação processual, alterando a Lei Geral Tributária, o Código de Procedimento e de Processo Tributário, o Regime Geral das Infrações Tributárias e outros atos legislativos* (26 Feb. 2021), available at <https://data.dre.pt/eli/lei/7/2021/02/26/p/dre/pt/html> (accessed 24 Feb. 2022). See also PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 53.

Shifted towards/matched the best practice:

Australia

Best practice:

Legal assistance should be provided to those taxpayers who cannot afford it.

Shifted away from the best practice:

None

Shifted towards/matched the best practice:

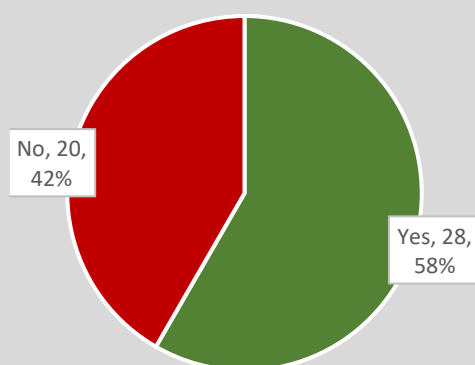
Australia, Chile, Lithuania

Shifted away from the best practice:

None

Chart 51. Does the loser have to pay the costs in a tax appeal?

56 responses



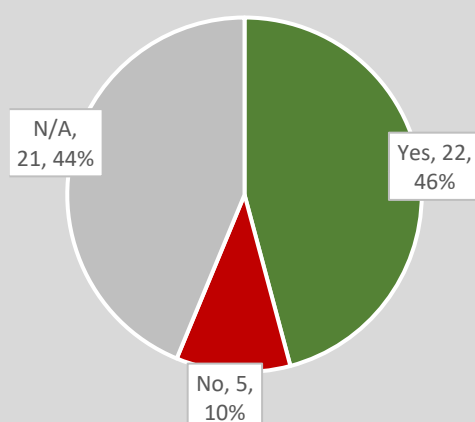
Yes: Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Cyprus, Czech Republic, Germany, Greece, Guatemala, Italy, Lithuania, Luxembourg, Mauritius, Norway, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Spain, Switzerland, Turkey, Ukraine, United Kingdom, Venezuela

No: Austria, Bolivia, China (People's Rep.), Colombia, Denmark, Finland, Honduras, India, Japan, Kazakhstan, Kenya, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), South Africa, Sweden, United States, Uruguay

Source: OPTR: Questionnaire 1, Question 51

Chart 52. If yes, are there situations recognized where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?

56 responses



Yes: Argentina, Australia, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Cyprus, Germany, Greece, Guatemala, Italy, Lithuania, Luxembourg, Mauritius, Norway, Portugal, Russia, Serbia, Slovenia (2), Spain, Ukraine, United Kingdom

No: Bosnia and Herzegovina, Chinese Taipei, Czech Republic, Slovenia (1), Turkey, Venezuela

Not applicable: Austria, Bolivia, China (People's Rep.), Colombia, Denmark, Finland, Honduras, India, Japan, Kazakhstan, Kenya, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), South Africa, Sweden, Switzerland, United States, Uruguay

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 52

Positive developments in this area have been reported in **Australia**, where the ATO will pay the reasonable costs for the taxpayer to engage external legal representation in disputes within the Small Business Tax Division of the Administrative Appeals Tribunal, if the taxpayer is self-represented and the ATO engages external legal representation.³⁹⁵

Also, a best practice in this area is reported from **Australia**, where disputes about the ATO decisions or the manner in which it has dealt with the taxpayer's claims in relation to litigation funding may be raised with the Inspector-General of Taxation and Taxation Ombudsman (IGTO). From July to October each year, the ATO Tax Help Program assists eligible taxpayers in lodging or amending returns. This free program was extended until the end of November 2021 to further assist those impacted by the COVID-19 pandemic. Assistance through this program was available in person, over the phone or online. In addition, in 2019, a pilot of tax clinics (operated in conjunction with several Australian universities) was undertaken. The clinics provide tax advice and representation for vulnerable taxpayers and those who cannot afford to obtain those services. The success of the pilot led the government to extend funding of the program for an additional 4 years. The ATO has been tasked with providing the funding for the universities through an open competitive grant process. Under the program, students studying tax-related courses provide free tax advice and support under the supervision of qualified clinic managers. Sessions are offered via phone or web conferencing, as well as in person at some locations. The ATO does not have any input into how each university runs its tax clinic.³⁹⁶

In **Chile**, the general amendments to the tax code have included the creation of the tax ombudsperson office, the *Defensoría del Contribuyente*, to assist taxpayers and provide legal assistance.³⁹⁷ In **Lithuania**, a legal services information system (TEISIS) has provided residents with interactive consultations and electronic services of state-guaranteed legal aid.³⁹⁸

6.7. Public hearings

Minimum standard: Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

None

³⁹⁵ See AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 54.

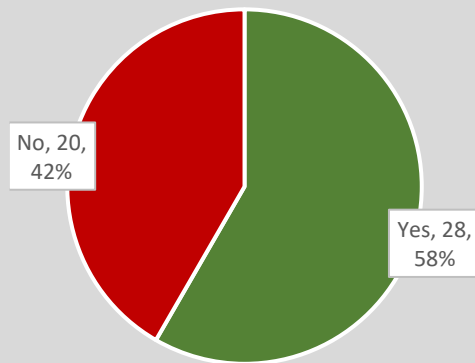
³⁹⁶ See AU: ATO Tax Help Program, available at <https://www.ato.gov.au/Individuals/Your-tax-return/Help-and-support-to-lodge-your-tax-return/Tax-Help-program/> (accessed 24 Feb. 2022); and ATO, *National Tax Clinic open competitive grant program* (8 Jan. 2021), available at <https://www.ato.gov.au/General/Gen/Consultation-paper---National-Tax-Clinic-open-competitive-grant-program/> (accessed 24 Feb. 2022). See also AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 55.

³⁹⁷ See CL: MoF Press Release, *Defensoría del Contribuyente comienza sus funciones con designación del Defensor Nacional* (12 Nov. 2021), available at <https://www.hacienda.cl/noticias-y-eventos/noticias/defensoria-del-contribuyente-dedecon-comienza-sus-funciones-con-designacion-del> (accessed 24 Feb. 2022). See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 54; and sec. 12.3.

³⁹⁸ See the TEISIS website, available at <https://teisis.lt/external/home/main> (accessed 24 Feb. 2022). See also LT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 54.

Chart 53. If there is usually a public hearing, can the taxpayer request a hearing on camera (i.e. not in public) to preserve secrecy/confidentiality?

56 responses



Yes: Australia, Austria, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep.), Chinese Taipei, Colombia, Cyprus, Denmark, Germany, Honduras, Italy, Kazakhstan, Kenya, Lithuania, Mauritius, Norway, Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Sweden, Ukraine, United Kingdom, United States, Uruguay

No: Argentina, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, Czech Republic, Finland, Greece, Guatemala, India, Japan, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Slovenia (1), Spain, Switzerland, Turkey, Venezuela

Reports with diverging opinions: Peru, Slovenia

Source: OPTR: Questionnaire 1, Question 53

By investigating facts and circumstances relevant for tax purposes, the administration will inevitably discuss matters of considerable sensitiveness to the taxpayers. This is, in itself, an invasion of their affairs and – if not handled properly – this activity may even affect the taxpayers’ right to privacy and their freedom of establishment by revealing delicate information or industrial secrets (as addressed in section 3 of this yearbook).

No developments were reported regarding this best practice in 2021, probably as the digitalization of judicial proceedings (as discussed in section 6.1. of this yearbook) forced all court sessions to be somewhat private.

6.8. Publication of judgments and privacy

Minimum standard: Tax judgments should be published.

Shifted towards/improved the minimum standard:

Chile

Shifted away from the minimum standard:

Uruguay

For transparency and certainty, awareness of how the tax rules are interpreted and applied in practice is pivotal. As part of this, the publication of tax judgements is an important measure to provide clarity for taxpayers and decrease disputes with the tax administration as a result.

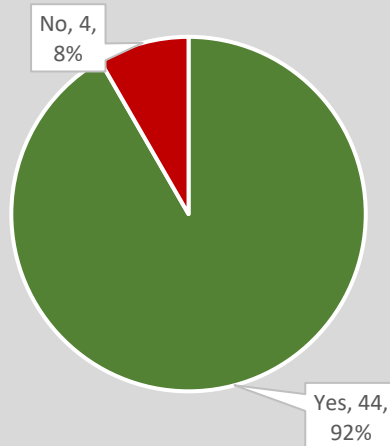
At the same time, taxpayers are entitled to privacy and, as stated above, the publication of rulings without proper caution of the sensitive information contained in them may have severe adverse effects for the taxpayers. Therefore, ensuring taxpayers’ privacy should equally be protected by a minimum standard.

Chile has continued its positive development towards this minimum standard from previous years, as discussed several times throughout this yearbook. The Servicio de Impuestos Internos Letter No. 12 expressly provides for the mandatory publicity of all judicial decisions

in tax matters, while it mandates the confidentiality of all acts during the proceedings. However, there is no reference to the anonymization of these decisions.³⁹⁹

Chart 54. Are judgments of tax tribunals published?

56 responses



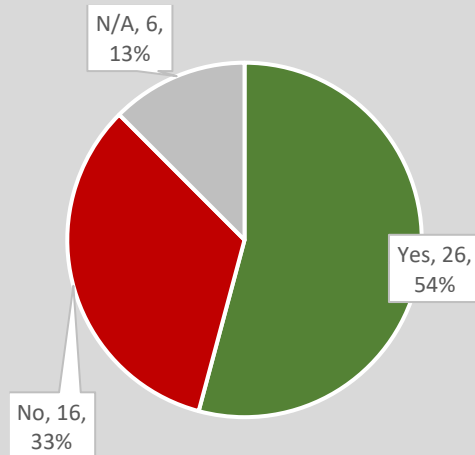
Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People’s Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Germany, Greece, Guatemala, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Finland, Honduras, Serbia, Turkey

Source: OPTR: Questionnaire 1, Question 54

Chart 55. If yes, can the taxpayer preserve its anonymity in the judgment?

56 responses



Yes: Australia, Austria, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chinese Taipei, Cyprus, Czech Republic, Denmark, Germany, Greece, Italy, Japan, Lithuania, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Slovenia (1), Slovenia (2), South Africa, Spain, Switzerland, Ukraine, United Kingdom

No: Argentina, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, China (People’s Rep.), Colombia, Guatemala, India, Kazakhstan, Russia, Sweden, United States, Uruguay, Venezuela

Not applicable: Finland, Honduras, Kenya, Luxembourg, Serbia, Turkey

Source: OPTR: Questionnaire 1, Question 55

In contrast, **Uruguay** regressed in this aspect. In 2021, Parliament examined – and rejected – a bill providing the possibility of allowing free access to the case law database of the High Administrative Court, including the compilation of its tax judgments.⁴⁰⁰

³⁹⁹ See secs. [1.4](#), [1.5](#), [1.6](#), [3.8](#), [4.1](#), [4.2](#), [4.3](#), [4.4](#), [4.5](#), and [5.3](#); and CL: Letter No. 12, *supra* n. 18, at sec. V. See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 57.

⁴⁰⁰ See UY: Parliament File No. 138863, Proyecto de Ley que establece normas relacionadas con la acción de nulidad ante el Tribunal de lo Contencioso Administrativo, available at

7. Criminal and Administrative Sanctions

7.1. The general framework

Minimum standard: Proportionality and *non bis in idem* should apply to tax penalties.

Shifted towards/improved the minimum standard:

Brazil, Chinese Taipei, Peru, Portugal

Shifted away from the minimum standard:

None

Best practice:

Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.

Shifted towards/matched the best practice:

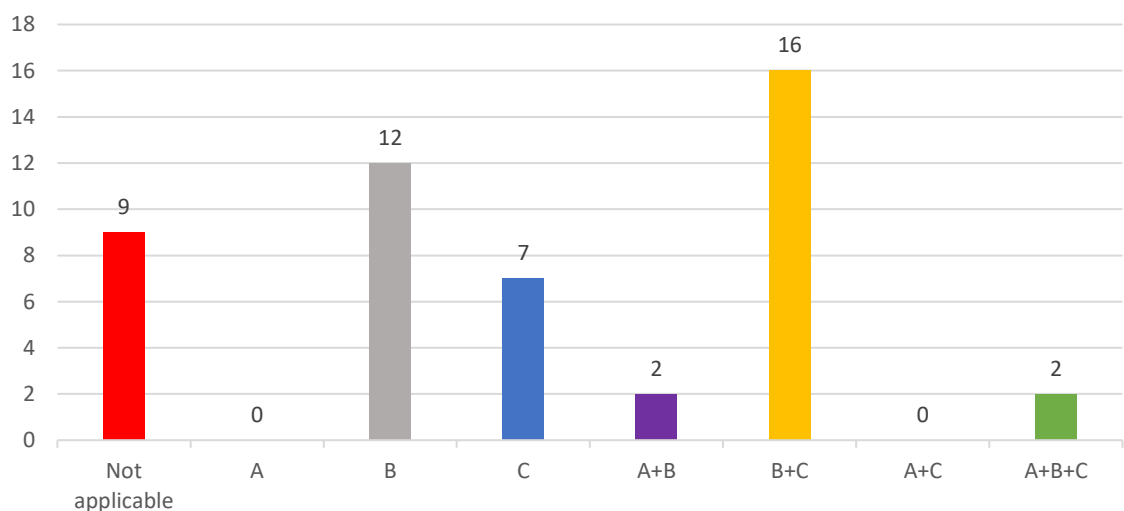
Chinese Taipei

Shifted away from the best practice:

Turkey

Chart 56. Does the principle *non bis in idem* apply in your country to prevent either (a) the imposition of a tax penalty and tax liability; (b) the imposition of more than one penalty for the same conduct; or (c) the imposition of a tax penalty and criminal liability?

56 responses



Source: OPTR: Questionnaire 1, Question 56

The principle does not apply (Not applicable):

Argentina, Denmark, Germany, India, Mauritius, South Africa, Turkey, United States, Uruguay

The imposition of more than one tax penalty for the same conduct (B):

Austria, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Cyprus, Czech Republic, Japan, Mexico (1), Mexico (2), Peru (1), Peru (2), Peru (3),

The imposition of a tax penalty and the tax liability; The imposition of more than one tax penalty for the same conduct (A + B):

Lithuania, Ukraine

The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (B + C):

China (People's Rep.), Chinese Taipei, Greece,

<https://parlamento.gub.uy/documentosyleyes/ficha-asunto/138863> (accessed 24 Feb. 2022). See also UY: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 57.

Portugal, Switzerland, Venezuela

The imposition of a tax penalty and criminal liability (C):

Australia, Belgium, Bosnia and Herzegovina, Colombia, Finland, New Zealand, Slovenia (1), Sweden

Guatemala, Honduras, Italy, Kazakhstan, Luxembourg, Netherlands, Norway, Poland (1), Poland (2), Russia, Serbia, Slovenia (2), Spain, United Kingdom

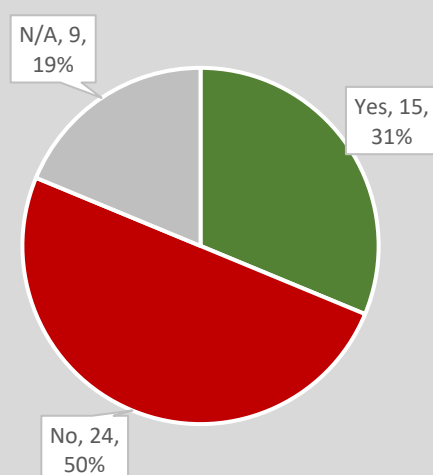
The imposition of a tax penalty and tax liability; The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (A+B+C):

Bolivia, Kenya

Reports with diverging opinions: Slovenia

Chart 57. If *non bis in idem* is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?

56 responses



Yes: Bolivia, Bosnia and Herzegovina, Cyprus, Finland, Guatemala, Honduras, Lithuania, Netherlands, New Zealand, Norway, Peru (2), Peru (3), Serbia, Spain, Sweden, United Kingdom

No: Australia, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Czech Republic, Greece, India, Italy, Japan, Kazakhstan, Kenya, Luxembourg, Mexico (1), Mexico (2), Peru (1), Poland (1), Poland (2), Portugal, Russia, Slovenia (1), Slovenia (2), Switzerland, Ukraine, Venezuela

Not applicable: Argentina, China (People’s Rep.), Denmark, Germany, Mauritius, South Africa, Turkey, United States, Uruguay

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 57

2021 Relevant Case Law – European Court of Human Rights

Case	<i>Milošević v. Croatia</i> , no. 12022/16 ⁴⁰¹	
Date	31 August 2021	
ECHR Articles	Article 4 of Protocol no. 7	
Facts	Decision	Comments
The case concerns the applicant’s punishment in minor offence proceedings for using prohibited heating oil as fuel in his truck and the subsequent imposition of	Violation of article 4 of Protocol No. 7 to the ECHR	The Court concluded that the present case did not address different aspects of the wrongdoing in a manner forming a coherent whole, so that the

⁴⁰¹ See HR: ECtHR, No. 12022/16, *Milošević v. Croatia*, available at <https://hudoc.echr.coe.int/eng/?i=001-211596> (accessed 16 Feb. 2022).

Case	<i>Milošević v. Croatia</i> , no. 12022/16 ⁴⁰¹	
Date	31 August 2021	
ECHR Articles	Article 4 of Protocol no. 7	
Facts	Decision	Comments
excise duties for the use of that oil increased one hundred times.		individual concerned is not thereby subjected to injustice. In addition, the court observed that the fine imposed on the applicant in the minor offence proceedings was not taken into account in subsequent administrative (tax) proceedings. Notwithstanding their foreseeability, the two sets of proceedings had not been sufficiently linked.

- See *Halet v. Luxembourg*, Application no. 21884/18, at sec. [9.1](#).⁴⁰²

2021 Relevant Requests for Preliminary Rulings – Court of Justice of the European Union

Case	C-97/21, MV-98 ⁴⁰³	
Date	16 February 2021	
EU Charter Articles	47, 49(3), 50, 52(1)	
Facts	Questions	
Under Bulgarian law, for an act of not having registered the sale of goods and not having recorded it by issuing a document evidencing the sale, administrative proceedings for the ordering of a coercive administrative measure and administrative penalty proceedings for the imposition of an assets penalty may be brought against the same person in a cumulative manner. Legislation does not impose on the authorities competent for conducting the two sets of proceedings and on the courts the obligation to ensure the effective application of the principle of proportionality with regard to the overall severity of all the cumulated measures in relation to the seriousness of the specific offence at the same time.	The issue here is whether the imposition on a taxable person who failed to issue invoices the sealing of business premises, together with administrative penalty, is proportionate. Although not included in the questions referred by the national court, the issue could also be examined under article 16 of the Charter protecting the freedom to conduct a business, considering article 52(1) on the proportionality and legality of any limitations imposed.	

⁴⁰² See LU: ECJ, 25 Nov. 2021, Case C-437/19, *État du Grand-duché de Luxembourg v. L*, Case Law IBFD.

⁴⁰³ See BG: ECJ, 16 Feb. 2021, Case C-97/21, *MV – 98 v. Nachalnik na otdel 'Operativni deynosti' – grad Sofia v. glavna direktsia 'Fiskalen kontrol' pri Tsentralno upravlenie na Natsionalna agentsia za prihodite*, Case Law IBFD.

Case	C-412/21, Dual Prod SRL⁴⁰⁴	
Date	6 July 2021	
EU Charter Articles	48(1), 50	
Facts	Questions	
<p>In the course of the joint investigation carried out by police and customs authorities, it was found that the applicant had installed a hose through which alcohol was carried into a container located near the fence surrounding the production tax warehouse.</p> <p>Following the inspection, two simultaneous sets of proceedings were initiated against the company Dual Prod SRL, both of which exclusively concerned the facts, without any formal charge being made against the possible perpetrators.</p> <p>On 5 September 2018, the customs authorities officially suspended the applicant's authorization as a tax warehouse-keeper for a period of 12 months, taking the view that the existence of evidence of criminal offences was sufficient for that administrative penalty to be imposed. Following the applicant's appeal against that measure, the Court of Appeal, Oradea, reduced the penalty from 12 to 8 months, finding the maximum penalty to be disproportionate. The applicant fully complied with the 8-month suspension.</p> <p>On 21 October 2020, the applicant was formally charged in the criminal proceedings and consequently, on 19 November 2020, the customs authorities imposed the same administrative penalty again, in respect of the same facts, suspending the applicant's authorization as a tax warehouse-keeper for an indefinite period pending the final outcome of the criminal proceedings.</p>	<p>Questions referred:</p> <p>1. Is article 48(1) of the Charter of Fundamental Rights of the European Union, which concerns the principle of the presumption of innocence, read in conjunction with article 16(1) of Directive 2008/118/EC, to be interpreted as precluding a legal situation, such as that at issue in the present case, in which an administrative measure suspending an authorization to operate as a producer of alcohol may be adopted on the basis of mere presumptions that are the subject of an ongoing criminal investigation, without any final conviction in criminal proceedings having been handed down?</p>	

2021 Relevant AG Opinions – Court of Justice of the European Union

Case	C-570/20, BV⁴⁰⁵	
Date	9 December 2021	
EU Charter Articles	50, 52	
Facts	AG Opinion	Comments
BV, a sole trader, practised as an accountant. The tax authorities	Article 50 of the Charter of Fundamental Rights of the	Duplication of administrative and criminal penalties that are

⁴⁰⁴ See RO: ECJ, 6 July 2021, Case C-412/21, *Dual Prod SRL v. Direcția Generală Regională a Finanțelor Publice Cluj-Napoca – Comisia regională pentru autorizarea operatorilor de produse supuse accizelor armonizate*, Case Law IBFD.

⁴⁰⁵ See FR: Opinion of Advocate General Campos Sánchez-Bordona, 9 Dec. 2021, Case C-570/20, *BV v. Direction départementale des finances publiques de la Haute-Savoie*, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=250889&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3591967> (accessed 16 Feb. 2022).

Case	C-570/20, BV ⁴⁰⁵	
Date	9 December 2021	
EU Charter Articles	50, 52	
Facts	AG Opinion	Comments
discovered that BV had declared less professional income than he had actually received, resulting in tax evasion in the amounts of EUR 82,507 in respect of VAT and EUR 108,833 in respect of taxable profits. The taxpayer was subject to an administrative penalty. Subsequently, the tax authorities forwarded to the public prosecutor's office a complaint alleging accounting irregularities and evasion of income tax and VAT, acts which involved the concealment of income received. The taxpayer complained that there was a breach of the <i>non bis in idem</i> principle.	European Union is to be interpreted as meaning the following: It does not preclude national legislation which permits the duplication of administrative and criminal proceedings and penalties in situations defined on the basis of clear and precise criteria that are laid down by law and properly defined by case law. It precludes national legislation which does not make it possible to ensure the required proportionality between the seriousness of the offence, on the one hand, and the severity of all the combined penalties, on the other, whether they be financial administrative penalties of a substantively criminal nature or prison sentences.	imposed on the same person, in relation to the same acts, in order to punish (simultaneously or consecutively) tax offences related to, inter alia, VAT

2021 Relevant Precautionary Measures Decisions – Inter-American Commission of Human Rights

Case	<i>Mariano Valle Peters v. Nicaragua</i> ⁴⁰⁶	
Date	8 January 2021	
ACHR Articles	Article 13	
Facts	Decision	Comments
On 9 October 2020, the Inter-American Commission on Human Rights received a request for precautionary measures urging it to require that the state of Nicaragua adopt protective measures to guarantee the rights of Mr Mariano Valle Peters. According to such a request, Mr Valle Peters is the owner of a corporation, parent company of Channel 12, a television station that	The Inter-American Commission on Human Rights decided to ask the state of Nicaragua to guarantee that Mr Valle Peters could continue exercising his right to freedom of expression. Particularly, the state was requested to refrain from carrying out the decision to sell the seized assets. The Commission considered that, in accordance with the applicable <i>prima facie</i> standard, the existence of a	Freedom of expression has an individual and social dimension, which not only recognizes the right of each person to express his or her thoughts, ideas and information through any appropriate means of dissemination, but also that of society to be well informed. The proceeding referred above (aimed at the potential closure or forced sale of Channel 12 on

⁴⁰⁶ See Inter-American Commission of Human Rights, Resolución No. 3-2021 (8 Jan. 2021), *Mariano Valle Peters v. Nicaragua*, available at <https://www.oas.org/es/cidh/decisiones/pdf/2021/res%203-2021-%20mc-772-20%20es.pdf> (accessed 16 Feb. 2022).

<p>opposes the Nicaraguan government. He also is responsible for the general editorial line of Channel 12.</p> <p>The applicant indicated that on 30 September 2020, in order to collect alleged taxes owed by the corporation, a Nicaraguan court upheld a government action to freeze and confiscate the Channel 12 bank account, as well as to seize and sell its television antenna, other assets and Mr Valle Peters' home and personal vehicles.</p> <p>As part of his defence, Mr Valle Peters alleged that his taxes were duly paid and that the government's calculations were clearly wrong. Furthermore, it was alleged that the amounts claimed by the government were much lower than the value of the properties seized and ordered to be sold.</p> <p>The request for precautionary measures filed with the Inter-American Commission on Human Rights stated that it could be a matter of days before the properties of the television station and its owner were to be sold, which would violate Mr Valle Peters' freedom of expression, exercised through the media.</p> <p>The applicant sought to have the precautionary measures granted, considering that the tax assessment and court orders constituted indirect violations of freedom of expression. The above, since the assessments and tax orders against Channel 12 would have been performed in violation of due process, would not pursue a legitimate purpose and would be disproportionate.</p>	<p>situation of serious and urgent irreparable damage was sufficiently established in the case submitted by Mr Valle Peters.</p> <p>Indeed, the Commission emphasized that Mr Mariano Valle Peters was facing serious difficulties in exercising his right to freedom of expression, because of his role within the television medium and within the current context of Nicaragua.</p> <p>In the opinion of the Commission, such a situation would likely have an effect not only on his peers (journalists and social communicators) but also on any other person with an interest in reporting on issues of public relevance in a country facing a critical situation.</p> <p>The Commission highlighted the relevance of the context when evaluating requests for precautionary measures. In this regard, the Commission stressed that the facts alleged by Mariano Valle Peters were framed in a context of repression of independent journalistic activity in Nicaragua. The Inter-American Commission on Human Rights once again called attention to the continuity of the repression in Nicaragua and the closure of democratic spaces that characterizes the human rights crisis that persists in such a country.</p>	<p>the ground of alleged tax debts) seems to have been used to sanction expressions on matters of public interest, in violation of article 13 of the Inter-American Convention on Human Rights.</p> <p>Such proceeding would not have been justified by an imperative social interest and, thus would be unnecessary and disproportionate, in contradiction with the minimum standard that requires proportionality from tax penalties.</p> <p>To make things worse, the above tax proceeding not only may directly limit the exercise of Mr Valle Peters' right to freedom of expression but also may generate an indirect restriction through its chilling or inhibiting effects on the free flow of ideas in Nicaraguan society as a whole.</p>
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The drift towards the expansion of punitive tax law continued apace in 2021. There was a notable trend towards a significant increase in tax penalties in the period, sometimes in excess of proportionality. At the same time, the concurrence of criminal and administrative sanctions in respect of substantially identical facts has been strengthened through rules and jurisprudential interpretations that ratify the ontological difference between one and the other type of sanctions, where the only remedy to the *non bis in idem* seems to be the proportionality of the concurrently applicable sanctions.⁴⁰⁷

⁴⁰⁷ See C.E. Weffe, [Taxpayers' Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting](#)

A very good example is the new Tax Collection Act of **Chinese Taipei**, which goes in both directions. On the one hand, the applicable fine for tax evasion by fraud or any other unrighteous means has been significantly increased from TWD 60,000 (approximately EUR 1,902) to TWD 10 million (approximately EUR 317,000). Moreover, if a business enterprise has a tax shortfall exceeding TWD 50 million (approximately EUR 1.585 million), the criminal charge increases and becomes imprisonment ranging from 1 year to 7 years, plus a fine ranging from TWD 10 million to TWD 100 million (approximately EUR 3.17 million). Also, the criminal charge for instigating or aiding tax evasion by deceit or improper methods is imprisonment of up to 3 years with a penalty increase from a maximum of TWD 60,000 to a maximum of TWD 1 million (approximately EUR 31,700). Contrary to the previous legislation, the amendment no longer allows companies to avoid imprisonment by paying the fine. On the other hand, the new Tax Collection Act of **Chinese Taipei** is reported to have strengthened the applicability of *non bis in idem* between tax penalties and tax fines.⁴⁰⁸

Iceland enacted legislation granting the tax authorities the power to issue a penalty for failure by taxpayers to document, in whole or in part, transfer pricing transactions with related parties of up to ISK 3 million (approximately EUR 21,100) for each financial year for which they failed to comply with transfer pricing documentation requirements. Such penalty can be reduced to ISK 1.5 million (approximately EUR 10,550) if insufficient documentation was provided but taxpayers made the improvements required by the revenue and customs authorities within 45 days. Penalties may apply for a maximum of 6 financial years and not exceed ISK 6 million (approximately EUR 42,250).⁴⁰⁹

In **Malta**, Act VIII of 2021 clarifies that, in certain circumstances, taxpayers found guilty of tax evasion will receive a fine, further clarifying that such penalties will be regarded as criminal in nature.⁴¹⁰

The **United Arab Emirates** increased the penalties applicable to VAT and excise taxes.⁴¹¹

[Project](#), 74 Bull. Intl. Taxn. 2 (2020), Journal Articles & Opinion Pieces IBFD. See also A. Del Sole, *Liquidity crisis, criminal sanctions and non-payment of VAT according to the Court of Justice of the European Union*, 177 Crónica Tributaria 4, pp. 39-68 (2020), available at <https://www.ief.es/vdocs/publicaciones/1/177/2.pdf> (accessed 10 Feb. 2022).

⁴⁰⁸ See TW: Tax Collection Act (30 Nov. 2021), available at https://law.gov.tw/law-ch/home.jsp?id=12&contentid=12&parentpath=0%2C2&mcustomize=law_list.jsp&istype=L&classtablename=LawClass&lawclass=22&lawname=201803090434&article1=&article2=&keyword= (accessed 21 Mar. 2022); and TW: MoF Press Release, [The Legislative Yuan passed the Draft Amendment to some provisions of the Tax Audit Law today](#) (30 Nov. 2021), available at <https://www.mof.gov.tw/singlehtml/384fb3077bb349ea973e7fc6f13b6974?cntId=fb718960d9f44eb2804c6dc320bc846f> (accessed 21 Mar. 2022). See also Y. Lin, [Legislative Yuan Passes Amendments to Tax Collection Act](#) (5 Jan. 2022), News IBFD; W. Hoke, [Taiwan's Legislature Increases Tax Evasion Penalties](#) (30 Nov. 2021), News IBFD; and TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 58.

⁴⁰⁹ See IS: Income Tax Act no. 90/2003 as amended, available at <https://www.althingi.is/alttext/pdf/151/s/1562.pdf> (accessed 11 Feb. 2022). See also V. Sigurvaldadóttir, [Iceland Introduces Penalties of up to ISK 3 Million for Non-Compliance With Transfer Pricing Documentation Requirements](#) (29 June 2021), News IBFD.

⁴¹⁰ See MT: Act No. VIII of 2021, to amend the Income Tax Act, Cap. 123, the Duty on Documents and Transfers Act, Cap. 364, the Income Tax Management Act, Cap. 372, and the Value Added Tax Act, Cap. 406, available at <https://legislation.mt/eli/act/2021/8/eng> (accessed 10 Feb. 2022). See also T. Borg Olivier, [Malta Amends Tax Penalty Regime](#) (17 Mar. 2021), News IBFD.

⁴¹¹ See AE: Cabinet Resolution No. (49) of 2021 Amending Some Provisions of Cabinet Resolution No. (40) of 2017 On Administrative Penalties Imposed for Violating the State's Tax Law (28 Apr. 2021), available at <https://www.saifaudit.com/blog/wp-content/uploads/2021/05/2021-Tax-Penalties-Law.pdf> (accessed 10 Feb. 2022).

Turkey enacted new legislation criminalizing four offences relating to the integrity of documentation and/or the systems for storing and processing information relevant to tax purposes. Pursuant to the new law, these conducts are punishable by imprisonment between 3 years and 5 years. It is worrisome that the new law allows for the imposition of the incarceration penalties just mentioned in cases where the tax audit in which the material element of these new offences would have been established is still ongoing.⁴¹²

Uganda enacted new legislation increasing the pecuniary and imprisonment penalties for various tax offences by up to five times.⁴¹³

With regard to surcharges, a concept that walks between penalties as such and civil compensation,⁴¹⁴ foreign businesses selling cross-border electronic services to individuals in **Chinese Taipei** that failed to timely e-file required income tax returns for 2020 by 30 June 2021 were subject to delinquent reporting surcharges of 10% of the assessed tax, with a maximum of TWD 30,000 (approximately USD 1,074), according to an announcement from the tax authorities.⁴¹⁵

An interesting case that merits follow-up, the Administrative Court in Blagoevgrad, **Bulgaria** (*Administrativen sad Blagoevgrad*) asked the ECJ for a preliminary ruling on whether the sealing of business premises together with an administrative penalty is proportionate for failing to issue an invoice.⁴¹⁶ In parallel, AG Rantos delivered his opinion in the *Viva Telecom Bulgaria* EOOD case and concluded that the right to an effective remedy (as provided for in article 47 of the EU Charter of Fundamental Rights) does not apply to a prosecution in **Bulgaria** for obtaining or granting credit at an interest rate that deviates from the market rate at the time of the conclusion of the transaction, including interest-free loans, as long as these

2022). See also M.F. Charfeddine, [United Arab Emirates Amends VAT and Excise Tax Administrative Penalties](#) (20 May 2021), News IBFD.

⁴¹² See TK: Omnibus Bill No. 7318, amending the Tax Procedural Law, OG 30 Apr. 2021, available at <https://www.resmigazete.gov.tr/eskiler/2021/04/20210430-10.pdf> (accessed 10 Feb. 2022); S. Özgenç, [Turkey Enacts New Tax Evasion Crime Scheme](#) (3 May 2021), News IBFD; and S. Özgenç, [Turkey Proposes New Tax Evasion Crime Scheme](#) (28 Apr. 2021), News IBFD. See also TK: OPTR Report (Academia), Questionnaire 2, Question 59.

⁴¹³ See UG: Tax Procedures Code (Amendment) Bill 2021, available at <https://tjau.org/download/the-tax-procedure-code-amendment-bill-2021/> (accessed 10 Feb. 2022). See also R.B. Mbabazi, [Uganda Revises Tax Offenses and Penalties](#) (21 June 2021), News IBFD.

⁴¹⁴ See R. Seer & A.L. Wilms (eds.), [Surcharges and Penalties in Tax Law](#) (IBFD 2016), Books IBFD.

⁴¹⁵ See TW: MoF Announcement, *Foreign profit-seeking enterprises selling cross-border electronic services fail to file Income Tax returns of the taxable year 2020 and make tax payments before the deadline will result in delinquent reporting surcharges* (20 May 2021), available at <https://www.mof.gov.tw/Eng/singlehtml/f48d641f159a4866b1d31c0916fbcc71?cntId=83289af9aac948da99cb5f83ec25989d> (accessed 10 Feb. 2022). See also Tax Analysts, [Taiwan Clarifies Income Tax Returns for Foreign Businesses](#) (20 May 2021), News Tax Analysts.

⁴¹⁶ See BG: ECJ, 16 Feb. 2021, Case C-97/21, *MV – 98 v. Nachalnik na otdel ‘Operativni deynosti’ – grad Sofia v. glavna direktsia ‘Fiskalen kontrol’ pri Tsentralno upravlenie na Natsionalna agentsia za prihodite*, Case Law IBFD. See also Z. Szatmari, [CJEU Preliminary Ruling Request \(VAT\): MV - 98 \(Case C-97/21\) – Administrative sad Blagoevgrad Submits Referral on Whether Sealing of Business Premises Together With Administrative Penalty Is Proportionate for Failing to Issue Invoice](#) (3 May 2021), News IBFD.

provisions do not represent the transposition of an EU Directive or the application or enforcement of any other provision of EU law.⁴¹⁷

In an interesting case, given the contingent nature of tax penalties as a matter of principle, the tax authorities of **Russia** clarified their intention to impose penalties for late filing of tax returns, even though the tax assessed in this way has been paid in a timely manner.⁴¹⁸

There have been several developments regarding proportionality of penalties and surcharges in the **United States**.

The IRS issued two memoranda concluding that penalties for promoting abusive tax shelters should be equal to 50% of the gross income derived from promoting abusive tax shelters if the promoter makes, or causes another person to make, false or fraudulent statements with respect to any deduction, credit, income exclusion or any other tax benefit.⁴¹⁹

Minnesota waived specific penalties for late filing (except in cases of extended delinquency penalties), although penalties and interest will generally accrue on any unpaid tax liabilities if they are paid more than 6 months after the original due date of the return.⁴²⁰

Maryland established the first state whistle-blower reward program in the country to crack down on tax frauds. The reward will range from 15% to 30% of the taxes, penalties and interest collected through the enforcement or related action.⁴²¹

The New York governor vetoed a bill proposal penalizing wealthy individuals and businesses (i.e. those with net income or sales exceeding USD 1 million) that deliberately fail to file their tax returns worth at least USD 350,000 in lost state or local revenue.⁴²²

⁴¹⁷ See BG: Opinion of Advocate General Rantos, 30 Sept. 2021, Case C-257/20, *Viva Telekom Bulgaria EOOD v. Direktor na Direktsia Obzhalvane i danachno-osiguritelna praktika – Sofia*, Case Law IBFD.

⁴¹⁸ See RU: Department of Tax Policy of the Ministry of Finance Letter N 03-02-11/31931, *On responsibility for failure to submit a tax return on personal income tax* (26 Apr. 2021), available at <https://base.garant.ru/400833421/#friends> (accessed 11 Feb. 2022). See also K. Trouch, *Ministry of Finance Clarifies Penalty For Failure To File Individual Income Tax Return* (10 June 2021), News IBFD.

⁴¹⁹ See US: Office of Chief Counsel IRS Memorandum No. 202125008, *Calculation of Penalties Under Section 6700, Promoting Abusive Tax Shelters* (12 Mar. 2021), available at <https://www.irs.gov/pub/irs-wd/202125008.pdf> (accessed 11 Feb. 2022); and US: Office of Chief Counsel IRS Memorandum No. 202125009, *False Statements and Penalty Computation Under Section 6700, Promoting Abusive Tax Shelters* (12 Mar. 2021), available at <https://www.irs.gov/pub/irs-wd/202125009.pdf> (accessed 11 Feb. 2022). See also W. Choi, *IRS Issues Memorandum on Calculation of Penalties for Promoting Abusive Tax Shelters* (28 June 2021), News IBFD; and W. Choi, *IRS Issues Memorandum on Penalties for Promoting Abusive Tax Shelters* (28 June 2021), News IBFD.

⁴²⁰ See US: MN Department of Revenue, *Tax Tip #16 for Tax Professionals - Understanding income tax penalties and interest rates* (21 Apr. 2021), available at <https://content.govdelivery.com/accounts/MNREV/bulletins/2ce6c8b> (accessed 10 Feb. 2022). See also M. Ahmadi, *Minnesota Issues 2021 Interest Rates and Tax Penalties* (29 Apr. 2021), News IBFD.

⁴²¹ See US: MD Whistleblower Reward Program and Statute of Limitations for Tax Collections Act (30 May 2021), available at https://mgaleg.maryland.gov/2021RS/Chapters_noln/CH_515_hb0804t.pdf (accessed 11 Feb. 2022). See also J. Robles Santos, *Maryland Extends Delinquent Tax Collection Period, Becomes First State to Launch Whistleblower Reward Program* (7 June 2021), News IBFD.

⁴²² See US: NY Senate Bill S4730 to amend the state finance law, in relation to the liability of a person who presents false claims for money or property to the state or a local government, available at <https://www.nysenate.gov/legislation/bills/2021/S4730> (accessed 11 Feb. 2022); and US: NY Governor Veto Message No. 83 (31 Dec. 2021), available at <https://research.ibfd.org/collections/ftn/pdf/dc6c914ad708b6ae243bcc0ecfb07e7f-2022->

Hawaii enacted new legislation that imposes penalties on employers for wilful failure to furnish wage and tax statements to employees by the due date, as well as late filings or non-filings of wage and tax statements with the state's Department of Taxation.⁴²³

California waived property tax delinquency penalties, costs and other related charges resulting from a documented COVID-19-related hardship. Taxpayers qualify for the waiver if the auditor or tax collector finds that the taxpayer failed to timely pay due to a documented hardship arising from a shelter-in-place order (i.e. an order issued by the governor or local health officer requiring all persons to remain in their place of residence, except for essential activities), and if the taxpayer pays the principal tax due no later than 30 June of the fiscal year when payment first became delinquent.⁴²⁴

However, some developments during the period served to counteract the expansionary trend discussed earlier in this section.

In **Brazil**, following its case law in the matter, the Federal Administrative Council of Tax Appeals (*Conselho Administrativo de Recursos Fiscais*) declared inadmissible the tax authorities' claim to punish concurrently the non-payment of monthly advance payments and the final corporate tax debt of the same taxpayer, as it violated the guarantee of substantive *non bis in idem*.⁴²⁵

For its part, the tax authorities of **Greece** clarified that no fines will be imposed in case of non-compliance with its online platform for electronic invoicing (myDATA) obligations, also comprising any irregularities related to any overdue or inaccurate submissions made for 2021.⁴²⁶

[110_STTDocs_NY_S4730-VetoMessage.pdf](#) (accessed 11 Feb. 2022). See also J. Robles Santos, [New York Governor Vetoes Loophole Fix in Whistleblower Law](#) (4 Jan. 2022), News IBFD; and C. Vargas, [New York Governor Vetoes Expanding FCA to Cover Failure to File](#) (4 Jan. 2022), News Tax Analysts.

⁴²³ See US: HI Act for Withholding Tax, available at https://www.capitol.hawaii.gov/session2021/bills/SB1196_CD1_PDF (accessed 11 Feb. 2022). See also J. Robles Santos, [Hawaii Moves Wage and Tax Statement Filing Deadline, Imposes Penalty for Late or Non-Filings](#) (6 July 2021), News IBFD.

⁴²⁴ See US: CA 2021 Senate Bill (SB) 219 Property taxation: delinquent penalties and costs: cancellation: public health orders, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB219 (accessed 11 Feb. 2022). See also J. Robles Santos, [California Cancels Property Tax Delinquency Penalties Due To Pandemic-Related Stay-at-Home Orders](#) (27 July 2021), News IBFD.

⁴²⁵ See BR: CARF-CSRF-CARF-MF-DF (Prim. Turma), Acórdão No. 9101-005.080, VCB Transportes Ltda. (5 Apr. 2021), available at <http://carf.fazenda.gov.br/sincon/public/pages/ConsultarJurisprudencia/listaJurisprudenciaCarf.jsf#> (accessed 9 Feb. 2022). See also BR: OPTR Report (Academia), Questionnaire 2, Question 58.

⁴²⁶ See GR: Determination of the scope of application, the time and the scope of the electronic transmission of data to the Independent Public Revenue Authority, as well as any other matter necessary for the implementation of the provisions of Article 15A of Law 4174/2013 (Tax Code), (V'2470), as in force (18 Mar. 2021), available at https://www.aade.gr/sites/default/files/2021-04/a_1054_2021ada.pdf (accessed 11 Feb. 2022); and GR: AADE e-books - Operational Issues, available at https://www.aade.gr/sites/default/files/2021-04/FAQs_myDATA_epixeirisiaka2.pdf (accessed 11 Feb. 2022). See also V. Dafnomilis, [No Fines Due In Case Of Inaccurate Submissions to Online Platform for Electronic Invoicing, Greece Says](#) (29 June 2021), News IBFD.

Portugal incorporated a rule into its legislation according to which potential tax penalties are automatically waived if, in the preceding 5 years, the taxpayer has neither been convicted of any tax infraction nor availed of a reduction or waiver of tax penalties.⁴²⁷

Likewise, the Gradual Regime that allows the reduction of administrative penalties by defined percentages based on voluntary regularization opportunities in **Peru** has been extended, due to the situation generated by the COVID-19 pandemic.⁴²⁸

In the **Netherlands**, a decree ensures that individual income tax returns filed after 1 May 2021, but before 8 May 2021, will not attract penalty interest if the final assessment is identical to the filed return, as a consequence of a technical error on the platform that prevented tax returns to be filed. In order to prevent compliant taxpayers from being unintentionally penalized due to the extension, the decree ensures that no tax interest is due where (i) the tax return is submitted after 1 May but before 8 May 2021; and (ii) the final assessment is identical to the filed return.⁴²⁹

As a natural consequence of the expansion discussed earlier in this section, there appears to be an increase in criminal prosecutions and penalties imposed for tax fraud and related offences (e.g. money laundering) in 2021, along with the creation of new organizational structures for the investigation of tax offences.

The ECtHR upheld the compatibility of the criminal conviction imposed by **Luxembourg** on LuxLeaks whistle-blower Raphaël Halet with the ECHR. The Court found that the conviction to a criminal fine of EUR 1,000 and a symbolic compensation of EUR 1 to PwC for non-pecuniary damage does not infringe the applicant's freedom of expression, as it considered that the disclosure of documents that were subject to professional secrecy⁴³⁰ had caused harm to his employer since it resulted in damage to the firm's reputation and the loss of client confidence that outweighed the general interest. Regarding proportionality, the court pointed out that the domestic courts had taken the disinterested nature of the applicant's actions into consideration as a mitigating factor. Therefore, it had imposed a modest penalty that would not have a big effect on the exercise of the applicant's freedom or that of other employees.⁴³¹

⁴²⁷ See PT: Lei 7/2021 que reforça as garantias dos contribuintes e a simplificação processual, alterando a Lei Geral Tributária, o Código de Procedimento e de Processo Tributário, o Regime Geral das Infrações Tributárias e outros atos legislativos (26 Feb. 2021), available at <https://data.dre.pt/eli/lei/7/2021/02/26/p/dre/pt/html> (accessed 9 Feb. 2022). See also PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58.

⁴²⁸ See PE: Resolución de Superintendencia No. 000078-2021/SUNAT que modifica el Reglamento del Régimen de Gradualidad Aplicable a la Infacción tipificada en el numeral 1 del artículo 176 del Código Tributario (11 June 2021), available at <https://www.sunat.gob.pe/legislacion/superin/2021/078-2021.pdf> (accessed 9 Feb. 2022); and E. Rodríguez Alzaa, *Tax Administration Amends Regime on Gradual Application of Fines for Small- and Medium Enterprises* (23 June 2021), News IBFD. See also PE: OPTR Report (Tax Administration), Questionnaire 2, Question 58.

⁴²⁹ See NL: Decision of 4 May 2021, No 2021-9389, available at <https://zoek.officielebekendmakingen.nl/stcrt-2021-24144.html> (accessed 10 Feb. 2022). See also M. Schellenkens, *Ministry of Finance Publishes Decree on Penalty Interest for 2021 Tax Return* (12 May 2021), News IBFD.

⁴³⁰ See sec. 3.14.

⁴³¹ See LU: ECtHR, No. 21884/18, *Halet v. Luxembourg*, 11 May 2021, available at <https://hudoc.echr.coe.int/eng?i=001-210131> (accessed 10 Feb. 2022). See also R. Offermanns, *European Human Rights Court Confirms LuxLeaks Whistle-blower Conviction* (26 May 2021), News IBFD.

On the other hand, the ECJ ruled that in the determination of the taxable amount of a transaction concealed by taxable persons for VAT purposes, the amounts paid and received as reconstituted by the tax authority must be regarded as already including VAT, therefore influencing the amount of evaded taxes that may serve as basis for criminal penalties.⁴³²

In addition, in a landmark decision, the ECJ declared disproportionate the regulation of **Spain** that includes presumptively in the tax base of assets and rights situated abroad in respect of which their existence has not been declared (or has been declared late) without any practical possibility of invoking the statute of limitations and, above all, the application to those cases of a proportional fine of 150% of the tax calculated on that basis together with the flat-rate fines, the amount of which is, says the court, disproportionate to the penalties imposed for similar infringements in a purely domestic context and the total amount of which is unlimited.⁴³³

In **Germany**, the Federal Court of Justice (*Bundesgerichtshof*) upheld the previous decision of the Regional Court of Bonn (*Landgericht Bonn*) that found two defendants guilty of tax evasion on the subject of “cum-ex trades”. These structures involved trades made around the dividend record date, pursuant to which entitlement to the dividend payment is stripped from the stock. In the past, structures were set up that resulted in double or multiple refunds of German withholding tax, resulting in Germany losing billions in tax revenue. The discussion on the subject focused on the question of whether such transactions were to be considered abusive. While it has been argued that such transactions were abusive, it has also been argued that beneficiaries simply exploited a failure in the German withholding tax system until the legal loophole was closed.⁴³⁴

A major case broke in **Italy**, where the *Guardia di Finanza* (Financial Police) accused a multinational online travel company based in the **Netherlands** of evading payment of EUR 153 million in VAT between 2013 and 2019. According to the report, “the Dutch company issued invoices without VAT, applying the ‘reverse charge’ mechanism even in cases where the accommodation facility lacked the relevant [VAT] registration number, with the result that the tax was not declared or paid in **Italy**”.⁴³⁵

Also in **Italy**, thanks to the cooperation of the authorities of **Bulgaria**, the **Czech Republic** and **Germany**, the authorities dismantled a VAT carousel fraud scheme that involved the import of cars from Germany and resulted in VAT underpayments of at least EUR 6.3 million.

⁴³² See ES: ECJ, 1 July 2021, Case C-521/19, *CB v. Tribunal Económico-Administrativo Regional de Galicia*, Case Law IBFD. See also IBFD KC, [CJEU Decides On When Taxable Persons Agree To Conceal Transactions, It Must Be Presumed That Remuneration Did Not Include VAT: Tribunal Económico Administrativo Regional de Galicia \(Case C-521/19\) \(VAT\)](#) (1 July 2021), News IBFD; and B. Rodríguez, [CJ Advocate General Opines that Penalties Related to Failure to Report Assets Held Abroad are Disproportionate: Commission v. Spain \(Case C-788/19\) \(Direct Tax\) – Details](#) (29 July 2021), News IBFD.

⁴³³ See ES: ECJ, 27 Jan. 2022, Case C-788/19, *European Commission v. Kingdom of Spain*, Case Law IBFD. See also IBFD KC, [CJEU Decides on Penalties Related to Failure to Report Assets Held Abroad Being Disproportionate: Commission v. Espagne \(Obligation d’information en matière fiscale\) \(Case C-788/19\) \(Direct Tax\)](#) (27 Jan. 2022), News IBFD.

⁴³⁴ See DE: Federal Court of Justice, 28 July 2021, 1 StR 519/20, available at <https://rewis.io/service/pdf/urteile/m51-01-07-2021-1-str-51920.pdf> (accessed 14 Feb. 2022). See also A. Perdelwitz, [Federal Court of Justice Confirms Decision of Criminal Court on Cum/Ex Trades](#) (29 July 2021), News IBFD.

⁴³⁵ See W. Hoke, [Italy Accuses Booking.com of Evading €153 Million in VAT](#) (10 June 2021), News IBFD.

Over 200 vehicles were falsely registered in **Italy** and sold at below market price, creating unfair competition on the car market.⁴³⁶

In **Spain**, the Supreme Court has declared it appropriate to initiate the enforcement process for joint and several liability of third parties before the act imposing the penalties on the taxpayer becomes final. According to the court, there is no legal impediment to transfer to the person declared jointly and severally liable a penalty that has not become final in administrative proceedings because it has been challenged and, therefore, automatically suspended, without prejudice to the fact that the penalty cannot be enforced and must continue to be suspended until it becomes final in administrative proceedings. In cases in which an appeal for reconsideration or any other legally appropriate appeal is lodged against the decision imposing the sanction, the enforcement period shall begin with the finality of the sanction in administrative proceedings, which shall be determined by the body competent to issue the decision assigning liability.⁴³⁷

For its part, the **United Kingdom** Upper Tribunal (Tax and Chancery Chamber) approved a reduced penalty imposed by Her Majesty's Revenue and Customs on a company making use of a stamp duty land tax avoidance scheme. The reduced penalty was imposed due to the company's failure to take any "necessary corrective action" after notice was provided.⁴³⁸

There have been many developments in this regard in the **United States**. First, two bank executives were charged for their role in a massive money laundering scheme of over USD 170 million through the US financial system involving Odebrecht S.A., a **Brazil**-based global construction conglomerate. Odebrecht falsely recorded hundreds of millions of US dollars in international wire transfers sent to a bank in **Antigua** directed by the indicted as legitimate business expenses and deducted the fraudulent payments from the overall profits that it reported in **Brazil**. This enabled Odebrecht to evade more than USD 100 million in taxes in the latter country.⁴³⁹

The **United States'** Department of Justice also charged **Switzerland's** largest insurance company and its three subsidiaries for allegedly conspiring with US taxpayers for US tax fraud.

⁴³⁶ See EU: Eurojust Press Release, *Eurojust assists Italy in blocking VAT fraud scheme with car imports from Germany* (8 July 2021), available at <https://www.eurojust.europa.eu/eurojust-assists-italy-blocking-vat-fraud-scheme-car-imports-germany> (accessed 11 Feb. 2022). See also G. Gallo, *Italy Stops VAT Carousel Fraud Scheme Involving Car Imports from Germany* (12 July 2021), News IBFD.

⁴³⁷ See ES: TS, 8 Apr. 2021, STS 487/2021, available at <https://www.poderjudicial.es/search/sentence.jsp?reference=9503450&optimize=20210428> (accessed 14 Feb. 2022). See also L. Campanon Galiana, *Las derivaciones de responsabilidad de sanciones que no han adquirido firmeza en la vía administrativa* (11 May 2021), available at https://www.politicafiscal.es/equipo/laura-campanon-galiana/las-derivaciones-de-responsabilidad-de-sanciones-que-no-han-adquirido-firmeza-en-la-via-administrativa?utm_source=newsletter_170&utm_medium=email&utm_campaign=taxlandia (accessed 14 Feb. 2022); and N. Puebla Agramunt, *Responsable por Sanción No Firme* (7 May 2021), available at <https://www.nuriapuebla.com/blog/responsable-por-sancion-no-firme/> (accessed 14 Feb. 2022).

⁴³⁸ See UK: UKUT 81 (TCC), *Revenue and Customs v. Comtek Network Systems (UK) Limited* [2021], available at <https://www.bailii.org/uk/cases/UKUT/TCC/2021/81.html> (accessed 10 Feb. 2022). See also V. Koukouliti, *HMRC's Penalty on Stamp Duty Land Tax Avoidance Scheme Was Valid, UK Upper Tribunal Says* (8 Apr. 2021), News IBFD.

⁴³⁹ See US: DoJ News Release, *Two Bank Executives Charged for Conspiring to Launder Hundreds of Millions of Dollars Through U.S. Financial System in Connection with Odebrecht Bribery and Fraud Scheme* (25 May 2021), available at <https://www.justice.gov/opa/pr/two-bank-executives-charged-conspiring-launder-hundreds-millions-dollars-through-us-financial> (accessed 10 Feb. 2022). See also W. Choi, *US Grand Jury Indicts Two Australian Bankers for International Money Laundering and Bribery* (27 May 2021), News IBFD.

The Swiss insurance companies assisted US taxpayers in concealing from the IRS more than USD 1.452 billion in offshore insurance policies and related policy investment accounts in banks around the world, as well as the income generated in those accounts.⁴⁴⁰

The **United States** Attorney's Office for the Southern District of New York signed a non-prosecution agreement with a bank from **Bermuda**, which agreed to pay USD 5.6 million to the **United States** for assisting US taxpayer clients in opening and maintaining undeclared foreign bank accounts from 2001 through 2013. The bank admitted to helping its clients conceal their ownership of foreign bank accounts to avoid their US tax obligations. The bank allowed its US clients to use sham entities that assisted those US clients in funnelling money between accounts based in the **United States** and the Cayman Islands.⁴⁴¹

Several US courts have held proportionate the application of the 50% maximum penalty against taxpayers for wilful failure to file a timely Report of Foreign Bank and Financial Accounts (FBAR), since it represents a careless disregard of a known or obvious risk, as well as violation of a known legal duty.⁴⁴² Another court sentenced a Florida resident for his failure to report foreign financial accounts and for evading millions of US dollars in taxes on income earned in accounts held in several countries. The taxpayer will serve 24 months of imprisonment, along with 2 years of supervised release, and pay approximately USD 2,789,538 in restitution to the Treasury.⁴⁴³ In addition, a few indictments have been issued against US residents for allegedly failing to file FBARs and filing false documents with the IRS.⁴⁴⁴

⁴⁴⁰ See US: DoJ News Release, *Switzerland's Largest Insurance Company and Three Subsidiaries Admit to Conspiring with U.S. Taxpayers to Hide Assets and Income in Offshore Accounts* (14 May 2021), available at <https://www.justice.gov/opa/pr/switzerland-s-largest-insurance-company-and-three-subsidiaries-admit-conspiring-us-taxpayers> (accessed 10 Feb. 2022). See also W. Choi, *Swiss Insurance Company Admits to Helping US Taxpayers Hide Assets from IRS* (17 May 2021), News IBFD.

⁴⁴¹ See US: DoJ Non-Prosecution Agreement with *The Bank of N.T. Butterfield & Son Ltd.* (26 July 2021), available at <https://www.justice.gov/usao-sdny/press-release/file/1420806/download> (accessed 14 Feb. 2022); and US: DoJ News Release, *Manhattan U.S. Attorney Announces Agreement With Bermudian Bank To Resolve Criminal Tax Investigation* (3 Aug. 2021), available at <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-agreement-bermudian-bank-resolve-criminal-tax> (accessed 14 Feb. 2022). See also W. Choi, *Bermudian Bank Agrees to Pay USD 5.6 Million to Resolve US Criminal Tax Investigation* (4 Aug. 2021), News IBFD.

⁴⁴² See US: Court of Appeals for the Eleventh Circuit, No. 19-14464, 23 April 2021, *United States of America v. Said Rum*, available at <https://media.ca11.uscourts.gov/opinions/pub/files/201914464.pdf> (accessed 10 Feb. 2022); and US: Court of Federal Claims, No. 18-365, 19 Apr. 2021, *Leon Landa v. United States*, available at https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2018cv0365-58-0 (accessed 10 Feb. 2022). See also W. Choi, *Court Upholds 50% Penalty for Wilful Failure to Disclose Swiss Bank Account for Taxpayer's Family* (22 Apr. 2021), News IBFD; and W. Choi, *Another Court of Appeals Affirms 50% Penalty for Reckless Failure to Disclose Foreign Bank Account* (26 Apr. 2021), News IBFD.

⁴⁴³ See US: DoJ News Release, *Florida Man Sentenced for Evading Taxes on Millions in Secret Offshore Bank Accounts* (14 May 2021), available at <https://www.justice.gov/opa/pr/florida-man-sentenced-evading-taxes-millions-secret-offshore-bank-accounts> (accessed 10 Feb. 2022). See also W. Choi, *Florida Resident Dusko Bruer Receives Prison Sentence for Tax Evasion through Secret Offshore Bank Accounts* (17 May 2021), News IBFD.

⁴⁴⁴ See US: DoJ News Release, *Businessman Indicted for Not Reporting Foreign Bank Accounts and Filing False Documents with the IRS* (3 Mar. 2021), available at <https://www.justice.gov/opa/pr/businessman-indicted-not-reporting-foreign-bank-accounts-and-filing-false-documents-irs> (accessed 11 Feb. 2022). See also W. Choi, *US Grand Jury Indicts US Individual for Failure to Report Foreign Bank Accounts* (5 Mar. 2021), News IBFD.

In addition, the **United States**' Tax Court has held that a taxpayer's filing of income tax returns did not trigger the statute of limitations for tax assessment by the IRS if the taxpayer fraudulently underreported his income on an FBAR form with the intent to evade tax, a decision that seems to call into question the proportionality of criminal prosecution for tax offences. In this way, the statute of limitations is inapplicable, in practice, to this tax offence.⁴⁴⁵

In what may be considered a setback, the **United States**' District Court for the Southern District of Texas, Houston Division, held that civil penalties assessed for a taxpayer's non-wilful failure to file FBARs are remedial in nature and, thus, the US government's lawsuit for collecting the penalties survive the death of the taxpayer. The Court then held that FBAR penalties are primarily remedial because the penalties are paid, at least in part, to cover the costs that the US government must pay to investigate undisclosed accounts, and ambiguities in the law, which made this issue a close call, must be resolved in favour of the plaintiff (i.e. the US government).⁴⁴⁶

An interesting cross-border case also deserves mention from the **United States**, which concerns civil damages for tax offences. The US District Court for the Southern District of New York declined to dismiss an action that the tax authority of **Denmark** (SKAT) filed against a US pension plan and its sole participant for damages based on their fraudulent Danish tax refund claims. The court concluded that the action is not barred by either the statute of limitations or the revenue rule and that the SKAT's fraud allegations are enough to proceed with the trial.⁴⁴⁷

In addition, the **United States**' Court of Appeals for the Second Circuit has held that a US person that is both the sole owner and the beneficiary of a foreign trust and fails to timely report distributions received from the trust is subject to a 35% penalty for foreign trust beneficiaries, regardless of whether a 5% penalty for foreign trust owners applies. A writ of certiorari has been granted to the taxpayer before the Supreme Court, on the grounds of legitimate expectations regarding the previous IRS qualification of the conduct as punishable under a 5% penalty only.⁴⁴⁸

Cooperation between tax and criminal investigation bodies has also shown some developments in 2021. The **United States**' IRS Criminal Investigation Division and the tax authority of **South Africa** reached an agreement to fight tax and economic crimes affecting

⁴⁴⁵ See US: USTC, 26 July 2021, Memo. 2021-95, Docket No. 135331-18, *George S. Harrington v. Commissioner of Internal Revenue*, available at <https://bit.ly/3oHpnrc8> (accessed 11 Feb. 2022). See also W. Choi, [US Tax Court Denies Limitation Periods for Fraudulent Tax Returns](#) (28 July 2021), News IBFD.

⁴⁴⁶ See US: USDC, Texas Southern District, 30 June 2021, *United States of America v. Amarijt Gill*, Civil Action H-18-4020, available at https://www.govinfo.gov/content/pkg/USCOURTS-txsd-4_18-cv-04020/pdf/USCOURTS-txsd-4_18-cv-04020-0.pdf (accessed 16 Feb. 2022).

⁴⁴⁷ See US: 30 June 2021, *In re SKAT Tax Refund Scheme Litigation*, 18-md-2865 (LAK), available at <https://www.leagle.com/decision/infdco20201224734> (accessed 11 Feb. 2022). See also W. Choi, [US District Court Declines to Dismiss Danish Tax Authority's Tax Fraud Suit](#) (6 July 2021), News IBFD.

⁴⁴⁸ See US: Court of Appeals 2 Circuit, 28 July 2021, Docket No. 20-603, *Emily S. Wilson, as Executrix of the Estate of Joseph A. Wilson, and the Estate of Joseph A. Wilson v. United States of America*, available at <https://cases.justia.com/federal/appellate-courts/ca2/20-603/20-603-2021-07-28.pdf?ts=1627482613> (accessed 14 Feb. 2022); and US: SC, 26 Oct. 2021, Docket No. 21-631, available at https://www.supremecourt.gov/DocketPDF/21/21-631/197619/20211026122841201_Emily%20Wilson%20Main%20E%20FILE%20Oct%2026%2021.pdf (accessed 14 Feb. 2022). See also W. Choi, [US Court of Appeals Applies 35% Penalty to Foreign Trust Beneficiaries That Are Also Trust Owners](#) (29 July 2021), News IBFD.

both countries. They will work together to identify, investigate and bring to justice criminals with a nexus to both countries who have committed, among other crimes, international public corruption, cyber fraud and money laundering. The newly formed partnership has already uncovered emerging schemes perpetrated by promoters, professional enablers and financial institutions.⁴⁴⁹

For its part, **Bahrain** established a tax crime unit that specializes in tax evasion crimes to investigate criminal offences covered under VAT law.⁴⁵⁰

Finally, the **United States** released internal instructions for IRS personnel explaining penalties imposed on taxpayers who fail to disclose reportable transactions.⁴⁵¹

7.2. Voluntary disclosure

Best practice: Voluntary disclosure should lead to a reduction of penalties.

Shifted towards/matched the best practice:

China (People's Rep.), Chile, Spain, Ukraine

Shifted away from the best practice:

None

Minimum standard: Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

None

As a counterbalance to the expansion that characterized criminal and administrative sanctions (as indicated in section 7.1) that, in a way, seems to go against the minimum standard according to which sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures, voluntary disclosure regimes flourished in 2021, apparently due to the lengthening of the effects of the COVID-19 pandemic.

Starting in 2021, taxpayers who have lawsuits pending in **Brazil** related to the collection of social security contributions and contributions to other entities and funds levied on profit sharing may benefit from an agreement for special payment, with reduced penalties, provided by the Special Secretary of the Brazilian Federal Revenue Service and the Attorney-General's Office of the National Treasury. Under these agreements, taxpayers may pay up their debts with a reduction of up to 50% of the principal amount. The agreement provides three schemes of payment to be chosen by the taxpayer but, in all schemes, the minimum amount of the

⁴⁴⁹ See ZA: SARS Press Release, *IRS Criminal Investigation and SARS join forces to fight international crimes*, available at <https://www.sars.gov.za/media-release/irs-criminal-investigation-and-sars-join-forces-to-fight-international-crimes/> (accessed 11 Feb. 2022). See also W. Choi, *United States and South Africa Join Forces against Tax and Financial Crimes* (7 July 2021), News IBFD.

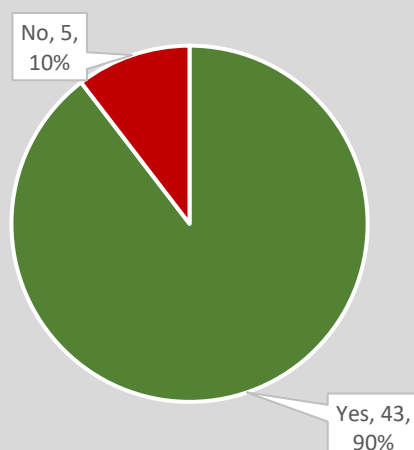
⁴⁵⁰ See S. Gueydi, *Bahrain Establishes a Tax Crime Unit* (17 Feb. 2021), News IBFD.

⁴⁵¹ See US: IRS Large Business & International division, 4 Aug. 2021, *Practice Unit on Penalty for Failure to Include Reportable Transaction Information with Return*, available at <https://www.irs.gov/pub/irs-utl/penalty-reportable-transaction.pdf> (accessed 14 Feb. 2022). See also W. Choi, *IRS Issues Practice Unit on Penalty for Failure to Disclose Reportable Transactions* (5 Aug. 2021), News IBFD.

instalment must be BRL 100 (approximately EUR 16,95) for individuals and BRL 500 (approximately EUR 84,75) for legal entities.⁴⁵²

Chart 58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, Italy, Japan, Kazakhstan, Kenya, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States

No: India, Lithuania, Luxembourg, Slovenia (1), Uruguay, Venezuela

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 58

In **China (People's Rep.)**, the revised Law on Administrative Penalties provides for voluntary disclosure as one of the main grounds for exclusion of liability for tax offences.⁴⁵³

In **Chile**, the Servicio de Impuestos Internos issued Letter No. 41/2021, in which the tax authorities further develop the rules of the Tax Code regarding, among other things, the facilitation of tax compliance and taxpayer control. Regarding sanctions, the Letter orders the tax authorities not to apply any sanctions to those taxpayers not complying with a few measures to facilitate tax compliance, so-called "preventive and cooperative". Such measures include the issuance of notifications for taxpayers in early stages of assessments to address differences in the views of taxpayers and tax authorities. In addition, in the case of taxes subject to self-assessment, if the taxpayer or person liable for the taxes voluntarily files an omitted declaration or submits a supplementary declaration that results in higher taxes, the corresponding punitive interest will be remitted. All in all, the collaboration of taxpayers is acknowledged in order to cancel, reduce or suspend penalties.⁴⁵⁴

⁴⁵² See BR: Edital No. 11, torna públicas as propostas da Secretaria Especial da Receita Federal do Brasil e da Procuradoria-Geral da Fazenda Nacional para adesão à transação no contencioso tributário de relevante e disseminada controvérsia jurídica (19 May 2021), available at <https://www.in.gov.br/web/dou/-/edital-n-11-de-19-de-maio-de-2021-320996132> (accessed 15 Feb. 2022); and L. Silva Costa, *Tax Authorities Provide New Modality for Special Payment of Debts with Reduced Penalty* (1 June 2021), News IBFD.

⁴⁵³ See CN: Law of the People's Republic of China on Administrative Penalties (2021), available at <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzAzYWRkMjAxNzczNzNkZjZhNDNIMzM%3D> (accessed 15 Feb. 2022); and CN: Rules on the Exercise of Discretionary Power of Administrative Punishment in Taxation (State Administration of Taxation Announcement No. 78 of 2016), available at <http://www.chinatax.gov.cn/chinatax/n810341/n810765/n1990035/201612/c2506180/content.html> (accessed 15 Feb. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 60.

⁴⁵⁴ See CL: *Circular No. 41, Imparte instrucciones sobre modificaciones introducidas por la Ley N° 21.210 al Código Tributario, en relación con las normas que regulan la relación de los contribuyentes con el Servicio de*

The **Dominican Republic's** voluntary disclosure regime, reinstated in 2021, seeks to create the conditions for taxpayers to voluntarily disclose all of their undeclared movable and immovable assets to the Directorate General of Internal Taxes (DGII), as well as to revalue them according to current market prices. The regime reduces taxes over the disclosed assets to a one-off tax of 2% of their market value. The regime was extended until December 2021.⁴⁵⁵

To provide relief to small and medium-sized taxpayers and encourage them to file pending GST returns, **India** has rationalized the late fees for failure to furnish various GST forms within the period prescribed under the Central Goods and Services Tax (CGST) Act and introduced an amnesty scheme for pending Form GSTR-3B for the period July 2017 to April 2021.⁴⁵⁶

In **Spain**, a decision of the Central Economic-Administrative Court (*Tribunal Económico-Administrativo Central*) deemed appropriate to maintain the 25% reduction in the penalties imposed for late payment when the interested parties request and obtain a deferment or payment in instalments, in those cases in which such deferments or payment in instalments are exempt from the obligation to provide a guarantee, i.e. because the person liable for payment does not have sufficient assets to guarantee the debt and the enforcement of their assets could substantially affect the maintenance of the productive capacity and the level of employment of the respective economic activity or could cause serious losses to the interests of the Public Treasury. In addition, Law 11/2021 of July 9, on prevention and anti-fraud measures, introduces greater reductions in the sanction in cases of agreement and voluntary payment.⁴⁵⁷

Impuestos Internos, incluyendo normas sobre sitio electrónico, facilitación del cumplimiento tributario, ciclo de vida y fiscalización de los contribuyentes, available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu41.pdf (accessed 15 Feb. 2022). See also CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 60.

⁴⁵⁵ See DO: Ley No. 46-20 sobre Transparencia y Revalorización Patrimonial, G. O. No. 10972 (21 Feb. 2020), available at <https://dgii.gov.do/legislacion/leyesTributarias/Documents/Leyes%20sobre%20Tenencia,%20Transferencia%20y%20Organizaci%C3%B3n%20de%20Patrimonio/46-20.pdf> (accessed 16 Feb. 2022); DO: Ley No. 07-21, que Reincorpora las Disposiciones de la Ley No. 46-20, del 19 de febrero de 2020, sobre Transparencia y Revalorización Patrimonial y sus disposiciones, y le introduce otras disposiciones (20 Jan. 2021), available at <https://dgii.gov.do/legislacion/leyesTributarias/Documents/Leyes%20sobre%20Tenencia,%20Transferencia%20y%20Organizaci%C3%B3n%20de%20Patrimonio/07-21.pdf> (accessed 16 Feb. 2022); and DO: Prórroga de pago automático declaraciones de transparencia, revalorización patrimonial y amnistía fiscal en virtud de la ley núm. 46-20, reintroducida por la ley núm. 07-21 (12 July 2021), available at <https://dgii.gov.do/publicacionesOficiales/avisosInformativos/Documents/2021/17-21.pdf> (accessed 16 Feb. 2022). See also M. Corral, *Dominican Republic Issues Automatic Extension under Voluntary Disclosure Regime* (19 July 2021), News IBFD; M. Corral, *Dominican Republic Issues New Automatic Extension under Voluntary Disclosure Regime* (19 Oct. 2021), News IBFD; M. Corral, *Dominican Republic Provides Guidance on Voluntary Disclosure Regime* (24 Feb. 2021), News IBFD; and M. Corral, *Dominican Republic Extends Voluntary Disclosure of Assets* (4 Feb. 2021), News IBFD.

⁴⁵⁶ See IN: Notification No. 19/2021, 1 June 2021, available at <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-19-central-tax-english-2021.pdf> (accessed 15 Feb. 2022); IN: Notification No. 20/2021, 1 June 2021, available at <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-20-central-tax-english-2021.pdf> (accessed 15 Feb. 2022); IN: Notification No. 21/2021, 1 June 2021, available at <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-21-central-tax-english-2021.pdf> (accessed 15 Feb. 2022); and IN: Notification No. 22/2021, 1 June 2021, available at <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-22-central-tax-english-2021.pdf> (accessed 15 Feb. 2022). See also N. Lingbawan, *India Approves Rationalization of and Amnesty for Late Filing of GST Returns* (4 June 2021), News IBFD.

⁴⁵⁷ See ES: TEAC, 16 Feb. 2021, Resolution No. 0/06542/2019/00/00, available at <https://www.iberley.es/resoluciones/resolucion-teac-0-06542-2019-00-00-16-02-2021-1532087> (accessed 15 Feb. 2022); and ES: Law 11/2021 of 9 July on measures to prevent and combat tax fraud, transposing Council

In **Sri Lanka**, a new tax amnesty law allows a 1% tax on voluntary disclosures and a tax arrears write-off.⁴⁵⁸

A tax amnesty has been enacted in **Ukraine** from 1 September 2021 to 1 September 2022, mainly aiming for voluntary disclosure of taxpayer assets. The general principle of its holding is voluntariness, as the declaration of assets is domestically understood as a right of taxpayers.⁴⁵⁹

While increasing the penalties applicable to VAT and excise taxes (as commented in section 7.1), the **United Arab Emirates** reduced the penalties due but not yet paid to 30% of the total unpaid penalties, provided that all of the following conditions are met: (i) the penalties were applied under the previous Cabinet Resolution no. 40/2017; (ii) the registrant will have paid all taxes due by 31 December 2021; and (iii) by 31 December 2021, the registrant will have paid 30% of the total administrative penalties due but unpaid as at the effective date of the Resolution.⁴⁶⁰

In the **United States**, the accuracy penalty on an original tax return can be avoided through disclosure. Voluntary disclosure may not help in all cases, though, particularly where the original return is incorrect. The IRS Criminal Investigation Voluntary Disclosure program is not available if the IRS had third party information on the non-compliance before the voluntary disclosure.⁴⁶¹

In 2021, the IRS issued Notice N-2021-39, establishing the conditions for penalty relief in cases of failure to (i) file or show information on partnership returns; (ii) file or show information on an S corporation return; (iii) file correct information returns; or (iv) furnish correct payee statements for pass-through entities. The Notice provides transition relief for taxable years that begin in 2021 so that a partnership will not be subject to the relevant penalties for any

Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, amending various tax and gambling regulations (BOE-A-2021-11473), available at <https://www.boe.es/eli/es/l/2021/07/09/11> (accessed 15 Feb. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 60.

⁴⁵⁸ See LK: Finance Act, No. 18 of 2021 (15 Sept. 2021), available at http://www.documents.gov.lk/files/act/2021/9/18-2021_E.pdf (accessed 16 Feb. 2022). See also N. Lingbawan, *Sri Lanka Proposes Tax Amnesty in Finance Bill* (13 July 2021), News IBFD; and N. Lingbawan, *Sri Lanka Passes Tax Amnesty Law* (17 Sept. 2021), News IBFD.

⁴⁵⁹ See UA: Amendments to the Tax Code and other laws on stimulating the deshadowing of income and increasing the tax culture of citizens by introducing a one-time (special) voluntary declaration by individuals of their assets and paying a one-time fee to the budget (Verkhovna Rada (VVR), 2021, No. 34, article 274), available at <https://zakon.rada.gov.ua/laws/show/1539-20#Text> (accessed 15 Feb. 2022). See also I. Lungu, *Ukraine Approves Tax Amnesty* (17 June 2021), News Tax Analysts; and UA: OPTR Report (Academia), Questionnaire 2, Question 60.

⁴⁶⁰ See AE: Cabinet Resolution No. (49) of 2021 Amending Some Provisions of Cabinet Resolution No. (40) of 2017 On Administrative Penalties Imposed for Violating the State's Tax Law (28 Apr. 2021), available at <https://www.saifaudit.com/blog/wp-content/uploads/2021/05/2021-Tax-Penalties-Law.pdf> (accessed 10 Feb. 2022). See also M.F. Charfeddine, *United Arab Emirates Amends VAT and Excise Tax Administrative Penalties* (20 May 2021), News IBFD; and M.F. Charfeddine, *Tax Authority Provides Conditions Related to Tax Penalties Reduction* (1 June 2021), News IBFD.

⁴⁶¹ See US: IRS Criminal Investigation Voluntary Disclosure Practice, available at <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (accessed 15 Feb. 2022). See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 60.

incorrect or incomplete reporting, if the filer establishes to the satisfaction of the Commissioner that it made a good faith effort to comply per the instructions.⁴⁶²

Particularly, the Department of Treasury of Michigan (**United States**) has offered filing and payment options for delinquent individual taxpayers and individuals who simply missed the extended 2020 state tax filing deadline, including penalty waivers if taxpayers can show reasonable cause for their untimely payment; monthly instalment payments over 48 months or less; and compromise requests (i.e. an application formally requesting that the Department lower a taxpayer's assessed tax liability).⁴⁶³

Also in the **United States**, New Jersey announced its Combined Reporting Initiative, allowing companies with New Jersey nexus that have been included in a combined return in tax years on or after 2019, but otherwise failed to file as a separate entity for tax years prior to 2019, to voluntarily come forward and comply with corporate tax filing requirements without penalties, even when these taxpayers are not eligible for a standard voluntary disclosure agreement.⁴⁶⁴ Further, Louisiana's Department of Revenue proposed regulation for taxpayers seeking good faith abatements on negligence and wilful disregard penalties.⁴⁶⁵

In addition, in the **United States**, Indiana waived penalties and interest on state and local tax underpayments directly, or indirectly, resulting from the state's new treatment of unemployment compensation earned in 2020 between 1 July and 30 September 2021.⁴⁶⁶

To conclude the recounting of voluntary disclosure measures within the **United States**, the state of Washington extended waived and suspended statutes related to tax penalties, fees, interest and due dates until September 2021. Since March, the governor's proclamations provided tax relief to Washington taxpayers suffering from the negative effects of the COVID-19 pandemic. The relief applies to a variety of taxes and fees, including property taxes, certain excise taxes and business license fees.⁴⁶⁷

⁴⁶² See US: IRS Notice N-2021-39, *Transition Period Penalty Relief for New Schedules K-2 and K-3 for Forms 1065, 1120-S and 8865* (30 June 2021), available at <https://www.irs.gov/pub/irs-drop/n-21-39.pdf> (accessed 16 Feb. 2022).

⁴⁶³ See US: MI Department of Treasury Press Release, *Treasury Offers Help To Taxpayers Who Missed Tax Filing Deadline* (26 May 2021), available at https://www.michigan.gov/treasury/0,4679,7-121-1755_1963-560596--,00.html (accessed 15 Feb. 2022). See also A. Ramesh, *Michigan Offers Help to Delinquent Individual Tax Filers* (4 June 2021), News IBFD.

⁴⁶⁴ See US: NJ Division of Taxation, *Corporation Business Tax - Combined Reporting Initiative* (5 Oct. 2021), available at <https://www.state.nj.us/treasury/taxation/cbt/cbt-initiative2021.shtml> (accessed 15 Feb. 2022). See also J. Robles Santos, *New Jersey Offers Penalty Waivers for Delinquent Combined Return Filers* (10 June 2021), News IBFD.

⁴⁶⁵ See US: LA Department of Revenue, *Notice of Intent - Abatement of Presumed Accuracy-Related Penalties LAC 61.III.2121-2125*, available at <https://revenue.louisiana.gov/LawsPolicies/NOI%20LAC%2061.III.2121-2125%20Proposed%20Regulation.pdf> (accessed 15 Feb. 2022). See also A. Ramesh, *Louisiana Proposes Clarifying Regulation for Accuracy-Related Penalty Abatements* (25 June 2021), News IBFD.

⁴⁶⁶ See US: IN Executive Order 21-17 (30 June 2021), available at <https://www.in.gov/gov/files/Executive-Order-21-17-Continuation-of-Limited-Health-and-Welfare-Provisions.pdf> (accessed 16 Feb. 2022). See also J. Robles Santos, *Indiana Waives Penalties and Interests Due to New Treatment of Unemployment Compensation* (6 July 2021), News IBFD.

⁴⁶⁷ See US: WA Governor Proclamation 20-20 (27 July 2021), available at https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-20.12.pdf (accessed 16 Feb. 2022). See also J. Robles Santos, *Washington Rescinds Waivers of Tax Penalties, Fees and Interest, Reinstates Related Due Dates* (29 July 2021), News IBFD.

For their part, several countries resorted to voluntary disclosure with reduced or waived penalties as a mechanism to clean up fiscal accounts and facilitate tax compliance, based on the situation generated by the COVID-19 pandemic.

Cyprus waived all administrative fines on overdue DAC6 information submissions if submitted by 30 June 2021. Later this lapse was extended until 31 January 2022. Moreover, the Registrar of Companies announced that it will not impose penalties for payments of annual company levies made after the deadline of 30 June 2021, provided that such payments are settled by 31 December 2021 at the latest.⁴⁶⁸

Kosovo waived penalties on companies and individuals for late payment of taxes and interest made by 30 June 2021 at the latest.⁴⁶⁹

Panama extended the tax amnesty period for the third time, until 31 August 2021, in an effort to provide relief to taxpayers during the COVID-19 pandemic. Also, an amnesty regime was introduced that covers debts owed to the Social Security Authority (*Caja de Seguro Social*, CSS). Law 215 of 2021 was introduced as a response to the adverse effects of the COVID-19 pandemic on the country's economy. The Law grants to individuals and legal entities a 100% waiver on late payment interest and fines, if at least 50% of the outstanding balance owed to the CSS is paid within 24 months of the Law's entry into force.⁴⁷⁰

In addition, **Paraguay** suspended until 31 August 2021 the application of the penalty for the late filing of the tax on dividends and profits informative affidavit.⁴⁷¹

⁴⁶⁸ See CY: Cypriot Tax Department Announcement, *DAC6 – Directive of the Council of EU on mandatory disclosure and exchange of information on cross-border arrangements* (3 June 2021), available at [https://www.mof.gov.cy/mof/tax/taxdep.nsf/All/2BC73259919261E2C22586880042F9BD/\\$file/ATT0YWG1.pdf](https://www.mof.gov.cy/mof/tax/taxdep.nsf/All/2BC73259919261E2C22586880042F9BD/$file/ATT0YWG1.pdf) (accessed 15 Feb. 2022); CY: Cypriot Tax Department Announcement, *Extension to the imposition of administrative fines for overdue submission of information* (22 Nov. 2021), available at [https://www.mof.gov.cy/mof/tax/taxdep.nsf/All/B0B04B793192A15CC22587950031F48F/\\$file/Extension%20to%20the%20imposition%20of%20administrative%20fines%2022_11_2021.pdf](https://www.mof.gov.cy/mof/tax/taxdep.nsf/All/B0B04B793192A15CC22587950031F48F/$file/Extension%20to%20the%20imposition%20of%20administrative%20fines%2022_11_2021.pdf) (accessed 15 Feb. 2022); and CY: Cypriot Tax Department Announcement, *Extension to the submission of information* (3 Feb. 2021), available at [https://www.mof.gov.cy/mof/tax/taxdep.nsf/All/1222C16C4F5DAC40C2258671002A9995/\\$file/DAC6_%20Extension%20to%20the%20submission%20of%20information.pdf](https://www.mof.gov.cy/mof/tax/taxdep.nsf/All/1222C16C4F5DAC40C2258671002A9995/$file/DAC6_%20Extension%20to%20the%20submission%20of%20information.pdf) (accessed 15 Feb. 2022). See also V. Argyropoulou, *Cyprus Waives Penalties for Late DAC6 Filings* (3 Mar. 2021), News IBFD; V. Argyropoulou, *Cyprus Extends Waiver of Penalties for Late DAC6 Filings* (14 June 2021), News IBFD; and V. Argyropoulou, *Cyprus Waives Penalties for Late Payments of Annual Levies* (20 July 2021), News IBFD.

⁴⁶⁹ See AL: TAK Press Release, *953 taxpayers have so far applied for the abolition of penalties* (3 June 2021), available at <https://www.atk-ks.org/en/komunikate-per-media-953-tatimpagues-deri-me-tani-kane-aplikuar-per-hegje-te-ndeshkimeve/> (accessed 15 Feb. 2022). See also R. Offermanns, *Kosovo Waives Penalty for Late Payments* (10 June 2021), News IBFD.

⁴⁷⁰ See PA: Ley 08 de 6 de abril de 2021 que modifica la Ley 99 de 2019, relativa a la amnistía tributaria para el pago de tributos y al Código de Procedimiento Tributario, y dicta otras disposiciones para aliviar la reactivación de la economía nacional, available at https://www.gacetaoficial.gob.pa/pdfTemp/29256_A/84220.pdf (accessed 15 Feb. 2022); PA: Ley 215 de 6 de mayo de 2021 que concede una amnistía para el pago total de las cuotas empleado-empleador, primas de riesgos y contribuciones de los empleados ante la CSS, available at https://rbc.com.pa/images/banners/RBC/LEYES_DECRETOS_GACETAS/ley%20215%20concede%20amnistia.pdf (accessed 15 Feb. 2022). See also A. Marusic, *Panama Approves Extension of Tax Amnesty Law* (7 Apr. 2021), News IBFD; and A. Marusic, *Panama Approves Amnesty Law for Social Security Contributions* (10 May 2021), News IBFD.

⁴⁷¹ See PY: Resolución General N° 91 por la cual se Suspende la Aplicación de la Sanción de Multa por Contravención por la Presentación Fuera de Plazo de la Declaración Jurada Informativa del Impuesto a las Utilidades o Dividendos (IDU) con vencimiento en el mes de junio de 2021 (10 June 2021), available at

In **Peru**, no fines or other sanctions (i.e. closure of establishments) will be imposed on taxpayers subject to the so-called simplified regime (*Régimen Único Simplificado*) for not filing their income tax return before the deadline, a measure aimed at providing relief to small entrepreneurs and individuals carrying out business activities.⁴⁷²

In the **Philippines**, Act 11569 has extended until 14 June 2023 the validity of the estate tax amnesty program. It grants taxpayers a one-time opportunity to settle their tax obligations through an estate amnesty program that gives tax relief to estates with outstanding estate tax liabilities.⁴⁷³

The **Slovak Republic** approved a new regulation that aims to relieve taxpayers from certain tax penalties. No interest on late tax penalties shall be levied if the tax payment due date occurred between 12 March 2020 and 31 December 2020 and the taxpayer makes the relevant tax payment by 30 June 2021 at the latest. Moreover, no penalty shall be levied for late filing of the tax return if the statutory date of filing occurred between 12 March 2020 and 31 December 2020 and the taxpayer makes the relevant filing by 30 June 2021 at the latest. Finally, no penalty shall be levied for taxpayers who declared in their income tax return (filed in the period between 1 January 2020 and 30 September 2020) a higher tax overpayment than it should be (upon the condition that the taxpayer refunds the difference back).⁴⁷⁴

However, the time for paying deferred VAT is up in the **Isle of Man**. The tax authorities announced new penalties for taxpayers that either failed to pay their deferred VAT in 2020 or did not agreed on a payment plan by 30 June 2021.⁴⁷⁵

<https://www.set.gov.py/portal/PARAGUAY-SET/detail?folder-id=repository:collaboration/sites/PARAGUAY-SET/categories/SET/Normativas/resoluciones/2021&content-id=/repository/collaboration/sites/PARAGUAY-SET/documents/2021/normativas/Resoluci%C3%B3n%20General%20N%C2%BA%2091-21> (accessed 15 Feb. 2022). See also E. Bañuelos, *Paraguay Suspends Application of Penalty for Late Filing of Dividends and Profits Informative Tax Affidavit* (18 June 2021), News IBFD.

⁴⁷² See PE: Resolución No. 000012-2021-SUNAT/700000, available at <https://busquedas.elperuano.pe/download/url/aplican-la-facultad-discrecional-en-la-administracion-de-san-resolucion-no-000012-2021-sunat700000-1962662-1> (accessed 16 Feb. 2022). See also E. Rodríguez Alzza, *Tax Authority Forgoes Tax Penalties Triggered by Late Tax Filings for Small Entrepreneurs* (2 July 2021), News IBFD.

⁴⁷³ See PH: Republic Act No. 11213, 23 July 2017, Tax Amnesty Act, available at https://www.bir.gov.ph/images/bir_files/internal_communications_1/Tax%20Amnesty%20matters/20190214-RA-11213-RRD_Annex%20A.pdf (accessed 15 Feb. 2022); PH: Republic Act No. 11569, 30 June 2021, extending the Estate Tax Amnesty and for other purposes, amending section 6 of Republic Act no. 11213, otherwise known as the “tax amnesty act”, available at https://lawphil.net/statutes/repacts/ra2021/ra_11569_2021.html (accessed 15 Feb. 2022). See also N. Lingbawan, *Congress Passes Estate Tax Amnesty Extension* (27 May 2021), News IBFD.

⁴⁷⁴ See SK: Regulation No. 88/2021 Coll (26 Feb. 2021), available at https://www.slov-lex.sk/static/pdf/2021/88/ZZ_2021_88_20210226.pdf (accessed 15 Feb. 2022). See also K. Bagolová, *Slovak Republic Waives Tax Penalties* (3 Mar. 2021), News IBFD.

⁴⁷⁵ See IM: Treasury Press Release, *The VAT deferral scheme (COVID) 2020, penalties for VAT registered traders who have not paid deferred VAT or agreed a Time to Pay plan* (16 July 2021), available at <https://www.gov.im/categories/tax-vat-and-your-money/news/?altTemplate=ViewCategorisedNews&id=134605> (accessed 16 Feb. 2022). See also M. Alvarado, *Isle of Man Introduces New Penalty for Taxpayers that Failed to Pay Their Deferred VAT in 2020 or Have Not Agreed on Payment Plan* (19 July 2021), News IBFD.

8. Enforcement of Taxes

Minimum standard: Collection of taxes should never deprive taxpayers of their minimum necessary for living.

Shifted towards/improved the minimum standard:

Chile, Honduras, Lithuania, United States

Shifted away from the minimum standard:

None

In order to provide the necessary financial foundation for a society, efficient tax enforcement is both necessary and key, which entails both an efficient collection of taxes and a balanced protection of the taxpayers. Enforcement entails greater powers for the tax administrations in the collection of taxes due,⁴⁷⁶ and the greater the tax administration's powers, the greater the risks for practices that can potentially be harmful to the taxpayers. Balancing against this power of tax collection for the state is the taxpayer's human dignity, which limits the state's power as it ensures the taxpayer the right to a dignified existence (*minimum vitale*), defined as the minimum necessary for living. Consequently, this is an area in need of strong safeguards.⁴⁷⁷

Coming out of a global pandemic and economic crisis, funds have been scarce for most states for the last 2 years. To mitigate the negative economic consequences of this, many countries have introduced postponements on collecting taxes, reducing interest rates for late payment of taxes, and some extension in due dates for compliance.

These efforts have been continued in 2021 for several countries.

A few countries enacted a bill on measures to support taxpayers during the pandemic, including reduced VAT rates for medical supplies, including **Austria**,⁴⁷⁸ **Belgium**,⁴⁷⁹ **Brazil**,⁴⁸⁰

⁴⁷⁶ The CJEU decision (Fifth Chamber) in Case C-95-19, *Agenzia delle Dogane v. Silcompa SpA*, is a very interesting development in this regard. It prevents the possibility of multiple tax recovery procedures within the EU for the same excise taxes due. As stated by the decision, "In the light of the foregoing considerations, the answer to the question referred is that Article 12(3) of Directive 76/308, read in conjunction with Article 20 of Directive 92/12, must be interpreted as meaning that, in the context of an action disputing enforcement measures taken in the Member State in which the requested authority is situated, the competent body of that Member State may refuse to grant the request to recover excise duties submitted by the competent authority of another Member State in respect of goods which irregularly departed from a suspension arrangement, for the purposes of Article 6(1) of Directive 92/12, where that request is based on the facts relating to the same export transactions which are already subject to excise duty recovery in the Member State in which the requested authority is situated". CJEU, Case C-95-19, *Agenzia delle Dogane v. Silcompa SpA* (Fifth Chamber, 24 Feb. 2021), at <https://www.courthousenews.com/wp-content/uploads/2021/02/silcompa-CJEU.pdf> (accessed 5 Mar. 2021).

⁴⁷⁷ Baker & Pistone, *supra* n. 16, at sec. 5.1., p. 57.

⁴⁷⁸ See AT: Federal Ministry of Finance Press Release, VAT Exemption for Face Masks, <https://www.bmf.gv.at/en/current-issues/Corona/information-coronavirus/VAT-exemption-for-face-masks.html> (accessed 7 Mar. 2022). See also AT: OPTR Report (Tax Administration)/(Tax) Ombudsperson), Questionnaire 2, Question 66.

⁴⁷⁹ See BE: Projet de Loi portant des mesures de soutien temporaires en raison de la pandémie du COVID-19 (21 Jun. 2021), <https://www.lachambre.be/FLWB/PDF/55/2070/55K2070001.pdf> (accessed 25 Feb. 2022). See also R. Offermanns, *Belgium Extends Application of Reduced 6% VAT Rate for Face Masks and Hydroalcoholic Gels* (30 June 2021), News IBFD.

⁴⁸⁰ See BR: Press Release, Prorrogação até o fim do ano lista de bens com tarifa zero (21 May 2021), <https://www.gov.br/pt-br/noticias/financas-impostos-e-gestao-publica/2021/05/prorrogada-ate-o-fim-do-ano-lista-de-bens-com-tarifa-zero> (accessed 28 Feb. 2022). See also D. Canen, *Ministry of Economy Reduces to*

Germany,⁴⁸¹ **India**,⁴⁸² **Italy**,⁴⁸³ **Paraguay**,⁴⁸⁴ the **United Arab Emirates**,⁴⁸⁵ **Uzbekistan**⁴⁸⁶ and **Venezuela**,⁴⁸⁷ also comprising customs duties.

Argentina extended, from 31 December 2020 to 30 September 2021, the application of the temporary income tax exemption to "frontline workers", namely health care providers dealing with those affected by the pandemic. **Argentina** also increased the special allowance for employees in a way that monthly salaries of up to ARS 150,000 will accrue no income tax liability.⁴⁸⁸

Austria reduced its basic personal income tax rate to 20% for those portions of income from EUR 11,000 to EUR 18,000. This measure will result in a relief of up to EUR 1.6 billion per year for wage and income taxpayers. The reduced tax rate in the amount of 20% applies retroactively from 1 January 2020.⁴⁸⁹

[0% Import Duty on 65 Additional Medical Supplies](#) (20 Apr. 2021), News IBFD; D. Canen, [Brazil Extends Application of 0% Import Duty on Medical Supplies Until 31 December 2021](#) (28 May 2021), News IBFD.

⁴⁸¹ See DE: Drittes Gesetz zur Umsetzung steuerlicher Hilfsmaßnahmen zur Bewältigung der Corona-Krise (Drittes Corona-Steuerhilfegesetz), https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_IV/19_Legislaturperiode/Gesetze_Verordnungen/2021-03-17-Drittes-Corona-Steuerhilfegesetz/0-Gesetz.html (accessed 25 Feb. 2022). See also A. Perdelwitz, [Bill on Further Measures to Support Taxpayers Enters Into Force](#) (24 Mar. 2021), News IBFD.

⁴⁸² See IN: Department of Revenue Notification No. 28/2021–Customs (24 Apr. 2021), <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs28-2021.pdf> (accessed 7 Mar. 2022); IN: Department of Revenue Notification No. 27/2021–Customs (20 Apr. 2021), <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs27-2021.pdf> (accessed 7 Mar. 2022). See also N. Lingbawan, [India Exempts Import of Vaccines, Oxygen Supply and Ventilators from Customs Duty and Health Cess](#) (26 Apr. 2021), News IBFD.

⁴⁸³ See IT: Circolare No. 15/2021 (28 Apr. 2021), https://www.adm.gov.it/portale/documents/20182/6571723/DEF_Circolare+proroga+aprile+decisione+491_2020.pdf/341d430a-e8f6-4570-9027-1c8f8fe776c6 (accessed 7 Mar. 2022). See also G. Gallo, [Customs Authorities Clarify Prolonged VAT and Customs Duties Relief for Importation of Medical Equipment](#) (5 May 2021), News IBFD.

⁴⁸⁴ See PY: Decreto Presidencial No. 6.540 (30 Dec. 2021), https://www.presidencia.gov.py/url-sistema-visor-decretos/index.php/ver_decreto/29385 (accessed 7 Mar. 2022). See also E. Bañuelos, [Paraguay Extends Application of 0% Customs Duties Rate on Import of Medical Supplies](#) (19 Jan. 2022), News IBFD.

⁴⁸⁵ See UA: Federal Tax Authority Clarification No. VATP025, Temporary Zero-Rating of Certain Equipment, <https://tax.gov.ae/-/media/Files/FTA/links/Public-Clarification/VATP025---Zero-rating-certain-medical-equipment---06-04-2021.pdf> (accessed 7 Mar. 2022). See also M.F. Charfeddine, [Tax Authority Extends Zero-Rating on Medical Equipment Importations](#) (28 Apr. 2021), News IBFD.

⁴⁸⁶ See UZ: Law No. ZRU-689 (29 Apr. 2021), <https://lex.uz/docs/5398713> (accessed 28 Feb. 2022). See also K. Trough, [Uzbekistan Temporarily Abolishes VAT on Certain Supplies](#) (26 May 2021), News IBFD.

⁴⁸⁷ See VE: Decreto N° 4.619, mediante el cual se establece las exoneraciones de impuestos de importación, IVA y tasa por determinación del régimen aduanero a mercancías y sectores (1 Jun. 2021), <https://finanzasdigital.com/2021/06/gaceta-oficial-extraordinaria-6625-exoneracion-impuestos-importacion-mercancias/> (accessed 7 Mar. 2022). See also M.A. Muñoz, [Executive Branch Provides VAT and Customs Duties Exemption on Import of Medical Equipment](#) (30 June 2021), News IBFD.

⁴⁸⁸ See AR: Ley 27617, Impuesto a las Ganancias (21 Apr. 2021), <https://www.boletinoficial.gob.ar/web/utills/pdfView?file=%2Fpdf%2Faviso%2Fprimera%2F243262%2F20210421> (accessed 7 Mar. 2022). See also E.O. Meloni, [Executive Branch Extends Temporary Income Tax Exemption for "Frontline Workers"](#) (26 Apr. 2021), News IBFD; and E.O. Meloni, [Argentina Exempts from Income Tax 13th Month Salary and Increases Allowance for Employees](#) (26 Apr. 2021), News IBFD.

⁴⁸⁹ See AT: Federal Ministry of Finance Press Release, VAT Exemption for Face Masks, <https://www.bmf.gv.at/en/current-issues/Corona/information-coronavirus/VAT-exemption-for-face-masks.html>

The government of **Bulgaria** proposed a bill introducing amendments to the Personal Income Tax Act to address the demographic crisis and aimed at supporting young people, young families and families with dependants (e.g. children below 18 years). If approved, parents will be able to apply an annual deduction of BGN 6,000 for each child when filing their personal income tax returns. The proposal also includes a measure that would allow employment income of individuals of up to 26 years to be exempt from personal income tax.⁴⁹⁰

Canada extended the temporary amendments to the Income Tax Regulations applicable to Registered Pension Plans and deferred salary leave plans from 2021 through 2022. The initial temporary regulations, which sought to provide relief to participating Canadian workers and their employers amid the ongoing COVID-19 pandemic, were released on 2 July 2020.⁴⁹¹

In **Honduras**, the progressive table of income tax is updated each year to account for the inflation to guarantee the minimum necessary for living.⁴⁹²

In **Lithuania** the tax-free income was increased from EUR 400 to EUR 460 from 1 January 2022, to reduce the tax burden on employees with a monthly income of up to a minimum wage.⁴⁹³

Moldova reduced the VAT rate applicable to hotel and restaurant services from 12% to 6%.⁴⁹⁴

On the other hand, **Slovenia** modified the criteria that determine whether taxpayers have suffered a relevant decrease in revenue and added additional criteria related to the number of employees and value of tangible fixed assets. The rules relate to the emergency tax measures adopted in 2020, which consist of salary compensation for the temporary waiting for work and the subsidies for a minimum wage.⁴⁹⁵

(accessed 7 Mar. 2022). See also AT: OPTR Report (Tax Administration/(Tax) Ombudsperson), Questionnaire 2, Question 66.

⁴⁹⁰ See BG: Draft Bill for Amendment and Supplementation of the Personal Income Taxes Act No. 154-01-46 (21 Apr. 2021), <https://www.parliament.bg/bg/bills/ID/163613> (accessed 7 Mar. 2022). See also S. Krastanov, *Bulgaria Proposes Favourable Tax Measures for Young Families* (26 Apr. 2021), News IBFD.

⁴⁹¹ See CA: Department of Finance Press Release, Relief measures for Registered Pension Plans and deferred salary leave plans (20 May 2021), <https://www.canada.ca/en/department-finance/news/2021/05/relief-measures-for-registered-pension-plans-and-deferred-salary-leave-plans.html> (accessed 28 Feb. 2022). See also J. Robles Santos, *Canada Proposes Extension of Relief for Registered Pension Plans and Deferred Salary Leave Plans for Duration of Pandemic* (31 May 2021), News IBFD.

⁴⁹² See HN: Acuerdo SAR No. 022-2021, 14 Jan. 2022, <https://www.tsc.gob.hn/web/leyes/Acuerdo-SAR-022-2021.pdf> (accessed 25 Feb. 2022). See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 62.

⁴⁹³ See LT: Personal Income Tax Law No. 1021010ISTA0IX-1007 (consolidated as of 01 Jan. 2022), <https://www.e-tar.lt/portal/lt/legalAct/TAR.C677663D2202> (accessed 25 Feb. 2022); LT: Ministry of Finance, Personal Income Tax, <https://finmin.lrv.lt/en/competence-areas/taxation/main-taxes/personal-income-tax> (accessed 25 Feb. 2022). See also OPTR Report (Taxpayers/Tax Practitioners) Questionnaire 2, Question 62.

⁴⁹⁴ See MD: Law No. 76, about the special taxation of the services performed within the activities referred to the Section I of the Qualifier of types of economic activity of Moldova (23 Apr. 2021), <https://cis-legislation.com/document.fwx?rgn=135099> (accessed 28 Feb. 2022). See also V. Foltea, *Moldova Reduces VAT Rate for Hotel and Restaurant Services* (28 May 2021), News IBFD.

⁴⁹⁵ See SI: Law on Additional Measures for the Mitigation of Consequences of COVID-19, OG 58/2021 (14 April 2021), <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2021-01-1170/pravilnik-o-dopolnitvah-pravilnika-o-merilih-sorazmernosti-pri-pogoju-ugotavljanja-znizanja-prihodkov> (accessed 1 Mar. 2022). See also N. Ovcar, *Slovenia Amends Conditions of Emergency Tax Measures* (18 May 2021), News IBFD.

The **United States** provided a safe harbour for taxpayers that received a loan pursuant to the Paycheck Protection Program (PPP) and, based on prior guidance, did not deduct certain otherwise deductible expenses paid or incurred during the taxpayers' taxable year(s) ending after 26 March 2020 and before 1 January 2021 (2020 taxable year). Under the safe harbour, such taxpayers may deduct the expenses in the immediately subsequent taxable year. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on 27 March 2020, established the PPP to provide forgivable loans of up to USD 10 million to small businesses.⁴⁹⁶

Best practice: Authorization by the judiciary should be required before seizing assets or banking accounts

Shifted towards/matched the best practice:

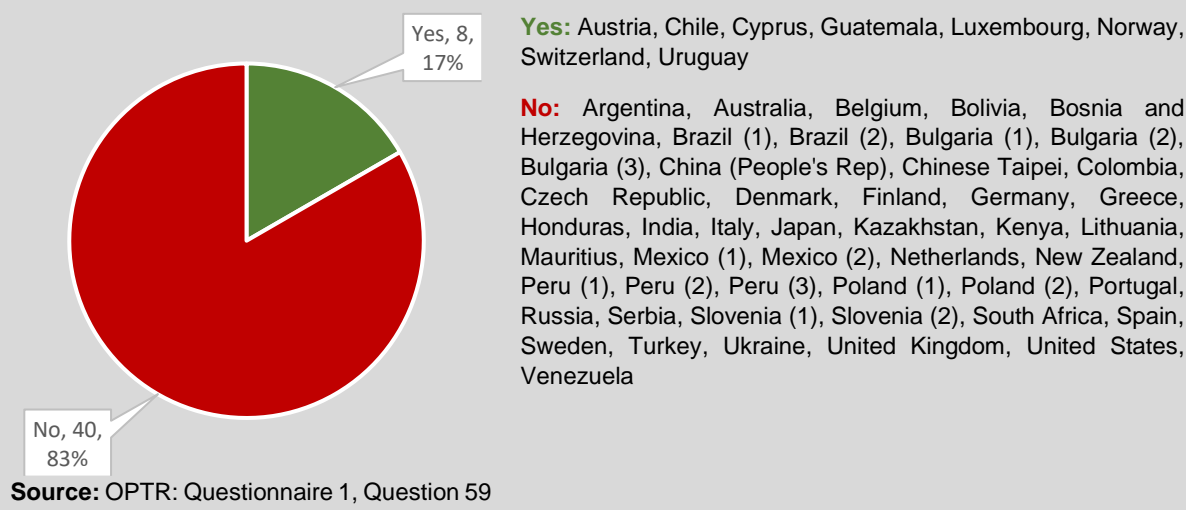
None

Shifted away from the best practice:

Mexico

Chart 59. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?

56 responses



One surveyed jurisdiction reported a shift away from the best practice, as **Mexico** has reportedly introduced a measure to allow the tax authorities to seize bank deposits without prior judicial hearing when a tax assessment has become "due". In addition, the tax code does not provide a definition of what is to be understood as a "due tax assessment". As described previously, the general interpretations of the Mexican tax code provide that a due tax assessment arises when the assessment is not paid, which is different from a "final assessment" where the period to challenge on an administrative stage or via the judiciary, has

⁴⁹⁶ See US: IRS Revenue Proceeding 2021-20, <https://www.irs.gov/pub/irs-drop/rp-21-20.pdf> (accessed 7 Mar. 2022); US: IRS Press Release IR-2021-91 (22 Apr. 2021), <https://www.irs.gov/newsroom/treasury-department-and-irs-provide-safe-harbor-for-small-businesses-to-claim-deductions-relating-to-first-round-paycheck-protection-program-loans> (accessed 7 Mar. 2022). See also W. Choi, [IRS Provides Safe Harbour for Deductions under Paycheck Protection Program](#) (23 Apr. 2021), News IBFD.

expired.⁴⁹⁷

For some time now, a controversy has been raging in **Spain** over the possibility, accepted by the Supreme Court in a 2019 ruling, of the tax administration seizing the minimum wage collected in previous months, which has not been used up in full, and which is being saved little by little in the account of the taxpayer.⁴⁹⁸

Minimum standard: Taxpayers should have the right to request delayed payment of arrears.

Shifted towards/improved the minimum standard:

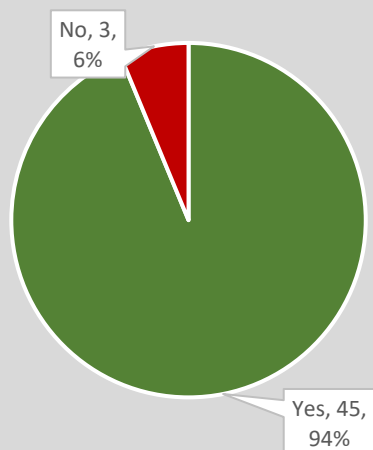
Belgium, China (People’s Rep.), Colombia, Netherlands, Portugal, Taiwan, United Kingdom

Shifted away from the minimum standard:

None

Chart 60. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?

56 responses



Yes: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep), Chinese Taipei, Colombia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Argentina, Chile, Cyprus

Source: OPTR: Questionnaire 1, Question 60

As described at the beginning of this section, means have been scarce for several taxpayers for the years 2020-2021, due to the pandemic and the economic crisis resulting from it. Consequently, several countries introduced COVID-specific measures in order to aid the

⁴⁹⁷ See MX: Federal Tax Code (*Código Fiscal de la Federación*), Article 151-Bis, D.O.F. 12 Nov. 2021, http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 20 Jan. 2021). See also MX: OPTR Report (Taxpayers/ Tax Practitioners), Questionnaire 2, Question 63.

⁴⁹⁸ See ES: ATS 9295/2019 [ECLI:ES:TS:2019:9295A], 26 Sept. 2019, <https://www.poderjudicial.es/search/TS/openDocument/516f119dc390d40f/20191004> (accessed 25 Feb. 2022). See also Ático Jurídico, Hacienda podrá embargar el salario mínimo del contribuyente (17 Oct. 2019), <https://aticojuridico.com/embargo-salario-minimo-tribunal-supremo/> (accessed 25 Feb. 2022); Llana Consultores, El Tribunal Supremo dictamina que Hacienda puede embargar al contribuyente la parte del salario mínimo no gastado, <https://llanaconsultores.com/el-tribunal-supremo-dictamina-que-hacienda-puede-embargar-al-contribuyente-la-parte-del-salario-minimo-no-gastado/> (accessed 25 Feb. 2022); P. Martínez-Almeida, El Supremo permite a Hacienda embargar el salario mínimo (17 Oct. 2019), <https://www.idealista.com/news/finanzas/economia/2019/10/16/777992-el-supremo-permite-a-hacienda-embargar-la-parte-del-salario-minimo-que-se-ahorra> (accessed 25 Feb. 2022).

taxpayers, which have been continued in 2021, including extensions of payment of taxes and of deadlines for reporting obligations.

Argentina froze the fixed monthly tax amounts to be paid under the special regime for small taxpayers to the values of December 2020. Also, the tax authorities extended the application of the 95% reduction of social security contributions to be paid by employers providing health care services. Also, in view of the COVID-19 pandemic, the tax authorities extended, from 30 September 2020 to 31 October 2020, the validity of the instalment schemes and interest rates applicable to micro, small and medium enterprises.⁴⁹⁹

Australia provided deferral of lodgements and payments and low-interest payment plans, along with support via tax agents - penalty relief for late lodgements and assistance to allow taxpayers to enter flexible payment plans online. Taxpayers with in-progress audits were contacted, either directly or through their agents, and offered assistance including deferrals of audit action with planned call-backs to understand if circumstances had changed, or an extension of time to provide requested materials. What was also provided was assistance to vary future tax instalments without penalty and recognition of the uncertain environment and different income sources particularly for business taxpayers, along with adjustment of debt collection approaches in three phases to enable taxpayers to get back on track.⁵⁰⁰

In **Belgium**, the tax authorities stated that companies that are unable to pay their debts for corporate income tax, withholding tax and VAT on time, can apply for delayed payment of arrears until 30 June 2021, as well as an exemption from interests and/or remission of fines for non-payment of the tax debt. Such a delay was possible at least under certain conditions (proof of “nuisance” experienced as a result of the corona crisis, no structural payment difficulties independent of the COVID-19 pandemic, etc.). A model application form was made available on the website of the tax administration.⁵⁰¹

Bolivia laid down requirements and procedures for taxpayers to continue benefiting from their tax payment arrangements even after having defaulted on their payment obligations between 1 October 2019 and 30 June 2021.⁵⁰² Also in **Bolivia**, the tax authorities regulated the

⁴⁹⁹ See AR: Law 27639, OG 22 Jul. 2021, Programa De Fortalecimiento Y Alivio Fiscal Para Pequeños Contribuyentes, <https://www.boletinoficial.gob.ar/detalleAviso/primera/247160/20210722> (accessed 25 Feb. 2022); AR: Presidential Decree No. 242/2021, BO 19 Apr. 2021, <https://www.boletinoficial.gob.ar/web/utills/pdfView?file=%2Fpdf%2Faviso%2Fprimera%2F243123%2F20210419> (accessed 25 Feb. 2022); AR: RESOG-2020-4822-E-AFIP-AFIP, Régimen de facilidades de pago, <https://www.boletinoficial.gob.ar/web/utills/pdfView?file=%2Fpdf%2Faviso%2Fprimera%2F235527%2F20200929> (accessed 28 Feb. 2022). See also D. Calzetta, [Special Regime for Small Taxpayers: New Fixed Monthly Tax Amounts Apply from July 2021](#) (30 July 2021), News IBFD; E.O. Meloni, [Tax Authorities Further Extend Reduction of Social Security Contributions for Employers Engaged in Health Care Sector](#) (29 Apr. 2021), News IBFD; and E.O. Meloni, [Tax Authorities Extend Validity of Instalment Agreement Regime to Regularize Tax and Social Security Obligations](#) (5 Oct. 2020), News IBFD.

⁵⁰⁰ See AU: Commissioner of Taxation, Annual Report 2020-21, pp 21-22 https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/ATO_annual_report_2020-21.pdf (accessed 28 Feb. 2022). See also AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 66.

⁵⁰¹ See BE: SPF Finances, Payment plan from 12 to 24, 36 or 50 months, <https://finances.belgium.be/fr/entreprises/coronavirus/paiement> (accessed 25 Feb. 2022); R. Offermanns, [Belgium Introduces Instalment Payments for Companies and Self-Employed Persons](#) (6 July 2021), News IBFD. See also BE: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 64.

⁵⁰² See BO: Resolución (RND) No. 102100000008, Procedimiento para la aplicación de la Ley No. 1380 que dispone la continuidad de facilidades de pago incumplidas (14 Jul. 2021),

procedure for landlords to claim a tax deduction based on the 50% discount granted to their tenants, according to Law 1342 of 2020, which established that landlords who grant their tenants a 50% discount on their lease payment would qualify for a tax deduction on their rental income equivalent to that amount.⁵⁰³

In view of the downward pressure on the economy in 2021 and the intensification of the pandemic, **China (People's Rep.)** introduced a series of tax relief and tax deferral policies during the reporting period. In this regard, taxpayers are entitled to apply for tax deferral under certain conditions. According to the law, if taxpayers have special difficulties, they can apply for tax deferral before the expiry of the tax period established by law or the decision of the tax authority.⁵⁰⁴

Chinese Taipei loosened the requirements for taxpayers to apply for the deferral of the tax payment or for payment by instalments. After acceptance by the tax authorities, it may approve the extension of payment at its discretion by 1 to 12 months or the payment by 2 to 36 instalments (each period is calculated as 1 month).⁵⁰⁵

Colombia also relaxed the requirements for granting delayed payment of arrears. In this regard, Decree 374 of 2021 was issued to modify the deadlines for the payment of income tax declared by legal entities classified as micro- and small companies. This, in order to contribute to the recovery of these companies whose economic activity was affected by the situation derived from the COVID-19 pandemic. Then, by means of Decree 612 of 2021, the terms for the payment of income tax were extended again due to the persistence of the economic situation affecting these companies, as well as to events that affected public order and prevented the normal development of the activities of these companies.⁵⁰⁶

<https://impuestos.com.bo/procedimiento-continuidad-facilidades-pago-incumplidas/> (accessed 25 Feb. 2022). See also A. Villegas, *Tax Administration Issues Procedures for Taxpayers to Reactivate Validity of Defaulted Tax Payment Arrangements* (3 Aug. 2021), News IBFD.

⁵⁰³ See BO: Ley 1342 de 2020, excepcional de arrendamientos (27 Ago. 2020), <https://web.senado.gob.bo/sites/default/files/LEY%20N%C2%B01342-2020.PDF> (accessed 1 Mar. 2022); BO: Resolución Normativa de Directorio No. 1021000005, procedimiento para la aplicación de la Ley 1342 (8 Apr. 2021), <https://www.impuestos.gob.bo/ckeditor/plugins/imageuploader/uploads/4385d71464.pdf> (accessed 1 Mar. 2022). See also P. Ordóñez, *Tax Administration Regulates Procedure for Landlords to Claim Tax Deduction on Discounted Rent* (25 May 2021), News IBFD.

⁵⁰⁴ See CN: MoF and State Tax Authority's announcement: Continuing Preferential Policies on Taxes and Fees in Response to the Pandemic (17 Mar. 2021), <http://www.chinatax.gov.cn/chinatax/n359/c5162489/content.html> (accessed 3 Mar. 2022); CN: Notice of the State Administration of Taxation on granting the function of taxation and aid to win the battle of epidemic prevention and control Notice on certain measures (General Administration of Taxation [2020] No. 14) <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5143585/content.html> (accessed 3 Mar. 2022); CN: State Administration of Taxation on carrying out the Opinions on the "Spring Breeze Action for convenient tax administration" (General Administration of Taxation Fa [2020] No. 11) <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5145201/content.html> (accessed 3 Mar. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 64.

⁵⁰⁵ See TW: MoF Press Release: Taxpayers affected by the severe special infectious pneumonia (COVID-19) epidemic can apply for the deferred tax payments or for payments by instalments. The amount of tax payable is not limited, and can be deferred for a maximum of 1 year or be paid in 3-year instalments (17 Apr. 2021), <https://www.mof.gov.tw/eng/singlehtml/f48d641f159a4866b1d31c0916fbcc71?cntId=c0c5975593044efbab5713bfe4182bc3> (accessed 3 Mar. 2022). See also TW: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 64.

⁵⁰⁶ See CO: Decreto Presidencial No. 612 (20 Jun. 2021), [https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20612%20DEL%204%20DE%20JUNIO%](https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20612%20DEL%204%20DE%20JUNIO%202021)

Cyprus extended the instalment scheme and partial relief from late payment interest payments and related penalties for overdue tax liabilities. Under the amending law, eligible taxpayers may also apply for the instalment scheme for overdue tax liabilities relating to tax years 2016/2019 (inclusive), subject to a decrease in their annual turnover of at least 25% in 2020 (as compared to 2019) due to business disruption caused by the COVID-19 pandemic, in addition to the obligation to be registered (or exempt) from VAT.⁵⁰⁷

By Act 533 of 27 March 2021, **Denmark** made it possible to avoid taxation of public COVID-19 support paid out as part of a support package if the support is paid back within 3 years.⁵⁰⁸

Greece decided to defer the deadlines for the payment of instalments pertaining to liabilities under a settlement scheme expiring in May 2021, free of interest or surcharges.⁵⁰⁹

In **Lithuania**, the government agreed business support measures regarding the negative effects of the COVID-19 pandemic, including a one-off possibility for businesses that suffered a loss in the 2020 tax period to utilize this loss by reducing their taxable profit in the 2019 tax period, a reduction of the VAT rate from 21% to 9% for the catering, culture and sports sectors until December 2022, and an extension of the tax debts collection relief for businesses affected by the pandemic until 31 August 2021.⁵¹⁰

Paraguay broadened the responsibilities of the Treasury Solicitor's Office (*Abogacía del Tesoro*, ABT) as regards the approval of payment schemes applicable to tax debts, including those that are documented in debt certificates.⁵¹¹

Peru introduced an extraordinary procedure for taxpayers to apply for a tax payment deferral on their outstanding balance for cases in which the taxpayer had lost such benefit due to non-compliance with the terms established under the tax payment deferral arrangement established under Legislative Decree 1,487 of 2020, until 31 December 2021.⁵¹²

[20DE%202021.pdf](#) (accessed 3 Mar. 2022). See also CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 64.

⁵⁰⁷ See CY: Law Regulating the Settlement of Overdue Taxes (4(I)/2017), http://www.cylaw.org/nomoi/enop/non-ind/2017_1_4/index.html (accessed 1 Mar. 2022). See also V. Argyropoulou, [Cyprus Waives Certain Interest and Penalties for Overdue Tax Liabilities](#) (25 May 2021), News IBFD.

⁵⁰⁸ See DK: Act No. 533 (27 Mar. 2021), <https://www.retsinformation.dk/eli/lt/2021/533> (accessed 7 Mar. 2022). See also DK: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 66.

⁵⁰⁹ See GR: Government Gazette No: 2096B/20-5-2021, https://www.aade.gr/sites/default/files/2021-05/a_1111_2021ada.pdf (accessed 1 Mar. 2022).

⁵¹⁰ See LT: Draft law amending Article 30 of the Law on Corporate Tax No. IX-675 (14 May 2021), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/af7f9cd0b4ad11eb9624b75b084fae15?positionInSearchResults=95&searchModelUUID=134c2815-d7bc-436c-a9b0-98d30e957075> (accessed 25 Feb. 2022); LT: VMI Request for Deferral or Determination of Tax Arrears, <https://www.vmi.lt/evmi/en/prasymas-atideti-arba-isdestyti-mokestine-nepriemoka> (accessed 25 Feb. 2022). See also G. Apulskyte, [Lithuania Approves Revised Draft Budget for 2021](#) (1 June 2021), News IBFD.

⁵¹¹ See PY: Resolución General No. 92 (22 Jul. 2021), <https://bit.ly/3sj1F8b> (accessed 25 Feb. 2022). See also E. Bañuelos, [Tax Authority Amends Instalment Agreement Application Rules to Speed up Payment of Tax Debts](#) (3 Aug. 2021), News IBFD.

⁵¹² See PE: Supreme Decree No. 144-2021-EF of 2021 (11 Jun. 2021), <https://busquedas.elperuano.pe/download/url/establecen-como-supuesto-de-excepcion-temporal-a-la-aplicaci-decreto-supremo-n-144-2021-ef-1962685-2> (accessed 7 Mar. 2022). See also E. Rodríguez Alzra, [Peru Adopts Temporary Measures for Taxpayers to Request Application of Tax Payment Deferral Regime](#) (2 July 2021), News IBFD.

In **Portugal**, Decree-Law 125/2021 of 30 December created (i) a regime allowing for the payment of taxes in instalments prior to the commencement/outside the context of tax enforcement proceedings, upon request of the taxpayer; and (ii) a regime of automatic payment in instalments for small tax debts (up to EUR 5,000.00 for individuals and EUR 10,000.00 for companies) not paid within the legal deadlines.⁵¹³

Puerto Rico allowed qualified taxpayers to carry back eligible net operating losses for use on their 2018 or 2019 income tax returns through filing a request, instead of amending their tax returns for said years.⁵¹⁴

The **Netherlands** granted various payment extensions to taxpayers upon request. The Dutch tax authority will propose a payment schedule for all extended payments, ending on 1 October 2027 at the latest. All new tax debts after 31 January 2022 must be paid normally, unless the government decides to extent the arrangement further. Tax collection interest has also been reduced to 0.1% until 1 July 2022. Starting 1 July 2022, this interest rate will be increased gradually from 1% to the normal 4% on 1 January 2024.⁵¹⁵

The tax authorities of the **United Kingdom** have been reported to show a lot of leeway in agreeing postponement of liability and in approving time-to-pay arrangements during the pandemic. According to the National Audit Office Report on HMRC's annual report and accounts for 2020/21, levels of tax debt increased greatly during the pandemic to a peak of GBP 67 billion in August 2020, largely because of HMRC's decision to suspend collection of VAT and income tax self-assessment debts at the outset. This debt balance was down to GBP 57.5 billion by the end of March 2021, including GBP 3 billion of tax credit debt. By March 2021, there were 864,000 arrangements in place, facilitated by a VAT new payment scheme and an enhanced self-assessment self-serve time- to-pay facility. The average duration of repayment plans increased from around 5 months pre-pandemic to 12 months in July 2021. A helpline was made available for businesses and self-employed individuals who needed help with payment of tax during the COVID-19 pandemic.⁵¹⁶

In the **United States**, the IRS exercised its discretion to refrain from offsetting stimulus payments made in the form of 2020 recovery rebate credits. Furthermore, statutory, and administrative protections exist for taxpayers who would experience economic hardship due to tax collection actions.⁵¹⁷

⁵¹³ See PT: Decreto-Lei n.º 125/2021, que altera o regime de pagamento em prestações de tributos nas fases pré-executiva e executiva e aprova regimes excepcionais de pagamento em prestações no ano de 2022 (30 Dec. 2021), <https://data.dre.pt/eli/dec-lei/125/2021/12/30/p/dre/pt/html> (accessed 3 Mar. 2022). See also PT: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Questions 64 and 66.

⁵¹⁴ See PR: Boletín Informativo de Rentas Internas No. 21-04, Programa para retrotraer pérdidas netas en operaciones hacia años contributivos anteriores ("carryback") bajo la Ley No. 57-2020 (11 May 2021), <http://www.hacienda.pr.gov/publicaciones/boletin-informativo-de-rentas-internas-num-21-04-bi-ri-21-04> (accessed 28 Feb. 2022). See also E.J. Zayas García, *Puerto Rico Treasury Publishes Informative Bulletin on Net Operating Loss Carryback* (31 May 2021), News IBFD.

⁵¹⁵ See M. Schellekens, *Government Extends Tax Measures* (28 May 2021), News IBFD. See also NL: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 64.

⁵¹⁶ See UK: National Audit Office Audit Report and Accounts 2020-21 (22 Jun. 2021), <https://www.nao.org.uk/report/nao-annual-report-and-accounts-2020-21/> (accessed 3 Mar. 2022). See also UK: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 64.

⁵¹⁷ See US: NTA Blog: IRS Initiates New Favorable Offer In Compromise Policies (15 Nov. 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-irs-initiates-new-favorable-offer-in-compromise-policies/>

Best practice: Bankruptcy of taxpayers should be avoided by partial remission of the debt or structured plans for deferred payment.

Shifted towards/matched the best practice:

Colombia, Peru, United States

Shifted away from the best practice:

None

To prevent taxpayer bankruptcy during the hardship of the pandemic, several countries have introduced specific measures in line with the best practice. Ideally, these interim measures could provide inspiration for how to further prevent taxpayer bankruptcy and insolvency.

Argentina suspended the initiation of collection lawsuits and the application of enforced collection measures, except for the collection activities currently conducted by the tax authorities (*Administración Federal de Ingresos Públicos*, AFIP) regarding the Once-Only Tax on Wealth, which was due on 16 April 2021.⁵¹⁸

Belgium temporarily reduced, from 15% to 10% and from 1 April to 30 September 2021, the general proportional fine that is imposed for non-payment or delayed payment of VAT (of which the due date is evidenced by a periodic VAT declaration). In addition, new legislation temporarily reduced the applicable annual interest rate for late payment of VAT from 9.6% to 4%, for April, May and June 2021, due to the COVID-19 pandemic.⁵¹⁹

In **Colombia**, Decree 939 of 2021 regulated the rescue and recovery mechanism for companies in insolvency proceedings, namely the reduction of penalties, interest and capital, in line with the best practice.⁵²⁰

The **Czech Republic** further prolonged until 31 December 2021 the VAT waiver on respirator supplies due to the extraordinary circumstances caused by the COVID-19 pandemic. Also with

(accessed 28 Feb. 2022). See also US: OPTR Report (Taxpayers / Tax Practitioners/Academia), Questionnaire 2, Question 62.

⁵¹⁸ See AR: RESOG-2021-4936-E-AFIP-AFIP. Suspensión de la iniciación de determinados juicios de ejecución fiscal y traba de medidas cautelares hasta el 31 de marzo de 2021 (25 Feb. 2021), <https://www.boletinoficial.gob.ar/detalleAviso/primera/241311/20210301> (accessed 28 Feb. 2022); AR: RESOG-2021-4996-E-AFIP-AFIP, Suspensión de la iniciación de determinados juicios de ejecución fiscal y traba de medidas cautelares. Resolución General N°4.936 y su complementaria. Norma complementaria (21 May 2021), <https://www.boletinoficial.gob.ar/web/utills/pdfView?file=%2Fpdf%2Faviso%2Fprimera%2F244781%2F20210526> (accessed 28 Feb. 2022). See also E.O. Meloni, [Suspension of Tax Collection Procedures Does Not Apply in Respect of Once-Only Tax on Wealth](#) (28 May 2021), News IBFD.

⁵¹⁹ See BE: Royal Decree amending Royal Decrees Nos. 1, 4, 24 and 41 on value added tax and introducing support measures due to the COVID-19 pandemic (29 Mar. 2021), <http://www.ejustice.just.fgov.be/eli/arrete/2021/03/29/2021020715/moniteur> (accessed 7 Mar. 2022); BE: Law of 2 April 2021 on temporary support measures in the light of the COVID-19 pandemic (13 Apr. 2021), <http://www.ejustice.just.fgov.be/cqi/article.pl> (accessed 7 Mar. 2022). See also BE: OPTR Report (Taxpayers/ Tax Practitioners/Academia), Questionnaire 2, Question 66.

⁵²⁰ See CO: Decreto 939 de 2021, por el cual se reglamenta parcialmente el parágrafo 3 del artículo 5 del Decreto Legislativo 560 de 2020 y se adiciona la Sección 7 al Capítulo 9 del Título 2 de la Parte 2 del Libro 2 del Decreto 1074 de 2015, Decreto Único Reglamentario del Sector Comercio, Industria y Turismo (19 Ago. 2021), <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20939%20DEL%2019%20DE%20AGOSTO%20DE%202021.pdf> (accessed 3 Mar. 2022). See also CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 66.

regard to the pandemic, the **Czech Republic** extended the VAT exemption on the import of certain supplies used to combat COVID-19 from 30 April 2021 until 31 December 2021.⁵²¹

Denmark obtained approval from the EU Commission for its tax deferral scheme for small and medium-sized enterprises (SMEs) affected by the COVID-19 pandemic, and an increase amounting to EUR 7.6 million (DKK 57 million) in the budget of the scheme. Further, the European Commission also approved the application of a new deferral scheme for medium-sized enterprises in the amount of EUR 15.4 million (DKK 115 million). In addition, Law 779 authorized the extension of interest-free loans for wage tax and value added tax (VAT) payments to undertakings covering their withholding tax and labour market contribution duties on salaries for certain periods during the pandemic, subject to various conditions, as a result of the COVID-19 pandemic.⁵²²

Also, in **Denmark**, Act 1956 of 19 October 2021 postponed the payback dates for loans granted by the state and covering VAT. By the same Act other means were also used to facilitate the liquidity situation for undertakings. In addition, according to a new provision in the Tax Assessment Act, a taxpayer to whom a temporary payment of COVID-19 support has been paid can choose the year of taxation of that support. The choice is between the year of payment and a later year; however, the support must be taxed no later than the year when the recipient obtained an administrative decision awarding them the final right to the amount.⁵²³

Finland announced that the interest rate for late payment of undue taxes that are part of a repayment arrangement agreed with the tax authorities will be reduced to 2.5% (from 7%). The new rate applies with effect from 1 May 2021 on payment arrangements already in place and new arrangements for which the application has been submitted on or after 21 April 2021. The new rate would apply until 31 August 2021.⁵²⁴

Greece announced that companies and individuals exercising business activities can depreciate their fixed assets for the period in which their operation was suspended under a

⁵²¹ See CZ: Treasury Financial Advisory Issue 33/2021, <https://www.mfcr.cz/cs/legislativa/financni-zpravodaj/2021/financni-zpravodaj-cislo-33-2021-43259> (accessed 25 Feb. 2022); Commission Decision (EU) 2021/660 of 19 April 2021 amending Decision (EU) 2020/491 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020. See also F. Krajcuska, *Czech Republic Further Extends VAT Waiver on Respirator Supplies* (20 Oct. 2021), News IBFD; F. Krajcuska, *Czech Republic Extends Import VAT Exemption on Certain Supplies* (18 May 2021), News IBFD.

⁵²² See DK: EU Commission Press Release (26 May 2021), https://ec.europa.eu/commission/presscorner/detail/en/mex_21_2682 (accessed 28 Feb. 2022); DK: Act No. 779 (4 May 2021), <https://www.retsinformation.dk/eli/lta/2021/779> (accessed 7 Mar. 2022); DK: Act No. 122 (30 Jan. 2021), <https://www.retsinformation.dk/eli/lta/2021/122> (accessed 7 Mar. 2022); DK: Act No. 248 (23 Feb. 2021), <https://www.retsinformation.dk/eli/lta/2021/248> (accessed 7 Mar. 2022). See also *European Commission Approves Danish Tax Deferral Schemes Aimed at Supporting Enterprises* (26 May 2021), News IBFD; and J. Lammers, *Denmark Signs and Gazettes Law on Extending Wage Tax and VAT Loan Schemes* (10 May 2021), News IBFD. See also DK: OPTR Report (Taxpayers / Tax Practitioners, Tax Administration), Questionnaire 2, Question 66.

⁵²³ See DK: Act No. 1956 (19 Oct. 2021), <https://www.retsinformation.dk/eli/lta/2021/1956> (accessed 7 Mar. 2022); DK: Act No. 2611 (28 Dec. 2021), <https://www.retsinformation.dk/eli/lta/2021/2611> (accessed 7 Mar. 2022). See also DK: OPTR Report (Taxpayers / Tax Practitioners, Tax Administration), Questionnaire 2, Question 66.

⁵²⁴ See FI: VeroSkatt, Interest on Late Payments, <https://www.vero.fi/en/individuals/payments/paying-taxes/interest-on-late-payments/> (accessed 25 Mar. 2022). See also L. Ambagtsheer-Pakarinen, *Tax Authorities Reduce Temporarily Late Payment Interest for Repayment Arrangements* (15 Apr. 2021), News IBFD.

state decision, namely the extraordinary circumstances of the COVID-19 pandemic, while the fixed assets would have been used during the suspension period. The same applies to individuals and companies that due to the COVID-19 pandemic will not operate again. In the same vein, business expenses incurred during the period of suspension are deductible regardless of whether the relevant services were provided. The expenses, however, need to be properly documented.⁵²⁵

India further postponed the deadline for the dispute settlement payment under the Vivad se Vishwas Scheme and passing of orders and notices for assessments or reassessments from 30 April 2021 to 30 June 2021.⁵²⁶

In **Lithuania**, companies affected by the pandemic and listed by the tax authorities may form interest-free loan agreements (MPS) until 31 August 2021 for the debts that have been comprised for the period from 16 March 2020 until 31 August 2021. Companies shall pay the loan in instalments until 31 December 2022, among other measures.⁵²⁷

In **Moldova**, the Exceptional Situations Commission issued a decision providing that expenses incurred by legal entities until 31 May 2021 for purchasing COVID-19 vaccines and vaccinating their employees against COVID-19 will not constitute a taxable benefit granted by the employer to its employees on which individual income tax, social security and medical assistance contributions must be calculated and paid.⁵²⁸

New Zealand extended the deadline by which a person entitled to research and development tax credits must apply for criteria and methodology approvals for the 2020/21 income year by 3 months. The extension applies where the planning or conduct of eligible research and development or the ability to obtain necessary information, seek advice and formulate an application on time has been materially delayed or disrupted by the COVID-19 pandemic and its effects.⁵²⁹

⁵²⁵ See GR: General Department of Taxation, 'Carrying out of valuations and fiscal monitoring of expenditure and of costs and expenses of expenditure and losses incurred by businesses affected by the COVID-19 pandemic' (21 May 2021), https://www.aade.gr/sites/default/files/2021-05/e2110_2021.pdf (accessed 25 Feb. 2022). See also V. Dafnomilis, *Individuals and Companies May Depreciate Fixed Assets for Period During Which Their Operation Was Suspended* (2 June 2021), News IBFD.

⁵²⁶ See IN: Department of Revenue Press Release (24 Apr. 2021), https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/933/PressRelease_Government_extends_certain_timelines_in_light_of_raging_pandemic_24_4_21.pdf (accessed 7 Mar. 2022); IN: Central Board of Direct Taxes Notification No. 9/2021 (26 Feb. 2021), https://www.incometaxindia.gov.in/communications/notification/notification_9_2021.pdf (accessed 7 Feb. 2022); IN: Central Board of Direct Taxes Notification No. 10/2021 (27 Feb. 2021), <https://govtempdiary.com/2021/03/cbdt-extends-various-limitation-dates-notification-no-10-2021-in-s-o-notification-no-10-2021-in-s-o-966-e-dated-27-02-2021/73340> (accessed 7 Feb. 2022). See also N. Lingbawan, *India Further Extends Dispute Settlement and Other Deadlines* (26 Apr. 2021), News IBFD; and N. Lingbawan, *India Extends Various Deadlines* (1 Mar. 2021), News IBFD.

⁵²⁷ See LT, Tax Authority Guidance No. KM2514, <https://bit.ly/3Cm7ZPH> (accessed 7 Mar. 2022). See also G. Apulskyte, *Lithuania Further Extends Tax Relief Measures for Companies* (4 May 2021), News IBFD.

⁵²⁸ See MD: Instruction No 2 of Moldova's Commission for Emergency Situations (8 April 2021), <https://albasat.md/en/instruction-no-2-of-moldovas-commission-for-emergency-situations-from-8-april-2021/> (accessed 7 Mar. 2022). See also V. Foltea, *Expenses Related to COVID-19 Vaccines Are Tax Deductible* (6 May 2021), News IBFD.

⁵²⁹ See NZ: Inland Revenue Statutory Variation to sections 33E and 68CC(3) of the Tax Administration Act 1994 (21 Apr. 2021), <https://www.taxtechnical.ird.govt.nz/-/media/project/ir/tt/pdfs/determinations/covid-19->

Panama introduced an amnesty regime that covers debts owed to the Social Security Authority (*Caja de Seguro Social*, CSS). The law grants to individuals and legal entities a 100% waiver on late payment interest and fines if at least 50% of the outstanding balance owed to the CSS is paid within 24 months from the law's entry into force.⁵³⁰

In **Peru**, Decree 144-2021-EF allowed the tax authorities to provide further deferral of arrears to taxpayers who, due to the pandemic, were not able to fulfil the tax liabilities that were the object of delayed payments in 2020, provided they produce evidence of a decrease in their income in 2021, compared to 2020.⁵³¹ **Peru** also provided procedural measures for taxpayers in the tourism sector to request the application of the tax deferral and payment plan regime, initially introduced through Law 31103 of 2021 due to the adverse economic effects of the COVID-19 pandemic on the tourism sector.⁵³² So did **Paraguay**, expanding the scope of said measures to catering, accommodation, tourist transport, tourist guide and event organization services, while enacting a special VAT regime for leasing of immovable property for business purposes.⁵³³

[variation/cov-21-01.pdf?la=en](#) (accessed 7 Mar. 2022). See also K. Holmes, [New Zealand Extends Deadlines for Research and Development Expenditure Approvals and Supplementary Returns](#) (26 Apr. 2021), News IBFD.

⁵³⁰ See PA: Ley 215, que concede una amnistía para el pago total de las cuotas empleado-empleador, las primas de riesgos profesionales y demás contribuciones de los empleadores ante la Caja de Seguro Social (6 May 2021), https://www.gacetaoficial.gob.pa/pdfTemp/29279_B/84906.pdf (accessed 7 Mar. 2022). See also A.J. Marusic, [Panama Approves Amnesty Law for Social Security Contributions](#) (10 May 2021), News IBFD.

⁵³¹ See PE: Decreto Supremo No. 144-2021-EF, que establece como supuesto de excepción temporal a la aplicación del inciso b) del Artículo 36 del Código Tributario la posibilidad de la SUNAT de otorgar aplazamiento y/o fraccionamiento por el saldo de la deuda tributaria contenido en una resolución de pérdida del Régimen de Aplazamiento y/o Fraccionamiento (RAF), aprobado por el Decreto Legislativo N° 1487 (12 Jun. 2021), <https://busquedas.elperuano.pe/download/url/establecen-como-supuesto-de-excepcion-temporal-a-la-aplicacion-decreto-supremo-n-144-2021-ef-1962685-2#:~:text=El%20presente%20Decreto%20Supremo%20tiene,art%C3%ADculo%2036%20del%20C%C3%B3digo%20Tributario> (accessed 3 Mar. 2022). See also PE: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 66.

⁵³² See PE: Ley 31103 de 2021, que declara de interés nacional la reactivación del sector turismo (30 Dec. 2020), <https://pderecho.pe/ley-31103-declara-interes-nacional-reactivacion-sector-turismo/> (accessed 28 Feb. 2022); PE: Resolución N° 000070-2021/SUNAT, aprueban normas referidas al régimen de aplazamiento y/o fraccionamiento de la deuda tributaria para el sector turismo y regulan canales adicionales para realizar el pago de la deuda materia de acogimiento a diversos aplazamientos y/o fraccionamientos (14 May 2021), <https://busquedas.elperuano.pe/normaslegales/aprueban-normas-referidas-al-regimen-de-aplazamiento-yo-fra-resolucion-n-000070-2021sunat-1953428-1/> (accessed 28 Feb. 2022). See also E. Rodríguez Alza, [Peru Adopts Regulations on Tax Payment Deferral Regime for Tourism Sector](#) (31 May 2021), News IBFD.

⁵³³ See PY: Presidential Decree No. 5.278 (13 May 2021), https://www.presidencia.gov.py/url-sistema-visor-decretos/index.php/ver_decreto/27049 (accessed 28 Feb. 2022); Presidential Decree No. 5.075 (5 Apr. 2021), <https://baselegal.com.py/docs/b4bb49eb-ac19-11eb-972c-525400c761ca> (accessed 7 Mar. 2022); PY: Presidential Decree No. 5.190/2021 (29 Apr. 2021), <https://baselegal.com.py/docs/b7085019-ac18-11eb-972c-525400c761ca> (accessed 7 Mar. 2022). See also E. Bañuelos, [Paraguay Extends Validity of Special VAT Regime for Tourism, Catering and Accommodation Services](#) (26 May 2021), News IBFD; E. Bañuelos, [Paraguay Provides Special VAT Regime for Leasing of Immovable Property for Business Purposes](#) (14 May 2021), News IBFD; E. Bañuelos, [Paraguay Provides Special VAT Regime for Import and Supply of Medical Goods](#) (10 May 2021), News IBFD.

Also, **Uruguay** extended the expiration date of the VAT reduction granted to certain activities in the tourism sector as a response to the continued harmful economic effects of the COVID-19 pandemic.⁵³⁴

In the **United States**, a few federal states have taken further measures (exemptions, allowing deductions) to help taxpayers coping with the pandemic. The IRS exercised its discretion to refrain from offsetting stimulus payments made in the form of 2020 recovery rebate credits. The IRS amended its offer in compromise (OIC) policies to allow OIC applicants to seek an offset bypass refund due to financial hardship. For OICs accepted after 1 November 2021, the IRS will not offset the taxpayer's refund for the year of acceptance. Also, the IRS will permit taxpayers with a pending OIC to request an offset bypass refund due to hardship. Both changes make the OIC program more accessible to taxpayers. However, it has been reported that the IRS could improve its systemic protections and be more proactive in identifying taxpayers at risk of economic hardship.⁵³⁵

Minimum standard: Temporary suspension of tax enforcement should follow natural disasters.

Shifted towards/improved the minimum standard:

Australia, Belgium, Chile, China (People's Rep.), Denmark, Kazakhstan, Mauritius, New Zealand, Norway, Peru, Portugal, Slovenia, Sweden, Turkey, United Kingdom

Shifted away from the minimum standard:

None

Natural disasters are extraordinary situations calling for superior citizens' protection, including flexibility in tax payments. The COVID-19 pandemic has been a truly unique situation because all countries have suffered from it, and whether or not this is defined as a "natural disaster" in the respective jurisdictions, it is clear that the situation has prompted the states to promptly relieve their citizens of their tax and reporting obligations.

A myriad of countries continued their policy of extending deadlines for filing tax returns and providing information, as it happened in 2020. That occurred in the cases of **Algeria**,⁵³⁶

⁵³⁴ See UY: Decreto No. 128/21 (30 Jun. 2021), <https://www.impo.com.uy/bases/decretos/128-2021> (accessed 1 Mar. 2022). See also M.I. Eibe, *Uruguay Extends Expiration Date of VAT Reduction for Tourism Sector Until 30 June 2021* (20 May 2021), News IBFD.

⁵³⁵ See US: 2021 National Taxpayer Advocate Annual Report to Congress (2021 NTA ARC), <https://www.taxpayeradvocate.irs.gov/reports/2021-annual-report-to-congress/full-report/> (accessed 3 Mar. 2022); US: 2022 NTA Purple Book, pp. 58-59, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook.pdf (accessed 3 Mar. 2022); NTA Blog, *IRS Initiates New Favorable Offer In Compromise Policies* (15 Nov. 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-irs-initiates-new-favorable-offer-in-compromise-policies/> (accessed 3 Mar. 2022); J. Robles Santos, *Texas Exempts Pandemic-Related Loans and Grants from Franchise Tax* (17 May 2021), News IBFD; J. Robles Santos, *Hawaii Adopts IRS Ruling on Deduction of Forgiven PPP Loans* (17 May 2021), News IBFD; J. Robles Santos, *New Jersey Exempts Forgiven Paycheck Protection Loans from State Tax, Allows Deductions* (17 May 2021), News IBFD. See also US: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Questions 62, 65 and 66.

⁵³⁶ See DZ: Communiqué relatif à la prorogation de délai de souscription des déclarations fiscales annuelles de résultats, https://www.mfdgi.gov.dz/images/pdf/communiques/communique_declaration-annuelle.fr.pdf (accessed 7 Mar. 2022). See also F. Zohra Zouine, *Tax Authority Prolongs Deadline for Filing 2020 Annual Tax Return* (20 Apr. 2021), News IBFD.

Argentina,⁵³⁷ Australia,⁵³⁸ Bolivia,⁵³⁹ Brazil,⁵⁴⁰ Canada,⁵⁴¹ Chile,⁵⁴² China (People's Rep.),⁵⁴³ Colombia,⁵⁴⁴ Cyprus,⁵⁴⁵ Denmark,⁵⁴⁶ Ecuador,⁵⁴⁷ Greece,⁵⁴⁸ India,⁵⁴⁹ Italy,⁵⁵⁰

- ⁵³⁷ See AR: AFIP Press Release (30 Apr. 2021), *Precios de Transferencia: prórroga para los ejercicios cerrados entre el 31/12/2020 y el 31/12/2021*, <https://blog.errepar.com/precios-transferencia-prorroga-presentacion/#:~:text=La%20AFIP%20informa%20que%20se%20prorrogar%C3%A1%20de%20de.2020%20y%20el%2031%20de%20diciembre%20de%202021> (accessed 25 Feb. 2022); AR: Resolución General 4988/2021 (RESOG-2021-4988-E-AFIP-AFIP) - Impuesto a las Ganancias. Plazos especiales para la presentación y pago de declaraciones juradas. Resolución General N° 4.626. Su complementaria (12 May 2021), <https://www.boletinoficial.gob.ar/detalleAviso/primera/244402/20210514> (accessed 7 Mar. 2022). See also E.O. Meloni, [Tax Authorities Will Extend Deadline for Filing Transfer Pricing Documentation](#) (7 May 2021), News IBFD; E.O. Meloni, [Tax Authorities Further Suspend Tax Collection Procedures](#) (29 Nov. 2021), News IBFD; E.O. Meloni, [Tax Authorities Extend Deadline for Filing 2020 Corporate Tax Returns](#) (14 May 2021), News IBFD; E.O. Meloni, [Tax Authority Postpones Deadlines for Reporting Immovable Property Lease Agreements](#) (30 Apr. 2021), News IBFD.
- ⁵³⁸ See AU: Commissioner of Taxation, Annual Report 2020-21, pp 21-22 https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/ATO_annual_report_2020-21.pdf (accessed 28 Feb. 2022). See also AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 66.
- ⁵³⁹ See BO: Resolución Normativa de Directorio No. 102100000006 (28 Apr. 2021), <https://www.impuestos.gob.bo/ckeditor/plugins/imageuploader/uploads/4411942c9d.pdf> (accessed 1 Mar. 2022). See also P. Ordóñez, [Bolivia Extends Deadline to Submit Financial Reports and Supporting Documentation for Corporate Income Tax Until 31 May 2021](#) (18 May 2021), News IBFD.
- ⁵⁴⁰ See BR: INSTRUÇÃO NORMATIVA RFB N° 2.020 (9 Apr. 2021), <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-rfb-n-2.020-de-9-de-abril-de-2021-313193696> (accessed 7 Feb. 2022). See also D. Canen, [Ministry of Economy Postpones Deadline for Filing Individual Income Tax Return for Tax Year 2020](#) (20 Apr. 2021), News IBFD.
- ⁵⁴¹ See CA: Deputy Prime Minister Press Release (30 Jul. 2021), <https://deputyprime.minority.ca/en/news/news-releases/2021/07/30/government-extends-covid-19-benefits-and-business-supports-support> (accessed 7 Mar. 2022). See also J. Robles Santos, [Canada Extends COVID-19 Support Measures through 23 October 2021](#) (6 Aug. 2021), News IBFD.
- ⁵⁴² See CL: MoF Decree No. 671, OJ No. 42.596 (18 May 2021), <https://www.diariooficial.interior.gob.cl/publicaciones/2021/05/18/42956/01/1946190.pdf> (accessed 25 Feb. 2022); CL: SII Press Release, SII extiende plazo para pagar Impuesto a la Renta hasta el 30 de junio manteniendo fechas de devolución (27 Apr. 2021), <https://www.sii.cl/noticias/2021/270421noti01er.htm> (accessed 25 Feb. 2022); A. Bustos Baraona, [Tax Authority Extends Deadline for Payment of Income Tax for Small and Medium-Sized Companies](#) (29 Apr. 2021), News IBFD; A. Bustos Baraona, [Ministry of Finance Extends Deadline for Filing Annual Income Tax Returns](#) (26 May 2021), News IBFD. See also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Questions 62 and 66.
- ⁵⁴³ See CN: Announcement of the State Administration of Taxation Ministry of Finance on Matters Relating to the Deferral of Payment of Certain Taxes and Fees for Small and Medium-sized Enterprises in the Manufacturing Sector for the Fourth Quarter of 2021, etc. (29 Oct. 2021), <http://www.chinatax.gov.cn/chinatax/n362/c5170139/content.html> (accessed 7 Mar. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 66.
- ⁵⁴⁴ See CO: Decreto No. 374. por el cual se adiciona el parágrafo 4 al artículo 1.6.1.13.2.12. de la Sección 2 del Capítulo 13 del Título 1 de la Parte 6 del Libro 1 del Decreto 1625 de 2016, Único Reglamentario en Materia Tributaria (9 Apr. 2021), https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=161529 (accessed 7 Mar. 2022). See also M.A. Muñoz, [Colombia Postpones Deadlines for Payment of Corporate Income Tax for 2020 for Small Enterprises](#) (20 Apr. 2021), News IBFD.
- ⁵⁴⁵ See CY: Law on The Transfer and Collection of Taxes (4/1978), http://www.cylaw.org/nomoi/enop/non-ind/1978_1_4/full.html (accessed 25 Feb. 2022). See also V. Argyropoulou, [Cyprus Extends 2020 Tax Return Filing Deadlines](#) (29 Apr. 2021), News IBFD.
- ⁵⁴⁶ See DK: Act No. 204 (13 Feb. 2021), <https://www.retsinformation.dk/eli/lt/2021/204> (accessed 7 Mar. 2022). See also DK: OPTR Report (Taxpayers / Tax Practitioners, Tax Administration), Questionnaire 2, Question 66.
- ⁵⁴⁷ See EC: Resolución NAC-DGERCGC21-0000012, OG 1 Mar. 2021, <https://www.sri.gob.ec/BibliotecaPortlet/descargar/764172d9-3528-4300-b915-809215d5d7dd/NAC->

- [DGERCGC21-00000012-signed.pdf](#) (accessed 25 Feb. 2022); EC: Resolución No. NAC-DGERCGC21-00000024, OG 3 May 2021, https://www.fielweb.com/App_Themes/InformacionInteres/NAC-DGERCGC21-00000024fw.pdf (accessed 28 Feb. 2021); EC: Resolución NAC-DGERCGC21-00000025, OG 12 May 2021, <https://www.sri.gob.ec/o/sri-portlet-biblioteca-alfresco-internet/descargar?id=7c0f24ba-8f89-41ee-969e-e1a8ab0f005a&nombre=NAC-DGERCGC21-00000025.pdf> (accessed 1 Mar. 2022). See also G. Guerra Bello, [Ecuador Postpones Income Tax Return Filing Under Micro-Enterprise Tax Regime](#) (24 Mar. 2021), News IBFD; G. Guerra Bello, [Ecuador Postpones Filing Deadline for Dividends Annex](#) (31 May 2021), News IBFD; and G. Guerra Bello, [Ecuador Postpones Filing Deadline for CRS Annex of Non-Resident Financial Accounts](#) (20 May 2021), News IBFD.
- ⁵⁴⁸ See GR: Bill 4778/2021, <https://www.hellenicparliament.gr/UserFiles/bbb19498-1ec8-431f-82e6-023bb91713a9/11570869.pdf> (accessed 25 Feb. 2022); GR: Government Gazette No: 2145 B/24.05.2021, https://www.aade.gr/sites/default/files/2021-05/a_1113_2021ada.pdf (accessed 1 Mar. 2022); GR: Bill 4794/2021, http://www.et.gr/idos-nph/search/pdfViewerForm.html?args=5C7QrtC22wEzH9d6xfVpRXdtvSoCirlL8ZgJn3pl6MeDtlI9LGdkF53UIxSx942CdyqxSQYNuqAGCF0lfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsLuV-nRwO1oKqSe4BIOTSpEWYhszF8P8UqWb_zFijPw-MOB9CMEGdnJ5H8zoiAluPF63dQmlBmAaOVU3em60 (accessed 7 Mar. 2022). See also V. Dafnomilis, [Greece Further Extends Payment Deadline for Social Security Contributions](#) (26 Feb. 2021), News IBFD; V. Dafnomilis, [Greece Defers Payment Deadlines for Settlement Scheme Liabilities](#) (25 May 2021), News IBFD; and V. Dafnomilis, [Greece Further Extends Deadline for Payment of VAT Liabilities](#) (3 May 2021), News IBFD.
- ⁵⁴⁹ See IN: Central Board of Direct Taxes Press Release (20 May 2021), https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/936/PressRelease_Government_extends_certain_timelines_in_light_of_severe_pandemic_20_5_21.pdf (accessed 1 Mar. 2022). See also N. Lingbawan, [India Extends Compliance Deadlines under Income Tax Act](#) (21 May 2021), News IBFD; N. Lingbawan, [India Extends Certain Compliance Deadlines](#) (3 May 2021), News IBFD.
- ⁵⁵⁰ See IT: Decreto-legge No. 73, Misure urgenti connesse all'emergenza da COVID-19, per le imprese, il lavoro, i giovani, la salute e i servizi territoriali (25 May 2021), <https://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?ACTION=getSommario&id=%7bDD8D761A-0BA9-4BAE-8E54-6E988AD1509E%7d> (accessed 7 Mar. 2022). See also G. Gallo, [Italy Postpones Deadline for Certain Tax Payments](#) (30 June 2020), News IBFD; G. Gallo, [Council of Ministers Approves Further Support Measures](#) (22 Mar. 2021), News IBFD; G. Gallo, [Parliament Enacts Postponement of Tax Payment Deadlines](#) (27 July 2021), News IBFD.

Jamaica,⁵⁵¹ **Malta**,⁵⁵² **Mauritius**,⁵⁵³ **Mexico**,⁵⁵⁴ **St. Lucia**,⁵⁵⁵ **Panama**,⁵⁵⁶ **Paraguay**,⁵⁵⁷ **Peru**,⁵⁵⁸ **the Philippines**,⁵⁵⁹ **Portugal**,⁵⁶⁰ **Puerto Rico**,⁵⁶¹ both the federal and state tax authorities of the **United States**⁵⁶² and **Uruguay**.⁵⁶³

- ⁵⁵¹ See JA: Tax Administration Jamaica Press Release, 2021/22 Property Tax Payment Date Extended to June 30 (6 May 2021), https://www.jamaicatax.gov.jm/web/guest/home/-/blogs/2021-22-property-tax-payment-date-extended-to-june-30?_33_redirect=https%3A%2F%2Fwww.jamaicatax.gov.jm%2Fweb%2Fguest%2Fhome%3Fp_p_id%3D33%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_pos%3D1%26p_p_col_count%3D2 (accessed 7 Mar. 2022). See also M.A. Muñoz, [Jamaica Extends Deadline For Payment of Property Tax 2021/2022](#) (4 June 2021), News IBFD.
- ⁵⁵² See MT: Law 132 of 2021, Malta Enterprise Act, <https://legislation.mt/eli/ln/2021/132/eng> (accessed 7 Mar. 2022). See also T.B. Olivier, [Malta Gazettes Extension of Tax Deferral Measures](#) (14 Apr. 2021), News IBFD.
- ⁵⁵³ See MU: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 66.
- ⁵⁵⁴ See MX: Primera Resolución de Modificaciones a la Resolución Miscelánea Fiscal para 2021 y sus Anexos 1-A, 3, 9, 11, 14, 15 Y 29 (3 May 2021), http://www.dof.gob.mx/nota_detalle.php?codigo=5617389&fecha=03/05/2021 (accessed 7 Mar. 2022). See also E. Orellana Polo, [Tax Administration Extends Deadline for Filing Individual Income Tax Return for 2020](#) (4 May 2021), News IBFD.
- ⁵⁵⁵ See LC: Gov. Press Release, Income Tax filing deadline extended (26 Mar. 2021), <http://www.govt.lc/news/income-tax-filing-deadline-extended> (accessed 25 Feb. 2022). See also T. Chin, [St. Lucia Extends Filing Deadline of 2020 Individual Income Tax Return](#) (25 Mar. 2021), News IBFD.
- ⁵⁵⁶ See PA: Resolution No. 201-5674, OG No. 293221-A (1 Jul. 2021), <https://dgi.mef.gob.pa/6IntercambioFiscal/pdf-R-intercmbio/Resoluci%C3%B3n-201-5674-Extiende%20plaz-para%20la-presentaci%C3%B3n-CRS%202021.pdf> (accessed 25 Feb. 2022). See also A.J. Marusic, [Tax Administration Extends CRS Filing Deadline Until 31 August](#) (2 Aug. 2021), News IBFD.
- ⁵⁵⁷ See PY: Decreto Presidencial No. 5.232, por el cual se dispone un régimen especial de liquidación del Impuesto al Valor Agregado (IVA) para el arrendamiento de inmuebles destinados a actividades empresariales (10 May 2021), <https://baselegal.com.py/docs/7d618f36-b32c-11eb-8314-525400c761ca/doc> (accessed 7 Mar. 2022). See also E. Bañuelos, [Paraguay Provides Special VAT Regime for Leasing of Immovable Property for Business Purposes](#) (14 May 2021), News IBFD.
- ⁵⁵⁸ See PE: Decreto Supremo No. 106-2021-EF, 13 May 2021, <https://www.gob.pe/institucion/mef/normas-legales/1923813-106-2021-ef> (accessed 28 Feb. 2022); PE: Resolución N° 000069-2021/SUNAT, 13 May 2021, <https://noticia.educacionenred.pe/2021/05/res-000069-2021-sunat-establecen-nuevas-fechas-maximas-presentar-ano-2021-225437.html> (accessed 28 Feb. 2022). See also E. Rodríguez Alza, [Tax Administration Extends Deadline for Disclosure of Financial Information for 2018 and 2020](#) (31 May 2021), News IBFD; E. Rodríguez Alza, [Tax Administration Postpones Filing and Payment Deadlines](#) (18 Feb. 2021), News IBFD; and PE: OPTR Report (Tax Administration), Questionnaire 2, Question 66.
- ⁵⁵⁹ See PH: Revenue Memorandum Circular No. 39-2021 (18 Mar. 2021), https://www.bir.gov.ph/images/bir_files/internal_communications_1/Advisory/2021%20posts/RMC%20No.%2039-2021.pdf (accessed 25 Feb. 2022). See also N. Lingbawan, [Philippines Extends VAT Refund Application Deadline](#) (23 Mar. 2021), News IBFD; and N. Lingbawan, [Philippines Suspends Statute of Limitations for Tax Assessment and Collection in Certain Areas](#) (15 Apr. 2021), News IBFD.
- ⁵⁶⁰ See PT: Order 133/2021-XXII (12 Oct. 2021), https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/Despachos_SEAF/Documents/Despacho_SEAAF_133_2021_XXII.pdf (accessed 7 Mar. 2022). See also R. de Castro Mendonça, [Government Extends Submission Deadlines for VAT and Corporate Income Tax Returns](#) (26 Apr. 2021), News IBFD; R. Botelho Moniz, [Government Postpones VAT Filing Deadlines](#) (4 Aug. 2021), News IBFD; and PT: OPTR Report (Taxpayers/ Tax Practitioners), Questionnaire 2, Question 66.
- ⁵⁶¹ See PR: Administrative Order No. 2021-02 (6 Apr. 2021), <https://www.estado.pr.gov/wp-content/uploads/2021/04/OA2021-02English.pdf> (accessed 7 Mar. 2022). See also E. Zayas García, [Puerto Rico State Department Extends Due Date for Filing of 2020 Annual Reports](#) (23 Apr. 2021), News IBFD.
- ⁵⁶² See US: IRS, Tax Relief in Disaster Situations (2021), <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations> (accessed 7 Mar. 2022); US: IRS Rule on Mandatory 60-Day Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster (11 Jun. 2021),

There were other cases, such as that of **Moldova**, in which the extension of the deadlines for filing tax returns and the postponement of payments of taxes by legal entities whose administrators (or legal representatives) responsible for filing tax returns and payment of taxes were on medical leave due to the COVID-19 pandemic were revoked, as the Decree declaring the state of emergency due to the pandemic, which served as legal grounds for these deadline extensions, was annulled by the Constitutional Court.⁵⁶⁴

In addition, **Italy** suspended the activities of collection agents, in response to the pandemic.⁵⁶⁵ While the COVID-19 pandemic was at its peak, HMRC in the **United Kingdom** reduced the numbers of enquiries and other investigations commenced. Part of the reason for that was the requirement for HMRC officers who could do so to work from home, and also the deployment of considerable resources to designing and administering the many grants and loan schemes available to business to tide them over that period. It has been reported that the current signs are that investigative activity is again on the increase, with larger numbers of "nudge letters" being sent out, albeit to relatively narrow groups of taxpayers.⁵⁶⁶

Other natural disasters occurred throughout 2021, compelling the tax authorities to enforce further measures. **Turkey** introduced force majeure provisions for certain cities due to wildfires and flood disasters. Taxpayers were covered by force majeure provisions up to 31 December 2021. According to those measures, certain periods regarding taxation were extended such as submission periods for tax returns and declarations, the payment periods for all taxes, the

<https://www.federalregister.gov/documents/2021/06/11/2021-12311/mandatory-60-day-postponement-of-certain-tax-related-deadlines-by-reason-of-a-federally-declared> (accessed 7 Mar. 2022); M. Ahmadi, *Dozens of US States Join IRS in Extending 2020 Tax Filing and Payment Deadline for Individuals* (23 Mar. 2021), News IBFD; J. Robles Santos, *Texas Pushes Sales, Use and Excise Tax Filing Deadlines For Disaster Victims* (25 May 2021), News IBFD; J. Robles Santos, *Rhode Island Extends Emergency Regulation on Withholding Taxes of Temporary Remote Workers* (21 May 2021), News IBFD; J. Robles Santos, *Kansas Pushes Corporate Income Tax Filing Deadline and Amends Law on Various Tax Matters* (19 May 2021), News IBFD; J. Robles Santos, *IRS Extends Disaster-Related Tax Relief to Victims in Various States* (18 May 2021), News IBFD; M. Ahmadi, *Oklahoma To Allow Extended Tax Deadlines during States of Emergency* (17 May 2021), News IBFD; M. Ahmadi, *Oregon Pushes Individual Estimated Tax Declaration Deadline* (17 May 2021), News IBFD; J. Robles Santos, *Kentucky and Tennessee Extend Tax Relief to Disaster Victims* (17 May 2021), News IBFD; J. Robles Santos, *Georgia Extends Fuel Tax Suspension Due to Gas Shortage* (17 May 2021), News IBFD; J. Robles Santos, *Massachusetts Pushes Sales & Use Tax Deadline of Smaller Retailers, Yet Again* (10 May 2021), News IBFD; J. Robles Santos, *Alabama Pushes Income Tax Filing and Payment Deadline Due to Severe Storms* (10 May 2021), News IBFD; M. Ahmadi, *Pennsylvania Pushes Corporate Income Tax Deadline to Match Individual Deadline* (29 Apr. 2021), News IBFD. See also US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 66.

⁵⁶³ See UY: Resolución DGI N° 624/021 (20 Apr. 2021), <https://www.impo.com.uy/bases/resoluciones-dgi/624-2021> (accessed 7 Mar. 2022). See also M.I. Eibe, *Uruguay Extends Deadlines for Certain Tax Obligations* (23 Apr. 2021), News IBFD.

⁵⁶⁴ See MD: Constitutional Court, 28 Apr. 2021, Judgment no. 15 for the constitutional review of the Government Decision on the proposal to declare the state of emergency no. 43 of March 30, 2021 and the Parliament Decision on declaring the state of emergency no. No. 49 of 31 March 2021 (declaration of a state of emergency), https://www.constcourt.md/public/ccdoc/notariri/h_15_2021_81a_82a_2021_rou.pdf (accessed 22 Mar. 2022). See also V. Foltea, *Moldovan Constitutional Court Declares Unconstitutional Extension of Emergency Situation Due to COVID-19 Pandemic* (14 May 2021), News IBFD.

⁵⁶⁵ See IT: Comunicato Stampa N° 88, Proroga al 31 maggio 2021 della sospensione delle attività di riscossione e della notifica delle cartelle (30 Apr. 2021), <https://www.mef.gov.it/ufficio-stampa/comunicati/2021/Proroga-al-31-maggio-2021-della-sospensione-delle-attivita-di-riscossione-e-della-notifica-delle-cartelle/> (accessed 7 Mar. 2022). See also G. Gallo, *Ministry of Economy and Finance Announces Extended Suspension of Certain Tax Payments and Collection Activities* (5 May 2021), News IBFD.

⁵⁶⁶ See UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 66.

payment periods for tax penalties and interest for late payment, etc. Collection dates of taxes and other duties were also extended until 30 November 2021. The force majeure extensions started to apply due to the COVID-19 pandemic in 2020 and continued to apply until 1 June 2021, which was the date on which the removal of measures was gradually started by the Ministry of Internal Affairs.⁵⁶⁷

9. Cross-Border Situations

Unfortunately, taxpayers' rights in cross-border situations seem to be weakened in practice, as they are generally not involved in the cross-border procedures carried out between the states. This situation entails the risk of taxpayers not exercising and protecting their rights in the procedures effectively. However, positive developments have occurred as well with the systems to ensure taxpayers' legal standing in terms of access to mutual agreement procedures (MAPs) in article 16(1) of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)⁵⁶⁸ and mandatory arbitration in article 19(1).

In the same vein, rules on the mandatory disclosure of tax minimization arrangements were introduced broadly to grant the tax authorities early access to "timely, comprehensive and relevant information on aggressive tax planning strategies" so that they may "quickly respond to tax risks through informed risk assessments, audits, or changes to legislation or regulations".⁵⁶⁹ Essentially, this measure served an objective similar to other forms of information gathering and exchange of this information, namely to enable the tax administrations to use the information for statistical purposes as an early warning system to highlight the issues they want to address. However, the analysis and legal prequalification applied to the collected facts by the tax administration included an inherent risk that indicia of a potential tax offence could be derived, providing the information with a probative value.⁵⁷⁰ If the disclosed information may give rise to liability for the taxpayer or the advisers under punitive law, this also raises the question about the right not to self-incriminate (*nemo tenetur se detegere*),⁵⁷¹ as described in section 5.2. of this yearbook.

The surveyed jurisdictions did not report many developments in 2021 regarding the exchange of information's benchmarks monitored by the OPTR, as the findings mostly related to the overall trends, as will be analysed in this section. Probably the most important development regarding the matter was the introduction of new reporting obligations in the **European Union** for digital platforms and amendments to the existing framework of administrative cooperation in the field of taxation, rules adopted by the sixth amendment to the Directive on Administrative Cooperation (2011/16), approved by the Council of the European Union on 22 March 2021

⁵⁶⁷ See TK: Ministry of Treasury and Finance Press Release (5 Aug. 2021), <https://www.gib.gov.tr/hazine-ve-maliye-bakanligi-tarafindan-yangindan-etkilenen-yerler-icin-mucbir-sebep-hali-ilan-edildi> (accessed 7 Mar. 2022); and E. Ferhatoğlu, [Turkey Introduces Emergency Tax Measures Due to Wildfires](#) (6 Aug. 2021), News IBFD. See also TK: OPTR Report (Academia), Questionnaire 2, Question 66.

⁵⁶⁸ [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#), (24 Nov. 2016), Treaties & Models IBFD.

⁵⁶⁹ [OECD/G20, Mandatory Disclosure Rules – Action 12: Final Report](#) (OECD 2015), Primary Sources IBFD [hereinafter Action 12 Final Report].

⁵⁷⁰ C.E. Weffe H., [Mandatory Disclosure Rules and Taxpayers' Rights: Where Do We Stand?](#), 4 Intl. Tax Stud. 1, p. 3 (2021), Journal Articles & Opinion Pieces IBFD.

⁵⁷¹ Id.

(DAC7).⁵⁷² The DAC7 expands the automatic exchange of information and reporting obligations to cover certain transactions through digital platforms, which will have to collect and verify the seller's name, address, taxpayer identification number and VAT number, as well as business registration number and permanent establishments in the European Union, if applicable. Additionally, it modifies existing regulations with the aim of improving administrative cooperation in the exchange of information, as regards, for instance, joint audits, information requests and data breaches.⁵⁷³

A similar development happened at a local level in the **United States**. Washington state's Department of Revenue adopted regulations clarifying sales and use tax collection and reporting responsibilities of marketplace facilitators on behalf of online sellers as required by state law. The regulations echoed the state's mandate that marketplace facilitators collect and remit sales or use tax and other applicable taxes and fees on behalf of online sellers on all Washington-sourced taxable retail sales made through the facilitator's platform. In addition, the regulations address a variety of key topics, in terms strikingly similar to those of DAC7.⁵⁷⁴

9.1. Exchange of information

9.1.1. Exchange of information on request (EoIR): The right of the taxpayer to be informed and to challenge EoI

Minimum standard: 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 the grounds that it would prejudice the investigation.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

Honduras

Best practice: The taxpayer should be informed that a cross-border request for information is to be made.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

Honduras

As a key element of a democratic state, the rule of law prescribes that taxpayer must be

⁵⁷² EU: Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

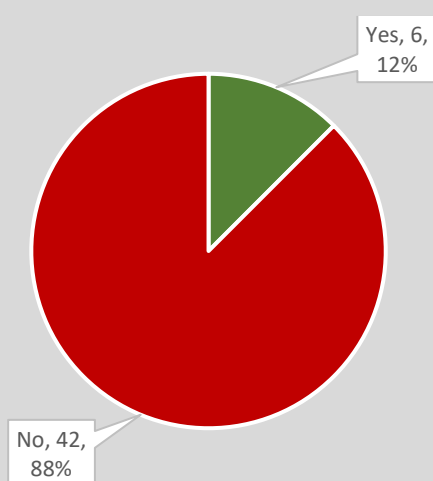
⁵⁷³ See T. Morales, [European Union Introduces New Reporting Obligations for Digital Platforms and Other Amendments to the Exchange of Information \(DAC7\) – Details](#) (24 Mar. 2021), News IBFD. See also M. Manca, [EU DAC7 Proposal Further Strengthens EU Tax Administrative Cooperation, Even in Respect of Digital Platforms](#), 61 Eur. Taxn. 4 (2021), Journal Articles & Opinion Pieces IBFD; and T. Morales, [Council](#), 61 Eur. Taxn. 6 (2021), Journal Articles & Opinion Pieces IBFD.

⁵⁷⁴ See US: WA Department of Revenue Rules WAC 458-20-282, Marketplace tax collection and reporting (1 Jun. 2021), <https://dor.wa.gov/sites/default/files/2022-02/20-282cr3pfrmdraftjun21.pdf> (accessed 8 Mar. 2022). See also J. Robles Santos, [Washington Adopts Sales and Use Tax Collection Regulations for Marketplace Facilitators](#) (8 June 2021), News IBFD.

previously informed of any governmental attempt to exercise its public powers. In an ideal world, the fact that a taxable event comprises a cross-border element should strengthen the protection of the taxpayers' rights corresponding to the situation. Best practice should include specific provisions regulating the time, form and conditions for the notification and allow the exchange of information also to be used for evidence to benefit the taxpayer.

Chart 61. Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?

56 responses



Yes: China (People's Rep), Czech Republic, Germany, Slovenia (1), Switzerland, Uruguay, Venezuela

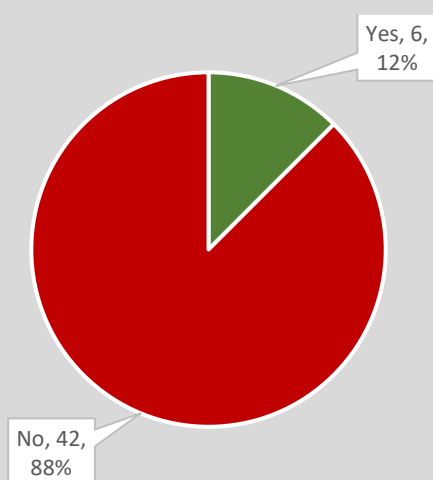
No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Denmark, Finland, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Turkey, Ukraine, United Kingdom, United States

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 61

Chart 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?

56 responses



Yes: China (People's Rep), Czech Republic, Germany, Mauritius, Slovenia (1), United States, Venezuela

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Denmark, Finland, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, Uruguay

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 62

Unfortunately, the world seems to be less than ideal, as 88% of the surveyed jurisdictions report that the taxpayers do not have the right to be informed before exchanging information, as illustrated by Chart 61. This is especially an unfortunate development compared to 2020, where the number was 77%.

Not informing the taxpayer before the exchange is apparent for situations involving information from third parties. Chart 62 demonstrates that 88% of the surveyed jurisdictions do not provide for this protection. This is also a decline compared to 2020, where the number was 82%.

Only **Honduras** reports developments, by noting changes in its administrative practice due to a perceived change in the interpretation of rights assisting taxpayers in this context.⁵⁷⁵

Best practice: Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

No developments were reported in this regard in 2021.

Best practice: Provisions should be included in tax treaties setting specific conditions for EoI.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

No new developments were reported in 2021.

9.1.2. A disturbing development: The removal of the right of the taxpayer to be notified in certain states under international pressure

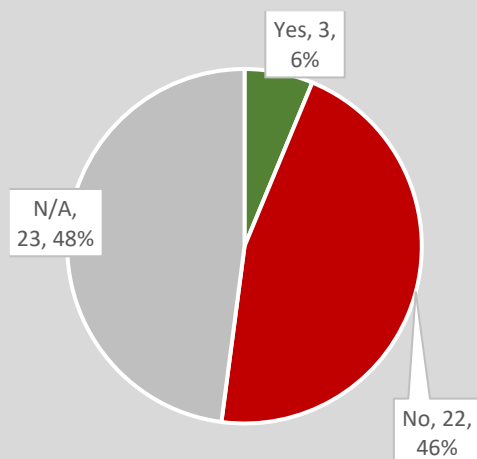
The OECD Forum on Transparency and Exchange of Information applied pressure on countries to repeal the taxpayer's right to be informed prior to the exchange of information already in 2015, which has provided for an unfortunate development ever since with numerous countries removing this right. As evidenced by Chart 63, an extra 6% of surveyed jurisdictions reported their previous acknowledgement of the right to be informed being removed due to the pressure from the OECD Forum, which is a slight decrease compared to 9% in 2020.

No new developments were reported in 2021.

⁵⁷⁵ See HN: RRPP SAR Press Release No. 056-2121, *Autoridades del SAR y Asesor Tributario de OCDE dialogan sobre iniciativas internacionales de transparencia, combate a evasión y elusión fiscal* (17 Nov. 2021) <https://www.sar.gob.hn/2021/11/autoridades-del-sar-y-asesor-ocde-dialogan-sobre-instancias-internacionales-de-combate-a-evasion-y-elusion-fiscal/> (accessed 10 Mar. 2022). See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 67.

Chart 63. If no to either of the previous two questions, did your country previously recognize 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?

56 responses



Yes: Luxembourg, Netherlands, Slovenia (2), Venezuela

No: Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia, Cyprus, Denmark, Greece, Honduras, Japan, Lithuania, Mauritius, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Sweden, United States, Uruguay

Not applicable: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, China (People's Rep), Chinese Taipei, Czech Republic, Finland, Germany, Guatemala, India, Italy, Kazakhstan, Kenya, New Zealand, South Africa, Spain, Switzerland, Turkey, Ukraine, United Kingdom

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 63

9.1.3. Additional safeguards in connection with EoIR

Minimum standard: If information is sought from third parties, judicial authorization should be necessary.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

United Kingdom

2021 Relevant Case Law – European Court of Justice

- See *État du Grand-duché de Luxembourg v. L*, Case no. C-437/19, at sec. [4.1](#).⁵⁷⁶

As presented in section [4.1](#), the exchange of information may lead to a tax assessment. If that is the case, all fundamental principles of proportionality, *non bis in idem* (prohibition of double jeopardy), *audi alteram partem* (the right to be heard before any decision is taken) and *nemo tenetur se ipsum accusare* (the principle against self-incrimination) apply.

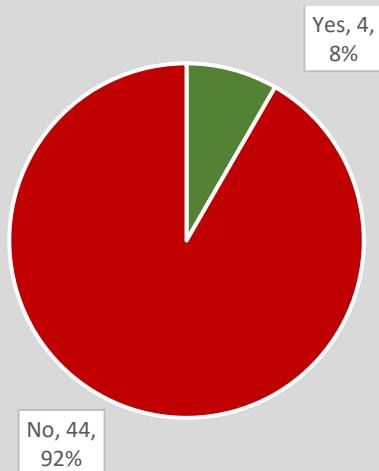
Although essential, this does not provide the taxpayer with adequate protection if these principles are not implemented in practice since the taxpayer is not informed, as described in section [9.1.1](#), of this yearbook.

The right to be heard before the exchange of information takes place is not granted in 92% of the surveyed jurisdictions, as illustrated by Chart 64.

⁵⁷⁶ See LU: CJEU, Case 437/19, Request for a preliminary ruling from the Cour administrative (Luxembourg) lodged on 31 May 2019 – *État du Grand-duché de Luxembourg v. L*, https://curia.europa.eu/juris/document/document.jsf?text=&docid=250041&pageIndex=0&doclang=EN&mode=_lst&dir=&occ=first&part=1&cid=743476 (accessed 8 Mar. 2022).

Chart 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?

56 responses



Yes: Germany, Slovenia (1), Switzerland, Uruguay, Venezuela

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Turkey, Ukraine, United Kingdom, United States

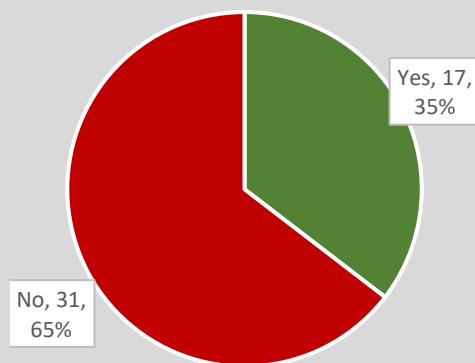
Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 64

The right to challenge before the judiciary follows the same trend, with 63% of the surveyed jurisdictions not acknowledging this right, as evidenced by Chart 65.

Chart 65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?

56 responses



Yes: Belgium, Brazil (1), Brazil (2), Cyprus, Czech Republic, Denmark, Germany, Kazakhstan, Lithuania, Netherlands, New Zealand, Portugal, Serbia, Slovenia (1), South Africa, Spain, Switzerland, Ukraine, Venezuela

No: Argentina, Australia, Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep), Chinese Taipei, Colombia, Finland, Greece, Guatemala, Honduras, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Russia, Slovenia (2), Sweden, Turkey, United Kingdom, United States, Uruguay

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 65

An interesting development is provided by the Federal Court of **Canada's** decision in *Blue Bridge Trust Company Inc v. Minister of National Revenue*. The information was being sought from the Canadian trustee of a few trusts where persons resident in France were apparently interested in them. While endorsing the need for judicial review of the request for information, the court pointed out that the requested authority had to assume that the request for information complied with the domestic law of the requesting state and was necessary for the purposes of the investigation, based on mutual trust between the parties of a double tax

convention (**Canada** and **France**, in this case). The courts had merely to verify that the information order was based on a sufficiently reasoned request by the requesting authority concerning information not manifestly devoid of any foreseeable relevance having regard, on the one hand, to the taxpayer concerned and to any third party who was being asked to provide the information and, on the other hand, to the tax purpose being pursued.⁵⁷⁷

Best practice: The taxpayer should be given access to information received by the requesting state.

Shifted towards/matched the best practice:

None

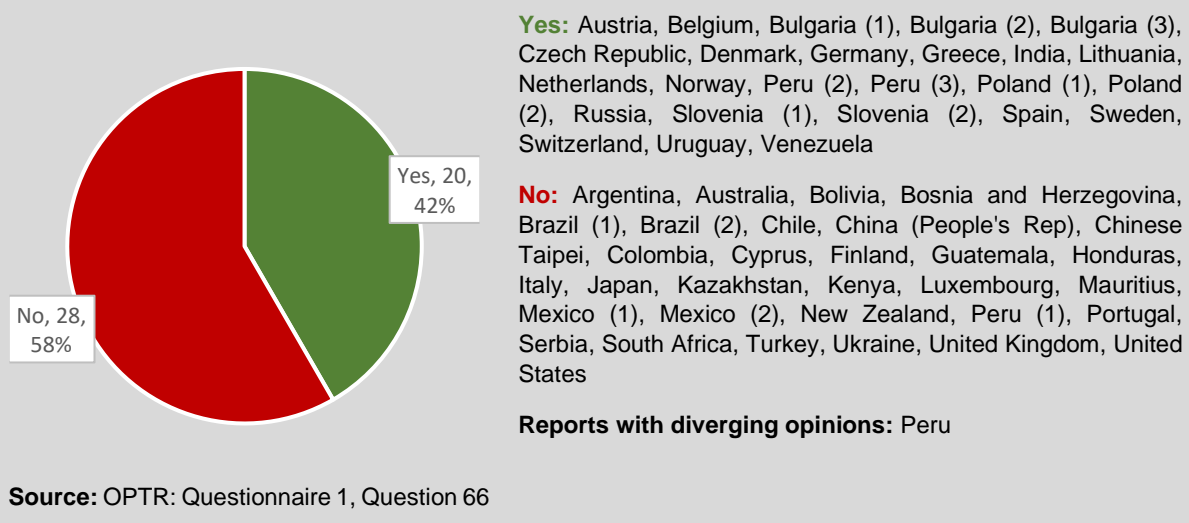
Shifted away from the best practice:

Denmark, Honduras

As discussed earlier in section 5.3, the state’s invasive evidence gathering on a taxpayer should be governed by judiciary control, especially when it involves the right to confidentiality, as discussed in section 3.1. As illustrated by Chart 66, this is the case in 42% of the surveyed jurisdictions.

Chart 66. Does the taxpayer have the right to see any information received from another country that relates to him?

56 responses



Against this background, the European Court of Auditors affirmed that EU Member States only make limited use of the information exchanged automatically, by either (i) weaknesses related to the timeliness, the accuracy and the completeness of AEOI; (ii) DAC2 information exchange functions generally on time, but still lacks in data quality and completeness; (iii) Member States receive huge volumes of information, with information generally underused; (iv) DAC1 and

⁵⁷⁷ See CA: Federal Court of Canada, Federal Court of Canada, 11 Sept. 2020, *Blue Bridge Trust Company Inc. v. Minister of National Revenue* (2020 FC 893), <https://taxinterpretations.com/content/604629> (accessed 8 Mar. 2022); CA: Federal Court of Canada, 24 Mar. 2021, *Blue Bridge Trust Company Inc. v. Minister of National Revenue* (2021 FCA 62), <https://taxinterpretations.com/content/610100> (accessed 8 Mar. 2022). See also P. Baker, *Blue Bridge Trust Company Inc v. Minister of National Revenue* (2020 FC 893), pp. 747-774, 23 Intl. Tax Law Reports 4 (2021), https://library.ibfd.org/custom/web/SD_PDF/scans/2021/G-I/ITLR/vol.23/4_747-774.pdf?_ga=2.1673394.2021595780.1646735897-574979399.1627633795 (accessed 8 Mar. 2022).

DAC2 information is not rigorously exploited; or (v) exchanges of information have increased, but some information is still not reported, among other reasons. As a result, less than a third of the items of information received under DAC1 and DAC2, for example, resulted in further tax-related actions.⁵⁷⁸

In **Denmark**, the National Tax Tribunal decided an appeal on access to information received in an exchange of information on the taxpayer between Denmark and **Luxembourg** and more specifically access to cover letters, e-mails, and other documents initiating the procedure between the Danish competent authority and the Luxembourg competent authority. In a noteworthy development, the Danish competent authority declined the request for information made by the taxpayer, stating that the e-mails and schematic forms in question were exempt from access to information under section 15 of the Danish Public Administration Act. On appeal, the Danish National Tax Tribunal upheld the decision of the Danish competent authority, based on the protection of confidentiality. The Tribunal also drew attention to the fact that the Tribunal itself had reviewed the documents and information in question and confirmed the nature of the documents and information. The Tribunal noted that the Danish competent authority had asked the Luxembourg competent authority whether the information in question should be regarded as confidential, and the Luxembourg competent authority had confirmed.⁵⁷⁹

Best practice: Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.

Shifted towards/matched the best practice:

China (People's Rep.)

Shifted away from the best practice:

None

2021 Relevant Case Law – European Court of Human Rights

Case	<i>Halet v. Luxembourg</i> , no. 21884/18 ⁵⁸⁰	
Date	11 May 2021	
ECHR Articles	Article 10	
Facts	Decision	Comments
The case concerns the applicant's criminal conviction in the context of the so-called <i>Luxleaks</i> case, in which the domestic courts rejected his argument that he had acted as a whistle-blower. He	Article 10: No violation, referral to the Grand Chamber.	The applicant's conviction for having transmitted confidential document to a journalist, who had then published them, constituted an interference in the exercise of his freedom of expression.

⁵⁷⁸ See European Court of Auditors, Exchanging tax information in the EU: solid foundation, cracks in the implementation (2021), https://www.eca.europa.eu/lists/ecadocuments/sr21_03/sr_exchange_tax_inform_en.pdf (accessed 8 Mar. 2022).

⁵⁷⁹ See DK: National Tax Tribunal, 5 May 2021, SKM 2021.253 LSR, <https://skat.dk/data.aspx?oid=2303674&lang=da> (accessed 8 Mar. 2022). See also DK: OPTR Report (Taxpayers/Tax Practitioners/Tax Administration), Questionnaire 2, Question 71.

⁵⁸⁰ See LU: ECtHR, App. No. 21884/18, *Halet v. Luxembourg*, 11 May 2021, <https://hudoc.echr.coe.int/eng/?i=001-210131> (accessed 8 Mar. 2022) of this yearbook. See also sec. [7.1](#).

Case	<i>Halet v. Luxembourg</i> , no. 21884/18 ⁵⁸⁰	
Date	11 May 2021	
ECHR Articles	Article 10	
Facts	Decision	Comments
relies on Article 10 of the Convention.		Reiterating that article 10 applies to the workplace in general, including when the relations between employer and employee are governed by private law. According to the court, the applicant qualifies as a whistle-blower, and the conviction qualified as a proportionate and necessary interference with the applicant's freedom of speech in a democratic society.

The prohibition of the exchange of illegally obtained information has received a boost in **China (People's Rep.)**, where the newly reformed Personal Information Protection Law, interpreted along the applicable tax regulation on exchange of information, moved towards the best practice, since it is clear that no organization or individual may unlawfully provide personal information of others. If information on individual taxpayers in international tax information exchanges is obtained illegally, it will in principle also be subject to the restrictions of the new personal information protection law.⁵⁸¹

Best practice: A requesting state should provide confirmation of confidentiality to the requested state.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

No developments were reported in this regard in 2021.

Minimum standard: 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.

Shifted towards/improved the minimum standard:

Colombia, Honduras

Shifted away from the minimum standard:

None

⁵⁸¹ See CN: Personal Information Protection Law (20 Aug. 2021), <http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml> (accessed 8 Mar. 2022); CN: Notice of the State Administration of Taxation on issuing the Rules for the International Exchange of Tax Information (18 May 2006), http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=3020d02c49508ff1bdfb&keyword=%e5%9b%bd%e9%99%85%e7%a8%8e%e6%94%b6%e6%83%85%e6%8a%a5%e4%ba%a4%e6%8d%a2%e5%b7%a5%e4%bd%9c%e8%a7%84%e7%a8%8b&EncodingName=&Search_Mode=accurate&Search_IsTitle=0 (accessed 8 Mar. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 72.

All developments reported in 2021 come from Latin America.

The OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes issued its Tax Transparency in Latin America 2021 Progress Report, according to which six out of eight Latin American jurisdictions reviewed against the enhanced standard on exchange of information on request until 2020 and were rated as Largely Compliant. Also, nine Latin American jurisdictions already participated in the automatic exchange of financial account information.⁵⁸²

Precisely due to its recent commitment to the Punta del Este Declaration, **Honduras** reports actions towards the improvement of its data protection standards. According to the OECD, the Eol infrastructure is progressing with the setting up of an Eol unit and manual, but delegation of the CA function and the use of Eol tools are yet to be implemented. The implementation of the AEOI standard by a specific date has yet not been considered.⁵⁸³

A positive development has also been reported in **Colombia**. Law 2155 of 2021 unified the definition of “beneficial owner”, both for reporting information for domestic and cross-border purposes, under the concept of “final beneficiary”. In this regard, the identification and registration of final beneficiaries before the tax authority was established, its administration, conditions, mechanisms were regulated to guarantee that it contains correct and updated information, as well as its confidentiality.⁵⁸⁴

9.1.4. Automatic exchange of financial information: The different issues of taxpayer protection

Best practice: For automatic exchange of financial information (AEOI), the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.

Shifted towards/matched the best practice:

China (People’s Rep.)

Shifted away from the best practice:

None

There have been some positive developments in this area, as **China (People’s Rep.)** reported a shift towards the minimum standard in terms of exchange of information obtained from third parties. The tax authorities require financial institutions to provide a specified and reasonable period for account holders to report changes to their information. Where a personal data processor provides personal information to any party outside **China (People’s Rep.)**, it must inform the taxpayer of such provision, the purpose and form of the processing, the type of

⁵⁸² See OECD, *Tax Transparency in Latin America 2021 Punta del Este Declaration Progress Report* (2021), <https://www.oecd.org/tax/transparency/documents/Tax-Transparency-in-Latin-America-2021.pdf> (accessed 8 Mar. 2022).

⁵⁸³ See *id.*, at p. 66. See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 74.

⁵⁸⁴ See CO: Ley 2155 de 2021, por medio de la cual se expide la Ley de Inversión Social y se dictan otras disposiciones (14 Sept. 2021), <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=170902> (accessed 8 Mar. 2022); CO: Resolución DIAN No. 000164 (27 Dec. 2021), <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000164%20de%2027-12-2021.pdf> (accessed 8 Mar. 2022). See also CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 74.

information, and the procedure for the taxpayer to consent or otherwise exercise the rights provided by law for his or her defence.⁵⁸⁵

9.2. Mutual agreement procedure

Minimum standard: Taxpayers should have a right to request initiation of mutual agreement procedure.

Shifted towards/improved the minimum standard:

Mauritius, Lithuania, Turkey

Shifted away from the minimum standard:

Mexico

Best practice: Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.

Shifted towards/matched the best practice:

Mauritius

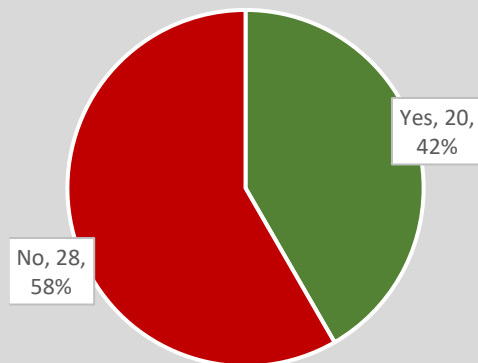
Shifted away from the best practice:

None

One of the great advances for taxpayers' rights in cross-border situations in recent years has been the widespread ratification of the MLI and its introduction of MAP and mandatory binding arbitration. In the same vein, the EU Tax Dispute Resolution Mechanisms⁵⁸⁶ also provides better taxpayer protection in this regard at an EU level.

Chart 67. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?

56 responses



Yes: Austria, Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chinese Taipei, Colombia, Cyprus, Greece, India, Italy, Kazakhstan, Lithuania, Luxembourg, Mauritius, Peru (2), Peru (3), Poland (1), Poland (2), Russia, Serbia, Slovenia (2), South Africa, Sweden, Turkey

No: Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, China (People's Rep), Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, Japan, Kenya, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Portugal, Slovenia (1), Spain, Switzerland, Ukraine, United Kingdom, United States, Uruguay, Venezuela

Reports with diverging opinions: Peru, Slovenia

Source: OPTR: Questionnaire 1, Question 67

⁵⁸⁵ See CN: State Administration of Taxation Announcement No. 14, *Administrative Measures for Due Diligence on Tax-Related Information on Non-Resident Financial Accounts*, <http://www.chinatax.gov.cn/n810341/n810755/c2623078/content.html> (accessed 8 Mar. 2022); CN: Personal Information Protection Law (20 Aug. 2021), <http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml> (accessed 8 Mar. 2022). See also CN: OPTR Report (Academia), Questionnaire 2, Question 75.

⁵⁸⁶ EU: Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

There is room for development regarding the taxpayer's right to initiate and participate in mutual agreement procedures, as only 44% of the surveyed jurisdictions have acknowledged the taxpayers' right to request the initiation of a mutual agreement procedure, as illustrated by Chart 67. This is a slight improvement compared to 40% in 2020.

Also, only 10% of the reports provided for the taxpayers' right to access the communication exchanged in the procedure's context, as evidenced by Chart 68. The latter is a slight setback compared to the 12% in 2020, and a significant setback compared to 2019, where 23% of the surveyed jurisdictions provided such a right.

Chart 68. Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?

56 responses



Source: OPTR: Questionnaire 1, Question 68

While there is still room for improvement in this area, some positive developments have been recorded in 2021.

Mediation as an additional option for tax disputes (in general, most administrative disputes) was introduced in **Lithuania**. However, so far the tax authority has not tended to accept mediation and prefers that taxpayers should initiate the standard procedure of mutual agreement.⁵⁸⁷

Spain approved new regulations developing the mutual agreement procedures included in the tax treaties signed by Spain as well as in the Arbitration Convention,⁵⁸⁸ without substantial amendments from the MAP draft regulations. The regulations have a three-fold aim: to complete the implementation of the EU Tax Dispute Resolution Directive;⁵⁸⁹ to introduce

⁵⁸⁷ See LT: Law on Mediation (29 Apr. 2021), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.325294/uMxhbvJsDI> (accessed 11 Mar. 2022). See also LT: OPTR Report (Taxpayers/Tax Practitioners) Questionnaire 2, Question 76.

⁵⁸⁸ EU: Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises 90/436/EEC.

⁵⁸⁹ EU: Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

determined measures included in Base Erosion and Profit Shifting (BEPS) Action 14 minimum standard; and to resolve problems in order to enhance legal certainty.⁵⁹⁰

Morocco also published its guidance on the mutual agreement procedure. Access to MAPs is guaranteed for all taxpayers meeting the requirements provided in the tax treaties article on the matter. The taxpayer should submit the MAP in their residence state. However, some treaties provide for a different provision; it is therefore necessary to refer to these treaties in order to ascertain the place of submission of the MAP.⁵⁹¹

In addition, the **United Arab Emirates** issued mutual agreement procedure (MAP) guidance for tax treaties, aiming at facilitating taxpayers' access to effective and expedient dispute resolution mechanisms under bilateral tax treaties and including information on how a MAP request should be initiated, to whom it should be presented and what information should be included in the request.⁵⁹²

In **Turkey**, the waiver from the requirement of legal action for the initiation of a mutual agreement procedure has been repealed. This means that the application for the initiation of the mutual agreement procedure will only interrupt the term of litigation, i.e. in case the contracting states do not agree, the taxpayer may resume the litigation procedure within the remaining time.⁵⁹³

On the other hand, **Mexico** introduced a provision in its Tax Code that maintains the tax administration's collection powers in force despite the taxpayer's request to initiate a MAP procedure. Consequently, the taxpayer must pay the full tax assessment when requesting a MAP. This effectively cancels the right to access a MAP in Mexico, as the taxpayer would have to pay first, in a manner identical to the *solve et repete* discussed in section 6.5 of this yearbook. Additionally, MAP processing times in **Mexico** are generally not concluded within 24 months, so paying first and then contesting essentially renders the MAP ineffective.⁵⁹⁴

⁵⁹⁰ See ES: Real Decreto 399/2021, por el que se modifican el Reglamento de procedimientos amistosos en materia de imposición directa, aprobado por el Real Decreto 1794/2008, de 3 de noviembre, y otras normas tributarias (8 Jun. 2021), <https://www.boe.es/boe/dias/2021/06/09/pdfs/BOE-A-2021-9558.pdf> (accessed 9 Mar. 2022). See also A. de Juan Ledesma, [Government Approves Mutual Agreement Procedure Regulations](#) (18 June 2021), News IBFD.

⁵⁹¹ See MA: DGI La Procédure Amiable dans le cadre des conventions de non double imposition (2021) https://www.tax.gov.ma/wps/wcm/connect/f57e16a3-cd5e-4450-b1a7-a1a27c745fd3/Guide_MAP_Final+Version-07-05-21.pdf?MOD=AJPERES&CACHEID=f57e16a3-cd5e-4450-b1a7-a1a27c745fd3 (accessed 9 Mar. 2022). See also Y. Kaikani, [Tax Authority Details Mutual Agreement Procedure](#) (17 June 2021), News IBFD.

⁵⁹² See UA: Ministry of Finance – Mutual Agreement Procedure (MAP) Guidance (7 Jan. 2021), [https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxationAgreements/Documents/UAE-%20MAP%20Guidance%20\(2\).pdf](https://www.mof.gov.ae/en/StrategicPartnerships/DoubleTaxationAgreements/Documents/UAE-%20MAP%20Guidance%20(2).pdf) (accessed 9 Mar. 2022). See also M.F. Charfeddine, [United Arab Emirates Issues Mutual Agreement Procedure](#) (5 July 2021), News IBFD.

⁵⁹³ See TR: Law No. 7338, Tax Procedure Law, OG 31640 (26 Oct. 2021), <https://www.resmigazete.gov.tr/eskiler/2021/10/20211026-1.htm> (accessed 8 Mar. 2022). See also TR: OPTR Report (Academia) Questionnaire 2, Question 76.

⁵⁹⁴ See MX: Federal Tax Code (*Código Fiscal de la Federación*), Article 142, D.O.F. 12 Nov. 2021, http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 23 Feb. 2021). See also MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 76.

10. Legislation

10.1. The general framework

In a democratic state, taxes must be based on a legal source, which results from the will of the people expressed through its political representation in the legislature. It is not sufficient for tax law to formally comply with the issuing state's legal order to safeguard taxpayers' rights in practice comprehensively, rather, taxes must be the outcome of the citizens' consent.

Ideally, taxpayers should be involved in shaping the legislation via public consultation that is both adequate in communication, accessibility, and duration for the deadline to reply. Besides, tax legislation should solely regulate taxable events *ex nunc* (from the moment of its enactment).

In practice, a fair amount of tax legislation will be enacted to prevent certain taxpayer behaviours, for example to close loopholes in the legislation. To do so without providing taxpayers opportunities to rearrange their affairs, legislators sometimes deem it necessary to enact the amendments retroactively. This behaviour should be a last resort and done only exceptionally under circumstances explicitly stated, narrowly drafted and interpreted. This is not always the case in practice for different reason, which will be analysed further below.

Perhaps as a consequence of the "hardening" of soft law and the progressive intervention of multilateral bodies in the legislative processes in tax matters, and probably in response to doubts about the democratic legitimacy of the rule-making processes carried out by such bodies, 2021 was the scene of a growing trend towards public consultation. This is particularly notable with respect to the European Union, where the European Commission confirmed a steady (and growing) movement towards greater citizen participation in EU regulatory processes in general. In this regard, the Commission follows in the footsteps of the OECD, which maintained in 2021 its policy of public consultation on a number of its proposals, in particular those related to the digitization of the economy. This process is described in more detail in section [10.3](#).

10.2. Constitutional limits on tax legislation: Retroactive legislation

Minimum standard: Retrospective tax legislation should only be permitted in limited circumstances, which are spelt out in detail.

Shifted towards/improved the minimum standard:

Belgium, Bulgaria, Luxembourg

Shifted away from the minimum standard:

Chinese Taipei, New Zealand,

Best practice: Retrospective tax legislation should ideally be banned completely.

Shifted towards/matched the best practice:

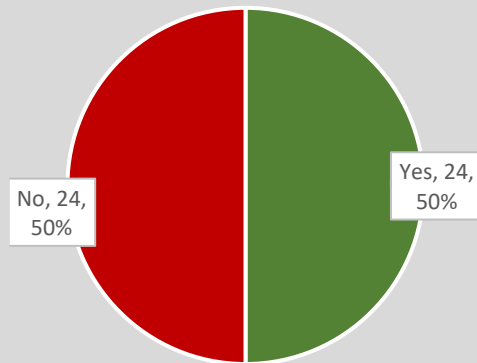
Belgium

Shifted away from the best practice:

Chinese Taipei

Chart 69. Is there a prohibition on retrospective tax legislation in your country?

56 responses



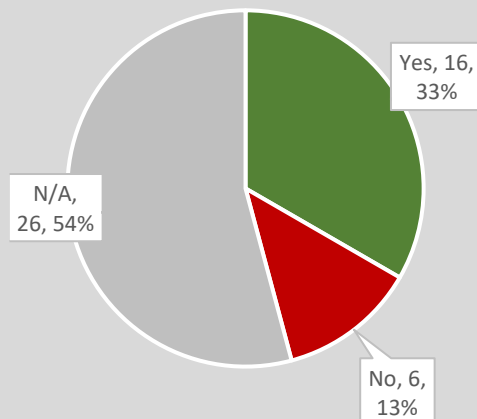
Yes: Bolivia, Brazil (1), Brazil (2), Chile, China (People's Rep), Chinese Taipei, Colombia, Cyprus, Czech Republic, Guatemala, Honduras, Italy, Lithuania, Luxembourg, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Russia, Slovenia (1), Slovenia (2), Sweden, Switzerland, Ukraine, Uruguay, Venezuela

No: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Denmark, Finland, Germany, Greece, India, Japan, Kazakhstan, Kenya, Mauritius, Netherlands, New Zealand, Portugal, Serbia, South Africa, Spain, Turkey, United Kingdom, United States

Source: OPTR: Questionnaire 1, Question 69

Chart 70. If no, are there restrictions on the adoption of retrospective tax legislation in your country?

56 responses



Yes: Argentina, Austria, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), Denmark, Germany, Greece, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Portugal, Serbia, Spain, United Kingdom

No: Australia, Finland, Kazakhstan, South Africa, Turkey, United States

Not applicable: Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, China (People's Rep), Chinese Taipei, Colombia, Cyprus, Czech Republic, Guatemala, Honduras, India, Italy, Kenya, Lithuania, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Russia, Slovenia (1), Slovenia (2), Sweden, Switzerland, Ukraine, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 70

2021 Relevant Case Law – European Court of Human Rights

Case	VEGOTEX International S.A. v. Belgium, No. 49812/09⁵⁹⁵	
Date	10 November 2020 (Referral to the Grand Chamber 8 Mar. 2021)	
ECHR Articles	Articles 6 § 1	
Facts	Decision	Comments
<p>The case concerned tax-assessment proceedings in which the applicant company had been ordered to pay approximately EUR 298,813 together with a 10% surcharge.</p> <p>In 1995 the tax authorities corrected the company's tax return and applied a 10% penalty on the amount due. The company first appealed to the head of regional tax office (1996-2000) and then in 2000 to the court. In October 2000 the tax authorities issued it with a summons to pay, expressly stating that the purpose of the summons was to interrupt the period before the tax debt became time-barred.</p> <p>In a judgment of 10 October 2002 – while the company's case was pending at first instance – the Court of Cassation adopted new case-law to the effect that this type of summons did not interrupt the limitation period in such cases. As a result, the recovery of tax debt had been time-barred since 15 February 2001 (a date prior to the actual emergence of this case-law).</p> <p>The applicant company first referred to this case-law in April 2004 before the Court of Appeal. However, in July 2004 the legislature intervened to reverse this development and to restore the previous administrative practice by means of a law that was immediately applicable to pending proceedings. This legislation was applied to the applicant's case by the Court of Cassation, which consequently dismissed its appeal on points of law in 2009.</p>	<p>Articles 6 § 1: the applicant company complained about the legislator's intervention during the proceedings. It argued that if the new law had not been applied retrospectively to its case, its tax debt would have become time-barred in accordance with the case-law of the Court of Cassation as established in a judgment of 10 October 2002.</p> <p><u>Applicability of Article 6:</u> tax assessment proceedings did not fall within the scope of article 6 but the imposition of the surcharge was to be considered as “criminal charge”. Article 6 therefore applied. At the same time, the tax surcharge had a close link with the tax debt; it thus differed from the hard core of criminal law. The criminal-head guarantees do not necessarily apply with their full stringency in such cases (<i>Jussila v. Finland</i> [GC], no. 73053/01, § 43, ECHR 2006-XIV).</p> <p><u>On the merits:</u></p> <p>(1) As a result of the impugned law the applicant's debt had ultimately not been considered time-barred. The intervention of the legislature had decisively influenced the judicial outcome of the dispute to which the state was a party.</p> <p>(2) The retrospective law had sought to neutralize the effect of the case-law introduced by the Court of Cassation, which itself had been retrospective (it had undermined legal certainty). The retrospective application of that law cannot be justified by the need of safeguarding the financial interests of the state. The Court accepted – in the circumstances of</p>	<p>In the assessment of justification for the retrospective application of law the court gave no assessment of the fact that taxpayers could have legitimately expected the application of the new, favourable to them case-law of the Court of Cassation. Indeed the court was reluctant to justify the retrospective application of new law by the need of safeguarding financial interests of the state. However, it cannot be said that the court fully took into account the need of taxpayers' rights protection in that case. It had found that domestic proceedings had been excessively long with no fault on the part of the taxpayer. If the final decision had been made before the entry into force of the new law in 2004, the applicant company would have benefited from the favourable change in the administrative practice. The Court did not pay attention to the fact that there might have been other taxpayers which had indeed benefited from that change because their proceedings were concluded in due course, before summer 2004. That creates “arbitrary discrimination between different taxpayers” that the impugned law meant to avoid, in the court's view.</p> <p>As to the length of the proceedings, the applicant company first had to file an appeal with the head of the regional tax office which was pending for 4 years. Once this appeal had been dismissed, the company had recourse to judicial review proceedings, which lasted 9 years. No reasons can justify such an extremely long duration of the examination of the tax case.</p>

⁵⁹⁵ See BE: ECtHR, Application No. 49812/09, VEGOTEX International S.A. v. Belgium, <https://hudoc.echr.coe.int/eng/?i=001-206214> (accessed 24 Feb. 2022).

Case	<i>VEGOTEX International S.A. v. Belgium, No. 49812/09</i> ⁵⁹⁵	
Date	10 November 2020 (Referral to the Grand Chamber 8 Mar. 2021)	
ECHR Articles	Articles 6 § 1	
Facts	Decision	Comments
	<p>the case - that the law sought to re-establish legal certainty and to confirm the legality of previous administrative practice. It had not therefore been unforeseeable. The legislature's intervention had also sought to ensure that taxes were paid by those who were liable for them and thus to avoid arbitrary discrimination between different taxpayers.</p> <p>(3) The Court concluded that the impugned measure had been driven by a compelling reason of a general interest. That was to restore the interruption of the limitation period by payment orders that had been served well before the Court of Cassation's 2002 judgment, thus enabling the resolution of disputes pending before the courts and without affecting the rights of taxpayers.</p> <p>No violation.</p> <p>Articles 6 § 1: the applicant company alleged a breach of its right to adversarial proceedings before the Court of Cassation. It claimed that the court substituted the grounds of appeal of its own motion.</p> <p>The Court found no violation of that right since the applicant company had been afforded the opportunity to respond to the submissions of the public prosecutor who had called for that substitution.</p> <p>Articles 6 § 1: length of proceedings (calculated from 1995 when the applicant company had been informed of the tax authority's intention to rectify its tax return and to impose a penalty, until 2009 when the Court of Cassation delivered final judgment).</p> <p>Violation: 13 years and 6 months.</p> <p>Article 41 (non-pecuniary): finding of a violation constitutes sufficient just satisfaction.</p>	

Positive developments have been reported in this area in **Belgium** regarding the interpretation of the general anti-avoidance rule. So far, the provision has been interpreted by the Belgian Minister of Finance as well as the Belgian tax administration in a way that makes the rule applicable to a series of legal acts of which the constituent acts did not all take place in the taxable period associated with the assessment year. It was enough that the last legal act occurred after the entry into force of the provision (2013). However, in 2021, the Court of Cassation confirmed the criterion set forth by a series of judgments of the Ghent Court of Appeal, according to which it is required that all legal acts which, taken as a whole, bring about the same transaction, fall within the temporal scope of the provision and are thus established as from the assessment year 2013.⁵⁹⁶

In **Bulgaria**, there have been significant amendments to the Law on Administrative Violations and Penalties, which also influences tax matters. In this regard, the National Revenue Agency issued a guidance on their application in pending tax situations, distinguishing when the old regulation is applicable and when the new one applies.⁵⁹⁷

The **Luxembourg** Constitutional Court declared unconstitutional the economic retroactivity of the combined provisions of articles 1er, point 5°, and 4 of the Law of 23 July 2016⁵⁹⁸ transposing Council Directive (EU) 2015/2060 of 10 November 2015⁵⁹⁹ on taxation of savings income in the form of interest payments, which entered into force on 1 January 2016, in so far as they entail retroactive application from January 2016 of the exclusion of interest payments from foreign paying agents from the scope of a reduced 10% withholding tax on certain interests produced by movable savings, are in line with the principles of legal certainty, respect for legitimate expectations and non-retroactivity of laws, as well as in article 10*bis* and article 112 of the **Luxembourg** Constitution.⁶⁰⁰

In the case, the taxpayer held Swiss bonds and regularly received interest from a paying agent established in **Switzerland**. Until 31 December 2015, those interests fell within the scope of the Law of 23 December 2005.⁶⁰¹ The taxpayers' request for the application of the reduced

⁵⁹⁶ See BE: Court of Cassation, 25 November 2021, *Belgische Staat v. D. D., and M.-R. T.*, https://juportal.be/JUPORTAwork/ECLI:BE:CASS:2021:ARR.20211125.1N.4_NL.pdf (accessed 9 Mar. 2022). See also BE: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 78.

⁵⁹⁷ See BG: Law on Administrative Violations and Penalties (12 Mar. 2021), <https://www.lex.bg/laws/ldoc/2126821377> (accessed 9 Mar. 2022). See also BG: OPTR Report (Academia), Questionnaire 2, Question 78 and Annex.

⁵⁹⁸ See LU: Law of 23 July 2016 on (1) transposition of Council Directive (EU) 2015/2060 of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments; (2) amendment of the amended Act of 23 December 2005 introducing a withholding tax on certain interest generated by movable savings; (3) repeal of the amended Law of 21 June 2005 transposing into Luxembourg law Directive 2003/48/EC of 3 June 2003 of the Council of the European Union on taxation of savings income in the form of interest payments, <https://legilux.public.lu/eli/etat/leg/loi/2016/07/23/n5/jo> (accessed 1 Apr. 2022).

⁵⁹⁹ EU: Council Directive 2015/2060/EC of 10 November 2015 repealing Directive 2003/48/EC on taxation of savings income in the form of interest payments.

⁶⁰⁰ See LU: Constitution of the Grand Duchy of Luxembourg (22 Oct. 1868), <https://legilux.public.lu/eli/etat/leg/constitution/1868/10/17/n1/jo> (accessed 1 Apr. 2022).

⁶⁰¹ See LU: Law of 23 December 2005 on 1. introduction of a withholding tax on certain interest generated by movable savings; 2. repeal of wealth tax on natural persons; 3. amendment of certain provisions of the amended

withholding tax was denied, in view of the entry into force of the Law of 23 July 2016 previously mentioned. That interest was therefore retroactively included in the taxable income subject to the application of the normal progressive scale of income tax, so as to be subject to a higher a priori tax.

The Constitutional Court used this case as its first opportunity to rule on the constitutional value of the principles of legal certainty, protection of legitimate expectations and non-retroactivity of laws not included in the text of the Constitution. Based on the case law of the ECJ and the ECtHR, the court regarded the principle of certainty and its expressions, such as the principles of legitimate expectations and non-retroactivity of laws, as among the principles inherent in any legal system based on respect for the law and therefore as part of the fundamental elements of the rule of law.

Against this background, the court rejected the (economic) retroactive application of the 2016 rules, since the principle of legal certainty precludes norms from being applied retroactively. The Court upheld the position of the Administrative Court of **Luxembourg**, which rightly pointed out in that regard that the foreseeable nature of the law means that the rule of law must define the regime of a certain act in such a way that the public authorities or citizens can reasonably foresee its consequences at the time when they carry it out, which implies that the rule of law has been established prior to the implementation of the act. Retroactive application is only possible exceptionally, when justified by the general interest and where the legitimate expectations of the persons concerned are duly respected, which was not the case in the situation at hand.⁶⁰²

In **India**, the Supreme Court found "ludicrous" the tax authorities' attempt to apply an expanded 2012 definition of software royalty to events occurring since 1 June 1976. The Court held that the amendment could not be considered merely "clarificatory", since the term "computer software" was introduced into the country's legislation long after 1976. The Court also found that the unilateral amendment by India did not amend the definition of 'royalty' in the relevant Double Tax Convention and consequently the definition in the Convention, being more beneficial would apply.⁶⁰³

Also, in **India**, the Prime Minister Shri Narendra Modi expressly qualified retrospective tax legislation as "a *mistake*".⁶⁰⁴ In this regard, the government proposed to withdraw the retrospective application of the taxability of gains arising from the transfer of assets located in

Law of 4 December 1967 concerning income tax (28 Dec. 2005), <https://legilux.public.lu/eli/etat/leg/loi/2005/12/23/n1/jo> (accessed 1 Apr. 2022).

⁶⁰² See LU: Cour constitutionnelle, Case n° 00152 (22 Jan. 2021), <http://legilux.public.lu/eli/etat/leg/acc/2021/01/22/a72/jo> (accessed 5 Mar. 2021).

⁶⁰³ See IN: SC, 2 Mar. 2021, *Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income Tax*, 2021 SCC 159. 16, <https://itatonline.org/archives/engineering-analysis-centre-of-excellence-private-limited-vs-cit-supreme-court-taxability-of-sums-received-for-supply-of-software-as-royalty-given-the-definition-of-royalties-contained-in-article/> (accessed 9 Mar. 2022). See also M. Butani, *India – Global Tax Treaty Commentaries – Country Policy & Practice*, Country Tax Guides IBFD; and S. Shah, *Supreme Court Decision: Software Payments for End-Use or Resale not Taxable as Royalty* (9 Mar. 2021), News IBFD.

⁶⁰⁴ See IN: *PM addresses the Confederation of Indian Industry (CII) Annual Meeting 2021* (11 Aug. 2021), https://research.ibfd.org/collections/ftn/pdf/d7d48990ff3dcf2cdd3fa0c5132f317d-2021-31506_Support-Doc_WTD-Docs_India-Notes-Abolition-of-Retropective-Taxation.pdf (accessed 9 Mar. 2022). See also K.M. Strocko, *India's Retrospective Tax Laws Were a Mistake, Modi Says* (11 Aug. 2021), News Tax Analysts.

the country through the transfer of the shares of a foreign company. The retrospective application of the indirect transfer of Indian assets provision in section 9 of the Income Tax Act, 1961 was originally introduced in the Finance Act 2012.⁶⁰⁵ Following suit, the Parliament passed a bill that eliminated the country's retrospective taxation in respect of transfer of a capital asset situate in India in consequence of the transfer of a share or interest in a company or entity registered or incorporated outside India made before the 28th day of May, 2012. Further, any existing tax demand stood nullified on the condition that any pending litigation, arbitration or any other proceedings either by the taxpayer or anyone claiming through the taxpayer, is withdrawn. Further, any amount paid as tax would be refunded, without interest.⁶⁰⁶

On the other hand, negative developments have been reported in **New Zealand**, where more statements have been made of proposed legislative changes well ahead of any draft legislation being made public and eventually enacted.⁶⁰⁷ In addition, in **Chinese Taipei**, new legislation regarding capital gains in force from 1 July 2021 taxes the transfer of real property acquired on or after 1 January 2016.⁶⁰⁸

10.3. Public consultation and involvement in the making of tax policy and tax law

Best practice: Public consultation should precede the making of tax policy and tax law.

Shifted towards/matched the best practice:

Colombia, United Kingdom

Shifted away from the best practice:

Poland, Slovenia, New Zealand

An efficient legislative protection of taxpayers' rights requires an efficient public participation in the legislative process in order to ensure the *no-taxation-without-representation* principle, as introduced in section 10.1. It also involves the constitution's integrity as tax codes may be

⁶⁰⁵ See K. Susarla and A. Bhandari, *India Proposes to Withdraw Retrospective Application of Indirect Transfer of Indian Assets* (6 Aug. 2021), News IBFD.

⁶⁰⁶ See IN: The Taxation Laws (Amendment) Act, 2021, [https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Taxation%20Laws%20\(Amendment\)%20Act,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Taxation%20Laws%20(Amendment)%20Act,%202021.pdf) (accessed 9 Mar. 2022). See also K.M. Strocko, *Indian Parliament Passes Bill to End Retrospective Tax Laws* (9 Aug. 2021), News IBFD.

⁶⁰⁷ See NZ: Inland Revenue Press Release, *Government property announcements* (23 Mar. 2021), <https://taxpolicy.ird.govt.nz/news/2021/2021-03-23-government-property-announcements> (accessed 10 Mar. 2022); NZ: Inland Revenue Press Release, *SOP to tax bill released* (23 Mar. 2021), <https://taxpolicy.ird.govt.nz/news/2021/2021-03-23-sop-to-tax-bill-released> (accessed 10 Mar. 2022); NZ: Inland Revenue Press Release, *Interest Deductibility Consultation Launched* (23 Mar. 2021), <https://taxpolicy.ird.govt.nz/news/2021/2021-06-10-interest-deductibility-consultation-launched> (accessed 10 Mar. 2022); NZ: Inland Revenue Press Release, *Questions and Answers Property Investment Proposals* (26 Jul. 2021), <https://taxpolicy.ird.govt.nz/news/2021/2021-07-26-questions-and-answers-property-investment-proposals> (accessed 10 Mar. 2022); NZ: Inland Revenue Press Release, *Interest Limitation Proposals* (28 Sept. 2021), <https://taxpolicy.ird.govt.nz/news/2021/2021-09-28-interest-limitation-proposals> (accessed 10 Mar. 2022); NZ: Inland Revenue Press Release, *Commentary SOP Released* (12 Oct. 2021), <https://taxpolicy.ird.govt.nz/news/2021/2021-10-12-commentary-sop-released> (accessed 10 Mar. 2022); NZ: Inland Revenue Press Release, *Tax Bill Reported Back* (3 Mar. 2022), <https://taxpolicy.ird.govt.nz/news/2022/2022-03-03-tax-bill-reported-back> (accessed 10 Mar. 2022). See also NZ: OPTR Report (Academia), Questionnaire 2, Question 78.

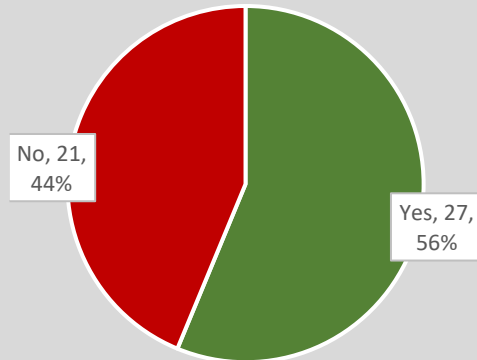
⁶⁰⁸ See TW: Income Tax Act (28 Apr. 2021), art. 4-4, <https://law.moj.gov.tw/ENG/LawClass/LawHistory.aspx?pcode=G0340003> (accessed 22 Mar. 2022). See also TW: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 78.

ruled to contradict general codes and violate taxpayers' rights.

Most surveyed jurisdictions provide public consultation (56%), as evidenced by Chart 71.

Chart 71. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?

56 responses



Yes: Austria, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep), Chinese Taipei, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, India, Kazakhstan, Kenya, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom

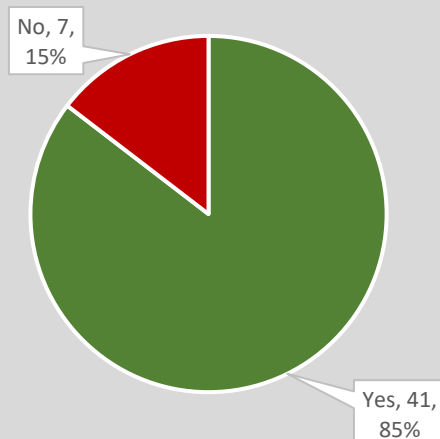
No: Argentina, Australia, Belgium, Bolivia, Brazil (1), Brazil (2), Colombia, Guatemala, Honduras, Italy, Japan, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Peru (3), Portugal, Turkey, Ukraine, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 71

The majority also state that judicial review is part of their constitutional systems, as Chart 72 shows.

Chart 72. Is tax legislation subject to constitutional review that can strike down unconstitutional laws?

56 responses



Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Turkey, Ukraine, United States, Uruguay, Venezuela

No: China (People's Rep), Finland, Kazakhstan, New Zealand, Slovenia (1), Sweden, Switzerland, United Kingdom

Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 72

Overall, 2021 was the scene of significant growth in public consultation for tax matters. A noteworthy number of countries brought the discussion of a wide range of regulatory reforms

to the public arena. This was the case of **Australia**,⁶⁰⁹ **Canada**,⁶¹⁰ **Chile**,⁶¹¹ **Ireland**,⁶¹² **Italy**,⁶¹³

- ⁶⁰⁹ See AU: Treasury Public Consultation: Intangible asset depreciation, <https://treasury.gov.au/consultation/c2021-213422> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Miscellaneous amendments to Treasury portfolio laws 2022, <https://treasury.gov.au/consultation/c2021-226955> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Remake of Public Ancillary Fund Guidelines, <https://treasury.gov.au/consultation/c2021-219118> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Clarifying income tax exemptions for Australians engaged by the IMF and WBG, <https://treasury.gov.au/consultation/c2021-217851> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Second round of miscellaneous amendments to Treasury portfolio laws 2021, <https://treasury.gov.au/consultation/c2021-207222> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021, <https://treasury.gov.au/consultation/c2021-207712> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Expanding Australia's Tax Treaty Network, <https://treasury.gov.au/consultation/c2021-208427> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Laminaria-Corallina Decommissioning Levy, <https://treasury.gov.au/consultation/c2021-201956> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Financial Services Royal Commission – Compensation Scheme of Last Resort, <https://treasury.gov.au/consultation/c2021-186669> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Patent Box, <https://treasury.gov.au/consultation/c2021-186669> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Miscellaneous amendments to Treasury portfolio laws 2021, <https://treasury.gov.au/consultation/c2021-167053> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Fringe benefits tax – exemption to support retraining and reskilling, <https://treasury.gov.au/consultation/c2021-161627> (accessed 9 Mar. 2022); AU: Treasury Public Consultation: Supporting older Australians - exempting granny flat arrangements from Capital Gains Tax (CGT), <https://treasury.gov.au/consultation/c2021-161601> (accessed 9 Mar. 2022); AU: ATO Public Consultation: Draft Taxation Ruling TR 2021/D4, <https://www.ato.gov.au/law/view/print?DocID=DTR%2FTR2021D4%2FNAT%2FATO%2F00001&PiT=99991231235958> (accessed 9 Mar. 2022). See also T. Toryanik, *Australian Taxation Office Consults on Definition of Royalties* (28 June 2021), News IBFD; and T. Toryanik, *Treasury Consults on Removing Taxable Point for Employee Share Schemes* (29 July 2021), News IBFD.
- ⁶¹⁰ See CA: Revenue Canada Public Consultation: Investment Tax Credit for Carbon Capture, Utilization, and Storage, <https://www.canada.ca/en/department-finance/programs/consultations/2021/investment-tax-credit-carbon-capture-utilization-storage.html> (accessed 9 Mar. 2022); CA: Revenue Canada Public Consultation: Department of Finance launches consultations on tax implications of international accounting rules for insurance contracts (IFRS 17), <https://www.canada.ca/en/department-finance/news/2021/05/department-of-finance-launches-consultations-on-tax-implications-of-international-accounting-rules-for-insurance-contracts-ifs-17.html> (accessed 9 Mar. 2022). See also J. Robles Santos, *Canada Seeks Public Comments on 2022 Investment Tax Credit for Carbon Capture, Utilization and Storage* (16 June 2021), News IBFD; and J. Robles Santos, *Canada Seeks Public Comments on 2023 International Accounting Rules for Insurance Contracts* (8 June 2021), News IBFD.
- ⁶¹¹ Chile submitted 22 proposals to public consultation throughout 2021 in the area of taxation. See CL: SII Consulta Pública de Proyectos de Normas o de Instrucciones (2021), <https://www4.sii.cl/consultaProyectosNormativosInternet/#Inicio> (accessed 11 Mar. 2022).
- ⁶¹² See IE: Department of Finance, Minister Donohoe launches Public Consultation on the OECD International Tax Proposals (20 Jul. 2021), <https://www.gov.ie/en/consultation/d03f6-minister-donohoe-launches-public-consultation-on-the-oecd-international-tax-proposals/> (accessed 10 Mar. 2022); IE: Department of Finance, Tax Treaty Policy Ireland - Public Consultation (7 Apr. 2021), <https://www.gov.ie/en/consultation/a4f6d-tax-treaty-policy-ireland-public-consultation/> (accessed 10 Mar. 2022); IE: Department of Finance, Minister Donohoe publishes Feedback Statement on ATAD interest limitation ratio (2 Jul. 2021), <https://www.gov.ie/en/consultation/83563-minister-donohoe-publishes-feedback-statement-on-atad-interest-limitation-ratio/> (accessed 10 Mar. 2022); IE: Department of Finance, Ireland's corporation tax rules: Public consultation on the application of the Authorised OECD Approach to the attribution of profits to branches of non-resident companies (16 Mar. 2021), <https://www.gov.ie/en/consultation/88df2-public-consultation-on-the-application-of-the-authorised-oecd-approach-to-the-attribution-of-profits-to-branches-of-non-resident-companies/> (accessed 10 Mar. 2022); IE: Department of Finance, Public Consultation on New Taxation Measures to apply to Outbound Payments (5 Nov. 2021), <https://www.gov.ie/en/consultation/40368-public-consultation-on-new-taxation-measures-to-apply-to-outbound-payments/> (accessed 10 Mar. 2022); IE: Department of Finance, Public Consultation on the Development of a National Resolution Framework for (re)Insurers (1 Sept. 2021), <https://www.gov.ie/en/consultation/b9afd-public-consultation-on-the-development-of-a-national-resolution-framework-for-reinsurers/> (accessed 10 Mar. 2022); IE: Department of Finance, Minister Donohoe publishes Feedback Statement on Anti-Reverse Hybrid Rule (2 Jul. 2021), <https://www.gov.ie/en/consultation/eefc5-minister-donohoe-publicises-feedback-statement-on-anti-reverse->

Singapore,⁶¹⁴ South Africa,⁶¹⁵ Spain⁶¹⁶ and the United States.⁶¹⁷

- [hybrid-rule/](#) (accessed 10 Mar. 2022). See also S. Páez, [Ireland Opens Public Consultation on OECD Tax Proposals](#) (20 July 2021), News Tax Analysts; [Ireland Launches Public Consultation on Introduction of Territorial System of Taxation](#) (28 Dec. 2021), News IBFD; and P. Bak, [Government Launches Consultation on Tax Treaty Policy](#) (14 Apr. 2021), News IBFD.
- ⁶¹³ See IT: Agenzia Centrale, Consultazione pubblica – Bozza di circolare sul regime della rivalutazione dei beni d'impresa e del riallineamento fiscale (23 Nov. 2021), <https://www.agenziaentrate.gov.it/portale/web/guest/consultazione-pubblica-del-23-novembre-2021> (accessed 10 Mar. 2022); IT: Agenzia Centrale, Consultazione pubblica sulla bozza di circolare in tema di “Disallineamenti da Ibridi” (18 Oct. 2021), <https://www.agenziaentrate.gov.it/portale/web/guest/consultazione-pubblica-disallineamenti-da-ibridi> (accessed 10 Mar. 2022); IT: Agenzia Centrale, Consultazione pubblica sulla bozza di circolare che fornisce chiarimenti in tema di documentazione idonea a consentire il riscontro della conformità al principio di libera concorrenza dei prezzi di trasferimento praticati dalle imprese multinazionali (20 Sept. 2021), <https://www.agenziaentrate.gov.it/portale/consultazione-pubblica-concorrenza-prezzi-trasferimento-imprese-multinazionali> (accessed 10 Mar. 2022); IT: Agenzia Centrale, Consultazione pubblica sulla bozza di circolare riguardante la disciplina fiscale dei trust (11 Aug. 2021), <https://www.agenziaentrate.gov.it/portale/web/guest/consultazione-pubblica-dell-11-agosto-2021> (accessed 10 Mar. 2022); IT: Agenzia Centrale, Consultazione pubblica sulla bozza di circolare e schema di provvedimento in merito alla disciplina sulle Società controllate estere (Controlled Foreign Companies, Cfc) (5 Jul. 2021), <https://www.agenziaentrate.gov.it/portale/web/guest/consultazione-pubblica-del-5-luglio-2021> (accessed 10 Mar. 2022); IT: Agenzia Centrale, Consultazione pubblica sulla bozza di circolare sulle novità apportate alla disciplina fiscale dei piani di risparmio a lungo termine (“PIR”) (19 Jan. 2021), <https://www.agenziaentrate.gov.it/portale/web/guest/consultazione-pubblica-del-19-gennaio-2021> (accessed 10 Mar. 2022). See also G. Gallo, [Tax Authorities Launch Consultation on Draft Implementing Rules and Clarifications on Controlled Foreign Company Rules](#) (6 July 2021), News IBFD.
- ⁶¹⁴ See SG: Ministry of Finance Public Consultation on Proposed Amendments to The Accountants Act (14 Oct. 2021), <https://www.mof.gov.sg/news-publications/public-consultations/public-consultation-on-proposed-amendments-to-the-accountants-act> (accessed 10 Mar. 2022); SG: Ministry of Finance Public Consultation on Draft Goods and Services Tax (GST) Amendment Bill 2021 (6 Jul. 2021), [https://www.mof.gov.sg/news-publications/public-consultations/public-consultation-on-draft-goods-and-services-tax-\(gst\)-amendment-bill-2021](https://www.mof.gov.sg/news-publications/public-consultations/public-consultation-on-draft-goods-and-services-tax-(gst)-amendment-bill-2021) (accessed 10 Mar. 2022); SG: Ministry of Finance Public Consultation on Proposed Enhancements To Singapore’s Regime on Transparency And Beneficial Ownership Of Companies and Limited Liability Partnerships (2 Jul. 2021), <https://www.mof.gov.sg/news-publications/public-consultations/public-consultation-on-proposed-enhancements-to-singapore-s-regime-on-transparency-and-beneficial-ownership-of-companies-and-limited-liability-partnerships> (accessed 10 Mar. 2022); SG: Ministry of Finance Public Consultation on Proposed Income Tax (Amendment) Bill 2021 (11 Jun. 2021), [https://www.mof.gov.sg/news-publications/public-consultations/public-consultation-on-proposed-income-tax-\(amendment\)-bill-2021](https://www.mof.gov.sg/news-publications/public-consultations/public-consultation-on-proposed-income-tax-(amendment)-bill-2021) (accessed 10 Mar. 2022). See also I. Aw and J. Lim, [Singapore Opens Public Consultation for Proposed GST Amendments](#) (12 July 2021), News IBFD; I. Aw and J. Lim, [Singapore Opens Public Consultation on Proposed Amendments to Income Tax Act](#) (16 June 2021), News IBFD; and [Singapore Opens Consultation on Proposed Income Tax Amendments](#) (11 June 2021), News Tax Analysts.
- ⁶¹⁵ See ZA: 2021 Draft Tax Bills for Public Comment, <http://www.treasury.gov.za/public%20comments/Tax%20Bills%202021%20Draft/> (accessed 10 Mar. 2022). See also L. Mvovo, [Government Releases Draft Taxation Laws Amendment Bill 2021 for Public Comment](#) (4 Aug. 2021), News IBFD; and L. Mvovo, [Government Requests Further Comments on Draft Rates, Monetary Amounts, and Amendment of Revenue Laws Bill 2021](#) (4 Aug. 2021), News IBFD.
- ⁶¹⁶ Spain submitted 71 proposals to public consultation in the area of taxation. See ES: Ministerio de Hacienda y Función Pública: Normas en Tramitación (2021), <https://www.hacienda.gob.es/ES/Normativa%20y%20doctrina/NormasEnTramitacion/Paginas/normasentramitacion.aspx> (accessed 10 Mar. 2022). See also A. de Juan Ledesma, [Public Consultation on Spanish Digital Services Tax Ends Today](#) (21 June 2021), News IBFD.
- ⁶¹⁷ See J. Robles Santos, [California Seeks Public Comments on Proposed Amendments to Market-Based Sourcing Regulations](#) (17 June 2021), News IBFD; J. Robles Santos, [Illinois Seeks Public Comments on Proposed Amendments to Late Discretionary Hearing Rules for Income Tax Deficiencies](#) (2 July 2021), News IBFD; J. Robles Santos, [Iowa Requests Public Comments on Proposed Expansion of Sales Tax Exemption Regulations](#) (9 June 2021), News IBFD; and J. Robles Santos, [Louisiana to put Centralized Local Sales Tax Collection Measure on October 2021 Ballot](#) (8 June 2021), News IBFD.

The EU Commission conducted a major public consultation initiative on taxpayers' rights, designed to collect information on direct tax-related problems that citizens currently face when they exercise their freedoms for cross-border activities, as well as collecting information on certain indirect tax (VAT) issues especially affecting SMEs. IBFD submitted a contribution, in which it highlighted the current lack of harmonization and coordination is an issue of grave concern, requiring action from the EC by some form of "codification", whether by soft law minimum standards and best practices alone or by a combination of non-binding guidance and hard law instruments. In the opinion of IBFD, a set of minimum standard and best practices, coupled with additional soft law guidelines, would provide a defined picture of EU-wide taxpayers' fundamental rights. That would give taxpayers a clear awareness of the scope of their entitlements under EU law and would signal to domestic bodies and courts the extent and the boundaries of their prerogatives in matters in which taxation could impinge upon fundamental rights.⁶¹⁸

Besides that, the EU Commission launched 17 other public consultation initiatives in 2021, covering topics such as the VAT rules for financial and insurance services,⁶¹⁹ the use of shell entities and arrangements for tax purposes,⁶²⁰ the debt-equity bias reduction allowance (DEBRA),⁶²¹ a system for avoiding double taxation regarding withholding taxes,⁶²² an update on the excise duties for manufactured tobacco products,⁶²³ a review of tax rules for alcohol and tobacco bought abroad,⁶²⁴ the strengthening rules on administrative cooperation and expanding the exchange of information,⁶²⁵ a so-called "digital levy",⁶²⁶ the so-called "EU Green

⁶¹⁸ See EU Commission Public Consultation: EU taxpayers' rights – simplified procedures for better tax compliance (Recommendation), https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12627-EU-taxpayers-rights-simplified-procedures-for-better-tax-compliance-Recommendation-public-consultation_en (accessed 9 Mar. 2022).

⁶¹⁹ See EU Commission Public Consultation: VAT rules for financial and insurance services – review, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12671-Review-of-the-VAT-rules-for-financial-and-insurance-services/public-consultation_en (accessed 9 Mar. 2022).

⁶²⁰ See EU Commission Public Consultation: Tax avoidance – fighting the use of shell entities and arrangements for tax purposes, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12999-Tax-avoidance-fighting-the-use-of-shell-entities-and-arrangements-for-tax-purposes_en (accessed 9 Mar. 2022).

⁶²¹ See EU Commission Public Consultation: Debt-equity bias reduction allowance (DEBRA), <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12995-Debt-equity-bias-reduction-allowance-DEBRA-en> (accessed 9 Mar. 2022).

⁶²² See EU Commission Public Consultation: Withholding taxes – new EU system to avoid double taxation, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation_en (accessed 9 Mar. 2022).

⁶²³ See EU Commission Public Consultation: Tobacco taxation – excise duties for manufactured tobacco products (updated rules), <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12645-Tobacco-taxation-excise-duties-for-manufactured-tobacco-products-updated-rules-en> (accessed 9 Mar. 2022).

⁶²⁴ See EU Commission Public Consultation: Alcohol & tobacco bought abroad – review of tax rules, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12650-Alcohol-&-tobacco-bought-abroad-review-of-tax-rules_en (accessed 9 Mar. 2022).

⁶²⁵ See EU Commission Public Consultation: Tax fraud & evasion – strengthening rules on administrative cooperation and expanding the exchange of information, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12632-Tax-fraud-&-evasion-strengthening-rules-on-administrative-cooperation-and-expanding-the-exchange-of-information_en (accessed 9 Mar. 2022).

⁶²⁶ See EU Commission Public Consultation: A fair & competitive digital economy – digital levy, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12836-A-fair-&-competitive-digital-economy-digital-levy_en (accessed 9 Mar. 2022).

Deal” (carbon border adjustment mechanism),⁶²⁷ a revision of the Energy Taxation Directive,⁶²⁸ a review of a tax relief⁶²⁹ and the renewal of an autonomous tariff suspension for the Canary islands (**Spain**) on certain local products,⁶³⁰ a review of tax relief on local products of **France**,⁶³¹ a proposal for a Council Directive to lift the cost of VAT on EU measures that are in the public interest,⁶³² detailed implementing rules for the VAT e-commerce trade,⁶³³ a modern EU business taxation framework,⁶³⁴ an initiative for sharing best practices and supporting implementation regarding the so-called “VAT Gap”,⁶³⁵ and regarding the so-called single corporate tax rulebook for the European Union (BEFIT).⁶³⁶

Despite this intense consultation activity, a few jurisdictions have reported a shift away from the best practice.

In **Slovenia**, neither public consultations nor referenda were allowed in 2021, contrary to normal circumstances and constitutional safeguards, based on the need to speed up COVID-19-related measures.⁶³⁷ Also, despite what appears to be an intense consultation activity,⁶³⁸

⁶²⁷ See EU Commission Public Consultation: EU Green Deal (carbon border adjustment mechanism), <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12228-EU-Green-Deal-carbon-border-adjustment-mechanism- en> (accessed 9 Mar. 2022).

⁶²⁸ See EU Commission Public Consultation: EU Green Deal – Revision of the Energy Taxation Directive, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12227-EU-Green-Deal-Revision-of-the-Energy-Taxation-Directive en> (accessed 9 Mar. 2022).

⁶²⁹ See EU Commission Public Consultation: Tax relief for Canary islands on certain local products (review), <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12277-Tax-relief-for-Canary-islands-on-certain-local-products-review- en> (accessed 9 Mar. 2022).

⁶³⁰ See EU Commission Public Consultation: Canary Islands – autonomous tariff suspension (renewal of Regulation), <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13123-Canary-Islands-autonomous-tariff-suspension-renewal-of-Regulation- en> (accessed 9 Mar. 2022).

⁶³¹ See EU Commission Public Consultation: Tax relief for French overseas regions on local products (review), <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12279-Tax-relief-for-French-overseas-regions-on-local-products-review- en> (accessed 9 Mar. 2022).

⁶³² See EU Commission Public Consultation: VAT – Proposal for a Council Directive amending Directive 2006/112/EC to lift the cost of VAT on EU measures that are in the public interest, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12990-VAT-Proposal-for-a-Council-Directive-amending-Directive-2006-112-EC-to-lift-the-cost-of-VAT-on-EU-measures-that-are-in-the-public-interest en> (accessed 9 Mar. 2022).

⁶³³ See EU Commission Public Consultation: Detailed implementing rules for the VAT e-commerce trade, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12242-Detailed-implementing-rules-for-the-VAT-e-commerce-trade- en> (accessed 9 Mar. 2022).

⁶³⁴ See EU Commission Public Consultation: A modern EU business taxation framework, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12930-A-modern-EU-business-taxation-framework en> (accessed 9 Mar. 2022).

⁶³⁵ See EU Commission Public Consultation: VAT – Mind the VAT Gap, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12816-VAT-Mind-the-VAT-Gap en> (accessed 9 Mar. 2022).

⁶³⁶ See EU: Letter No. E-002742/2021 – Single corporate tax rulebook for the European Union (BEFIT) (3 Aug. 2021), https://www.europarl.europa.eu/doceo/document/E-9-2021-002742-ASW_EN.pdf (accessed 15 Mar. 2022). See also T. Morales, *New EU Single Corporate Tax Rulebook (BEFIT) Will Follow OECD's Proposals for the Digitalized Economy Alert* (6 August 2021), News IBFD.

⁶³⁷ See Kovač, & Klun, *supra* n. 40. See also SI: OPTR Report (Academia) Questionnaire 2, Question 79.

⁶³⁸ See NZ: Inland Revenue PUB00330: GST – goods purchased on deferred payment terms (24 Dec. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub0330> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00357: GST and finance leases (17 Dec. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00357> (accessed 10 Mar.

New Zealand reported minimal use of public consultation, and even setting aside the usual tax policy process.⁶³⁹

In **Poland**, the quality of the tax legislative process and its products is reported to have deteriorated, partly because the practical role of public consultations has been decreasing. It has been reported that deadlines for public consultations were many times too short (a few days for extensive drafts with major legal, social and economic consequences), opinions expressed by the public, social partners, interest groups and independent experts were not given adequate recognition, and the pace of parliamentary discussions was sometimes too fast to allow for an in-depth consideration and necessary correction of the drafts. This is considered to have resulted in the adoption of tax legislation of poor quality, inducing a lot of uncertainty and confusion, and requiring urgent changes and extensive administrative guidance.⁶⁴⁰

On the brighter side, a positive development has been reported in **Colombia**, where a tax reform project presented during the first quarter of 2021 (Draft Bill 594-2020C) was withdrawn

2022); NZ: Inland Revenue ED0235: Reporting requirements for domestic trusts (30 Nov. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/ed0235> (accessed 10 Mar. 2022); NZ: Inland Revenue ED0234: Amortisation Rates for Landfill Cell Construction Expenditure (30 Nov. 2021); <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/ed0234> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00411: Income tax – application of the land sale rules to changes to co-ownership, subdivisions, and changes of trustees (9 Nov. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00411> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00401: Foreign exchange rates (11 Oct. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/pub00401> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00370: Income tax – foreign tax credits – how to calculate a foreign tax credit (28 Sept. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00370> (accessed 10 Mar. 2021); NZ: Inland Revenue PUB00376: Loss carry-forward - continuity of business activities (28 Jun. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00376> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00305: Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (31 Mar. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00305> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00305 QB 1: Income tax: scenarios on tax avoidance – reissue of QB 14/11 scenario 1 and QB 15/11 scenario 2 (31 Mar. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00305-qb-1> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00305 QB 2: Income tax: scenarios on tax avoidance – reissue of QB 15/11 – scenarios 1 and 3 (31 Mar. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00305-qb-2> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00256: When does s 5(23) of the Goods and Services Tax Act 1985 apply to shift GST liability to the purchaser of land? (31 Mar. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00256> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00359a: Charities business exemption – when it must be used (1 Feb. 2021), <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00359a> (accessed 10 Mar. 2022). See also K. Holmes, *Inland Revenue Seeks Public Comment on Draft Non-Resident GST Registration Statement* (16 Feb. 2021), News IBFD.

⁶³⁹ NZ: OPTR Report (Academia) Questionnaire 2, Question 79.

⁶⁴⁰ An example given is the legislative proceedings concerning the so called *New Polish Deal* (Polski Ład), with hundreds of pages of new tax legislation, introducing major changes as of 1 January 2022, were discussed by the Parliament in September and October 2021, signed by the President on 15 November and promulgated on 23 November 2021. Since the subject of this legislation is complicated, extensive and regards the situation of most Polish taxpayers, the *vacatio legis* in this case was considered by many experts as inadequate. The legislation required amendments very soon after its adoption (three amending acts in December 2021) and further (partial and numerous) amendments are expected at the beginning of 2022. Extensive administrative guidance will also be needed to deal with the resulting uncertainties. See PL: Draft Bill No. 1532-A - Government bill amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts, <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=1532> (accessed 10 Mar. 2022). See also PL: OPTR Report (Taxpayers / Tax Practitioners, Academia) Questionnaire 2, Question 79.

from Congress by the National Government due to strong social protests of disagreement. In the second half of 2021, consultations and public sessions were held from which Law 2155 of 2021 was built.⁶⁴¹

Finally, the **United Kingdom** reported a marked increase in prior consultation, as well as a perception of openness among HRMC teams to a constructive dialogue with taxpayers, as discussed in section 2 of this yearbook.⁶⁴²

11. Revenue Practice and Guidance

11.1. The general framework

To abide by the law and comply with their tax obligations, taxpayers must not merely comprehend the objects of the law but also be aware of it. This awareness of the legal materials is a cornerstone of legal certainty and, therefore, for protecting taxpayers' rights. From a practical point of view, the taxpayer must be able to access the relevant legal materials and to be able to rely on any binding guidance provided by the tax authorities.⁶⁴³ While the tax authorities may be reluctant to publish guidance, thereby committing themselves to specific interpretations or applications of the legal materials, these measures provide additional certainty for taxpayers and are increasingly considered an example of good governance by ombudsman offices.⁶⁴⁴

11.2. The publication of all relevant materials

Minimum standard: Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.

⁶⁴¹ See CO: Proyecto de Ley 594-2020C, "Por medio de la cual se consolida una infraestructura de equidad fiscalmente sostenible para fortalecer la política de erradicación de la pobreza, a través de la redefinición de la regla fiscal, el fortalecimiento y focalización del gasto social y la redistribución de cargas tributarias y ambientales con criterios de solidaridad y que permitan atender los efectos generados por la pandemia y se dictan otras disposiciones ([https://cijuf.org.co/sites/cijuf.org.co/files/activos/imagenes/P.L.594-2020C%20\(SOLIDARIDAD%20SOSTENIBLE\).pdf](https://cijuf.org.co/sites/cijuf.org.co/files/activos/imagenes/P.L.594-2020C%20(SOLIDARIDAD%20SOSTENIBLE).pdf)) (accessed 10 Mar. 2022); CO: Ley 2155 de 2021, por medio de la cual se expide la Ley de Inversión Social y se dictan otras disposiciones, <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=170902> (accessed 10 Mar. 2022); J.D. Quesada, Duque cede a las protestas y retira la reforma tributaria de Colombia – El País (2 May 2021), <https://elpais.com/internacional/2021-05-02/el-presidente-de-colombia-retira-la-reforma-tributaria.html> (accessed 10 Mar. 2022). See also CO: OPTR Report (Tax (Ombudsperson)), Questionnaire 2, Question 79.

⁶⁴² The United Kingdom submitted 47 proposals to public consultation throughout 2021 in the area of taxation. See UK: HRMC Policy Papers and Consultations (2021), https://www.gov.uk/search/policy-papers-and-consultations?content_store_document_type%5B%5D=closed_consultations&organisations%5B%5D=hm-revenue-customs&public_timestamp%5Bfrom%5D=01/01/2021&order=updated-newest (accessed 10 Mar. 2022). See also V. Koukouloti, *United Kingdom Launches Public Consultation on Making More Frequent Business Rates Revaluations* (6 July 2021), News IBFD; V. Koukouloti, *United Kingdom Seeks Comments on Raising Tax Advice Market Standards* (31 Mar. 2021), News IBFD; V. Agianni, *United Kingdom Seeks Public Input on Proposed New Tax Measures on the Road to Finance Bill 2021-2022* (20 July 2021), News IBFD; V. Koukouloti, *United Kingdom Seeks Public Input On Reporting Rules for Digital Platforms* (3 Aug. 2021), News IBFD. See also UK: OPTR Report (Tax (Ombudsperson)), Questionnaire 2, Question 79.

⁶⁴³ See Baker & Pistone, *supra* n. 16, at sec. 11.1, p. 68.

⁶⁴⁴ See A. Pham, A. Genest-Grégoire, A. Godbout, J-H. Guay, *Tax literacy: a Canadian perspective*, pp. 987-1007, 68 Canadian Tax Journal/Revue fiscale canadienne 4, (2020), <https://ssrn.com/abstract=3766406> (accessed 4 Mar. 2022).

Shifted towards / improved the minimum standard:

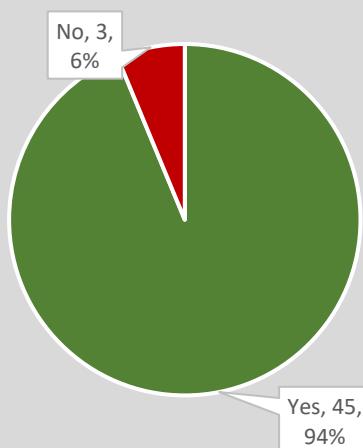
Denmark, Honduras

Shifted away from the minimum standard:

None

Chart 73. Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?

56 responses



Yes: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep), Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela

No: Argentina, Chinese Taipei, Kenya

Source: OPTR: Questionnaire 1, Question 73

The general move towards compliance with this minimum standard, underpinned by the digitalization of tax administrations, continued in 2021.⁶⁴⁵

In addition, in **Honduras**, taxpayers gained access to relevant legal material, comprising legislation and administrative regulation in 2021, through the "Digital Services" section of the tax administration's webpage.⁶⁴⁶

Minimum standard: 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.

Shifted towards / improved the minimum standard:

None

Shifted away from the minimum standard:

Guatemala

The only reported development regarding access to legal materials through ways other than the Internet is a setback: although most procedures are conducted online in **Guatemala**, there are almost no options for taxpayers that do not have access to the Internet.⁶⁴⁷

⁶⁴⁵ See OPTR, *supra* n. 143 (2021), at sec. 11.2.

⁶⁴⁶ See HN: SAR – Servicios Digitales, <https://www.sar.gob.hn/#ServiciosDigitales> (accessed 4 Mar. 2022). See also HN: OPTR Report (Tax Administration), Questionnaire 2, Question 80.

⁶⁴⁷ See GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 81.

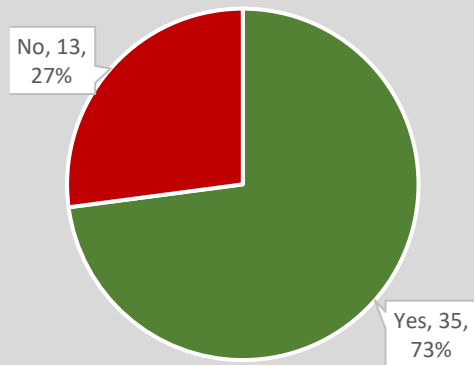
11.3. Binding rulings

Minimum standard: Binding rulings should only be published in anonymized form.

<p>Shifted towards / improved the minimum standard: Spain</p>	<p>Shifted away from the minimum standard: None</p>
--	--

Chart 74. Does your country have a generalized system of advance rulings available to taxpayers?

56 responses



Yes: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Chile, Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Guatemala, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, New Zealand, Norway, Peru (1), Poland (1), Poland (2), Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United States, Uruguay, Venezuela

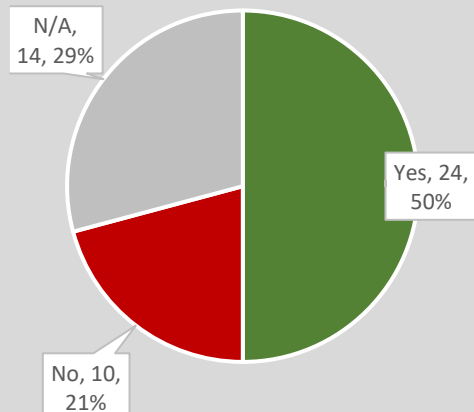
No: Argentina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep), Greece, Honduras, Kazakhstan, Mexico (1), Mexico (2), Peru (2), Peru (3), Russia, Serbia, Slovenia (1), Slovenia (2), United Kingdom

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 74

Chart 75. If yes, is it legally binding?

56 responses



Yes: Australia, Austria, Belgium, Bolivia, Chinese Taipei, Cyprus, Czech Republic, Denmark, Finland, Germany, Guatemala, India, Japan, Kenya, Luxembourg, Mauritius, Netherlands, New Zealand, Norway, Peru (1), Portugal, Spain, Sweden, United States, Uruguay

No: Bosnia and Herzegovina, Chile, Italy, Lithuania, Poland (1), Poland (2), South Africa, Switzerland, Turkey, Ukraine, Venezuela

Not applicable: Argentina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep), Colombia, Greece, Honduras, Kazakhstan, Mexico (1), Mexico (2), Peru (2), Peru (3), Russia, Serbia, Slovenia (1), Slovenia (2), United Kingdom

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 75

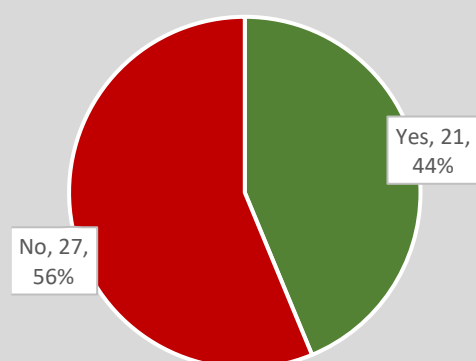
As it was in 2020, in 2021, guidelines on the tax measures have also been of immense importance, considering the vast number of unprecedented, specialized tax rules implemented

due to the COVID-19 pandemic, although this intense activity in terms of taxpayer guidance has not always been linked to the special circumstances related to the pandemic.

A multitude of circulars, rulings and further guidance were issued by several jurisdictions in 2021.

Chart 76. If a binding ruling is refused, does the taxpayer have a right to appeal?

56 responses



Yes: Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Honduras, India, Italy, Lithuania, Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Slovenia (1), Ukraine, Uruguay, Venezuela

No: Argentina, Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep), Chinese Taipei, Greece, Guatemala, Japan, Kazakhstan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States

Reports with diverging opinions: Peru, Slovenia

Source: OPTR: Questionnaire 1, Question 76

Regarding the topics addressed, jurisdictions such as **Barbados**⁶⁴⁸ and **Nigeria**⁶⁴⁹ provided guidance with reference to deadlines for tax returns and similar administrative filing obligations and in a number of cases, guidance aims to clarify and to relax administrative obligations that would have been excessively burdensome given the circumstances of the COVID-19

⁶⁴⁸ See BB: Revenue Authority Policy Note No. PPG No. 001/2021 - Income Tax Act Cap. 73 Delinquent Companies (30 Jun. 2021), <https://bra.gov.bb/Download.ashx?file=Attachments%2fPolicy+Note+001-2021+Delinquent+Companies.pdf&name=Policy+Note+PPG+No.+001%2f2021+Delinquent+Companies> (accessed 11 Mar. 2022). See also M.A. Muñoz, [Barbados Provides Guidance for Companies Consistently Failing to File Corporate Income Tax Returns](#) (26 July 2021), News IBFD.

⁶⁴⁹ See NG: Federal Inland Revenue Service Tax Circulars, Regulations and Public Notices, <https://firs.gov.ng/tax-circulars-regulations-and-public-notice/> (accessed 14 Mar. 2022). See also C. Okoriekwe, [Tax Authority Issues Guidance to Taxpayers on Instalment Tax Payments](#) (1 Apr. 2021), News IBFD; and C. Okoriekwe, [Tax Authority Issues Public Notice on Due Dates for Capital Gains Tax Returns and Payments](#) (7 Apr. 2021), News IBFD.

pandemic, as is the case for **Chile**,⁶⁵⁰ **Isle of Man**,⁶⁵¹ **Italy**,⁶⁵² and some federal jurisdictions within the **United States**.⁶⁵³

Also, numerous jurisdictions have reported news on specific guidelines intended to help clarify the application of tax measures to non-residents, such as **Australia**,⁶⁵⁴ **Chile**,⁶⁵⁵ **Italy**,⁶⁵⁶ **Poland**⁶⁵⁷ and **South Africa**.⁶⁵⁸

⁶⁵⁰ See CL: Resolución Exenta SII No. 73, que establece procedimiento de postergación del pago del IVA, en virtud de los decretos supremos dictados a raíz de la catástrofe generada por la pandemia generada por el COVID-19 (1 Jul. 2021), https://www.sii.cl/normativa_legislacion/resoluciones/2021/reso73.pdf (accessed 11 Mar. 2022).

⁶⁵¹ See IM: Treasury Practice Note No. PN-216/21, Taxation of COVID-19 financial support (17 May 2021), <https://www.gov.im/media/1372987/pn-216-21-taxation-of-covid-19-financial-support-published.pdf> (accessed 11 Mar. 2022).

⁶⁵² See IT: Risposta dalla Agenzia Centrale No. 393/2021, Interpello - articolo 11, comma 1, lett. a), legge 27 luglio 2000, n. 212 - Errata applicazione del reverse charge - ravvedimento operoso. Recupero credito IVA soggetto non residente, https://www.agenziaentrate.gov.it/portale/documents/20143/0/Risposta_424_22.06.2021+%281%29.pdf/77f937d9-5789-57f5-b20a-d5600039bda1 (accessed 14 Mar. 2022). See also S. La Grutta, *Tax Authorities Clarify VAT Treatment of Supplies of Goods and Services for Containment and Management of the Pandemic* (25 May 2021), News IBFD.

⁶⁵³ See J. Robles Santos, *COVID-19 Pandemic: New Hampshire Updates Forgiven PPP Loans Taxation Guidance* (28 June 2021), News IBFD; J. Robles Santos, *COVID-19 Pandemic: Rhode Island Updates its Guidance on Taxation of Forgiven PPP Loans* (9 July 2021), News IBFD.

⁶⁵⁴ See AU: ATO Guidance on MLI Competent Authority determination (15 Jul. 2021), <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Competent-Authority-determination/> (accessed 11 Mar. 2022). See also T. Toryanik, *Australian Taxation Office Provides Guidance to MLI Dual Residents* (15 July 2021), News IBFD.

⁶⁵⁵ See CL: SII - Oficio Ordinario 650, Consulta sobre adjudicación de bienes desde una sociedad situada en el extranjero (10 Mar. 2021), https://www.sii.cl/normativa_legislacion/jurisprudencia_administrativa/ley_impuesto_renta/2021/ley_impuesto_renta_jadm2021.htm (accessed 22 Mar. 2022). See also F. Sepúlveda, *Tax Authorities Provide Clarifications on Tax Treatment of Adjudication of Assets of Non-Resident Company to its Chilean Shareholder* (29 Mar. 2021), News IBFD.

⁶⁵⁶ See IT: Ministero dell' Economia e delle Finanze Risoluzione No. 5/DF (11 Jun. 2021), <https://www.finanze.gov.it/export/sites/finanze/galleries/Documenti/Fiscalita-locale/Risoluzione-n.-5-DF-del-2021-IMU-e-TARI-Residenti-alleestero-firmata.pdf> (accessed 14 Mar. 2022); IT: Risoluzione n. 5/DF (11 Jun. 2021), <https://www.finanze.gov.it/export/sites/finanze/galleries/Documenti/Fiscalita-locale/Risoluzione-n.-5-DF-del-2021-IMU-e-TARI-Residenti-alleestero-firmata.pdf> (accessed 22 Mar. 2022); and G. Gallo, *Finance Department Clarifies Reduction of Municipal Tax on Immovable Property for Non-Residents* (16 June 2021), News IBFD.

⁶⁵⁷ See PL: Ministry of Finance tax explanations on tax residence and the scope of tax liability of natural persons in Poland (29 Apr. 2021), <https://www.gov.pl/web/finanse/objasnienia-podatkowe-z-29-kwietnia-2021-r-ws-rezydencji-podatkowej-oraz-zakresu-obowiazku-podatkowego-osob-fizycznych-w-polsce> (accessed 15 Mar. 2022). See also M. Olejnicka, *Ministry of Finance Publishes Road Map for Determining Tax Residence of Individual Taxpayers* (19 May 2021), News IBFD.

⁶⁵⁸ See ZA: South Africa Revenue Service (SARS), Interpretative Note n. 93 (Issue 3) (17 May 2021), <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2016-07-IN93-The-taxation-of-foreign-dividends.pdf> (accessed 4 March 2022); ZA: Interpretation Note No. 93 (Issue 3) (17 May 2021), <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2016-07-IN93-The-taxation-of-foreign-dividends.pdf> (accessed 15 Mar. 2022); ZA: SARS Binding Private Ruling No. BPR 357 (15 Mar. 2021), <https://www.sars.gov.za/wp-content/uploads/Legal/Rulings/BPR/IntR-R-BPR-2021-01-BPR-357-Donations-to-a-foreign-trust-of-property-situated-outside-the-republic.pdf> (accessed 15 Mar. 2022). See also L. Mvovo, *Tax Authority Issues Binding Private Ruling on Tax Consequences of Distribution in Specie of Shares by a Resident Company to Shareholders* (14 July 2021), News IBFD; L. Mvovo, *Tax Authority Issues Interpretation Note on*

The taxation of non-residents was also addressed by **Thailand**⁶⁵⁹ and **Ukraine**.⁶⁶⁰

A growing body of guidelines regards corporate taxation issues, signalling tax authorities' aim to increase certainty and reduce risks of litigation, as happened in **Chile**.⁶⁶¹

Guidance continues to be issued in relation to the application of transfer price rules in many jurisdictions such as **Germany**,⁶⁶² **Peru**,⁶⁶³ **Poland**,⁶⁶⁴ and regarding the application of withholding taxation.

[Taxation of Foreign Dividends](#) (20 May 2021), News IBFD; L. Mvovo, [Tax Authority Issues Ruling on Donations to a Foreign Trust of Property outside South Africa](#) (14 Apr. 2021), News IBFD.

⁶⁵⁹ See TH: Revenue Department Guide on VAT on Electronic Service Provided to Non-VAT Registrants in Thailand by Non-resident Business Person (2021), <https://www.rd.go.th/fileadmin/download/eService.pdf> (accessed 15 Mar. 2022). See also N. Lingbawan, [Revenue Department Issues Guideline on VAT Administration for Foreign Digital Services Supplied to Non-VAT Buyers](#) (30 July 2021), News IBFD.

⁶⁶⁰ See J. Trouch, [Ministry of Finance Clarifies Tax Registration of Non-Residents](#) (28 June 2021), News IBFD; J. Trouch, [Ministry of Finance Clarifies Taxation of CFC Liquidation Proceeds Received by Individuals](#) (18 June 2021), News IBFD; J. Trouch, [State Tax Service Clarifies Definition of Permanent Establishment under Tax Treaties](#) (30 July 2021), News IBFD; J. Trouch, [State Tax Service Clarifies Procedure for Obtaining Withholding Certificate for Taxes Paid in Ukraine](#) (28 July 2021), News IBFD; J. Trouch, [State Tax Service Clarifies Rules for Obtaining a Certificate of Tax Residence in Ukraine](#) (28 July 2021), News IBFD; J. Trouch, [State Tax Service Clarifies Tax Treatment of Expenses Reimbursed to an Individual According to a Court Decision](#) (28 Apr. 2021), News IBFD; J. Trouch, [State Tax Service Clarifies Tax Treaty Requirements under CFC Rules](#) (28 July 2021), News IBFD; J. Trouch, [State Tax Service Clarifies VAT Treatment of Credit Notes Issued by Non-Resident for Goods Imported by Ukrainian VAT Payer](#) (10 May 2021), News IBFD; O. Olekhova, and [Ukrainian State Tax Service Clarifies Tax Liabilities for Non-Resident Purchaser When Acquiring Shares in a Ukrainian Company From a Non-Resident Seller](#) (28 Apr. 2021), News IBFD.

⁶⁶¹ See CL: SII Oficio Ordinario 530 - Procedencia del inciso quinto del artículo 64 del Código Tributario en una reorganización que incluye contribuyentes no residentes ni domiciliados en Chile (22 Feb. 2021), https://www.sii.cl/normativa_legislacion/jurisprudencia_administrativa/ley_impuesto_renta/2021/ley_impuesto_renta_jadm2021.htm (accessed 22 Mar. 2022); CL: SII Oficio Ordinario 798 - Fusión internacional entre sociedad domiciliada en el extranjero (absorbida) y otra domiciliada en Chile (absorbente) (26 Mar. 2021), https://www.sii.cl/normativa_legislacion/jurisprudencia_administrativa/ley_impuesto_renta/2021/ley_impuesto_renta_jadm2021.htm (accessed 22 Mar. 2022); CL: SII Oficio Ordinario 1469 - Fusión por absorción de una empresa domiciliada en el extranjero que registra utilidades financieras acumuladas (7 Jun. 2021), https://www.sii.cl/normativa_legislacion/jurisprudencia_administrativa/ley_impuesto_renta/2021/ley_impuesto_renta_jadm2021.htm (accessed 22 Mar. 2022). See also F. Sepúlveda, [Tax Administration Clarifies Tax Treatment of Corporate Reorganization](#) (3 Mar. 2021), News IBFD; F. Sepúlveda, [Tax Administration Confirms Tax Neutrality of International Mergers](#) (8 Apr. 2021), News IBFD; and F. Sepúlveda, [Tax Administration Determines Tax Treatment of Financial Profits Transferred Within Framework of International Merger](#) (28 June 2021), News IBFD.

⁶⁶² See DE: Verwaltungsgrundsätze Verrechnungspreise GZ: IV B 5-S 1341/19/10017:001, DOK 2021/0770780 (14 Jul. 2021), https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Internationales_Steuerrecht/Allgemeine_Informationen/2021-07-14-verwaltungsgrundsaeetze-verrechnungspreise.pdf?__blob=publicationFile&v=4 (accessed 14 Mar. 2022). See also A. Perdelwitz, [Ministry of Finance Issues New Comprehensive Guidance on German Transfer Pricing Rules](#) (19 July 2021), News IBFD.

⁶⁶³ See PE: Índice Correlativo de Consultas 2021 SUNAT, <https://sunat-pe.com/legislacion/oficios/2021/indcor.htm> (accessed 14 Mar. 2022). See also E. Rodríguez Alzza, [Previous Rules on Intragroup Services did not Prevent Taxpayers from Choosing Most Appropriate Transfer Pricing Method](#) (16 Apr. 2021), News IBFD.

⁶⁶⁴ See PL: Ministry of Finance tax explanations - No. 3: The comparable uncontrolled price method (31 Mar. 2021), <https://www.gov.pl/web/finanse/objasnienia-podatkowe-w-zakresie-cen-transferowych-z-31-marca-2021-r---nr-3-metoda-porownywanej-ceny-niekontrolowanej> (accessed 15 Mar. 2022); PL: Ministry of Finance tax explanations in the field of transfer pricing - No. 2: Transfer pricing adjustment within the meaning of Article 11e of the CIT Act (Article 23q of the PIT Act) (31 Mar. 2021), <https://www.gov.pl/web/finanse/objasnienia->

Tackling tax evasion and international tax avoidance remained a key concern. For example, in the **United States**, the Internal Revenue Service updated the FAQs on the Foreign Account Tax Compliance Act (FATCA) general issues.⁶⁶⁵ Also, the US Internal Revenue Service issued updated frequently asked questions (FAQs) on qualified intermediaries (QIs), withholding foreign partnerships (WPs) and withholding foreign trusts (WTs).⁶⁶⁶

Increased attention by tax authorities can be noted also in relation to VAT and indirect taxation more broadly, as is the case for **Bolivia**,⁶⁶⁷ **Dominican Republic**,⁶⁶⁸ **Italy**,⁶⁶⁹ **Ireland**⁶⁷⁰ and **Poland**.⁶⁷¹

[podatkowe-w-zakresie-cen-transferowych-z-31-marca-2021-r---nr-2-korekta-cen-transferowych-w-rozumieniu-art-11e-ustawy-o-cit-art-23q-ustawy-o-pit](https://www.gov.pl/web/finanse/objasnienia-podatkowe-w-zakresie-cen-transferowych-z-31-marca-2021-r---nr-2-korekta-cen-transferowych-w-rozumieniu-art-11e-ustawy-o-cit-art-23q-ustawy-o-pit) (accessed 15 Mar. 2022), <https://www.gov.pl/web/finanse/objasnienia-podatkowe-w-zakresie-cen-transferowych-z-31-marca-2021-r---nr-2-korekta-cen-transferowych-w-rozumieniu-art-11e-ustawy-o-cit-art-23q-ustawy-o-pit> (accessed 15 Mar. 2022).

⁶⁶⁵ See US: IRS FAQs, FATCA Compliance Legal, available at <https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal> (accessed 22 Mar. 2022). See also W. Choi, *IRS updates FAQs on Foreign Account Tax Compliance Act (FATCA) General Issues* (16 Mar. 2021), News IBFD.

⁶⁶⁶ See US: IRS FAQs, Qualified Intermediary (QI), Withholding Foreign Partnership (WP), and Withholding Foreign Trust (WT) Frequently Asked Questions (FAQs) - <https://www.irs.gov/businesses/corporations/qualified-intermediary-general-faqs#Certifications> (accessed 22 Mar. 2022). See also W. Choi, *IRS Updates FAQs on Qualified Intermediaries, Withholding Foreign Partnerships and Withholding Foreign Trusts* (26 Feb. 2021), News IBFD.

⁶⁶⁷ See BO: Decreto Supremo No. 4541 (15 Jul. 2021), <https://impuestos.com.bo/tratamiento-prestacion-servicios-continuos/> (accessed 11 Mar. 2022). See also A. Villegas, *Bolivia Clarifies VAT Treatment for Recurring Services, Public Utility Services and Digital Invoicing* (23 July 2021), News IBFD.

⁶⁶⁸ See DO: DGII G.L. No. 24434 (19 Jul. 2021), <https://dgii.gov.do/legislacion/consultas/Documents/Mayo/Consulta%2001-Aplicaci%C3%B3n%20de%20ITBIS%20en%20productos%20intangibles%20digitales.pdf> (accessed 14 Mar. 2022). See also M. Corral, *Dominican Republic Provides Clarity on VAT on Transactions of Intangible Digital Assets* (2 Aug. 2021), News IBFD.

⁶⁶⁹ IT: Invoicing (28 Jun. 2021), https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/content/italy-2017-06-28_en (accessed 14 Mar. 2022); IT: Risposta dalla Agenzia Centrale No. 424/2021, Interpello - Articolo 11, comma 1, lett. a), legge 27 luglio 2000, n. 212 - Recupero dell'IVA nell'ambito di una operazione regolata mediante il meccanismo della scissione dei pagamenti (c.d. split payment), https://www.agenziaentrate.gov.it/portale/documents/20143/0/Risposta_424_22.06.2021+%281%29.pdf/77f937d9-5789-57f5-b20a-d5600039bda1 (accessed 14 Mar. 2022); IT: Risposta dalla Agenzia Centrale No. 392/2021, IVA - Assegnazione e utilizzo dei punti nell'ambito di un programma di fidelizzazione mediante App - Disciplina IVA, https://www.agenziaentrate.gov.it/portale/documents/20143/0/Risposta_392_07.06.2021.pdf/f7c5f78b-a7de-e630-42ae-33f0db053faf (accessed 14 Mar. 2022). See also S. La Grutta, *Tax Authorities Clarify Refund Procedure for Erroneously Charged VAT on Supplies Subject to Split Payment Mechanism* (15 July 2021), News IBFD; S. La Grutta, *Tax Authorities Clarify Refund Procedure In Case Of Incorrect Application of Reverse Charge Mechanism* (19 July 2021), News IBFD; G. Gallo, *Tax Authorities Clarify VAT Treatment of Supplies of Loyalty Programmes Points* (15 July 2021), News IBFD.

⁶⁷⁰ See IE: Revenue eBrief 2021, <https://www.revenue.ie/en/tax-professionals/ebrief/index.aspx?year=2021> (accessed 14 Feb. 2022). See also P. Bak, *Revenue Clarifies Role of Intermediaries Under VAT Import One Stop Shop* (30 July 2021), News IBFD; P. Bak, *Revenue Confirms Pre-Registration Requirements for One Stop Shop and Import One Stop Shop Schemes* (31 Mar. 2021), News IBFD.

⁶⁷¹ See PL: Ministry of Finance Tax explanations regarding the "Slim VAT" solution package and selected solutions clarifying certain VAT structures introduced by the Act of 27 November 2020 amending the Act on tax on goods and services and certain other acts (Journal of Laws, item 2419) (23 Apr. 2021), <https://www.gov.pl/web/finanse/objasnienia-podatkowe-z-23-kwietnia-2021-r-w-zakresie-pakietu-rozwiazan-slim-vat-oraz-wybranych-rozwiazan-doprecyzowujacych-niektore-konstrukcje-vat-wprowadzonych-ustawa-z->

Guidance was put forward by states, including **France**,⁶⁷² **Chile**⁶⁷³ and the **Philippines**,⁶⁷⁴ in relation to the interpretation and application of conventions on double taxation.

The taxation of the digital economy represented an area of attention and several jurisdictions, including **Malaysia**,⁶⁷⁵ the **United States**,⁶⁷⁶ **Spain**⁶⁷⁷ and **Thailand**,⁶⁷⁸ provided guidance to help clarify relevant rules.

11.4. Non-binding guidance

Minimum standard: Where a taxpayer relies on published guidance of a revenue authority that subsequently proves to be inaccurate, changes should apply only prospectively.

Shifted towards / improved the minimum standard:	Shifted away from the minimum standard:
Netherlands	None

[27-listopada-2020-r-o-zmianie-ustawy-o-podatku-od-towarow-i-uslug-oraz-niektorych-innych-ustaw-dz-u-poz-2419](#) (accessed 15 Mar. 2022); PL: Ministry of Finance Tax explanations regarding the so-called VAT e-commerce package introduced by the Act of 20 May 2021 amending the Act on tax on goods and services and certain other acts (Journal of Laws, item 1163) (1 Sept. 2021), <https://www.gov.pl/web/finanse/objasnienia-podatkowe-z-dnia-1-wrzesnia-2021-r-w-zakresie-tzw-pakietu-vat-e-commerce-wprowadzonego-ustawa-z-dnia-20-maja-2021-r-o-zmianie-ustawy-o-podatku-od-towarow-i-uslug-oraz-niektorych-innych-ustaw-dz-u-poz-1163> (accessed 15 Mar. 2022). See also N. Lasinski-Sulecki, [Ministry of Finance Clarifies SLIM VAT Package](#) (12 May 2021), News IBFD.

⁶⁷² See E. Joannard-Lardant, [French Tax Authorities Publish Updated Administrative Commentaries to Treaties with Monaco](#) (3 June 2021), News IBFD.

⁶⁷³ See PE: Informe No. 143-2020-SUNAT/7T0000 (5 Feb. 2021), <https://www.sunat.gob.pe/legislacion/oficios/2020/informe-oficios/i143-2020-7T0000.pdf> (accessed 22 Mar. 2022). See also E. Rodríguez Alza, [Tax Administration Clarifies Tax Treatment of Dividends Distributed to Investment Funds under Tax Treaty between Peru and Chile](#) (19 Feb. 2021), News IBFD.

⁶⁷⁴ See PH: Review Memorandum Order No. 14-2021, Streamlining the Procedures and Documents Benefits (31 Mar. 2021), https://www.bir.gov.ph/images/bir_files/internal_communications_3/Full%20Text%20of%20RMO%202021/RMO%20No.%2014-2021.pdf (accessed 15 Mar. 2022). See also N. Lingbawan, [Philippines Updates Guidelines for Claiming Tax Treaty Benefits](#) (1 Apr. 2021), News IBFD.

⁶⁷⁵ See MY: Royal Malaysian Customs Department Guide on Digital Services by Foreign Service Provider (FSP) (21 Feb. 2021), <https://mysst.customs.gov.my/IndustryGuides> (accessed 22 Mar. 2022). See also J. Cheang, [Malaysia Issues Updated Guidelines on Digital Service Tax for Foreign Service Providers](#) (22 Feb. 2021), News IBFD.

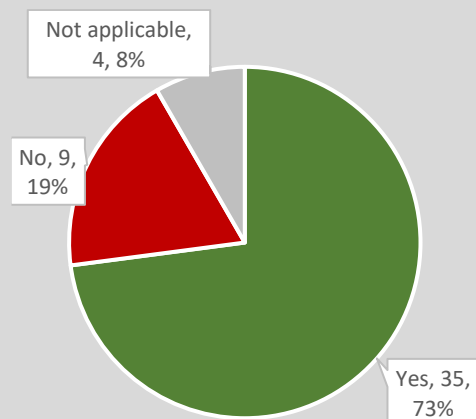
⁶⁷⁶ See US: MD Department of Revenue Business Tax Tip #29 Sales of Digital Products and Digital Codes (3 Jun. 2021), https://www.marylandtaxes.gov/forms/Business_Tax_Tips/bustip29.pdf (accessed 15 Mar. 2022). See also S. Basiaga, [Maryland Issues Revised Guidance on Digital Goods Sales Tax](#) (9 June 2021), News IBFD.

⁶⁷⁷ See ES: Resolución de 25 de junio de 2021, de la Dirección General de Tributos, relativa al Impuesto sobre Determinados Servicios Digitales, BOE-A-2021 No. 10745 (25 Jun. 2021), <https://www.boe.es/boe/dias/2021/06/29/pdfs/BOE-A-2021-10745.pdf> (accessed 15 Mar. 2022). See also A. de Juan Ledesma, [Tax Administration Clarifies Determination of Taxable Base for Digital Services Tax](#) (2 July 2021), News IBFD.

⁶⁷⁸ See TH: Revenue Department Guide on VAT on Electronic Service Provided to Non-VAT Registrants in Thailand by Non-resident Business Person (30 Jun. 2021), <https://www.rd.go.th/fileadmin/download/eService.pdf> (accessed 22 Mar. 2022). See also N. Lingbawan, [Revenue Department Issues Guideline on VAT Administration for Foreign Digital Services Supplied to Non-VAT Buyers](#) (30 July 2021), News IBFD.

Chart 77. If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?

56 responses



Yes: Australia, Austria, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, China (People's Rep), Chinese Taipei, Colombia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Netherlands, Norway, Peru (2), Peru (3), Poland (1), Poland (2), Portugal, Russia, Spain, Switzerland, Turkey, Ukraine, United Kingdom, Uruguay, Venezuela

No: Belgium, Bolivia, Luxembourg, Mauritius, New Zealand, Serbia, Slovenia (1), Slovenia (2), Sweden, United States

Not applicable: Argentina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Mexico (1), Mexico (2), Peru (1), South Africa

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 77

The principle of good faith is a cornerstone in all legal relations, so taxpayers have the right to rely on the guidance provided by the tax authorities from this principle as a legitimate expectation. This is part of legal certainty, and as a minimum standard, taxpayers' legitimate expectations require that inaccuracies in advance rulings provided by the tax administration should only apply prospectively.

The **OECD** published its report *Building Tax Culture, Compliance and Citizenship*, aiming to help tax revenue authorities in designing and implementing taxpayer education initiatives. It examines 140 initiatives under implementation in 59 developed and developing countries, offering a classification of different approaches to taxpayer education, and identifying common challenges and solutions.⁶⁷⁹

There was an interesting multilateral effort to provide guidance as the **OECD** released opinions, approved by the Conference of the Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI),⁶⁸⁰ to address interpretation and implementation concerns regarding the MLI and to solve possible mismatches between the MLI and tax treaties. Other opinions were released in 2021, covering the entry into effect under article 35(1)(a) MLI, the implementation of article 16 of the MLI

⁶⁷⁹ See OECD, *Building Tax Culture, Compliance and Citizenship : A Global Source Book on Taxpayer Education*, ch. 5 (2021), https://www.oecd.org/tax/building-tax-culture-compliance-and-citizenship-second-edition-18585eb1-en.htm?utm_source=Adestra&utm_medium=email&utm_content=Global%20Source%20Book%20on%20Taxpayer%20Education%2C%20Second%20Edition&utm_campaign=Tax%20News%20Alert%2006-01-2022&utm_term=ctp (accessed 11 Mar. 2022).

⁶⁸⁰ *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (2016), Treaties & Models IBFD.

(Mutual Agreement Procedure) and the application of the entry into effect of Part VI (Arbitration) and article 36(1)(b) and (2) of the MLI.⁶⁸¹

In this regard, a noteworthy judgment issued by the **Netherlands Hoge Raad** (Supreme Court) went towards the minimum standard. The Court protected the taxpayer against an incorrect statement on the website of the Tax and Customs Administration regarding revision in the event of the surrender of an annuity. This allows for the taxpayer to rely on information published by the Dutch tax authorities, even when this appears to be inaccurate at a later moment. The taxpayer can apply the principle of protection of legitimate expectations now more easily, in relation to this information.⁶⁸²

As reported in section [3.13](#) of this yearbook, the Supreme Court of **Spain** stated that tax rulings should be considered not only by tax officers but also by judges when applying a specific tax provision in the light of taxpayers' legitimate expectations. In this regard, the judgment stated that the courts are obliged to recognize the taxpayer's right to rely on the criteria that the tax authority (i) determines as directly applicable to his case, in the case of a consultation made by the taxpayer himself; or (ii) has repeatedly applied to similar cases.⁶⁸³

12. Institutional Framework for Protecting Taxpayers' Rights

12.1. The general framework

In practice, an institutional framework is needed when states enact their powers towards taxpayers. In doing so, states must adhere to legality, meaning that they must both enact their powers and at the same time meet their obligations. The framework necessary can be shaped in different ways in order to ensure adequate protection of taxpayers' rights.

12.2. Statements of taxpayers' rights: charters, service charters and taxpayers' bills of rights

⁶⁸¹ See OECD, *Opinion of the Conference of the Parties of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting on Interpretation and Implementation* (3 May 2021), <https://www.oecd.org/tax/treaties/beps-mli-cop-opinion-interpretation-and-implementation-questions.pdf> (accessed 11 Mar. 2022); OECD, *Opinion of the Conference of the Parties of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting on Entry into Effect under Article 35 (1) (a)* (25 Mar. 2021), <https://www.oecd.org/tax/treaties/beps-mli-cop-opinion-entry-into-effect-under-article-35-1-a.pdf> (accessed 14 Mar. 2022); OECD, *Opinion of the Conference of the Parties of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting on Implementation of Article 16 MLI (mutual agreement procedure)* (30 Sept. 2021), <https://www.oecd.org/ctp/treaties/beps-mli-cop-opinion-article-16-mutual-agreement-procedure.pdf> (accessed 14 Mar. 2022); OECD, *Opinion of the Conference of the Parties of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting on Application of the entry into effect of Part VI (Arbitration) and Article 36(1)(b) and (2) of the MLI* (30 Sept. 2021) <https://www.oecd.org/ctp/treaties/beps-mli-cop-opinion-entry-into-effect-part-vi-and-article-36.pdf> (accessed 14 Mar. 2022). See also IBFD Tax Treaties Unit, *Signatories Approve Opinion on Interpretation and Implementation* (21 May 2021), News IBFD.

⁶⁸² See NL: HR, 5 Nov. 2021, case No. 20/0373 [ECLI:NL:HR:2021:1654], https://www.ndfr.nl/content/ECLI_NL_HR_2021_1654 (accessed 15 Mar. 2022).

⁶⁸³ See ES: STS 4108/2021 [ECLI:ES:TS:2021:4108], 2 Jun. 2021, <https://www.poderjudicial.es/search/TS/openDocument/46cd0847047cd940/20211122> (accessed 15 Mar. 2022). See also ES: OPTR Report (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Questions 22 and 82.

Minimum standard: Adoption of a charter or statement of taxpayers’ rights should be a minimum standard.

Shifted towards / improved the minimum standard:

Australia, Chile

Shifted away from the minimum standard:

Poland

Best practice: A separate statement of taxpayers’ rights under audit should be provided to taxpayers who are audited.

Shifted towards / matched the best practice:

Chile, Cyprus, United Kingdom

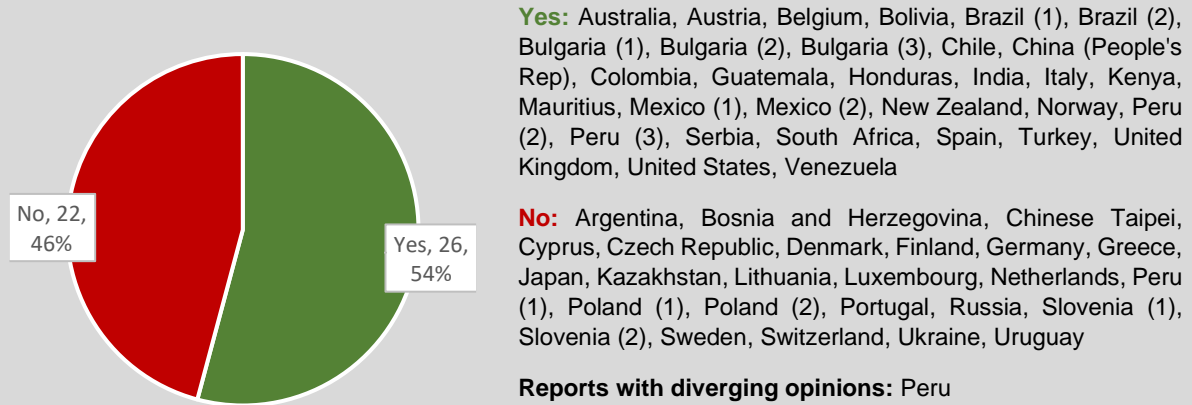
Shifted away from the minimum standard:

None

Enacting a set of rules identifying taxpayers’ rights can take various forms, such as a taxpayers’ bill of rights or taxpayers’ charters. These different types of rules provide an institutional framework of certainty regarding the content and scope of taxpayers’ rights and the tax authority’s obligations, which can also be defined through service charters. As illustrated by Chart 78, 54% of the surveyed jurisdictions have taxpayers’ charters or bills of rights.

Chart 78. Is there a taxpayers’ charter or taxpayers’ bill of rights in your country?

56 responses



Source: OPTR: Questionnaire 1, Question 78

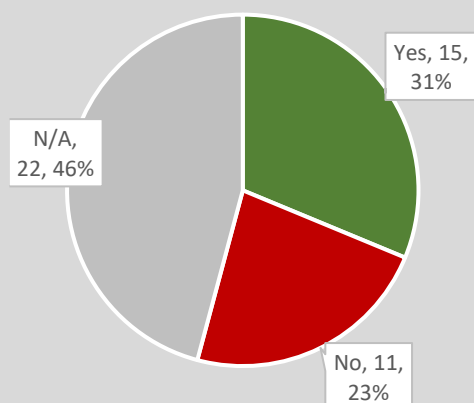
However, 23% of the surveyed jurisdictions have reported that these provisions are not legally effective, as illustrated by Chart 79, which is actually a great improvement compared to 53% in 2020.

A great example of a general framework comes from **Australia**, where the Australian Taxation Office has established and maintained a Taxpayers’ Charter since 1993, following a Parliamentary Committee report. Recently, there have been recommendations for changes to the Charter to enhance enforceability, awareness and status. For example, the Australian House of Representatives Standing Committee on Tax and Revenue has recommended “that

the Australian Taxation Office develops and promotes an Australian Taxpayers' Bill of Rights that clearly outlines taxpayers' rights and obligations".⁶⁸⁴

Chart 79. If yes, are its provisions legally effective?

56 responses



Yes: Belgium, Bolivia, Brazil (1), Brazil (2), Chile, China (People's Rep), Guatemala, Honduras, Italy, Kenya, Mexico (1), Mexico (2), Norway, Peru (2), Peru (3), Spain, United States, Venezuela

No: Australia, Austria, Bulgaria (1), Bulgaria (2), Bulgaria (3), Colombia, India, Mauritius, New Zealand, Serbia, South Africa, Turkey, United Kingdom

Not applicable: Argentina, Bosnia and Herzegovina, Chinese Taipei, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Japan, Kazakhstan, Lithuania, Luxembourg, Netherlands, Peru (1), Poland (1), Poland (2), Portugal, Russia, Slovenia (1), Slovenia (2), Sweden, Switzerland, Ukraine, Uruguay

Reports with diverging opinions: Peru

Source: OPTR: Questionnaire 1, Question 79

Likewise, the **United Kingdom** has continued a positive development from 2020 with improvements to the drafting of its Charter and its governance, as the first annual report under this new charter has now been composed and an active Customer Experience Committee has been established.⁶⁸⁵

As stated many times throughout this yearbook, **Chile** has reported a general improvement on the regulation of taxpayers' rights as defined in their Tax Code, due to the issuance of Letter 12/2021 by the tax authorities.⁶⁸⁶

Following the best practice, in the **United States**, the South Carolina Department of Revenue issued a guide for taxpayers under audit, indicating what to do when selected to an audit, what to expect from it and how to challenge it, in case of disagreement.⁶⁸⁷ Also in the **United States**,

⁶⁸⁴ See AU: House of Representatives Standing Committee on Tax and Revenue Report on the 2018-19 Commissioner of Taxation Annual Report (2021), p. 40, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024470/toc_pdf/2018-19CommissionerofTaxationAnnualReport.pdf;fileType=application%2Fpdf (accessed 15 Mar. 2022). See also AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 84.

⁶⁸⁵ See UK: HMRC Annual Report and Accounts 2020 to 2021 (2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1035552/HMRC_Annual_Report_and_Accounts_2020_to_2021_Web.pdf (accessed 15 Mar. 2022); UK: HMRC Customer Experience Committee Charter annual report: April 2020 to March 2021 (4 Nov. 2021), <https://www.gov.uk/government/publications/hmrc-charter-annual-report-2020-to-2021/hmrc-charter-annual-report-april-2020-to-march-2021> (accessed 15 Mar. 2022). See also UK: OPTR Report (Taxpayers/ Tax Practitioners), Questionnaire 2, Question 84.

⁶⁸⁶ See secs. 1.4., 1.5., 1.6., 3.8., 4.1., 4.2., 4.3., 4.4., 4.5. and 5.3.; and CL: Letter No. 12, *supra* n. 18, at sec. V. See also CL: OPTR Report (Taxpayers/Tax Practitioners) Questionnaire 2, Question 84.

⁶⁸⁷ See US: SC Department of Revenue Press Release, *What to Do if Your Business is Selected for an Audit* (29 Jun. 2021), https://www.einnews.com/pr_news/545064302/what-to-do-if-your-business-is-selected-for-an-

renowned scholars have commented on the performance of the Taxpayers' Bill of Rights, claiming its "uncertain prospects".⁶⁸⁸

On the other hand, **Poland** reports that, after 2 years, the Parliament has still not dealt with a draft Bill of Taxpayers' Rights, developed by representatives of tax academia at the University of Lodz and introduced to Parliament by a group of opposition MPs in December 2019. In January 2020, the draft was referred to the first reading, which has not taken place yet.⁶⁸⁹

12.3. Organizational structure for protecting taxpayers' rights

Best practice: A taxpayer advocate or ombudsman should be established to scrutinize 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 the normal operations of that authority.

Shifted towards / matched the best practice:

Australia, Chile

Shifted away from the minimum standard:

Mexico

Best practice: The organizational structure for the protection of taxpayers' rights should operate at a local level as well as nationally.

Shifted towards / matched the best practice:

None

Shifted away from the minimum standard:

None

One way for the state to further fulfil its obligations to protect taxpayers' rights is through a specialized body, preferably independent from the tax authorities. The idea is to have an institution bestowed with the power to ensure the conditions for the highest protection of taxpayers, which is also the rationale behind a Taxpayer Advocate or a Tax Ombudsman.

As illustrated by Chart 80, 58% of the surveyed jurisdictions have such an institution. As depicted by Chart 81, 39% of these are empowered to intervene in ongoing disputes between tax authorities and taxpayers, which is a significant improvement compared to 35% in 2020.

As illustrated by Chart 82, 44% of the ombudspersons are independent.

In **Australia**, there has been an independent office of the taxation ombudsman since 1995. Since that time and until 2015, the taxation ombudsman function was initially performed by the Commonwealth Ombudsman, and it is now performed by the Inspector-General of Taxation. The taxation ombudsman role in Australia is not part of the tax authority. The

[audit](#) (accessed 15 Mar. 2022). See also J. Robles Santos, [South Carolina Department of Revenue Issues Tax Audit Guidance](#) (7 July 2021), News IBFD.

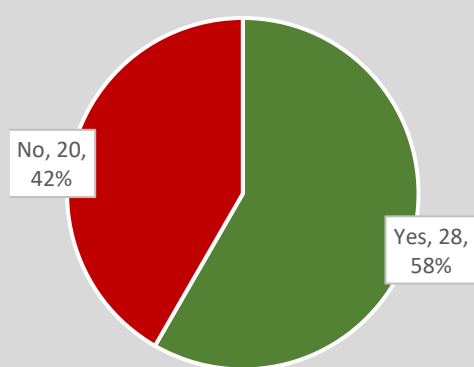
⁶⁸⁸ See R. Avi-Yonah, *The US Taxpayer Bill of Rights: Reflections on a Toddler*, U of Michigan Law & Econ Research Paper No. 21-008 (2021), <http://dx.doi.org/10.2139/ssrn.3782019> (accessed 15 Mar. 2022).

⁶⁸⁹ PL: Draft Bill No. 137 – Taxpayers' Bill of Rights, <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=137> (accessed 15 Mar. 2022). See also PL: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 84.

Parliamentary Committee mentioned above has made some recommendations for changes in the taxation ombudsman role as well, namely that the Inspector-General of Taxation be renamed the “Taxpayer Advocate”, and that the role aligns more closely with the powers and structure of the **United States** Taxpayer Advocate, based on the needs of the Australian tax system. The Taxpayer Advocate must continue to have the freedom and independence enjoyed by the current Inspector-General of Taxation.⁶⁹⁰

Chart 80. Is there a (tax) ombudsman/taxpayers’ advocate/equivalent position in your country?

56 responses



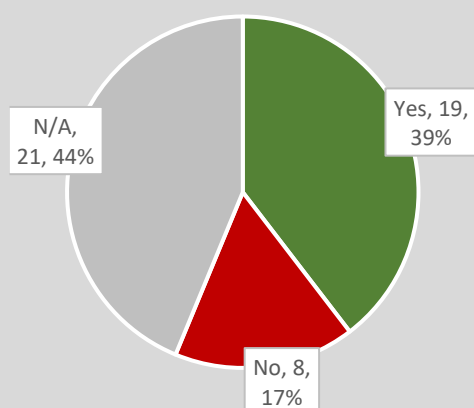
Yes: Australia, Austria, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep), Chinese Taipei, Colombia, Czech Republic, Denmark, Greece, Honduras, Italy, Japan, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), South Africa, Spain, Turkey, United Kingdom, United States

No: Argentina, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Cyprus, Finland, Germany, Guatemala, India, Kenya, Lithuania, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Sweden, Switzerland, Ukraine, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 80

Chart 81. If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?

56 responses



Yes: Chile, China (People's Rep), Chinese Taipei, Colombia, Czech Republic, Denmark, Greece, Honduras, Italy, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Norway, Poland (1), Poland (2), South Africa, Spain, Turkey, United States

No: Australia, Austria, Bulgaria (1), Bulgaria (2), Bulgaria (3), Japan, Netherlands, New Zealand, Peru (1), Peru (2), Peru (3), Slovenia (2), United Kingdom

Not applicable: Argentina, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Cyprus, Finland, Germany, Guatemala, India, Kenya, Lithuania, Portugal, Russia, Serbia, Slovenia (1), Sweden, Switzerland, Ukraine, Uruguay, Venezuela

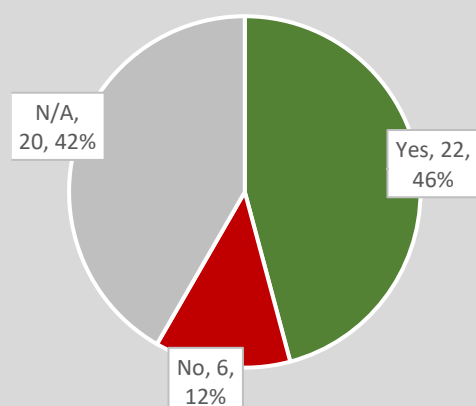
Reports with diverging opinions: Slovenia

Source: OPTR: Questionnaire 1, Question 81

⁶⁹⁰ AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 85. See also https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024470/toc_pdf/2018-19CommissionerofTaxationAnnualReport.pdf;fileType=application%2Fpdf, p. 40 (accessed 9 Mar. 2022).

Chart 82. If yes to a (tax) ombudsman, is he/she independent from the tax authority?

56 responses



Yes: Australia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia, Czech Republic, Denmark, Greece, Honduras, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Peru (3), Poland (1), Poland (2), South Africa, Spain, Turkey, United Kingdom, United States

No: Austria, Belgium, China (People's Rep), Chinese Taipei, Italy, Japan,

Not applicable: Argentina, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Cyprus, Finland, Germany, Guatemala, India, Kenya, Lithuania, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Sweden, Switzerland, Ukraine, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 82

Likewise, **Chile** has continued its positive path towards fulfilment of the best practices since the introduction of an ombudsman in 2020. Now, in 2021, a decentralized public service office called "Tax Ombudsman" (*Defensoría del Contribuyente, DEDECON*) was created to assist taxpayers and to provide them legal assistance. DEDECON is independent from the Chilean tax authorities.⁶⁹¹

Regretfully, the example set in previous years by **Mexico** through its *Procuraduría para la Defensa del Contribuyente* (PRODECON) appears to have suffered a few setbacks. An amendment to the Federal Tax Code has introduced a provision effectively limiting PRODECON's powers, as it limits the duration of the alternative mediation conducted by it. According to the amendment, the "conclusive agreement" cannot exceed 12 months since the filing of the request.⁶⁹²

Finally, in the **United States**, the Taxpayer Advocate Service (TAS) continued to maintain offices in each state. However, the local reach of TAS was limited by coronavirus health measures. Also, TAS service levels were reduced by increased caseloads caused by reduced IRS service levels.⁶⁹³

⁶⁹¹ See CL: Ministry of Finance Press Release, *Defensoría del Contribuyente (DEDECON) comienza sus funciones con designación del Defensor Nacional* (12 Nov. 2021), <https://www.hacienda.cl/noticias-y-eventos/noticias/defensoria-del-contribuyente-dedecon-comienza-sus-funciones-con-designacion-del> (accessed 15 Mar. 2022); and CL: Defensoría del Contribuyente website, <https://dedeconchile.cl/> (accessed 15 Mar. 2022). See also CL: OPTR Report (Taxpayers/ Tax Practitioners), Questionnaire 2, Question 85.

⁶⁹² See MX: Federal Tax Code (*Código Fiscal de la Federación*), Article 69-C, D.O.F. 12 Nov. 2021, http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 15 Mar. 2022). See also MX: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 85.

⁶⁹³ See 2021 NTA ARC, *supra* n. 166, at pp. 4 and 8. See also US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 85.

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Appendices

Appendix A: 2021 topical highlights

The following is a summary of the contents explained in detail in the main text of the 2021 IBFD Yearbook on Taxpayers' Rights. Accordingly, it is not advisable to interpret the content expressed in this table separately from the explanations contained in the main text of this document.

Taxpayers' right	Shift towards	Shift away from
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers		
Identification of taxpayers	<ul style="list-style-type: none"> • Australia: Changed identity requirements, enabling taxpayers to achieve a greater online identity strength, and taxpayer access to standard identity strength was expanded. • Bulgaria: Amended its legislation regarding the identification numbers of self-insured persons that practised freelance professions to separate the taxpayers' identification numbers from the persons' unique identification numbers to protect taxpayers' privacy. • Ghana: COVID-19-related measures. • Japan: COVID-19-related measures. • United States: The Internal Revenue Service (IRS) extended the scope of its identity protection programme to all those taxpayers able to verify their identity. 	
Information supplied by third parties and withholding obligations	<ul style="list-style-type: none"> • Colombia: Resolution established the conditions for secure transfers of information to local tax authorities for control purposes that is related to an optional taxation model that replaces the income tax and integrates several other taxes. • Turkey: Modified its Tax Procedures Act to require the partners, executives and personnel of the service providers of the revenue administration to keep the confidentiality of the information and secrets they learned about the taxpayers during the provision of their services. 	<ul style="list-style-type: none"> • Chinese Taipei: Regulations were enacted enabling the Ministry of Finance to request financial institutions to provide information on reportable financial accounts, without any reference to confidentiality.

Taxpayers' right	Shift towards	Shift away from
<p>The right to access (and correct) information held by tax authorities</p>	<ul style="list-style-type: none"> • Australia: The Australian Tax Office (ATO) expanded the data available in its pre-fill service to include reminders to taxpayers who earn foreign income and increased reminders to those who invest in cryptocurrency. • Chile: Issued guidance in which the tax administration is instructed on the procedures to be followed to safeguard taxpayers' rights, as well as the appearance of and notifications for tax administrative and judicial procedures. • United States: The IRS made additional (though still limited) information available through taxpayer online accounts and through online tools. 	<ul style="list-style-type: none"> • Belgium: The tax authorities refused the request made by a Luxembourg fiduciary (an individual) requesting information, access, rectification and restriction of the processing of personal information held about her. • Guatemala: New regulation limits the access of information to taxpayers by extending the concept of "reserved information" to documents used within audits and internal rulings of the tax administration.
<p>Communication with taxpayers</p>	<ul style="list-style-type: none"> • Belgium: Enacted a new bill on the dematerialization of the relations between the Belgian public service finance, citizens, legal persons and certain third parties, fostering safe and reliable electronic communication with tax authorities as a rule. • Chile: New measures improved the tax authorities' approach to technical assistance to taxpayers, with particular attention given to the electronic communication of tax proceedings (especially through help desks), the safekeeping of information relating to taxpayer e-mails and the formalities of electronic notifications of administrative acts. • Honduras: Implemented an integrated information system with many features allowing secure electronic communication with taxpayers, including identification and validation requirements. • India: Introduced faceless e-assessment for assessment and appellate proceedings, with built-in checks and balances to prevent impersonation or interception. • United States: Launched a secure-access digital identity platform, which meets updated digital identity guidelines. 	
<p>Cooperative compliance</p>	<ul style="list-style-type: none"> • Chile: New provisions order tax authorities to use all available means to facilitate tax compliance without unnecessary delay, 	

Taxpayers' right	Shift towards	Shift away from
	<p>demand or waiting.</p> <ul style="list-style-type: none"> • Honduras: Tax authorities are in the process of approving an internal guide on the implementation of a cooperative compliance programme for "large" taxpayers, which leaves open the possibility for any large taxpayer to enter the programme. • Mexico: Mandatory registration of natural persons of legal age (18 years old) in the federal taxpayers' register without punishment for non-compliance as a measure to encourage cooperative compliance. • Russia: New legislation softened the conditions for the application of the cooperative compliance programme so that more taxpayers may participate. • United Kingdom: Extra support services were made regularly available to those with particular difficulties in handling their tax affairs. 	
<p>Assistance with compliance obligations</p>	<ul style="list-style-type: none"> • Australia: COVID-19-related measures. • Belgium: New legal measures allow individuals to benefit from an "opt-in system", according to which they can keep on communicating with the tax administration on paper alone, unless they have expressly chosen to communicate by electronic means. • Chile: Improved the tax administration's digital platforms and assistance to taxpayers. • Colombia: Resumed face-to-face assistance to taxpayers to help them comply with their obligations. • Spain: New recovery plan to increase assistance to taxpayers and enhance cooperative compliance. 	<ul style="list-style-type: none"> • Guatemala: Most assistance for compliance was given electronically, despite the large number of remote areas without access to the Internet. • Honduras: Most assistance for compliance was provided online, and no assistance was available in remote areas. • United States: When the tax offices and phone lines reopened, backlogs and social distancing requirements, combined with increased taxpayer assistance requests, caused low levels of service, which adversely impacted taxpayers.

Taxpayers' right	Shift towards	Shift away from
2. The issuance of a tax assessment		
<p>Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on the equality of arms</p>	<ul style="list-style-type: none"> • Chile: New regulations introduced a new tax dispute settlement mechanism to establish an independent review body, able to settle disputes swiftly in a context of collaboration and mutual trust, which would provide legal certainty to the taxpayer, on the one hand, and, on the other hand, to ensure tax compliance and safeguard the interest of the revenue. • Guatemala: The tax administration made efforts to approach different tax organizations, such as the International Fiscal Association (IFA), to establish a dialogue about tax matters and find common ground regarding tax law interpretation. • Switzerland: Approved a new Code of Conduct between taxpayers and the tax authorities, which aims to sustainably strengthen the "historically growing" relationship of respect and trust between taxpayers, tax representatives and tax administrations. • Russia: The Supreme Court Commercial Disputes Chamber decision of 15 December 2021 in the <i>Spetskhimprom</i> case limited the possibility to attribute responsibility of the negligent purchaser as an accessory to tax fraud to the actual amount of the prejudice caused to the revenue as determined through a fair tax assessment, based on the equality of arms and determined on the basis of all relevant circumstances of which the tax authority has become aware through the taxpayer or other sources. 	<ul style="list-style-type: none"> • United States: COVID-19-related service reductions.
<p>Use e-filing to speed up assessments and the correction of errors</p>	<ul style="list-style-type: none"> • Australia: The ATO extended the use of real-time messaging for those using online services to lodge activity statements, prompting them to self-correct and prevent inadvertent errors prior to lodging. • Chile: COVID-19-related measures. • Ecuador: Enacted transitory measures for buyers to explicitly 	

Taxpayers' right	Shift towards	Shift away from
	<p>accept (or deny) electronic commercial invoices addressed to them, while the tax authorities internally developed an automatic system that allows buyers to accept (or deny) commercial e-invoices.</p> <ul style="list-style-type: none"> • Guatemala: Developed an electronic portal through which the tax authorities conduct almost all procedures and encouraged the use of e-filing to expedite tax compliance. • Paraguay: Developed a system for the e-registration of purchases and sales vouchers. • Peru: Pre-populated virtual advanced VAT form based on the information obtained from electronic receipts, aiming to reduce human errors and expedite assessments. 	
3. Confidentiality		
Guarantees of privacy in the law	<ul style="list-style-type: none"> • Brazil: New provisions establishing the conditions under which data protected by tax secrecy may be shared, through a secured and controlled virtual system, with other authorities of the Federal Accounting Court and the Office of the Federal Controller General. • Bolivia: The wealth tax law states the confidentiality of the information obtained from taxpayers and third parties. Said information may only be used for tax assessment purposes and cannot be transferred to third parties without an order from the competent authority. • Chile: An amendment to the Tax Code improved taxpayers' access to private information, as well as the collection of the latter through digital platforms. 	
Encryption – Control of access	<ul style="list-style-type: none"> • Brazil: A secure and controlled virtual system was created to avoid data misuse and leaks when tax-secrecy-protected information is disclosed by the Federal Revenue Service to authorities. 	

Taxpayers' right	Shift towards	Shift away from
	<ul style="list-style-type: none"> • Chile: General improvements to the tax administration's digital platforms were made in 2021, a process that will continue in 2022. 	
Administrative measures to ensure confidentiality		<ul style="list-style-type: none"> • Chinese Taipei: Major national tax bureau official accidentally leaked a large amount of tax agents' personal data online. No measure has been taken since to prevent data leaks.
Exceptions to confidentiality		<ul style="list-style-type: none"> • South Africa: Denied the Public Prosecutor access to taxpayer information held by the South African Revenue Service (SARS) about the country's former president based on the minimum standard of non-disclosure to politicians. The same court ruled in a later decision, related to the same taxpayer, that the freedom of speech and right to access to information override the taxpayers' right to secrecy "when the exercise of those rights are in the public interest".
The interplay between taxpayer confidentiality and freedom-of-information legislation	<ul style="list-style-type: none"> • Chile: Enacted a provision allowing a taxpayer to authorize the sharing of specific data to third parties specifically indicated by the taxpayer. 	<ul style="list-style-type: none"> • United Kingdom: The introduction of so-called "financial institution notices" represents a request to financial institutions to provide documents to the tax authorities for either assess a given taxpayer or collect outstanding debts.
Anonymized judgments and rulings	<ul style="list-style-type: none"> • Spain: The Supreme Court confirmed the applicability of the principle of legitimate expectations to these acts, which should be considered by both tax authorities and judges. 	
Legal professional privilege	<ul style="list-style-type: none"> • Belgium: The Court of Appeal of Antwerp confirmed the crucial importance of lawyers' professional secrecy and the central role that the President of the Bar plays in safeguarding it, i.e. checking that nothing is included that would violate professional secrecy if the tax authorities were to become aware of it. • Brazil: Declared a series of state laws unconstitutional that extended liability for tax offences committed by taxpayers to their advisers. The judicial declaration overturned the theory according to which liability for tax offences can be extended to third parties based on the vicariousness inherent to tort liability, 	<ul style="list-style-type: none"> • Mexico: Classified as a tax offence the failure to report the omission of taxes collected, withheld or transferred or the taxpayer's own taxes, punishable by a fine for the auditor who certified the financial statements. • Netherlands: Continuing with the ongoing debate about the scope of legal privilege and despite recent decisions from the judiciary (although not related to tax matters) upholding it against presumed public interest in disclosure, there was a public consultation for a legislative proposal that, if approved, would imply that lawyers, notaries and other legal professionals will be limited in their privilege regarding information that a tax adviser would also have to disclose,

Taxpayers' right	Shift towards	Shift away from
	a criterion followed by a few Latin American countries.	considering the "fair play" principle.
4. Normal audits		
<i>Ne bis in idem</i>	<ul style="list-style-type: none"> • Chile: New provisions producing general improvement of administrative procedures in favour of taxpayers to make administrative dispute resolution mechanisms more effective under the four basic principles. • Slovenia: The Constitutional Court declared unconstitutional a surcharge tax of 70% on undeclared income, fully applicable just by the commencement of an ex officio assessment. 	<ul style="list-style-type: none"> • United Kingdom: The introduction of financial institution notices departs from the <i>audi alteram partem</i> minimum standard by not requiring court approval before its issuance and the removal of the rights to appeal of affected third parties.
Principle of proportionality	<ul style="list-style-type: none"> • Chile: The general improvement of the Taxpayers' Bill of Rights due to an amendment of the Tax Code enhanced the protection of taxpayers regarding the statute of limitations and <i>non bis in idem</i> (by prohibiting multiple audits of the same taxpayer for the same taxable events). • Denmark: An obligation to provide transfer pricing documentation for domestic Danish transactions was repealed, as this obligation was considered to be particularly burdensome and without any real purpose, as internal Danish transactions do not entail a risk of profit shifting. The bill specifically motivated this amendment by referring to the principle that taxpayers should face as few burdens as possible. 	<ul style="list-style-type: none"> • Belgium: It became increasingly common during the pandemic for the authorities to initiate the audit of a taxpayer by requesting the taxpayer or their accountant to digitally transfer a backup file containing the entire electronically held bookkeeping/accounts of the taxpayer. • Guatemala: Introduction of an administrative practice according to which the tax administration claims to have the right to receive all information requested within 3 days.
<i>Audi alteram partem</i>	<ul style="list-style-type: none"> • Spain: The Supreme Court prevented the tax authorities from extending the scope of the audit by notifying a second assessment proposal and opening a new period of time for observations before the end of the audit procedure previously opened for the same matter. 	<ul style="list-style-type: none"> • United Kingdom: The introduction of financial institution notices permitting an authorized officer to issue a notice without the right for the taxpayer to be heard or for the financial institution to appeal on the grounds that to comply with the notice would be unduly burdensome.
<i>Nemo tenetur se detegere</i>		
The structure and content of tax audits	<ul style="list-style-type: none"> • Chile: The tax authorities extensively regulated the actions of the tax authorities in the context of tax assessments aiming to 	<ul style="list-style-type: none"> • Colombia: New measures have established that the official determination of income tax will be made by invoicing based

Taxpayers' right	Shift towards	Shift away from
	<p>better protect taxpayers' rights.</p> <ul style="list-style-type: none"> • Honduras: The tax authorities issued a short guide on taxpayers' rights and obligations during audit procedures and published it on their website. It chronologically outlines the rights and obligations of the taxpayer at each stage of the audit process. • Spain: The Directorate General of the State Tax Administration Agency highlighted the need to use digital communication to "bring taxpayers closer" to the tax administration office without them necessarily having to travel to the physical headquarters. 	<p>on information obtained from third parties and the electronic invoice system.</p> <ul style="list-style-type: none"> • Russia: Tax authorities are obliged to disclose any evidence used against the taxpayer, and the rule is applied to refuse to disclose any evidence that is not used against the taxpayers, even if it may be in their favour. This view has been upheld in practice as well in the <i>NelidovPressMash</i> case from the Russian Supreme Court (judgment dated 1 April 2021). • Uruguay: Some municipal governments have engaged private companies in order to take steps to claim taxes owed for advertising activities. • United Kingdom: The new financial institution notice procedure allows the tax authority to require a financial institution to produce information or documents relating to a named taxpayer in certain circumstances without seeking the consent either of the named taxpayer or of the tribunal.
Time limits for tax audits	<ul style="list-style-type: none"> • Chile: Enacted new measures to protect taxpayers' rights, which include the minimization of time limits for tax audits. • China (People's Rep.): Issued guidance rules on the procedures for handling tax audits, reinforcing the supervision and restraint mechanism and protecting taxpayers' rights, including the reduction of the time limit for tax audits. • Russia: The Supreme Court Chamber on Commercial Disputes ruled, in the <i>Neringa</i> case (judgment of 5 July 2021), that tax audits may extend beyond the determined time limits, but not beyond the general 2-year tax collection time limit. 	<ul style="list-style-type: none"> • Lithuania: Amendments to the Tax Code mean that the regulation of the duration of the tax investigation is abandoned and that, going forward, time limits are not fixed, except for audits on the premises of taxpayers.
Tax audit report	<ul style="list-style-type: none"> • Chile: New measures include the finalization of tax audits with administrative acts for which taxpayers' rights to participation and notification must be ensured. • Belgium: In 2021, taxpayers who were subject to a tax audit could already consult the audit report in their personal files 	

Taxpayers' right	Shift towards	Shift away from
	online.	
5. More intensive audits		
The general framework	<ul style="list-style-type: none"> • China (People's Rep.): The tax authorities revised regulations to clarify the need to strengthen the management of case sources and add new provisions that the inspection bureau may conduct inspections before filing a case in accordance with the law, if necessary. 	<ul style="list-style-type: none"> • Mexico: Amendments to the Federal Tax Code now require certified public accountants preparing reports on audits of financial statements for tax purposes to report to the tax authorities if they become aware of possible criminal conduct of the taxpayer.
Court authorization or notification	<ul style="list-style-type: none"> • Chile: New regulation requires the tax authorities to provide sufficient motivation for accessing the documentation, as well as prior notification to the taxpayer of all administrative actions in this regard. 	<ul style="list-style-type: none"> • Brazil: The State Court of Appeals of Minas Gerais found the prior authorization by the judiciary to enter premises (an accounting office) unnecessary. • Mexico: New provisions allow the tax authorities to seize bank deposits without a prior judicial hearing when a tax assessment has become due.
6. Reviews and appeals		
The remedies and their function	<ul style="list-style-type: none"> • Colombia: Full digitalization of all tax proceedings, e.g. electronic notifications, obligation to email lawsuit to defendant, digital notifications, virtual hearings and electronic files. • Peru: Electronic filing of claims to the Peruvian tax administration was implemented for the presenting an appeal, responding to information requests and sending requests related to the process. 	
Length of the procedure	<ul style="list-style-type: none"> • Colombia: COVID-19-related measures. • Denmark: Specific scrutiny of the Danish Tax Appeal Agency's average time spent handling an appeal has trended towards becoming shorter after an investigation into this was launched in 2016. 	<ul style="list-style-type: none"> • Bolivia: Judicial appeals are over 6 years long on average in practice. • Brazil: Most second-tier federal administrative proceedings have been suspended for the last few years, resulting in longer proceedings.

Taxpayers' right	Shift towards	Shift away from
		<ul style="list-style-type: none"> • Guatemala: Reviews and appeals may take over 5 years, and more than 15 years in court.
<i>Audi alteram partem</i> and the right to a fair trial	<ul style="list-style-type: none"> • Spain: Judgment from the Supreme Court made it possible to admit documentation that has not been contributed in audit procedures in administrative reviews. 	
<i>Solve et repete</i>	<ul style="list-style-type: none"> • Portugal: New provisions entail that guarantees provided to suspend tax enforcement procedures may expire, upon request, if the judicial appeal is not decided within 4 years. 	
Cost of proceedings	<ul style="list-style-type: none"> • Australia: The ATO will pay the reasonable costs for the taxpayer to engage external legal representation if the taxpayer has a dispute in the Small Business Tax Division of the Administrative Appeals Tribunal and is self-represented. • Chile: General amendments to the Tax Code included the creation of the tax ombudsperson's office to assist taxpayers and provide legal assistance. • Lithuania: A legal-service information system provides residents with interactive consultations and electronic services for state-guaranteed legal aid. 	
Public hearing		
Publication of judgments and privacy	<ul style="list-style-type: none"> • Chile: New provisions expressly provide for the mandatory publication of all judicial decisions in tax matters, while they mandate the confidentiality of all actions during the proceedings. 	<ul style="list-style-type: none"> • Uruguay: The parliament considered and rejected a bill that, if passed, would allow free access to the case law database of the High Administrative Court, including the compilation of its tax judgments.
7. Criminal and administrative sanctions		
The general framework	<ul style="list-style-type: none"> • Chinese Taipei: Reported to have strengthened the applicability of <i>non bis in idem</i> between tax penalties and tax fines. 	<ul style="list-style-type: none"> • Chinese Taipei: The applicable fine for tax evasion by fraud or any other unrighteous means significantly increased. Contrary to the previous legislation, the amendment no longer allows companies to avoid imprisonment by paying the fine.

Taxpayers' right	Shift towards	Shift away from
<p>Voluntary disclosure</p>	<ul style="list-style-type: none"> • China (People's Rep.): The revised Law on Administrative Penalties provides for voluntary disclosure as one of the main grounds for exclusion of liability for tax offences. • Chile: New provisions according to which the tax authorities further develop the rules of the Tax Code regarding, among other things, the facilitation of tax compliance and taxpayer control. • Spain: A decision of the Central Economic-Administrative Court deemed it appropriate to maintain the 25% reduction in the penalties imposed for late payment when the interested parties request and obtain a deferral or payment in instalments. • Ukraine: A tax amnesty was enacted that mainly aims for voluntary disclosure of taxpayer assets. The general underlying principle is voluntariness, as the declaration of assets is domestically understood as a right of taxpayers. 	<ul style="list-style-type: none"> • Mexico: Introduced a measure to allow the tax authorities to seize bank deposits without a prior judicial hearing when a tax assessment has become due.
<p>8. Enforcement of taxes</p>		
	<ul style="list-style-type: none"> • Belgium: Companies that are unable to pay their debts for corporate income tax, withholding tax and VAT on time can apply for delayed payment of arrears until 30 June 2021, as well as an exemption from interest and/or the remission of fines for non-payment of the tax debt. • China (People's Rep.): Introduced a series of tax relief and tax deferral policies during the reporting period. In this regard, taxpayers are entitled to apply for tax deferrals under certain conditions. • Chinese Taipei: Loosened the requirements for taxpayers to apply for deferral of tax payment or for payment in instalments. After the tax authorities accept the request, they may approve the extension of payment, at their discretion, by 1 to 12 months, or the payment in instalments by 2 to 36 instalments 	

Taxpayers' right	Shift towards	Shift away from
	<p>(each period is calculated as 1 month).</p> <ul style="list-style-type: none"> • Colombia: COVID-19-related measures. • Honduras: The progressive table of income tax is updated each year to account for the inflation to guarantee the minimum income necessary for living. • Lithuania: Tax-free income is increased from EUR 400 to EUR 460 per month from 1 January 2022 to reduce the tax burden on employees with a monthly income of up to a minimum wage. • Netherlands: Granted various payment extensions to taxpayers upon request. • Portugal: New provision created (i) a regime allowing for the payment of taxes in instalments prior to the commencement/outside the context of tax enforcement proceedings, upon request of the taxpayer; and (ii) a regime of automatic payment in instalments for small tax debts (up to EUR 5,000 for individuals and EUR 10,000 for companies) not paid within the legal time limits. • United Kingdom: Has shown a lot of leeway in agreeing to postponement of liability and approving time-to-pay arrangements during the pandemic. • United States: The IRS exercised its discretion to refrain from offsetting stimulus payments made in the form of 2020 recovery rebate credits. 	
9. Cross-border procedures		
EoIR: The right of the taxpayer to be informed of and to challenge EoI		
Additional safeguards in	<ul style="list-style-type: none"> • China (People's Rep.): The prohibition of the exchange of 	<ul style="list-style-type: none"> • Denmark: The National Tax Tribunal decided an appeal on

Taxpayers' right	Shift towards	Shift away from
connection with EoIR	<p>illegally obtained information received a boost with new provisions clarifying that no organization or individual may unlawfully provide personal information of others. If information on individual taxpayers in international tax information exchanges is obtained illegally, it will, in principle, also be subject to the restrictions of the new personal information protection law.</p> <ul style="list-style-type: none"> • Colombia: New provisions unified the definition of “beneficial owner” for the reporting of information for both domestic and cross-border purposes, under the concept of “final beneficiary”. In this regard, the identification and registration of final beneficiaries before the tax authority was established, and its administration, conditions and mechanisms were regulated to guarantee that it contains correct and updated information, as well as to ensure its confidentiality. 	<p>access to information received in an EoI on the taxpayer between Denmark and Luxembourg and, more specifically, access to cover letters, emails and other documents initiating the procedure between the Danish competent authority and the Luxembourg competent authority. In a noteworthy development, the Danish competent authority declined the request for information made by the taxpayer, stating that the emails and schematic forms in question were exempt from access to information.</p> <ul style="list-style-type: none"> • United Kingdom: The implementation of the financial institution notices have limited the taxpayers' right to judicial review of third-party information requests, including EoI.
AEoI: The different issues of taxpayer protection	<ul style="list-style-type: none"> • China (People's Rep.): The tax authorities require financial institutions to provide a specified and reasonable period for account holders to report changes to their information. When a personal data processor provides personal information to any party outside of China (People's Rep.), it must inform the taxpayer of such provision, the purpose and form of the processing, the type of information and the procedure for the taxpayer to consent or otherwise exercise the rights provided by law for their defence. 	
Mutual agreement procedure	<ul style="list-style-type: none"> • Lithuania: Introduced mediation as an additional option for tax disputes (in general, most administrative disputes). • Turkey: Waiver for the requirement of legal action for the initiation of a MAP was repealed. This means that the application for the initiation of the MAP will only interrupt the term of litigation. For example, in the case that the contracting states do not agree, the taxpayer may resort to the litigation procedure within the remaining time. 	<ul style="list-style-type: none"> • Mexico: Introduced a provision in its Tax Code that maintains the tax administration's collection powers in force, despite the taxpayer's request to initiate a mutual agreement procedure (MAP). Consequently, the taxpayer must pay the full amount of the tax assessment when requesting a MAP. This effectively cancels the right to access a MAP in Mexico, as the taxpayer has to pay first.

Taxpayers' right	Shift towards	Shift away from
10. Legislation		
<p>Constitutional limits to tax legislation: Retrospective laws</p>	<ul style="list-style-type: none"> • Belgium: The Court of Cassation confirmed the criterion set forth by a series of judgments of the Ghent Court of Appeal, according to which it is required for the application of the general anti-avoidance rule that all legal acts that, taken as a whole, bring about the same transaction fall within the temporal scope of the provision. • Bulgaria: Significant legal amendments that also influence tax matters. In this regard, the National Revenue Agency issued guidance on the application of these amendments in pending tax situations, distinguishing when the old regulation is applicable and when the new one applies. • Luxembourg: The Constitutional Court ruled that economic retroactivity of a tax provision is unconstitutional, as the principle of legal certainty precludes norms being applied retroactively. 	<ul style="list-style-type: none"> • Chinese Taipei: New legislation regarding capital gains in force from 1 July 2021 taxes the transfer of real property acquired on or after 1 January 2016. • New Zealand: More statements have been made regarding proposed legislative changes well ahead of any draft legislation being made public and eventually enacted.
<p>Public consultation and involvement in the making of tax policy and law</p>	<ul style="list-style-type: none"> • Colombia: A tax reform project was withdrawn due to strong social protests of disagreement. In the second half of 2021, consultations and public sessions were held for enacting a modified tax reform project. • United Kingdom: Increase in prior consultation, as well as a perception of openness among Her Majesty's Revenue and Customs teams to a constructive dialogue with taxpayers. 	<ul style="list-style-type: none"> • Poland: The quality of the tax legislative process and its products have deteriorated, partly because the practical role of public consultations has been decreasing. • New Zealand: Minimal use of public consultation, even setting aside the usual tax policy process.
11. Revenue practice and guidance		
	<ul style="list-style-type: none"> • Denmark: Digitalization of the tax administration continued in 2021. • Honduras: Taxpayers gained access to relevant legal material, comprising legislation and administrative regulations in 2021, through a digital service section on the tax 	<ul style="list-style-type: none"> • Guatemala: Almost no options for taxpayers that do not have access to the Internet.

Taxpayers' right	Shift towards	Shift away from
	<p>administration's webpage.</p> <ul style="list-style-type: none"> • Netherlands: The Supreme Court protected the taxpayer against an incorrect statement on the website of the Tax and Customs Administration regarding revisions in the event of surrender of annuity. This allows the taxpayer to rely on information published by the Dutch tax authorities, even when this information appears inaccurate at a later moment. • Spain: The Supreme Court stated that tax rulings should be considered not only by tax officers, but also by judges when applying a specific tax provision in the light of taxpayers' legitimate expectations. 	
<p>12. Institutional framework for protecting taxpayers' rights</p>		
<p>Statement of taxpayers' rights: Charters, service charters and taxpayers' bills of rights</p>	<ul style="list-style-type: none"> • Australia: The ATO has maintained a Taxpayers' Charter since 1993, following from a Parliamentary Committee report. Recently, there have been recommendations for changes to the Charter to enhance enforceability, awareness and status. • Chile: General improvement of the regulation of taxpayers' rights due to new tax provisions. • United Kingdom: Improvements to the drafting of its Charter and its governance, as the first annual report under this new Charter has now been composed, and an active Customer Experience Committee has been established. 	<ul style="list-style-type: none"> • Poland: For 2 years, the parliament has not addressed the draft Bill of Taxpayers' Rights developed by representatives of tax academia at the University of Łódź and introduced to the parliament by a group of opposition Members of Parliament in December 2019. In January 2020, the draft was referred to the first reading, which has not yet taken place.
<p>Organizational structures for protecting taxpayers' rights</p>	<ul style="list-style-type: none"> • Australia: Recommendations for change in the taxation ombudsman role, namely that the Inspector General of Taxation be renamed the Taxpayer Advocate and that the role aligns more with the powers and structure of the US Taxpayer Advocate, based on the needs of the Australian tax system. The Taxpayer Advocate must continue to have the freedom and independence enjoyed by the current Inspector General of Taxation. 	<ul style="list-style-type: none"> • Mexico: An amendment to the Federal Tax Code introduced a provision effectively limiting the tax ombudsman's powers, as it limits the duration of the alternative mediation conducted by it. According to the amendment, the "conclusive agreement" cannot exceed 12 months after the filing of the request.

Taxpayers' right	Shift towards	Shift away from
	<ul style="list-style-type: none">• Chile: A decentralized public service office called the Tax Ombudsman, independent from the Chilean tax authorities, was created to assist taxpayers and to provide them legal assistance.	

Appendix B: The protection of taxpayers’ rights per country (2021)

The following are the answers provided in all national reports to the questions regarding the effective implementation into domestic law of legal procedures, safeguards and guarantees associated with taxpayers’ rights in 82 specific situations, as identified in Questionnaire #1 and explained in detail in the main text of this Yearbook. Accordingly, it is not advisable to interpret the content expressed in these charts separately from the explanations in the relevant text.

B.1. Argentina-Finland

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People’s Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers																			
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
5	In your country, is there a system of “cooperative compliance”/“enhanced relationship” that applies to	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	Yes	Yes	No	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	some taxpayers only?																		
6	If yes, are there rules or procedures in place to ensure that this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?	N/A	Yes	Yes	No	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A	Yes	Yes	N/A	N/A	No	No
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly or other special cases) to receive assistance in complying with their tax obligations?	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	Yes	Yes	No	Yes	No
2. The issuance of a tax assessment																			
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuance of an assessment in order to reach an agreed assessment?	No	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	No	Yes	No
9	If yes, can the taxpayer request a meeting with the tax officer?	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	N/A	N/A	Yes	N/A
10	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	No	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	tax has been collected on an incorrect basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?																		
3. Confidentiality																			
11	Is information held by your tax authority automatically encrypted?	Yes	No	Yes	No	Yes	No	Yes	Yes	No	No	No	Yes	Yes	No	No	No	Yes	No
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?	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
13	If yes, must the tax official(s) identify themselves before accessing information held about a specific taxpayer?	Yes	N/A	Yes	Yes	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	No	Yes	N/A	N/A
14	Is access to information held about a taxpayer audited internally to check whether there has been any unauthorized access to that information?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access	Yes	Yes	Yes	No	No	No	Yes	Yes	No	No	No	No	Yes	No	No	No	No	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	to taxpayers' data?																		
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	No	No
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. <i>habeas data</i> or freedom of information)?	No	Yes	No	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No	No	Yes	No
19	Is there a system of protection of legally privileged communication between the taxpayer and its advisers?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	N/A	No	No	No	No	N/A	No	No	No	No	No	No	No	Yes	N/A	N/A	No	N/A
4. Normal audits																			
21	Does the principle of <i>ne bis in idem</i> apply to tax audits (i.e. the taxpayer can only receive one	No	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	audit in respect of the same taxable period)?																		
22	If yes, does this mean only one audit per tax per year?	N/A	N/A	Yes	N/A	Yes	Yes	N/A	N/A	No	No	No	No	Yes	Yes	Yes	No	N/A	N/A
23	Does the principle of <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 finalized)?	Yes	No	Yes	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to achieve finality of taxation for a particular year)?	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	Yes	No	No	No
25	Are there time limits applicable to the conducting of a normal audit in your country (e.g. the audit must be concluded within so many months)?	No	No	No	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No
26	If yes, what is the normal limit in months?	No limit	No limit	No limit	No limit	10-12	1-3	No limit	No limit	4-6	4-6	4-6	7-9	1-3	>24	No limit	No limit	No limit	No limit
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	experts be used in the audit process?																		
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No
5. More intensive audits																			
31	Is the principle of <i>nemo tenetur</i> (i.e. the principle against self-incrimination) applied in tax investigations?	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No	Yes	No	No	Yes	Yes	No
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	N/A	N/A	N/A	Yes	N/A	No	No	N/A	N/A	N/A	N/A	Yes	N/A	N/A	Yes	Yes	N/A
33	If yes to <i>nemo tenetur</i> , can the taxpayer refer to this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	N/A	N/A	No	N/A	No	No	N/A	N/A	N/A	N/A	No	N/A	N/A	Yes	No	N/A
34	Is there a procedure applied in your country to identify a point in time during an investigation	No	No	Yes	No	Yes	No	No	No	No	No	No	No	Yes	No	Yes	Yes	Yes	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	at which it becomes likely that the taxpayer may be liable for a penalty or criminal charge, and from that time onwards, the taxpayer's right not to self-incriminate is recognized?																		
35	If yes, is there a requirement to notify the taxpayer that the taxpayer can rely on the right of non-self-incrimination?	N/A	N/A	Yes	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	No	N/A	No	Yes	Yes	N/A
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No	No	No	Yes	No	No	No
37	May the tax authority enter and search the dwelling places of individuals?	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	No	Yes	No	Yes	Yes
38	Is a court order required before the tax authority can intercept communications (e.g. telephone tapping or gaining access to electronic communications)?	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	Yes	Yes	No	Yes	No	No	No	No	No	No	No	No	Yes	No	Yes	Yes	No
6. Reviews and appeals																			
40	Is there a procedure for an	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	internal review of an assessment/decision before the taxpayer appeals to the judiciary?																		
41	Does the taxpayer need permission to appeal to the first-instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
42	Does the taxpayer need permission to appeal to the second or higher-instance tribunals?	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	Yes	Yes
43	Is it necessary for the taxpayer to first bring their case before an administrative court to quash the assessment/decision before the case can proceed to a judicial hearing?	Yes	No	Yes	No	No	Yes	No	No	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes
44	Are there time limits applicable to a tax case for completing the judicial appeal process?	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	4-6	No limit	No limit	No limit	No limit	No limit
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	Yes	No	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	No	No
47	Is there a system for the	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	Yes	No	No	No	Yes	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	simplified resolution of tax disputes (e.g. by a determination on the file or by e-filing)?																		
48	Is the principle of <i>audi alteram partem</i> (i.e. that each party has the right to a hearing) applied to all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solve et repete</i>)?	Yes	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes
50	If yes, are there exceptions recognized when the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	No	N/A	Yes	N/A	Yes	Yes	N/A	N/A	Yes	Yes	Yes	N/A	Yes	N/A	No	N/A	N/A	Yes
51	Does the loser have to pay the costs of a tax appeal?	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No
52	If yes, are there situations recognized in which the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	Yes	Yes	N/A	Yes	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	Yes	No	N/A	N/A
53	If there is usually a public hearing, can the taxpayer request a hearing on camera (i.e. not in public) to preserve	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	secrecy/confidentiality?																		
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
55	If yes, can the taxpayer preserve its anonymity in the judgment?	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	N/A
7. Criminal and administrative sanctions																			
56	Does the principle of <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	No	C	B	C	A+B+C	C	B	B	B	B	B	B	B+C	C	B	B	No	C
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	N/A	No	No	No	Yes	Yes	No	No	No	No	No	No	N/A	No	Yes	No	N/A	Yes
58	If the taxpayer gives voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
8. Enforcement of taxes																			
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	Yes	No	No	No	No	No	No	No	No	Yes	No	No	Yes	No	No	No
60	Does the taxpayer have the right to request deferred payment of taxes or payment in instalments (perhaps with a guarantee)?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes
9. Cross-border situations																			
61	Does the taxpayer have the right to be informed before information relating to them is exchanged in response to a specific request?	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	Yes	No	No
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for EoI?	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	Yes	No	No
63	If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by	N/A	N/A	N/A	N/A	N/A	N/A	No	No	No	No	No	No	N/A	No	No	N/A	No	N/A

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	the Forum on Transparency and Exchange of Information?																		
64	Does the taxpayer have the right to be heard by the tax authority before the EoI relating to them with another country?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
65	Does the taxpayer have the right to challenge, before the judiciary, the EoI relating to them with another country?	No	No	No	Yes	No	No	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
66	Does the taxpayer have the right to see any information received from another country that relates to them?	No	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No
67	Does the taxpayer have the right, in all cases, to require that the MAP is initiated?	No	No	Yes	No	Yes	No	No	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No
68	Does the taxpayer have the right to see the communication exchanged in the context of the MAP?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes	Yes	No
10. Legislation																			
69	Is there a prohibition of retrospective tax legislation in your country?	No	No	No	No	Yes	No	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	No	No
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	Yes	No	Yes	Yes	N/A	N/A	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A	Yes	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	No	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
72	Is tax legislation subject to constitutional review that can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No
11. Revenue practice and guidance																			
73	Does the tax authority in your country publish guidance (revenue manuals, circulars, etc.) as to how it applies your tax law?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	Does your country have a generalized system of advance rulings available to taxpayers?	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes
75	If yes, is it legally binding?	N/A	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A	N/A	N/A	No	N/A	N/A	Yes	Yes	Yes	Yes
76	If a binding ruling is refused, does the taxpayer have the right to appeal?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e.	N/A	Yes	Yes	No	No	Yes	Yes	Yes	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia	Cyprus	Czech Republic	Denmark	Finland
	protection of legitimate expectations?)																		
12. Institutional framework for protecting taxpayers' rights																			
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No
79	If yes, are its provisions legally effective?	N/A	No	No	Yes	Yes	N/A	Yes	Yes	No	No	No	Yes	Yes	No	N/A	N/A	N/A	N/A
80	Is there a (tax) ombudsman/taxpayers' advocate or equivalent position in your country?	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	N/A	No	No	N/A	N/A	N/A	N/A	N/A	No	No	No	Yes	Yes	Yes	N/A	Yes	Yes	N/A
82	If yes to a (tax) ombudsman, is this person independent from the tax authority?	N/A	Yes	No	No	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	No	Yes	N/A	Yes	Yes	N/A

B.2. Germany-Peru (2)

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers																				
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	Yes	N/A	Yes	Yes	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
5	In your country, is there a system of “cooperative compliance”/“enhanced relationship” that applies to some taxpayers only?	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	No	No
6	If yes, are there rules	N/A	N/A	No	No	N/A	Yes	No	Yes	Yes	Yes	N/A	Yes	N/A	N/A	Yes	No	Yes	N/A	N/A

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	or procedures in place to ensure that this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?																			
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly or other special cases) to receive assistance in complying with their tax obligations?	Yes	No	No	No	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	No	Yes	Yes	No	No
2. The issuance of a tax assessment																				
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuance of an assessment in order to reach an agreed assessment?	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
9	If yes, can the	No	Yes	Yes	No	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	taxpayer request a meeting with the tax officer?																			
10	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 an incorrect basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?	Yes	Yes	No	No	No	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No
3. Confidentiality																				
11	Is information held by your tax authority automatically encrypted?	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes
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	Yes	Yes	No	No	Yes	No	Yes	No	No	No	No	Yes	Yes	Yes	No	Yes	No	No	No

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	affairs?																			
13	If yes, must the tax official(s) identify themselves before accessing information held about a specific taxpayer?	Yes	Yes	N/A	Yes	Yes	N/A	Yes	N/A	No	N/A	N/A	Yes	Yes	Yes	N/A	Yes	N/A	N/A	N/A
14	Is access to information held about a taxpayer audited internally to check whether there has been any unauthorized access to that information?	Yes	Yes	No	Yes	Yes	No	Yes	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	Yes	Yes	No	Yes	No	No	No	No	No	No	Yes	No	No	Yes	No	Yes	No	No	Yes
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	Yes	No	No	Yes	Yes	No	Yes	No	No	No	No	Yes	Yes	No	No	Yes	Yes	No
17	Is "naming and shaming" non-	No	Yes	Yes	No	No	No	No	Yes	No	No	No	Yes	Yes	Yes	No	No	No	Yes	No

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	compliant taxpayers practised in your country?																			
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. <i>habeas data</i> or freedom of information)?	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	No	Yes
19	Is there a system of protection of legally privileged communication between the taxpayer and its advisers?	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	Yes	No	No	Yes	N/A	No	N/A	No	No	N/A	No	No	N/A	N/A	Yes	No	No	N/A	No
4. Normal audits																				
21	Does the principle of	No	No	No	Yes	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	No	No	No	Yes	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	<i>ne bis in idem</i> apply to tax audits (i.e. the taxpayer can only receive one audit in respect of the same taxable period)?																			
22	If yes, does this mean only one audit per tax year?	N/A	N/A	N/A	Yes	N/A	N/A	Yes	N/A	N/A	Yes	No	N/A	Yes	Yes	N/A	N/A	N/A	No	No
23	Does the principle of <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 finalized)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to achieve finality of taxation for a particular year)?	No	No	No	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	No	No	Yes	No	No	No
25	Are there time limits applicable to the	No	No	No	Yes	Yes	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	conducting of a normal audit in your country (e.g. the audit must be concluded within so many months)?																			
26	If yes, what is the normal limit in months?	No limit	No limit	No limit	7-9	19-21	No limit	No limit	10-12	1-3	No limit	No limit	7-9	10-12	10-12	No limit	No limit	>24	10-12	10-12
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes)?	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No	No	No

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
5. More intensive audits																				
31	Is the principle of <i>nemo tenetur</i> applied to tax investigations (i.e. the principle against self-incrimination)?	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No	Yes	No	No
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	No	Yes	No	N/A	N/A	N/A	No	Yes	Yes	No	N/A	N/A	N/A	N/A	Yes	N/A	No	N/A	N/A
33	If yes to <i>nemo tenetur</i> , can the taxpayer refer to this principle to refuse to supply basic accounting information to the tax authority?	Yes	Yes	No	N/A	N/A	N/A	No	Yes	Yes	N/A	N/A	N/A	N/A	N/A	No	N/A	Yes	N/A	N/A
34	Is there a procedure applied in your country to identify a point in time during an investigation at which it becomes likely that the taxpayer may be liable for a penalty or a	Yes	No	No	No	Yes	No	Yes	Yes	No	No	Yes	No	No	No	Yes	Yes	Yes	No	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognized?	Yes	No	No	No	Yes	No	Yes	Yes	No	No	Yes	No	No	No	Yes	Yes	Yes	No	Yes
35	If yes, is there a requirement to notify the taxpayer that the taxpayer can rely on the right to non-self-incrimination?	Yes	N/A	N/A	N/A	N/A	N/A	No	Yes	N/A	N/A	Yes	N/A	No	No	Yes	No	Yes	N/A	No
36	Is authorization by a court always needed before the tax authority may enter and search premises?	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes
37	May the tax authority enter and search the dwelling places of individuals?	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	Yes	No	No	No	Yes	No	No	No
38	Is a court order required before the tax authority can intercept communications (e.g. telephone tapping or accessing electronic communications)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
39	Is there a procedure in place to ensure that	No	Yes	No	No	No	Yes	No	Yes	No	No	No	No	No	No	No	Yes	Yes	No	No

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	legally privileged material is not taken in the course of a search?																			
6. Reviews and appeals																				
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first-instance tribunal?	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No
42	Does the taxpayer need permission to appeal to the second or higher-instance tribunals?	Yes	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No
43	Is it necessary for the taxpayer to first bring their case before an administrative court to quash the assessment/decision before the case can proceed to a judicial	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	hearing?																			
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	22-24	No limit	No limit	No limit	10-12	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	No	No	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No
47	Is there a system for the simplified resolution of tax disputes (e.g. by determination on the file or by e-filing)?	Yes	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	No	No	No	No	No	No
48	Is the principle of <i>audi alteram partem</i> (i.e. each party has the right to a hearing) applied in all tax	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	appeals?																			
49	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solvo et repete</i>)?	Yes	Yes	No	No	Yes	Yes	No	No	No	No	Yes	Yes	No	No	Yes	No	Yes	No	No
50	If yes, are there exceptions recognized when the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	Yes	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A	Yes	Yes	N/A	N/A	Yes	N/A	Yes	N/A	N/A
51	Does the loser have to pay the costs of a tax appeal?	Yes	Yes	Yes	No	No	Yes	No	No	No	Yes	Yes	Yes	No	No	No	No	Yes	No	No
52	If yes, are there situations recognized in which the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	Yes	Yes	Yes	N/A	N/A	Yes	N/A	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes	N/A	N/A
53	If there is usually a public hearing, can the taxpayer request a hearing on camera (i.e. not in public) to	Yes	No	No	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	No	No	No	Yes	No	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	preserve secrecy/confidentiality ?	Yes	No	No	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	No	No	No	Yes	No	Yes
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	No	N/A	No	Yes	Yes	No	N/A	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7. Criminal and administrative sanctions																				
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	No	B+ C	B+ C	B+ C	No	B+ C	B	B+ C	A+B+ C	A+ B	B+ C	No	B	B	B+ C	C	B+ C	B	B
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings arising	N/A	No	Yes	Yes	No	No	No	No	No	Yes	No	N/A	No	No	Yes	Yes	Yes	No	Yes

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	from the same factual circumstances (e.g. a tax court and a criminal court)?																			
58	If the taxpayer gives voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
8. Enforcement of taxes																				
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes	No	No
60	Does the taxpayer have the right to request deferred payment of taxes or payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9. Cross-border situations																				
61	Does the taxpayer have the right to be informed before information relating to	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	them is exchanged in response to a specific request?																			
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for EoI?	Yes	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No
63	If no to either of the previous two questions, did your country previously recognize 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?	N/A	No	N/A	No	N/A	N/A	No	N/A	N/A	No	Yes	No	No	No	Yes	N/A	No	No	No
64	Does the taxpayer have the right to be heard by the tax authority before the EoI relating to them with another country?	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
65	Does the taxpayer have the right to challenge, before the judiciary, the EoI relating to them with another country?	Yes	No	No	No	No	No	No	Yes	No	Yes	No	No	No	No	Yes	Yes	No	No	No
66	Does the taxpayer have the right to see any information received from another country that relates to them?	Yes	Yes	No	No	Yes	No	No	No	No	Yes	No	No	No	No	Yes	No	Yes	No	Yes
67	Does the taxpayer have the right, in all cases, to require that the MAP is initiated?	No	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes
68	Does the taxpayer have the right to see the communication exchanged in the context of the MAP?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes
10. Legislation																				
69	Is there a prohibition of retrospective tax legislation in your country?	No	No	Yes	Yes	No	Yes	No	No	No	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes
70	If no, are there restrictions on the	Yes	Yes	N/A	N/A	N/A	N/A	Yes	No	N/A	N/A	Yes	Yes	N/A	N/A	Yes	Yes	N/A	N/A	N/A

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	adoption of retrospective tax legislation in your country?																			
71	Is there a procedure in your country for public consultation before the adoption of all (or most) tax legislation?	Yes	Yes	No	No	Yes	No	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	No	No
72	Is tax legislation subject to constitutional review that can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
11. Revenue practice and guidance																				
73	Does the tax authority in your country publish guidance (revenue manuals, circulars, etc.) as to how it applies your tax law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	Does your country have a generalized system of advance rulings available to taxpayers?	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No
75	If yes, is it legally	Yes	N/A	Yes	N/A	Yes	No	Yes	N/A	Yes	No	Yes	Yes	N/A	N/A	Yes	Yes	Yes	Yes	N/A

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)	
	binding?	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	No	No	Yes	No	Yes	No	No	
76	If a binding ruling is refused, does the taxpayer have the right to appeal?	Yes	No	No	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	N/A	N/A	Yes	No	Yes	N/A	Yes	
12. Institutional framework for protecting taxpayers' rights																					
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	No	Yes	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	
79	If yes, are its provisions legally effective?	N/A	N/A	Yes	Yes	No	Yes	N/A	N/A	Yes	N/A	N/A	No	Yes	Yes	N/A	No	Yes	N/A	Yes	
80	Is there a (tax) ombudsman/taxpayers' advocate or	No	Yes	No	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

#	Question	Germany	Greece	Guatemala	Honduras	India	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	México (2)	Netherlands	New Zealand	Norway	Peru (1)	Peru (2)
	equivalent position in your country?																			
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	N/A	Yes	N/A	Yes	N/A	Yes	No	Yes	N/A	N/A	Yes	Yes	Yes	Yes	No	No	Yes	No	No
82	If yes to a (tax) ombudsman, is this person independent from the tax authority?	N/A	Yes	N/A	Yes	N/A	No	No	Yes	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

B.3. Peru (3)-Venezuela

#	Question	Peru (3)	Poland (1)	Poland (2)	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	Turkey	Ukraine	United Kingdom	United States	Uruguay	Venezuela
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers																				
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes
5	In your country, is there a system of "cooperative compliance"/"enhanced relationship" that applies to some taxpayers only?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes

#	Question	Peru (3)	Poland (1)	Poland (2)	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	Turkey	Ukraine	United Kingdom	United States	Uruguay	Venezuela
6	If yes, are there rules or procedures in place to ensure that this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?	N/A	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes	Yes	N/A	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly or other special cases) to receive assistance in complying with their tax obligations?	No	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
2. The issuance of a tax assessment																				
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuance of an assessment in order to reach an agreed assessment?	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9	If yes, can the taxpayer	Yes	N/A	N/A	No	Yes	N/A	N/A	Yes	N/A	No	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

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	request a meeting with the tax officer?																			
10	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 an incorrect basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	Yes	No	No	Yes	No	No	No
3. Confidentiality																				
11	Is information held by your tax authority automatically encrypted?	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	No	No	Yes	No	No
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?	No	No	No	No	No	Yes	No	Yes	No	Yes	No	No	No	Yes	No	No	Yes	No	Yes

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13	If yes, must the tax official(s) identify themselves before accessing information held about a specific taxpayer?	N/A	N/A	N/A	N/A	N/A	Yes	N/A	Yes	N/A	Yes	N/A	No	N/A	Yes	N/A	N/A	Yes	N/A	No
14	Is access to information held about a taxpayer audited internally to check whether there has been any unauthorized access to that information?	Yes	No	No	Yes	No	Yes	No	Yes	No	Yes	Yes	No	No	Yes	No	No	Yes	No	No
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	Yes	No	No	No	Yes	No	No	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	No	No	Yes	No	No
17	Is "naming and shaming" non-compliant taxpayers	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	No	No

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	practised in your country?																			
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. <i>habeas data</i> or freedom of information)?	Yes	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	No	Yes
19	Is there a system of protection of legally privileged communication between the taxpayer and its advisers?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	No	No	No	No	Yes	Yes	No	Yes	No	Yes	No	No	N/A	No	N/A	No	Yes	Yes	Yes
4. Normal audits																				
21	Does the principle of <i>ne bis in idem</i> apply to tax audits (i.e. the	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	Yes	Yes

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	taxpayer can only receive one audit in respect of the same taxable period)?	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	No	Yes
22	If yes, does this mean only one audit per tax per year?	No	N/A	N/A	Yes	N/A	No	No	No	N/A	N/A	N/A	N/A	No	N/A	N/A	N/A	Yes	No	Yes
23	Does the principle of <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 finalized)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to achieve finality of taxation for a particular year)?	No	No	No	Yes	No	Yes	No	No	Yes	No	No	No	No	No	Yes	No	No	Yes	No
25	Are there time limits applicable to the conduct of a normal audit in your country	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	No	No	No	Yes	Yes	No	Yes	No	Yes

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	(e.g. the audit must be concluded within so many months)?																			
26	If yes, what is the normal limit in months?	10-12	No limit	No limit	4-6	13-15	No limit	No limit	1-3	No limit	16-18	No limit	No limit	No limit	10-12	1-3	No limit	>24	No limit	1-3
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes)?	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No
5. More intensive audits																				
31	Is the principle of <i>nemo</i>	No	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	No

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	<i>tenetur</i> applied to tax investigations (i.e. the principle against self-incrimination)?																			
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	No	No	Yes	N/A	N/A	No	Yes	Yes	N/A	N/A	N/A	N/A	N/A	No	No	No	No	N/A
33	If yes to <i>nemo tenetur</i> , can the taxpayer refer to this principle to refuse to supply basic accounting information to the tax authority?	N/A	No	No	No	N/A	N/A	No	No	No	N/A	N/A	N/A	N/A	N/A	No	Yes	No	Yes	N/A
34	Is there a procedure applied in your country to identify a point in time during an investigation at which 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	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes

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	recognized?																			
35	If yes, is there a requirement to notify the taxpayer that the taxpayer can rely on the right to non-self-incrimination?	No	Yes	Yes	N/A	N/A	N/A	Yes	Yes	No	Yes	Yes	Yes	N/A	N/A	No	Yes	Yes	Yes	No
36	Is authorization by a court always needed before the tax authority may enter and search premises?	Yes	No	No	No	No	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	No
37	May the tax authority enter and search the dwelling places of individuals?	No	Yes	Yes	No	No	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No	No	Yes	Yes	Yes
38	Is a court order required before the tax authority can intercept communications (e.g. telephone tapping or accessing electronic communications)?	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	No	No

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6. Reviews and appeals																					
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	
41	Does the taxpayer need permission to appeal to the first-instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	
42	Does the taxpayer need permission to appeal to the second or higher-instance tribunals?	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	Yes	No	No	No	
43	Is it necessary for the taxpayer to bring their case first before an administrative court to quash the assessment/decision before the case can proceed to a judicial hearing?	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	No	No	No	No	No	
44	Are there time limits applicable for a tax case to complete the judicial appeal	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	

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	process?																			
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	No limit	4-6	No limit	No limit	16-18	No limit	No limit	No limit	No limit	No limit	No limit	1-3	No limit	No limit	No limit	No limit
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	Yes	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes	Yes	No	Yes
47	Is there a system for the simplified resolution of tax disputes (e.g. by determination on the file or by e-filing)?	No	Yes	Yes	No	No	No	Yes	No	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	No
48	Is the principle of <i>audi alteram partem</i> (i.e. each party has the right to a hearing) applied to all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all of the tax before an appeal can be made	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	No	No	No

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	(i.e. <i>solve et repete</i>)?																			
50	If yes, are there exceptions recognized when the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	N/A	Yes	Yes	Yes	N/A	Yes	No	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A	N/A
51	Does the loser have to pay the costs of a tax appeal?	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes
52	If yes, are there situations recognized in which the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	N/A	N/A	N/A	Yes	Yes	Yes	No	Yes	N/A	Yes	N/A	N/A	No	No	Yes	Yes	N/A	N/A	No
53	If there is usually a public hearing, can the taxpayer request a hearing on camera (i.e. not in public) to preserve secrecy/confidentiality?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
55	If yes, can the taxpayer	Yes	Yes	Yes	Yes	No	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes	Yes	No	No	No

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	preserve its anonymity in the judgment?																			
7. Criminal and administrative sanctions																				
56	Does the principle of <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	B	B+C	B+C	B	B+C	B+C	C	B+C	No	B+C	C	B	B+C	No	A+B	B+C	No	No	B
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	Yes	No	No	No	No	Yes	No	No	N/A	Yes	Yes	No	No	N/A	No	Yes	N/A	N/A	No
58	If the taxpayer gives voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No

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8. Enforcement of taxes																				
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes	No
60	Does the taxpayer have the right to request deferred payment of taxes or payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9. Cross-border situations																				
61	Does the taxpayer have the right to be informed before information relating to them is exchanged in response to a specific request?	No	No	No	No	No	No	Yes	No	No	No	No	Yes	No	No	No	No	No	Yes	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No	Yes

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	request for EoI?																			
63	If no to either of the previous two questions, did your country previously recognize 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?	No	No	No	No	No	No	No	Yes	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	No	No	Yes
64	Does the taxpayer have the right to be heard by the tax authority before the EoI relating to them with another country?	No	No	No	No	No	No	Yes	No	No	No	No	Yes	No	No	No	No	No	Yes	Yes
65	Does the taxpayer have the right to challenge, before the judiciary, the EoI relating to them with another country?	No	No	No	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	No	No	Yes	No	No	No	Yes
66	Does the taxpayer have the right to see any information	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes

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	received from another country that relates to them?																			
67	Does the taxpayer have the right, in all cases, to require that the MAP is initiated?	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No	No	No
68	Does the taxpayer have the right to see the communication exchanged in the context of the MAP?	Yes	No	No	No	No	No	Yes	Yes	No	No	Yes	No	No	No	No	No	No	No	Yes
10. Legislation																				
69	Is there a prohibition of retrospective tax legislation in your country?	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	N/A	N/A	Yes	N/A	Yes	N/A	N/A	No	Yes	N/A	N/A	N/A	No	N/A	Yes	No	N/A	N/A
71	Is there a procedure in your country for public consultation before the adoption of all (or most) tax legislation?	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No	No

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72	Is tax legislation subject to constitutional review that can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes
11. Revenue practice and guidance																				
73	Does the tax authority in your country publish guidance (revenue manuals, circulars, etc.) as to how it applies your tax law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
74	Does your country have a generalized system of advance rulings available to taxpayers?	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
75	If yes, is it legally binding?	N/A	No	No	Yes	N/A	N/A	N/A	N/A	No	Yes	Yes	No	Yes	No	No	N/A	Yes	Yes	No
76	If a binding ruling is refused, does the taxpayer have the right to appeal?	Yes	Yes	Yes	Yes	No	No	Yes	No	No	No	No	No	No	No	Yes	No	No	Yes	Yes
77	If your country publishes guidance as to how it applies your tax law, can taxpayers	Yes	Yes	Yes	Yes	Yes	No	No	No	N/A	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

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	acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?																			
12. Institutional framework for protecting taxpayers' rights																				
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	Yes	No	No	No	No	Yes	No	No	Yes	Yes	No	No	No	Yes	No	Yes	Yes	No	Yes
79	If yes, are its provisions legally effective?	Yes	N/A	N/A	N/A	N/A	No	N/A	N/A	No	Yes	N/A	N/A	N/A	No	N/A	No	Yes	N/A	Yes
80	Is there a (tax) ombudsman/taxpayers' advocate or equivalent position in your country?	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	No	No
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	No	Yes	Yes	N/A	N/A	N/A	N/A	No	Yes	Yes	N/A	N/A	Yes	Yes	N/A	No	Yes	N/A	N/A
82	If yes to a (tax) ombudsman, is this	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A	Yes	Yes	N/A	N/A	No	Yes	N/A	Yes	Yes	N/A	N/A

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	person independent from the tax authority?	Green	Green	Green	Grey	Grey	Grey	Grey	Grey	Green	Green	Grey	Grey	Red	Green	Grey	Green	Green	Grey	Grey