

## **Observatory on the Protection of Taxpayers' Rights**



***The IBFD Yearbook on Taxpayers' Rights  
2023***

This Yearbook has been prepared by the IBFD Observatory on the Protection of Taxpayers' Rights. The persons with responsibility for producing and/or supervising this publication are:

### **IBFD Observatory on the Protection of Taxpayers' Rights**

Prof. Dr Philip Baker, KC, Director  
Prof. Dr Pasquale Pistone, Director  
Dr Alessandro Turina and Dr Sam van der Vlugt, Scientific Coordinators

In cooperation with

Dr Giovanni Consolo, Postdoctoral researcher, Bocconi University  
Prof. Dr Filip Debelva, Professor, KU Leuven  
Dr Ivan Lazarov, Research Associate, IBFD Academic  
Prof. Dr Clara Moreira, Instituto Brasileiro de Direito Tributário  
Dr Stefano Maria Ronco, Researcher, University of Turin  
Dr Maria Serrat Romaní, Beatriu de Pinós Postdoctoral Research Fellow, University of Barcelona

### **OPTR Supervisory Council**

Dr Robert Attard, Partner and Tax Policy Leader EY, Central and South East Europe  
Judge Dennis Davis, President of the South African Competition Appeal Court  
Prof. Dr Juliane Kokott, LL.M., S.J.D., Advocate General at the Court of Justice of the European Union  
Prof. Dr. Addy Mazz, Em. Professor of Tax Law, University of the Republic, Uruguay  
Nina E. Olson, JD, Executive Director, Center for Taxpayer Rights

Alessandro Turina and Sam van der Vlugt edited all sections and authored section 0. of this Yearbook. Giovanni Consolo authored sections 2. and 6. Filip Debelva authored sections 1. and 3. Ivan Lazarov authored sections 4. and 5. Clara Moreira authored sections 10. and 12. Stefano Maria Ronco authored sections 7. and 8. Marina Serrat Romaní authored sections 9. and 11.

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## 0. Executive Summary

### 0.1. Introduction

The Observatory on the Protection of Taxpayers' Rights (OPTR) is a neutral, non-judgemental 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 2023 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 2023 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. Short overview of findings

The year 2022 could be defined as a follow-up year to the trend instigated in 2021, with several measures that could still be seen as the after-effects of the pandemic being fine-tuned or implemented. Most significant in that respect is the correlation between the need for digital communication as it surfaced in the pandemic and the increased efficiency, taken together with the general governmental tendency to opt for digitalization of processes, to which tax authorities and their dealings are not immune. Efforts to further maximize the clear advantages of newly available technologies and methods must, however, be balanced by an adequate protection of the rights of taxpayers, in line with the different functioning and scope of these new technologies and their altering impact on the relationship between taxpayers and tax authorities.

Concerning the developments reported in 2023, section 0.3. will provide a more granular representation of the key developments; however, here, a few general findings will be presented concisely.

Geographically speaking, the spread of reported jurisdictions, as to be found in section 0.4. (on methodology), shows that, in general terms, there have been movements reported all around the globe, in both negative and positive shifts, which merits the general conclusion that taxpayers' rights remain a highly relevant topic to be structurally assessed. Even though no specific regional area can be said to show the most developments, it must be observed that some countries have certainly provided for a lot of changes. An example in that respect is **Italy**, and **Honduras** also stands out.

In thematic terms, the identification of taxpayers (section 1.) has been a particularly dynamic field, as has the area of confidentiality (section 3.). However, all fields show at least some movements. Those movements are in the majority positive or are at least slightly balanced (from a global perspective). Certain topical areas reported a more collective regressive picture, such as was the case for retroactive taxation, as reported under section 10. (on legislation).

In more granular terms, in section 1. (on the identification of taxpayers), the earlier mentioned digitalization of tax administrations and their modes of communication with taxpayers is responsible for most of the developments reported. More specifically, on intense contact between taxpayers and the tax authorities in regimes of cooperative compliance, a scattered landscape remains, with pilot projects launched in **Brazil** and **Germany**, but with the latter allowing for the tax authorities to accept participation of taxpayers at their own discretion.

Section 2. (concerning the issue of tax assessment) paints a general picture of convergence towards best practices in that sphere, i.e. an overall movement towards a dialogical interaction between taxpayer and tax authorities, with enhanced implementation within that setting of digital and online possibilities.

With reference to confidentiality (*see further* section 3.), several developments were observed in 2023, with notable increases in cybersecurity in, for example, **Botswana**, **China (People's Rep.)** and **Costa Rica**. It remains apparent that countries are struggling with the balance between openness and the public's right to insight on sensitive tax information of public figures and the privacy of those figures, as several interesting developments have been reported in that respect.

In terms of normal audits (*see further* section 4.), an area that is heavily populated by minimum standards that relate directly to key legal principles, most shifts reported were the result of case law, whilst **Italy** showed the most significant developments as a result of a comprehensive tax reform, which also significantly affected the Taxpayers' Bill of Rights. More extensive audits, as covered in section 5., show a more static picture this year, with few developments to report. It must, however, be mentioned that in **Mexico**, the Supreme Court implemented a shift away from the best practice concerning judicial authorization for access to bank information by deeming such practice unconstitutional.

The area of reviews and appeals (*see further* section 6.) remained rather static, except for the earlier indicated shifts that were prompted by the general trend towards a digitalization of government. Similarly, section 7. (on criminal and administrative sanctions) shows a more static picture. The European Court of Human Rights (**ECtHR**) has, however, been particularly active in comparison to developments at states' level, with several interesting judgments rendered in this respect (*see further* section 7.). The same can be said of the Court of Justice of the European Union (**ECJ**).

For the enforcement of taxes (*see further* section 8.), 2023 was a fairly static year. However, with regard to the seizure of assets and the need for prior judicial authorization, positive trends were observed, especially in Africa, more specifically in **Botswana** and **South Africa**.

Cross-border procedures (*see further* section 9.), especially exchange of information upon request, remain an area that requires continued surveillance, as several shifts away from the relevant standards were reported. Peculiarly enough, these were also geographically spread. In addition, section 10. (on legislation) shows a bleaker picture when it comes to retrospective taxation, with multiple shifts away from both the relevant minimum standard and best practice having been reported.

Finally, section 11. (on revenue practice and guidance) and section 12. (on institutional frameworks for the protection of taxpayers' rights) both show a rather static picture.

With regard to the feedback received in connection with Questionnaire 1, in which national reporters were requested to assess assertively (yes/no) the level of practical implementation of legal procedures, safeguards and guarantees associated with taxpayers' rights in domestic law in 82 "key situations", as evidenced in the pie charts that have been included in the present Yearbook, a comparison with the outcomes from the previous year (2022) tends to display a rather static picture, with some marginal improvements (when assessed as a percentage of the global pool of countries covered in this Yearbook) in the earlier mentioned core areas associated with confidentiality and the conduct of tax audits.

### 0.3. Most significant developments of the year

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

The identification of taxpayers comes across as one of the most dynamic areas among those countries surveyed, depicting for the most part a progressive evolutionary trend across various geographical regions.

Concerning the minimum standard dealing with the prevention of impersonation, in **Australia**, the newly established Australian Business Registry Service is operational and will be subject to an independent review.<sup>1</sup>

In **Bolivia**, as from 2023, the tax identification number (TINs) and commercial registration number are identical. In addition, in the procedure for obtaining a TIN, a physical verification has been implemented.<sup>2</sup>

The tax administration of **Costa Rica** has published a circular letter providing sign-in procedures and requirements for accessing the Tax Authority Platform through digital signature as a default access method.<sup>3</sup>

Furthermore, two positive shifts were reported as to the minimum standard relating to social and religious sensitivities in connection with taxpayer identification. In particular, in **Honduras**, the Institutional Strategic Plan of the Tax Administration for the year 2023 included within its institutional compass a section on gender equity.<sup>4</sup>

In the **United States**, regulations<sup>5</sup> were issued contemplating that an exemption from electronic filing requirements may be provided for filers for whom using technology conflicts with their religious beliefs.<sup>6</sup>

With regard to the minimum standard encompassing confidentiality obligations on third parties with respect to information gathered by them for tax purposes, while the picture appears overall relatively static, some positive developments were registered in a few European countries.

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<sup>1</sup> See further sec. 1.2.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> US: Treas. Reg. §§ 301.6011-2(c)(6)(ii); 301.6011-3(b)(2); 301.6011-5(b)(2); and 301.6037-2(b)(2).

<sup>6</sup> See further sec. 1.2.

In particular, in **Bulgaria**, a new provision regarding data protection has been inserted into the Bulgarian Tax and Social Security Procedure Code.<sup>7</sup>

In **Italy**, a comprehensive tax reform has significantly affected the Taxpayers' Bill of Rights,<sup>8</sup> currently expressly providing that all state administrations shall comply with the right of audi alteram partem and access to tax administrative documentation, the protection of legitimate expectations, the prohibition of ne bis in idem, the principle of proportionality and the duty to correct administrative acts. The same provisions are valid as principles for the regions and local authorities which adapt their respective systems in compliance with their respective autonomies.<sup>9</sup>

With reference to the right to access and correct information held by tax authorities, several positive shifts were observed across various regions.

In particular, with regard to the minimum standard by which pre-populated returns are used, i.e. that these should be sent to taxpayers to correct errors, in **Australia**, data analytics were used to prompt taxpayers to check prior years' returns in cases in which the pre-filing differs from that of other taxpayers in similar circumstances.<sup>10</sup>

In **Colombia**, 5.2 million pre-filled income tax returns were made available to taxpayers through electronic services,<sup>11</sup> which is an increase over the 4.8 million as reported in the 2022 Yearbook.<sup>12</sup>

The same progressive trend could be observed across a diverse geographic spectrum with regard to the minimum standard ensuring a right of access for taxpayers to personal information held about them and a right to apply to correct inaccuracies.

In **Botswana**, a system of self-assessment was implemented, which included guidelines for taxpayers.<sup>13</sup>

In **Bulgaria**, measures have been introduced to ensure correctness of information on sellers operating through platforms.<sup>14</sup>

In **Costa Rica**, administrative guidance was published providing for the possibility to amend information when using the electronic platform of the tax authorities is not possible due to personal conditions.<sup>15</sup>

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<sup>7</sup> See further sec. 1.3.

<sup>8</sup> By means of Legislative Decree 219 of 30 December 2023.

<sup>9</sup> See further sec. 1.3.

<sup>10</sup> See further sec. 1.4.

<sup>11</sup> The Colombian tax authorities have modified the applicable regulations, obliging individuals to file income tax returns electronically. See [Individuals Must File Income Tax Returns Electronically, Says National Tax Authority](#), News IBFD.

<sup>12</sup> See OPTR Report (2022), at sec. 1.4.

<sup>13</sup> See further sec. 1.4.

<sup>14</sup> See further sec. 1.4.

<sup>15</sup> Id.

In **Guatemala**, a tool was provided to review and correct taxpayer information.<sup>16</sup>

In **Italy**, the Taxpayers' Bill of Rights was amended, incorporating an explicit reference to the right to access tax administrative documents.<sup>17</sup>

In the **Netherlands**, an amendment that codifies the right of the taxpayer to request information held by the tax authorities that is relevant to the determination of the tax position of that taxpayer has been accepted by parliament in its discussion of the yearly fiscal measures accompanying the new 2023-2024 budget.<sup>18</sup> The new law is also opening the possibility for the taxpayer, as of 31 December 2025, if the tax authorities decline to give this access, to appeal this decision.<sup>19</sup>

Several positive shifts were also observed with regard to the best practice by which guidance on taxpayers' rights to access information and correct inaccuracies should be provided.

In particular, in **Spain**, the tax administration announced simplification of language in its most common documents.<sup>20</sup>

In the **United States**, the tax administration has made additional taxpayer information available through online tools. These developments were publicized through news releases and social media.<sup>21</sup>

With regard to communication with taxpayers, several shifts towards the minimum standard were observed.

In **Australia**, the ongoing work to safeguard the tax authorities' systems against cyberthreats has continued.<sup>22</sup>

In **Greece**, all taxpayers were required to update their email addresses and designate a second contact person.<sup>23</sup>

In the **United Kingdom**, guidance was published on cybersecurity.<sup>24</sup>

In the **United States**, a new taxpayer authentication platform has been implemented.<sup>25</sup>

With regard to cooperative compliance regimes, more ambivalent trends were recorded in 2023 vis-à-vis the minimum standard according to which, where a system of "cooperative compliance" operates, it is available on a non-discriminatory and voluntary basis.

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<sup>16</sup> See further sec. 1.4.

<sup>17</sup> See *supra* n. 8; see further sec. 1.4.

<sup>18</sup> NL: Tweede Kamer der Staten-Generaal, 36 418 Wijziging van enkele belastingwetten en enige andere wetten (Belastingplan 2024), Amendment Nr. 110, ISSN 0921 – 7371.

<sup>19</sup> See further sec. 1.4.

<sup>20</sup> See further sec. 1.4.

<sup>21</sup> See further sec. 1.4.

<sup>22</sup> See further sec. 1.5.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

Among the positive shifts, it can be reported that a pilot project on cooperative compliance was launched in **Brazil**.<sup>26</sup>

In **China (People's Rep.)**, tax compliance agreements are concluded with large enterprises that have been assessed to have a high degree of tax compliance. The system works on a voluntary basis.<sup>27</sup>

In **Italy**, a decree strengthening the cooperative compliance programme was approved at the end of 2023.<sup>28</sup> One of the main measures includes a gradual reduction of the revenue or turnover threshold to access the programme.<sup>29</sup>

On the other hand, **Germany** reported a setback: in 2023, a system of cooperative compliance was established for test purposes for which taxpayers may apply for participation.<sup>30</sup> However, the tax authorities decide at their own discretion whether taxpayers may participate. In 2029, the system will be evaluated.<sup>31</sup>

In **Honduras**, in the course of 2023, the discontinuation of a cooperative compliance pilot project already announced in 2022 was implemented.<sup>32</sup>

With reference to assistance to tax compliance obligations, several positive developments could be observed across various geographical areas with regard to compliance with the minimum standard.

In **Botswana**, physical in-person support was made available in remote areas.<sup>33</sup>

In **Costa Rica**, administrative guidance was published providing for the possibility to amend information when using the electronic platform of the tax authorities is not possible due to personal conditions.<sup>34</sup> Furthermore, the tax administration has started providing contact details of universities that offer services aiding taxpayers with their tax compliance obligations.<sup>35</sup>

**Greece** furthered the implementation of a plan to make online or remote services available.<sup>36</sup>

In **Honduras**, additional tax offices were opened in order to meet a greater demand for services and to reduce transportation costs for the population.<sup>37</sup>

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<sup>26</sup> See further sec. 1.6.

<sup>27</sup> Id.

<sup>28</sup> IT: Legislative Decree, 30 December 2023, No. 221

<sup>29</sup> See further sec. 1.6.

<sup>30</sup> DE: Art. 97 § 38 EGAO.

<sup>31</sup> See further sec. 1.6.

<sup>32</sup> Id.

<sup>33</sup> See further sec. 1.7.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

In **Mexico**, remote assistance to taxpayers was further enhanced.<sup>38</sup>

In **Spain**, the Spanish Supreme Court declared invalid several tax provisions that obliged all taxpayers to file their personal income tax return by electronic means. This led to the adoption of legislation<sup>39</sup> expressly foreseeing that the obligation for taxpayers to e-file their tax returns may be established, provided that the tax administration ensures personalized attention to taxpayers who require assistance in complying with their tax obligations.<sup>40</sup>

In the **United States**, increased funding has resulted in an increase of support for taxpayers with their tax compliance obligations.<sup>41</sup>

### 0.3.2. The issue of tax assessment

Several jurisdictions reported a shift towards the best practice of establishing a constructive dialogue between taxpayers and revenue authorities in 2023. Most of those were prompted by legislative reform or by changes in administrative practices, and one change was prompted by a judicial decision.

This judicial decision was handed down in **Belgium**, with a Supreme Court judgment on 2 March 2023 (F.21.0156.F) underscoring the importance of the “right to be heard” within the dialogical interaction between the taxpayer and the revenue authority.<sup>42</sup>

**Brazil** saw a consolidation of the legislative reforms already reported last year, in which the provisional measure of the previous year on the harmonization of Brazilian transfer pricing rules with international standards took away the provisional character of those measures by means of Law n. 14.596 of 14 June 2023.<sup>43</sup>

The new Tax Justice Bill that was passed in **Honduras** led to wide debate, and significant input was received on the proposal, totalling 102 suggestions for modifications to the draft.<sup>44</sup>

In **Italy**, the amendment of the Taxpayers’ Bill of Rights has introduced rules that implement a comprehensive tax reform. A stronger consolidation of the right to be heard is most notable in the light of the dialogue between taxpayers and revenue, which takes the specific form of a preliminary dialogue on all actions that are not automatic notices of assessment triggered by errors or miscalculations.<sup>45</sup>

A shift in the administrative practices of the tax authorities was reported in **Guatemala**, where the tax authorities have actively facilitated conflict resolution meetings, whilst in **Costa Rica**,

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<sup>38</sup> Id.

<sup>39</sup> Royal Decree-Law 8/2023 of 27 December 2023

<sup>40</sup> See further sec. 1.7.

<sup>41</sup> Id.

<sup>42</sup> See further sec. 2.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id. It may also be noted that the dialogue does not stop there. Also, active response mechanisms are included in which tax authorities are obliged to react to the views presented by the taxpayer and clarify their reasons if they adopt a different reading of the facts.



the tax administration fostered a constructive dialogue with the establishment of a forum involving prominent national taxpayers. In the **United Kingdom**, HM Revenue & Customs (HMRC) updated its Code of Governance for Resolving Tax Disputes, which opened the possibility for taxpayers to have an insight into its processes.<sup>46</sup>

Concerning the best practice of e-filing, the pandemic necessitated a shift towards digitalization, which is corroborated by the findings reported in the previous and the present year. E-filing seems to remain part of this (necessitated) shift towards digitalization. The shifts towards this best practice are observed around the globe.

In **Botswana**, the self-assessment system has been enhanced. In **Belgium**, taxpayers were enabled to receive “proposed simplified returns” exclusively through electronic channels. **Serbia** reported a shift towards exclusive electronic filing of tax returns for complementary global personal income tax. The **United Kingdom** has mandated that employers deliver returns electronically.<sup>47</sup>

In **Spain**, two improvements to the position of taxpayers can be seen. Firstly, by law n. 12/2023, modifying Article 120.3 of the General Tax Law, taxpayers can submit a corrective self-assessment, which allows them to circumvent a rectification procedure. A decision from the High Court of Galicia of 28 November 2023 recognized that taxpayers should not be penalised for making non-malicious and non-repeated mistakes in tax matters.<sup>48</sup>

A shift towards the best practice can also be observed in **Japan**, where positive numbers are recorded on the adoption of the individual identification system that allows for online tax filing by means of the “My-Number-Card”, which correlates with a general increase in e-filing.<sup>49</sup>

**Türkiye** has updated its technological infrastructure by launching the Digital Tax Office, which aims at unification of online tax services.

In the **United States**, the administrative backlog of the COVID-19 pandemic that the Internal Revenue Service (IRS) faced has weighed, and is still weighing heavily, on its administrative capacity, but multiple electronic and online instruments have been adopted to clear away these previous issues.<sup>50</sup> It will be interesting to see the adoption of these new instruments in future reports.

An outlier to the global trend is **Denmark**, where IT systems for e-filing by representatives of taxpayers are not living up to the standards set by the Ombudsman after a 2021 investigation into the digital solutions of the Danish Customs and Tax Administration.<sup>51</sup>

### 0.3.3. Confidentiality

In the area of confidentiality, several developments were observed in the course of 2023,

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<sup>46</sup> Id.

<sup>47</sup> See sec. 2. for more details on all the above-mentioned changes.

<sup>48</sup> Id. The decision aligns with the proposal of the Tax Ombudsman (no. 2/2022).

<sup>49</sup> See sec. 2. for this stellar increase in the number of adoptions of e-filing.

<sup>50</sup> See sec. 2. for a full overview.

<sup>51</sup> Id.



mostly of a progressive nature, displaying convergence towards minimum standards and best practices; nonetheless, some criticalities emerged.

With reference to the minimum standard sanctioning a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorized disclosures (and ensuring sanctions are enforced), positive developments could be observed in **Lithuania**, where the Tax Administration Law was supplemented with additional safeguards for taxpayers' data.<sup>52</sup>

With regard to control of access through encryption, mostly positive developments were observed.

In **Costa Rica**, additional investments were reported in cybersecurity, following a cyberattack by hacker groups in 2022.<sup>53</sup>

In **Botswana**, security processes were increased, including access restrictions and login verification to access taxpayer information.<sup>54</sup>

In **China (People's Rep.)**, the State Tax Administration strengthened its data security management in the course of 2023.<sup>55</sup>

With regard to administrative measures to ensure confidentiality, some shifts towards the minimum standard could be observed.

In particular, in **Colombia**, the tax administration carried out a virtual training process for tax officers that included content on confidentiality of information.<sup>56</sup>

In **Hungary**, a Regulation<sup>57</sup> enhancing data protection rights of taxpayers was approved.<sup>58</sup>

With reference to the minimum standard according to which, if a breach of confidentiality occurs, there is a full investigation with an appropriate level of seniority by independent persons, positive developments could be observed in 2023 in **Greece** following an instance of information leakage. In response to this incident, the governor of the tax authority ordered an urgent administrative examination, and the tax authorities publicly apologized.<sup>59</sup>

With regard to the minimum standard on remedies for taxpayers who are victims of unauthorized disclosure of confidential information, in **Hungary**, the tax administration adopted Regulation No. 2047/2023/ELC<sup>60</sup> on the protection of personal data and the

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<sup>52</sup> See further sec. 3.2.

<sup>53</sup> See further sec. 3.3.

<sup>54</sup> Id.

<sup>55</sup> Id..

<sup>56</sup> See further sec. 3.5.

<sup>57</sup> See HU :

[https://nav.gov.hu/pfile/file?path=/kozadat/altalanos\\_kozzeteteli\\_lista/nav\\_feladat\\_es\\_hataskore\\_1366633265\\_651/nav\\_adatvedelmi\\_szabalyzata/ld\\_nav\\_adatvedelmi\\_szab/A\\_Nemzeti\\_Ado-es\\_Vamhivatal\\_adatvedelmi\\_szabalyzata](https://nav.gov.hu/pfile/file?path=/kozadat/altalanos_kozzeteteli_lista/nav_feladat_es_hataskore_1366633265_651/nav_adatvedelmi_szabalyzata/ld_nav_adatvedelmi_szab/A_Nemzeti_Ado-es_Vamhivatal_adatvedelmi_szabalyzata) (accessed 13 Feb. 2024).

<sup>58</sup> See further sec. 3.5.

<sup>59</sup> See further sec. 3.7.

<sup>60</sup> See HU:

[https://nav.gov.hu/pfile/file?path=/kozadat/altalanos\\_kozzeteteli\\_lista/nav\\_feladat\\_es\\_hataskore\\_1366633265\\_651/nav\\_adatvedelmi\\_szabalyzata/ld\\_nav\\_adatvedelmi\\_szab/A\\_Nemzeti\\_Ado-es\\_Vamhivatal\\_adatvedelmi\\_szabalyzata](https://nav.gov.hu/pfile/file?path=/kozadat/altalanos_kozzeteteli_lista/nav_feladat_es_hataskore_1366633265_651/nav_adatvedelmi_szabalyzata/ld_nav_adatvedelmi_szab/A_Nemzeti_Ado-es_Vamhivatal_adatvedelmi_szabalyzata) (accessed 18 Feb. 2024).

disclosure of data of public interest.<sup>61</sup>

As for the minimum standard according to which exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted, positive developments could be observed in **Lithuania**, where article 164 of the Law on Tax Administration, dealing with the servicing of documents to the taxpayer, was amended taking into account the requirements of the General Data Protection Regulation (GDPR).<sup>62</sup>

With reference to the minimum standards on safeguards surrounding instances of “naming and shaming”, positive developments could be observed across various geographical regions.

In **Costa Rica**, the tax administration has in some cases declined requests to provide access to taxpayers’ information to the general public, making it necessary for interested parties to request the information by judicial means.<sup>63</sup>

In **Lithuania**, article 38 of the Tax Administration Law was supplemented with provisions regarding: (i) the purpose of publicizing personal data; (ii) specific personal data to be made public; (iii) the period of publication; and (iv) the right of a person to demand the protection of his data and the corresponding duties of the tax administrator corresponding to this right.<sup>64</sup>

In **Spain**, a judgment of the Spanish Supreme Court of 20 January 2023<sup>65</sup> established that only final tax assessments or final tax penalties can be included in the list of tax defaulters, which is published yearly according to article 95 bis of the Spanish General Tax Act. Moreover, the Supreme Court emphasized that necessary measures must be taken to prevent the indexing of the list content through Internet search engines and the list will cease to be accessible after 3 months from the date of publication<sup>66</sup>.

In contrast to the above-reported positive developments, in **Colombia**, a negative shift was observed as a sanctioned taxpayer (a well-known retailer) was named on a social network, being invited to comply with the electronic invoicing requirements.<sup>67</sup>

With regard to the best practice according to which judicial authorization is required before any disclosure of confidential information by revenue authorities, a regressive development was recorded in the **United Kingdom**, where the Court of Appeal held in one of its decisions<sup>68</sup> that HMRC did not require the permission of the First Tier Tax Tribunal before disclosing taxpayer information to another taxpayer.<sup>69</sup>

With reference to the minimum standard according to which there is to be no disclosure of confidential taxpayer information to politicians or where it might be used for political purposes,

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<sup>61</sup> See further sec. 3.8.

<sup>62</sup> See further sec. 3.9.

<sup>63</sup> See further sec. 3.10.

<sup>64</sup> Id.

<sup>65</sup> ES: STS, 20 Jan. 2023, 218/2023 - ECLI:ES:TS:2023:218

<sup>66</sup> See further sec. 3.10.

<sup>67</sup> Id.

<sup>68</sup> UK: CA, *Mitchell and Bell v. R & C Commrs* [2023] BTC 6 / [2023] EWCA Civ 261.

<sup>69</sup> See further sec. 3.10.

on the other hand, several regressive trends could be observed. Similarly to last year,<sup>70</sup> several countries reported a shift away from the minimum standard or best practice, and not a single jurisdiction has reported a positive change in these areas.

In **Costa Rica**,<sup>71</sup> the tax administration submitted information to a congressman about large taxpayers who have reported losses or no payable tax in their tax returns.<sup>72</sup>

In **Honduras**, news was reported about the publication of confidential taxpayer information on politicians, more specifically members of parliament. According to the affected taxpayers, the information was made public for political reasons.<sup>73</sup> Similarly, the tax administration (SAR) published cases of tax evasion by the “10 richest families in Honduras”.<sup>74</sup>

It is also worth noting that, in 2023, the Grand Chamber of the ECtHR delivered its decision on case No. 36345/16 L.B. against **Hungary**. In overruling the decision of the ECtHR of 12 January 2021, the Grand Chamber of the ECtHR stressed the importance of adequate safeguards within the context of legislative proceedings with respect to naming and shaming. According to the Grand Chamber, the publication of the applicant’s name and home address concerned information about his private life. Although the adverse effects of the publication of this information had not been proven to be substantial, the Court considered the publication to constitute an interference with the applicant’s right to respect for his private life. Despite the wide margin of appreciation for national authorities in establishing a scheme for the dissemination of personal data of non-compliant taxpayers, the Court ruled that the Hungarian legislator had not respected the principle of data minimalization. The Court ruled that the Hungarian parliament did not consider properly to what extent publication of all the data in question (in particular the debtor’s home address) had been necessary to achieve the original purpose of the collection of relevant personal data in the interest of the economic well-being of Hungary. In light of the foregoing, a violation of article 8 of the Convention was found to have taken place.<sup>75</sup>

With regard to the interplay between taxpayer confidentiality and freedom of information legislation, a regressive development appears to have emerged in **South Africa** in connection with a high-profile judicial case, somewhat questioning the balance between these two considerations in favour of the latter. The South African Constitutional Court had to decide in a case on the privacy rights of an individual, namely J.G. Zuma, the former State President. The case concerned access to tax records by a person other than the taxpayer himself. In other words, the Court was asked to balance the taxpayer’s right to privacy against the rights

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<sup>70</sup> See also OPTR Report (2022), at sec. 3.11.

<sup>71</sup> See further sec. 3.11.

<sup>72</sup> This was included in decision CR: Oficio MH-DM-OF-243-2023 del Ministerio de Hacienda al despacho del diputado Ariel Robles; see also <https://semanariouniversidad.com/pais/los-que-repiten-en-su-declaracion-de-impuesto-cero/> (accessed 20 Feb. 2024).

<sup>73</sup> See HN: <https://www.elheraldo.hn/honduras/maribel-espinoza-denuncia-divulgacion-datos-tributarios-CH15563625> (accessed 20 Feb. 2024).

<sup>74</sup> See HN: <https://www.sar.gob.hn/2023/09/marlon-choa-presenta-denuncia-contra-las-10-familias-que-manegan-el-pais/> (accessed 20 Feb. 2024).

<sup>75</sup> See further sec. 3.11.

of access to information.<sup>76</sup> The Court decided, in a narrow 5-4 majority, that the public interest overrode the privacy of the individual in this case.<sup>77</sup>

With reference to the protection of legal professional privilege, some positive developments can be observed across different geographical regions.

As to the minimum standard according to which legal professional privilege should apply to tax advice, in **Spain**, the Supreme Court, with its ordinance of 27 February 2023,<sup>78</sup> ordered the precautionary suspension of article 45.4.b) 2nd RGAT, which transposes the Directive on Administrative Cooperation (DAC) 6. This is a result of the judgement of the ECJ of 8 December 2022 in Case C-694/20, *Orde van Vlaamse Balies*.<sup>79</sup>

With reference to the minimum standard foreseeing that, where tax authorities enter premises that may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege, further positive case law developments can be reported from Spain. In particular, the Spanish Supreme Court, in its decision of 29 September 2023,<sup>80</sup> dealing with access of the tax authorities to the taxpayer's electronic devices, ruled that judicial authorization for entering a home is not sufficient to copy, seal, capture, possess or use data extracted from a computer where the activity has taken place outside the home and may affect other fundamental rights, such as the privacy of communications. Therefore, a specific judicial authorization is required. The relevant court should take the decision in light of the principles of the necessity, appropriateness and proportionality of the measure.<sup>81</sup>

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<sup>76</sup> See <https://www.saflii.org/za/cases/ZACC/2023/13.html> (accessed 20 Feb. 2024).

<sup>77</sup> ZA: CC, *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Service and Others* [2023] ZACC 13.

<sup>78</sup> The Ordinance later led to the adoption of Law 13-2023 of 24.05.2023

<sup>79</sup> See on this topic OPTR Report (2022), at sec. 3.14.

<sup>80</sup> ES: SC, STS 3978/2023 - ECLI:ES:TS:2023:3978

<sup>81</sup> See further sec. 3.14.

#### 0.3.4. Normal audits

There are four minimum standards and one best practice to be observed in section 4.1., and these are a direct product of four fundamental principles of general procedural law.<sup>82</sup>

Overall, in the past year, an alignment with the minimum standards and best practices can be observed, but shifts away from these remain and are a problem that requires monitoring.

In the case of normal audits, the amendments to the Taxpayers' Bill of Rights in **Italy** has produced a reportable shift towards the minimum standard that respect should be had for the four main principles in relation to tax audits.<sup>83</sup>

**Spain** reports shifts towards the minimum-standard, and **Belgium** continues the trend that was initiated last year, when the possibility was opened for some tax officials to be vested with the capacity of criminal police officers.<sup>84</sup>

Regarding the minimum standard that relates to proportionality, which demands that tax authorities may only request information that is strictly needed for an audit, two shifts towards the minimum standard were reported in 2023. **Belgium** saw a shift towards the minimum standard by means of case law in which it was held that a fair balance must be struck between social and individual interests in the collection of a taxpayer's digital data.<sup>85</sup> From 2023, the tax administration in **Guatemala** is applying deadlines for the provision of information more leniently if an effort is made by the taxpayer to comply with the duty to provide information.<sup>86</sup> Last year, reported practices which converge or diverge from the minimum standard continue to persist in **Chile** (convergence), and **Bulgaria** and **Chinese Taipei** (divergence).<sup>87</sup>

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<sup>82</sup> As was also explained in last year's report, "the first minimum standard envisages that audits should respect the following principles: (i) proportionality; (ii) *ne bis in idem* (prohibition of double jeopardy); (iii) *audi alteram partem* (right to be heard before any decision is taken); and (iv) *nemo tenetur se detegere* (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void. The second minimum standard in this area foresees that, in the application of proportionality, tax authorities may only request information that is strictly needed, that is not otherwise available and that imposes the least burdensome impact on taxpayers. According to the third minimum standard, in the application of *audi alteram partem*, taxpayers should have the right to attend all relevant meetings with the 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. The fourth and final minimum standard states that, in application of *nemo tenetur*, the right to remain silent should be respected in all tax audits". The best practice is an application of the *ne bis in idem* principle and reflects the idea that a taxpayer should not be subjected to more than one audit per taxable period. See further sec. 4.1.

<sup>83</sup> Id.; see further sec. 4.1.

<sup>84</sup> See sec. 4.1.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Id.

Further, this year, **Spain** and **Italy** reported a shift towards the *ne bis in idem* principle best practice. The former is a result of two cases of the Supreme Court; the latter is connected to the earlier mentioned new Taxpayers' Bill of Rights.<sup>88</sup>

The previous conclusion for **Italy** also applied to the principle of *audi alterem partem*, for which the same Taxpayers' Bill of Rights includes a new provision that the principle should always be followed during tax audits. Also, **Guatemala** shifted towards this minimum standard by granting wider access to meetings with tax authorities for taxpayers accompanied by their legal advisers.<sup>89</sup>

No shifts have been reported in respect of the right to remain silent in the application of *nemo tenetur*.

When considering the structure and content of tax audits, which comprises four best practices and two minimum standards, fewer developments have been reported. It must, however, be noticed that, concerning the best practice of having published guidelines for the structure of tax audits, **Hungary** and **Spain** have shown a shift towards this best practice by the publication of guidelines.<sup>90</sup> Also, the **German** provisions for audits have been revised, resulting in a shift towards the best practice of having meetings with taxpayers involved in the auditing process.

Concerning time limits, contained in dedicated section 4.3., this year only a shift in **Germany** was reported, whilst previous developments reported last year continue to make themselves felt.<sup>91</sup>

No shifts were observed in the minimum standard that technical assistance should be available at all stages of an audit.<sup>92</sup> Concerning the completion of a tax audit and the minimum standard that such fact should be accurately reflected in a document, in its full text, to the tax payer, **Luxembourg** reported a shift away from the minimum standard, as from case law it can be derived that the final report is not always made known to the taxpayer, which could only gain access at a later moment.

### 0.3.5. More extensive audits

More extensive audits come with specific consequences for the protection of taxpayers' rights. Thereby, the best practice in this section lays down that intensive audits should be limited and confined to the strictly limited cases in which these are necessary. **Hungary** has shifted toward this best practice by refining its more intensive audit procedures.<sup>93</sup>

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<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> See sec. 4.2.

<sup>91</sup> See sec. 4.3.

<sup>92</sup> See sec. 4.4.

<sup>93</sup> See sec. 5.1.

The subsequent minimum standard that requires that stronger protection of rights should be ensured once, over the course of an audit, it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charges was shifted away from in **Botswana**, where the Income Tax Act does not guarantee a right to remain silent.<sup>94</sup>

The entering of premises of taxpayers or the interception of their communications, where the minimum standard requires prior judicial approval, will be particularly addressed in an **ECtHR** case, whilst **Belgium** reported a shift away from the minimum standard due to case law.<sup>95</sup>

Another upcoming **ECtHR** case will shed an interesting light on the rights of taxpayers in more intense audits, this time falling within the scope of the minimum standard that requires authorizations to only be granted in urgent cases and subsequently reported to the judiciary. Within the same minimum standard, **Botswana** reported a shift away, as tax authorities have a nearly unrestrained power.<sup>96</sup>

Home searches require judicial approval under the relevant minimum standard, whilst a best practice in this sense is that a taxpayer should be informed of having an opportunity to appear before the judicial authorities.<sup>97</sup> After a shift away last year, **Belgium** has reported a shift towards this best practice based on case law, in which the Court of Cassation made clear that authorization is required and that the taxpayer must consent for the entire duration of the inspection. The **ECtHR** will also have to shine its light on these matters under article 8 and Protocol 1, article 1 of the European Convention on Human Rights (ECHR).<sup>98</sup>

For the other best practices and minimum standards in section 5.3.,<sup>99</sup> the most notable development to be mentioned occurred in **Mexico**, where the Supreme Court erased the shift away from last year in relation to the best practice that access to bank information requires judicial authorization by deeming unconstitutional a section of the law that allowed requests for bank information without prior judicial authorization.

Finally, concerning the treatment of privileged information,<sup>100</sup> **China (People's Rep.)** has adopted special rules for electronic records which allow original records to remain on site.

### 0.3.6. Reviews and appeals

As reported earlier, also within reviews and appeals, the trend of digitalization, probably in direct relation to its necessity during the pandemic period, has continued.<sup>101</sup>

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<sup>94</sup> See further sec. 5.2.

<sup>95</sup> See sec. 5.3.

<sup>96</sup> Id.

<sup>97</sup> That is, as long as there is no evident danger of documents being removed or destroyed.

<sup>98</sup> See sec. 5.3.

<sup>99</sup> Id.

<sup>100</sup> See sec. 5.4.

<sup>101</sup> See sec. 6.1. and especially the best practice that "[t]here should be e-filing of requests for internal review to ensure the effective and speedy handling of the review process".



A case before the **ECtHR** concerning the right of access to the judiciary did not find any violation under article 6, paragraph 1, of the first Protocol to the Convention where the applicant was required to pay the principle of the disputed amount before a tax obligation could be challenged in court.<sup>102</sup> It is notable that developments regarding the absence of a required payment of tax prior to appeal, contained as a best practice in section 6.5., remain vibrant, with several developments last year that were not overturned, **Honduras** providing the exception to that rule.<sup>103</sup>

Meanwhile, in 2023, in **Italy** and **China (People's Rep.)**, progress was made towards the best practice that reviews and appeals should not exceed 2 years.<sup>104</sup>

Repetition of procedures and the suspension of the limitation period in respect of the right of the tax authorities to assess that tax is suspended for the whole duration of the judicial review does not limit the effective exercise of the rights of the taxpayer in the **ECJ's Napfény-Toll** case.<sup>105</sup> Other issues on the length of administrative procedures were brought before the **ECtHR** during the year,<sup>106</sup> on which judgement will be rendered later. The same Court did render judgment in a case concerning the lack of compensation after a taxpayer's assets were seized for a disproportionate amount of time and stated that article 1 of Protocol 1 to the Convention was violated.

The right of taxpayers that cannot afford legal assistance to be provided with legal assistance by the state, contained in the best practice in section 6.6., has seen an expansion in **Mexico** and in the **United States**.<sup>107</sup> In the case of the former, this came in the form of an expansion of the tax ombudsman's functions; in the case of the latter, additional funding was made available for low-income taxpayers.

On a final note, concerning transparency and the minimum standard that tax judgments should be published, positive developments were reported in **Bulgaria** by means of the implementation of a new electronic system, whilst in **Costa Rica**, the Constitutional Court more strongly enforced the country's alignment with the minimum standard.<sup>108</sup> Developments in countries do not always follow the letter of the law, as was the case in **China (People's Rep.)**. There is a provision in the law that required publication of judicial decisions; however,

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<sup>102</sup> AL: ECtHR, No. 65320/09, *DEA 7.CO v. Albania*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-226128%22%7D> (accessed 24 Feb. 2024).

<sup>103</sup> See sec. 6.5.

<sup>104</sup> See sec. 6.2.

<sup>105</sup> HU: ECJ, 13 July 2023, Case C-615/21, *Napfény-Toll*, available at <https://curia.europa.eu/juris/document/document.jsf?jsessionid=42D850D6A4AFD07850E69156BC1FB17?text=&docid=275385&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3530162> (accessed 22 Feb. 2024).

<sup>106</sup> LV: ECtHR, No. 36219/19, *SIA TAVEX v. Latvia*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-225421%22%7D> (accessed 24 Feb. 2024); see also PT: ECtHR, No. 5481/21, *Doyen Sports Investments Limited v. Portugal*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-227882%22%7D> (accessed 24 Feb. 2024).

<sup>107</sup> See sec. 6.6.

<sup>108</sup> See sec. 6.8.



2022 and 2023 saw a decrease in published decisions. The government there has, however, launched an initiative to address the issue.<sup>109</sup>

### 0.3.7. Criminal and administrative sanctions

With regard to the area of criminal and administrative sanctions (**Area 7**), 2023 was a fairly static year. Yet, in the vast majority of cases, when developments occurred, they could be regarded as positive. Furthermore, 2023 recorded several relevant case law developments in this area, especially at the **ECtHR**.

In particular, concerning the minimum standard according to which proportionality and *ne bis in idem* should apply to tax penalties, the following can be reported:

In **Brazil**, the relevance of the principle of proportionality was recognized in legislative enactments and in several judgments by Brazilian courts.<sup>110</sup>

In **Spain**, new decisions of the Spanish courts have reinforced the principle of proportionality in tax punitive matters.<sup>111</sup> In particular, the Supreme Court established, in relation to the proportionality of penalties for formal infractions, that a court can annul the penalty in question without the need to raise an issue of constitutionality regarding that provision.<sup>112</sup> In addition, in a separate decision, the Supreme Court upheld the *ne bis in idem* principle in punitive tax matters by indicating that the tax authorities cannot initiate or continue administrative proceedings aimed at sanctioning the taxpayer if criminal responsibility is declared to be beyond its statute of limitations<sup>113</sup>

Likewise, in the United States, the US Supreme Court has applied the principle of proportionality to mitigate the penalties applicable in connection to minor tax violations.<sup>114</sup>

On the other hand, in **Costa Rica**, court decisions have downplayed the relevance of the principle of proportionality and have affirmed that severe penalties can also be imposed in cases in which the taxpayer has merely delayed the payment of taxes for a short period of time.<sup>115</sup>

The ECtHR also delivered several decisions of note for this area.

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<sup>109</sup> Id.

<sup>110</sup> See further sec. 7.1.

<sup>111</sup> Id.

<sup>112</sup> See ES: OPTR Report (2023) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58. See also ES: Sala de lo Contencioso Administrativo, Section 2<sup>a</sup>, judgments No. 1093/2023 of 25 Jul. 2023 and No. 103/2023 of 26 Jul. 2023.

<sup>113</sup> See ES: OPTR Report (2023) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 59. See also ES: Sala de lo Contencioso Administrativo, Section 2<sup>a</sup>, judgment No. 1104/2023 of 27 July 2023.

<sup>114</sup> Id.

<sup>115</sup> Id.

One of the relevant decisions<sup>116</sup> dealt with the case of an employee of a tax compliance firm who had offered to hand over to an investigative journalist confidential documents (tax returns) obtained by multinational companies with the assistance of the private firm. Following a criminal complaint made by the private firm, the applicant was sentenced to pay a criminal fine and a symbolic sum of compensation for non-pecuniary damages to the private firm. Relying on article 10 of the Convention, the applicant held that this criminal conviction had amounted to a disproportionate interference with his right to freedom of expression. Overturning the judgement of the ECtHR of 11 May 2021, the Grand Chamber of the ECtHR ruled that there had been a violation of article 10 of the Convention.

Another decision<sup>117</sup> concerned a case in which sanctions were imposed on the applicant company following its sale of goods without issuing a receipt, discovered during a tax audit. The applicant had to forfeit the income, was fined and had its activities suspended for a period of 3 months. These sanctions were upheld by the Romanian courts. The ECtHR found no violation of article 1 of Protocol 1 to the Convention, as the imposition of sanctions pursued the legitimate aim of combating tax evasion and improving financial responsibility among traders and did not impose an excessive burden on the applicant because of the large margin of appreciation for the authorities, the procedural safeguards available to the applicant and the temporary nature of the sanctions.

The ECtHR also addressed, in a decision delivered in September 2023,<sup>118</sup> a case involving the confiscation of imported precious metals by the applicant without declaring the importation to customs and paying applicable duties. Upon the overturning of the judgment that had found the applicant guilty of smuggling, the precious metals remained confiscated by the authorities. Relying on article 1 of Protocol 1 to the Convention, the applicant complained that his property was confiscated in absence of a final court decision. The Court found that there had been a violation of article 1 of Protocol 1 to the Convention, as the metal was confiscated in the absence of a final court decision finding him guilty of smuggling.

In a decision from October 2023,<sup>119</sup> the ECtHR dealt with a case of a lack of compensation for the applicant's loss of business profits due to decisions taken by the tax authorities that were disproportionate and were made in protracted proceedings covering 3 years. The Court concluded that the measure taken by Poland in a case involving an applicant who faced significant interference with his property rights due to tax decisions that were later found flawed constituted an excessive burden on the applicant, leading to the violation of article 1 of Protocol 1 to the Convention.

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<sup>116</sup> See LU: ECtHR, 14 Feb. 2023, No. 21884/18, *Halet v. Luxembourg*, available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-223259%22%5D%7D>, (accessed 28 Feb. 2024).

<sup>117</sup> See RO: ECtHR, 27 June 2023, No. 15553/15, *S.C. Zorina International s.r.l. v. Romania*, available at <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%2C%22itemid%22:%5B%22001-225441%22%5D%7D> (accessed 28 Feb. 2024).

<sup>118</sup> See TR: ECtHR, 12 Sept. 2023, Application No. 78661/11, *Yasargolu v. Türkiye*, available at <https://hudoc.echr.coe.int/eng?i=001-226463> (accessed 28 Feb. 2024).

<sup>119</sup> See PO: ECtHR, 5 Oct. 2023, Application No. 22716/12, *Andrzej Ruciński v. Poland*, available at <https://hudoc.echr.coe.int/fre?i=001-227721> (accessed 28 Feb. 2024).

Finally, in December 2023, the Court delivered a decision<sup>120</sup> on a case concerning the application of a 25% surcharge on the taxable income of certain self-employed professionals (under article 158 of the General Tax Code) because the applicant had not joined an approved association. According to the applicant, this raised an issue under article 1 of Protocol One to the Convention. The Court concluded that a violation of said provision had taken place, as the increase of the applicant's taxable professional income on account of his not being a member of an approved association disproportionately interfered with his right to the peaceful enjoyment of his possessions.

The ECJ also delivered some relevant decisions in the areas concerned in the course of 2023.

One decision<sup>121</sup> dealt with the issue of the compatibility with the EU Charter of the duplication of administrative and criminal penalties that are 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.

In essence, this case follows principles set out in the judgment of the ECJ in *Garlsson Real Estate and Others* of 20 March 2018 (Case C-537/16) and in *NE* of 8 March 2022 (Case C-205/20). In particular, in the MV-98 case the Court held that the Charter of Fundamental Rights must be interpreted as precluding national legislation under which a financial penalty and a measure involving sealing of business premises may be imposed on a taxpayer for one and the same offence relating to a tax obligation at the end of separate and autonomous procedures, where those measures are liable to challenge before different courts and where that legislation does not ensure coordination of the procedures enabling the additional disadvantage associated with the cumulation of those measures to be reduced to what is strictly necessary and does not ensure that the severity of all penalties imposed is commensurate with the seriousness of the offence concerned.

Another decision was delivered by the ECJ<sup>122</sup> on the issue of the compatibility with the EU Charter of the duplication of administrative and criminal penalties that are 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. In this case the Court held that Article 48(1) of the Charter (presumption of innocence) precludes an authorisation to operate as a tax warehouse for products subject to excise duty from being suspended for administrative purposes, until the conclusion of criminal proceedings, on the sole ground that the holder of that authorization has been formally charged in those criminal proceedings, if that suspension constitutes a criminal penalty.

On the other hand, if certain conditions are met, Article 50 (ne bis in idem) does not preclude a criminal penalty, for infringement of the rules on products subject to excise duty, from being

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<sup>120</sup> See FR: ECtHR, 7 Dec. 2023, Application No. 26604/15, *Waldner v. France*, available at <https://hudoc.echr.coe.int/fre?i=001-229589> (accessed 28 Feb. 2024).

<sup>121</sup> See BG: ECJ, 4 May 2023, Case C-97/21, *MV-98*, available at <https://curia.europa.eu/juris/document/document.jsf?jsessionid=787B148FDCD379A6D1BD1C003634FC42?text=&docid=273282&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4764179> (accessed 28 Feb. 2024).

<sup>122</sup> See RO: ECJ, 23 Mar. 2023, Case C 412/21, *Dual Prod SRL*, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=271743&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4764666> (accessed 28 Feb. 2024).

imposed on a legal person who has already been subject, in respect of the same facts, to a criminal penalty that has become final.

With regard to voluntary disclosure regimes, while most surveyed jurisdictions did not report any developments, the few where shifts were recorded indicated progressive trends.

In particular, in the **United States**, new voluntary disclosure regimes have been put in place with a view to fostering tax compliance.<sup>123</sup>

In 2023, **Lithuania** amended its Law on Tax Administration. It provides that sanctions cannot be lower than 20% of the unpaid taxes in cases of voluntary disclosure by the taxpayer.<sup>124</sup>

### 0.3.8. Enforcement of taxes

With regard to the enforcement of taxes (**Area 8**), a more nuanced picture emerges from 2023, even though, overall, it may be regarded as a fairly static year.

Positive developments were observed in connection with the minimum standard according to which collection of taxes should never deprive taxpayers of their minimum necessary for living. In particular, in **Lithuania**, new rules increase the amount of tax-free income. This amendment reduces the tax burden on taxpayers with a monthly income of up to one average wage.<sup>125</sup>

Similarly, with regard to the best practice according to which judicial authorization should be required before seizing assets or bank accounts, the following positive trends can be reported from Africa, a geographical area which comes across as the only one in which developments were observed in this respect.

In **South Africa**, courts have increased the level of protection for taxpayers in connection with seizure measures sought by the South African tax authorities for assets held abroad.<sup>126</sup> In **Botswana**, legislation was enacted that provides that decisions made by tax administrations to seize assets or bank account deposits are not subject to authorization by judicial authorities.<sup>127</sup>

With regard to the best practice according to which partial remission of a debt or structured plans for deferred payment should be envisaged in order to avoid the bankruptcy of taxpayers, it has been reported that, in the course of 2023, plans have been put in place in **Botswana** to allow taxpayers to defer payment and prevent bankruptcy.<sup>128</sup>

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<sup>123</sup> See US: The IRS Criminal Investigation Voluntary Disclosure Program, available at <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (accessed 28 Feb. 2024). See further sec. 7.2.

<sup>124</sup> Id.

<sup>125</sup> See further sec. 8.

<sup>126</sup> See further sec. 8.

<sup>127</sup> Id.

<sup>128</sup> Id.

With reference to the minimum standard encompassing the temporary suspension of tax enforcement following natural disasters, shifts towards the standard have been recorded across different regions.

In **Guatemala**, due to a political crisis, the tax administration has made it possible for taxpayers to delay the presentation of tax declarations.

In **Ukraine**, legislation has been enacted that stops tax enforcement activities from 1 August 2023 in the territory of Ukraine. In addition, statutory rules have forbidden undertaking measures to collect tax debts incurred before 24 February 2022 to taxpayers whose tax address/place of residence is in the territory of Ukraine temporarily occupied by the Russian Federation, the territory in which active hostilities are taking place or areas of possible hostilities.

In **Norway**, a specific legal framework has been introduced with the goal of ensuring a more simplified and flexible scheme for deferred payment in connection with the outbreak of COVID-19.

With reference to case law from supranational courts, relevant principles were affirmed by the Inter-American Court on Human Rights (IACtHR) in the case of *García Rodríguez et al. v. Mexico* (Serie C N°482).<sup>129</sup>

### 0.3.9. Cross-border procedures

The availability of additional safeguards for taxpayers in connection with the exchange of information (EOI) upon request displayed on balance some regressive trends, with several shifts away from the relevant standards across various regions, in particular with regard to the best practice according to which taxpayers should be informed that a cross-border request for information is to be made.

In this respect, with regard to **Honduras**, it is interesting to report that, in the course of 2023, the Global Forum sent an official notification requiring the government to clarify how domestic law is written, since the current state of the legislation does not make it clear whether taxpayers have the right to be notified in cases of EOI procedures.<sup>130</sup>

A modification of article 39 of the Law on Tax Administration of the Republic of **Lithuania** established that information received within the framework of an EOI procedure could be used for non-tax purposes as long as these further treatments for other purposes are foreseen in EU norms and signed international treaties. However, this modification does not mention informing taxpayers about the future treatment of their information.<sup>131</sup>

In the **Netherlands**, an open letter from the Ministry of Finance indicated that, irrespective of developments in the ECJ case law,<sup>132</sup> the Dutch tax authorities do not consider that there are sufficient compelling reasons to change the legislation to grant further taxpayers' rights, since

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<sup>129</sup> Id.

<sup>130</sup> See further sec. 9.1.1.

<sup>131</sup> Id.

<sup>132</sup> Compare, in particular, LU: ECJ, 6 Oct. 2020, Case C-245/19 and C-246/19, *État luxembourgeois v. B and Others*, ECLI: EU:C:2020:795.

taxpayers have plenty of mechanisms and broad guarantees to claim an effective remedy and challenge the lawfulness of the EOI order if considered unlawful.<sup>133</sup>

On the other hand, it may be worth reporting that the consolidation of a progressive trend was observed in the **United States** in light of recent case law delivered by the Court of Appeals,<sup>134</sup> in which it was confirmed that at least the taxpayer can challenge a summons the IRS issues at the request of a third country in certain circumstances.<sup>135</sup>

With regard to the best practice according to which, where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer, it can be reported that **Slovenia**<sup>136</sup> amended the Tax Procedure Act<sup>137</sup> to be in accordance with the GDPR.<sup>138</sup> The data protection guarantees have been expanded to new categories of data covered by the DAC.<sup>139</sup> The amendment intends to grant more protection to taxpayers' data when processing personal data within a cross-border EOI procedure.

In the area of automatic exchange of information, in **Slovenia**, for instance, platform operators have been required to report data on the business activities of each vendor they operate with digital platforms to the tax authorities, which will automatically transmit the data. However, if the platform operator deals with financial information, nothing is foreseen about informing the affected taxpayers to exercise their data protection rights before the proposed automatic exchange occurs.<sup>140</sup>

### 0.3.10. Legislation

Considerations about legislation prompt fundamental reflections about a broad panoply of constitutional limits on tax legislation, thereby including legal certainty.

Regarding retrospective taxation, 2023 was not a very good year, as multiple shifts away have been reported from both the minimum standard that retrospective taxation should only be permitted in limited and instances spelt out in detail, whilst the best practice states that retrospective taxation should ideally be banned altogether.

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<sup>133</sup> See further section 9.1.1.

<sup>134</sup> US: OPTR Report (2023) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2 (Development Survey), Question 67.

<sup>135</sup> The Opinion of the US Court of Appeals states that "evidentiary hearing is warranted only when the taxpayers 'can point to specific facts or circumstances plausibly raising an inference of bad faith' by the Service." (US: CA, *Samuel Barnaby Dyer Coriat et al. v. United States*, 11th Cir. No. 23-11648 (order issued 12/4/2023), at p. 6, available at: <https://law.justia.com/cases/federal/appellate-courts/ca11/23-11648/23-11648-2023-12-04.html> (accessed 16 Feb. 2024).

<sup>136</sup> SI: OPTR Report (2023) (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 68.

<sup>137</sup> SI: [Tax Procedure Act](#) (Official Gazette of the Republic of Slovenia, No. 163/2022, ZDavP-2N).

<sup>138</sup> 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.

<sup>139</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

<sup>140</sup> See further sec. 9.1.4



**Brazil, Bulgaria** and **Lithuania** reported shifts away from the minimum standard, whilst **Argentina, Brazil** and **Türkiye** diverted from the best practice.<sup>141</sup>

However, it must also be mentioned that **Türkiye** was the only country reporting a shift towards the minimum standard, as the Constitutional Court upheld an additional levy of motor vehicle taxation that was imposed in 2023 due to the earthquakes in the eastern part of the country under the condition that it is proportional.<sup>142</sup>

Concerning the best practice according to which public consultations should precede the making of tax policy and tax law, 2023 was a rather eventful year, with several reported shifts. Generally speaking, most surveyed jurisdictions allow for public consultation. Wider regulatory reforms were brought under public discussion in **Costa Rica** and **Honduras**, among others.<sup>143</sup> A shift away from the best practice was observed in **New Zealand**, even though, on face value, the intensity of the use of public consultation might seem strong.<sup>144</sup> In **Hungary**, a report was made regarding the practical ineffectiveness of its public consultation legislation, which led to a critique from the European Commission.<sup>145</sup>

### 0.3.11. Revenue practice and guidance

The year 2023 was fairly static in this area, but most recorded developments signalled progressive shifts.

With regard to the access on the part of taxpayers to relevant legal materials, several shifts towards the relevant minimum standard were recorded.

In particular, in **Colombia**, the search engine of the electronic consultation service that was implemented in October 2022 has been improved.<sup>146</sup> The particular improvement allows a more precise search of regulations and tax and judicial rulings.<sup>147</sup>

In **Costa Rica**, Resolution 25136/2023 of the Constitutional Court of 6 October 2023 stated that taxpayers can access tax information without any impediment. The Resolution stated that the Tax Digest is fully updating and operational, and users can contact civil servants to require documents that have not been yet published. Moreover, Costa Rica brought several examples of best practices to prove how the tax administration anonymizes binding rulings when the

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<sup>141</sup> See sec. 10.2.

<sup>142</sup> Thereby effectively setting out (detailed) instructions under which retrospective taxation is allowed to occur. See sec. 10.2.

<sup>143</sup> See sec. 10.3.

<sup>144</sup> Id.

<sup>145</sup> Id.

<sup>146</sup> See the search engine at DIAN, Motor de búsqueda doctrina, available at <https://www.dian.gov.co/normatividad/doctrina/Paginas/DireccionGestionJuridica.aspx> (accessed 13 Feb. 2024).

<sup>147</sup> See further sec. 11.2.

requesting party is a private entity. Finally, whenever there is a change in the criterion followed by the tax authorities, the new guidelines are never retroactive.<sup>148</sup>

In the **Netherlands**, since 30 March 2023, the Dutch Tax and Customs Administration has been publishing the opinions of 26 knowledge groups. The publication of such opinions intends to make clear what the tax authorities think about the tax issues that have been submitted to the knowledge groups. The taxpayer can consult the opinions via a specific website designed for such purpose.<sup>149</sup>

With reference to the minimum standard according to which, 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, **Spain** recorded several developments in the course of 2023. The Spanish Supreme Court declared null and void provisions<sup>150</sup> that obliged citizens to interact electronically with the tax administration for the declaration of the personal income tax return.<sup>151</sup> Furthermore, the tax administration is currently waiting for a report from the Tax Ombudsperson Council providing recommendations and actions to take in the next income tax return campaign. Additionally, the tax administration announced an enhancement to assistance to those taxpayers over 65 years old, excluding them from the mandatory appointment system and giving them priority to be attended physically and by phone.<sup>152</sup>

At the same time, it should be mentioned that, in **Botswana**, there have been reported several loopholes on the legislation regarding online access to legal materials, requiring anonymization of binding rulings or guaranteeing that new guidelines are not retroactively applied.<sup>153</sup>

### 0.3.12. Institutional framework for the protection of taxpayers' rights

No new taxpayers' rights charters or statements were adopted during this year; however, amendments were made in jurisdictions to existing instrument, as reported.<sup>154</sup>

The **IACtHR** dealt with a case in which Mexico continued to collect taxes from two people during a period in which they were held unjustifiably for 17 years in preventive detention.<sup>155</sup> These persons were still held liable to pay taxes during this period by the tax authorities. The applicants were awarded a general compensation for all facts taken together, with (unfortunately) no clear position taken on the fact that states continue to levy taxes whilst someone is held in detention.

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<sup>148</sup> Id.

<sup>149</sup> Id.

<sup>150</sup> In particular, arts. 9.1, 15.1 and 4, as well as sec. 1, of Order HAC/277/2019.

<sup>151</sup> With the decision No. 953/2023 of 11 July 2023.

<sup>152</sup> See further sec. 11.2.

<sup>153</sup> Id.

<sup>154</sup> See *supra* and *infra*.

<sup>155</sup> See MX: ICHR, *García Rodríguez et Al. v. Mexico*, Serie C No. 482, available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_482\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_482_ing.pdf) (accessed 20 Feb. 2024); see also sec. 12.2.



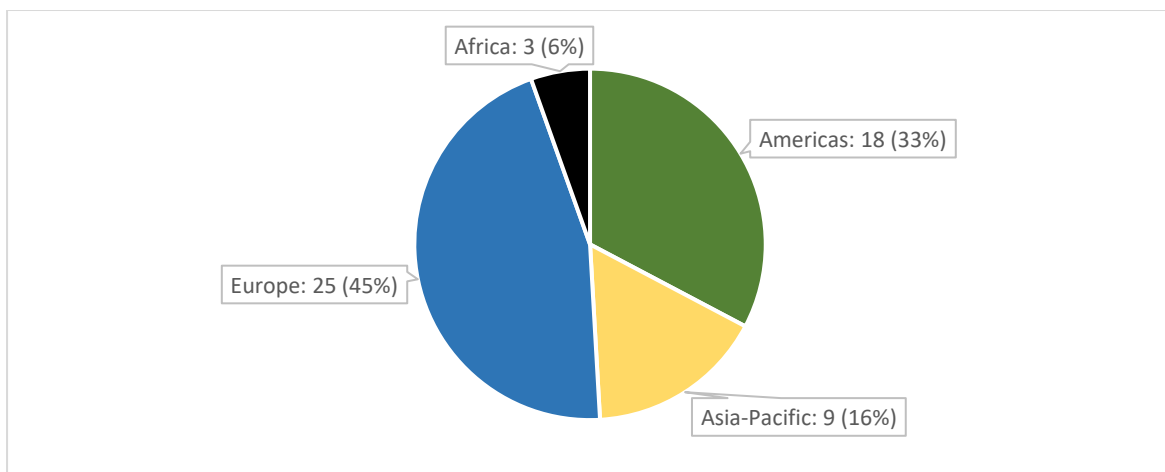
Another notable development is the dramatic decrease in size of the **Australian Taxpayers’ Charter**, going from 60 to 3 pages, and renamed as Our Charter by the Australian Tax Office. It will have to be seen what the consequences of this will be.

In relation to tax ombudspersons, positive developments are to be noted in **Spain**, with an increase in the reports published by the tax ombudsman.<sup>156</sup> A contrary movement must be observed in **Hungary**, where a continued constriction of the Hungarian government and persistent problems with the rule of law have also had adverse consequences for the protection of taxpayers’ rights.<sup>157</sup>

#### 0.4. Methodological remarks

Following the OPTR’s working standards and procedures, this Yearbook has been prepared based on the information provided in national reports from 55 countries worldwide,<sup>158</sup> 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 composed of practitioners/taxpayers, tax authorities, academics, tax ombudspersons and members of the judiciary of each surveyed country, with the aim of obtaining 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 ombudsman 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 2023 are as follows:

<sup>156</sup> See sec. 12.3.

<sup>157</sup> Id.

<sup>158</sup> It should be noted that, in connection with some countries, two or more national reports were submitted, as indicated further in this section.

Country	Position	Name
Argentina	Practitioner-Academic	Alberto Tarsitano
Australia	Ombudsperson	Duy Dam
		Karen Payne
	Academic	John Bevacqua
Austria	Academic	Barbara Gunacker-Slawitsch
	Practitioner	Christina Schwarzenbacher
	Tax Administration	Alfred Faller
Bahamas	Practitioner	Jivaan Bennett
Barbados	Practitioner	Jivaan Bennett
Belgium	Practitioner	Jef Van Eyndhoven
	Academic	Sylvie De Raedt
Bolivia	Practitioner-Academic	Alvaro Villegas Aldazosa
Bosnia and Herzegovina	Academic	Ana Dujmović
	Practitioner	Haris Jašarević
	Practitioner	Indir Osmić
Botswana	Academic	Mbakiso Magwape
Brazil	Practitioner-Academic	Paulo Ayres Barreto
		Dalton Luiz Dallazem
	Judiciary	Bianor Arruda
	Academic	Luís Eduardo Schoueri
		Raphael Assef Lavez
Bulgaria	Academic	Stoycho Dulevski

Country	Position	Name
	Practitioner	Boyana Milcheva
		Ivan Alexander Manev
Canada	Practitioner	Nicolas Cloutier
China (People's Rep.)	Academic	Zhengwen Shi
	Tax Administration	Zhiyong Zhang
Colombia	Ombudsperson	Leonardo Andrés Bautista Raba
		Yvonne Carolina Florez Cutiva
	Practitioner	Daniela Carolina Garzon Rey
Costa Rica	Academic	Johnny Pacheco Castro
Croatia	Academic	Nataša Zunic-Kovačević
Czech Republic	Practitioner-Academic	Hana Skalická
Denmark	Tax Administration	Henrik Klitz
	Practitioner	Henrik Peytz
Finland	Academic	Kristiina Äimä
		Eero Männistö
Germany	Tax Administration	Eva Oertel
	Practitioner	Martin Bartelt
	Academic	Daniel Dürrschmidt
Greece	Tax Administration-Academic	Katerina Perrou
	Judicial	Ioannis Dimitrakopoulos
Guatemala	Practitioner	Alfredo Rodríguez
		Alejandra Fuentes-Pieruccini
Guyana	Practitioner	Jivaan Bennett

Country	Position	Name
Honduras	Tax Administration	Roberto Ramos Obando
		Cristian Erazo Delgado
Hungary	Academic	Daniel Deak
India	Practitioner	Kuntal Dave
Ireland	Practitioner	Tatiana Kelly
Italy	Practitioner	Pietro Mastellone
		Isabella Cugusi
	Academic	Giovanna Tieghi
Jamaica	Practitioner	Jivaan Bennett
Japan	Academic	Masato Ohno
Kazakhstan	Practitioner	Anuar Nurakhmet
Kenya	Academic	Bosire Nyamori
	Practitioner	Brian Njenga Kagunyi
Lithuania	Practitioner	Marius Grajauskas
		Artūras Liutvinas
Luxembourg	Judiciary	Fatima Chaouche
	Practitioner	Joëlle Lyaudet
Mexico	Practitioner	Luis Salinas
		Fernando Juárez Hernández
		Diana Bernal Ladrón de Guevara
	Academic	Carlos Espinosa Berecochea
Nepal	Practitioner	Shailendra Uprety

Country	Position	Name
		Srijana Adhikari
The Netherlands	Practitioner	Roxana Bos
		Paul Halprin
New Zealand	Academic	Adrian Sawyer
Norway	Tax Administration	Eileen Monsen
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
Serbia	Academic	Svetislav V. Kostić
		Lidija Živković
Slovenia	Practitioner	Igor Angelovski
		Marusa Pozvek
South Africa	Ombudsperson	Gert van Heerden
	Academic	Jennifer Roeleveld
	Practitioner	Kevin Burt
	Ombudsperson-Academic	Javier Martín Fernández

Country	Position	Name
Spain		Jesús Rodríguez Márquez
	Judiciary	Felipe Alonso Murillo
		Manuel J. Lucas Durán
	Academic	Yolanda Martínez Muñoz
Elizabeth Gil García		
Sweden	Practitioner	Lynda Ondrasek Olofsson
	Academic	Eleonor Kristoffersson
Switzerland	Academic	Peter Hongler
Chinese Taipei	Academic	Huang Shih Chou
Trinidad & Tobago	Practitioner	Jivaan Bennett
Türkiye	Academic	Billur Yaltı
Ukraine	Academic	Iryna Stepanova
United Kingdom	Practitioner	Folajimi Olamide Akinla
United States	Academic	Christine S. Speidel
Venezuela	Academic	Melissa Elechiguerra
	Practitioner	Ronald Evans David Mongiovi 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, one comprising the case-law of the ECtHR and the ECJ; and (ii) for the Americas, one covering the judgments of the Inter-American Court of Human Rights (IACtHR). The regional groups of experts for 2023 are as follows:

Region	Position	Name
Court of Justice of the European Union	Tax Administration-Academic	Katerina Perrou
European Court of Human Rights	Academic - Practitioner	Felix Desmyttere
Inter-American Court of Human Rights	Academic; Academic – Ministry of Foreign Affairs	Patricio Miguel Masbernát Muñoz, Gloria Ramos-Fuentes

Reporters were asked to provide relevant information in three different ways. First, through Questionnaire 1, reporters were asked to 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**, **China (People's Rep.)**, **Colombia**, **Mexico** and **Poland** will have a value of 0.5, and each of the three reports from **Bulgaria** 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 from) 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 2023 (legislation enacted, administrative rulings, circulars, case law and tax administration practices)<sup>159</sup> 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.

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<sup>159</sup> Only for the purposes of the main texts of secs. 1. to 12. (thus thereby excluding the exhibits arranged by minimum standard/best practice) and the Appendices. With regard to Questionnaire 2, specific mention was made of situations in which a shift towards/away from recorded in 2021 was not reversed in 2022 and could hence be considered as to some extent consolidated.



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

### 1.1. General issues

Over the past several years, the OPTR has documented a growing utilization of digital tools for taxpayer identification, tax return filing and communication with taxpayers. This digital transformation, known as “Tax Administration 3.0”,<sup>160</sup> is gaining ground. As indicated in the OECD Tax Administration 2023 report, online filing of tax returns is now commonplace, with more than 85% of individuals and 95% of businesses filing their returns electronically.<sup>161</sup>

This shift toward digital solutions undoubtedly has had positive effects for both the tax administration and for taxpayers. Indeed, the adoption of digital tools facilitates the process of taxpayer identification. Furthermore, the widespread use of electronic tax return filing (e-filing) and working with pre-populating tax returns will reduce the time and resources required to file returns. An electronic filing environment can not only provide taxpayers with instant access to their tax-related information but might also facilitate making corrections to data if required.

However, it is important to acknowledge that the increased use of such digital resources could also present challenges, particularly for those members of society who may not have access to (or be familiar with) technology, such as the elderly and other vulnerable populations that may struggle to navigate the digital landscape. As outlined in this Yearbook, jurisdictions are inclined to still provide for exceptions to digital interactions if required, which was received as a positive development by reporters.

In light of the above-mentioned concerns, tax authorities and legislators should ensure that adequate measures and safeguards are in place to assist taxpayers in need and, in particular, to ensure that the digitalization process is inclusive and accessible to all taxpayers. Tax authorities should not only safeguard sensitive information that has been collected from their own records, third parties or the taxpayer himself but should also install mechanisms to avoid identity theft and other forms of cybercrime. The implementation of robust and effective security measures is essential to maintaining the trust and confidence of taxpayers in this process. As will be demonstrated below, in several countries, steps in the right direction have been taken in this respect.

In the authors’ opinion, it is crucial for tax authorities to strike a delicate balance between accessibility and security in further developing digital tools and measures. As mentioned in this section, despite the introduction of digital tools, tax authorities have still introduced (or enhanced) alternative ways of entering into contact with taxpayers, such as phone or in-person support, for taxpayers who may not be able to use digital tools. Striking the right balance between accessibility and security is required in order to foster trust and confidence in the tax system and may ultimately lead to an increase in overall compliance.

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<sup>160</sup> See Tax Administration 3.0: The Digital Transformation of Tax Administration, available at <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-3-0-the-digital-transformation-of-tax-administration.pdf> (accessed 23 Feb. 2024).

<sup>161</sup> Tax Administration 2023: Comparative Information on the OECD and other Advanced and Emerging Economies, available at <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-3-0-the-digital-transformation-of-tax-administration.htm> (accessed 23. Feb. 2024).

In the area of taxpayer identification, states have once again taken steps to enhance security measures to prevent identity theft. One notable example is Australia, where additional measures have resulted in positive changes for the sixth consecutive year in this area. The case of Australia demonstrates the importance of continuous improvement and the need for tax authorities to remain vigilant in securing taxpayer identification processes. Another interesting development, and contrary to the standstill in previous years, is the fact that positive shifts were also reported as to the minimum standard relating to religious sensitivities. For example, in the United States, by way of derogation from the normal procedure, an exemption from e-filing may be provided for filers for whom using technology conflicts with their religious beliefs (see section 1.2.).

In 2023, two positive shifts were noted in the trend towards protecting the confidentiality of taxpayers with regards to the handling of their information by third parties for tax purposes (see section 1.3.). Like last year, no changes were reported in relation to the best practice that requires, where tax is withheld by third parties, that the taxpayer should be excluded from liability if the third party fails to pay over the tax.

One of the most active areas in this edition of the Yearbook relates to the right to access (and correct) information held by tax authorities, known as *habeas data* (see section 1.4.). It is striking that all jurisdictions reported positive changes with regard to both minimum standards and the best practice that is being monitored by the OPTR.

When it comes to communication with taxpayers, several countries have reported positive developments by providing more secure communication channels (see section 1.5.).

In line with the previous editions of this Yearbook, the trend in the area of cooperative compliance is mixed (see section 1.6.). While cooperative compliance has seen continued growth in recent years, with several tax authorities implementing or expanding cooperative compliance programmes, one jurisdiction has discontinued its pilot project in this area.

The trend of increasing *assistance with compliance obligations*, as observed in previous OPTR Yearbooks, has continued in recent years (see section 1.7.). Previous Yearbooks mentioned a trend of increasing tax compliance services since the beginning of the COVID-19 pandemic. This trend has once more continued. No less than seven jurisdictions have reported positive developments, surpassing even last year's positive result for six jurisdictions.

In conclusion, the use of digital tools in tax administration has continued to increase over recent years. This trend has had a positive impact on the speed and efficiency of the tax process, but it has also raised concerns about accessibility and security. Safeguards are being implemented to prevent impersonation and protect the confidentiality of taxpayer information, but these measures can also create additional hurdles for taxpayers. In the area of cooperative compliance, the trend has been mixed, with two jurisdictions reporting a setback. Assistance with compliance obligations has continued to be a positive and permanent trend, with tax administrations providing more resources and guidance to help taxpayers meet their obligations. This trend towards increased digitalization in tax administration presents both opportunities and challenges, but overall one can notice a shift towards the minimum standards and best practices that the OPTR monitors.

## 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, Bolivia, Costa Rica

**Shifted away from the minimum standard:**

None

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

**Shifted towards/improved the minimum standard:**

Honduras, United States

**Shifted away from the minimum standard:**

None

As mentioned in previous OPTR Yearbooks, once more, an overall positive trend can be noticed regarding the issuance of taxpayer identification numbers (TINs).<sup>162</sup> Like last year, no jurisdictions has reported a shift away from the minimum standards in this respect, and three jurisdictions noted an improvement.

For the sixth consecutive year, **Australia** reported an improvement towards the minimum standard. In 2022, an Australian Business Registry Services (ABRS) was established.<sup>163</sup> The ABRS aims to operationalize a single business registry service, including director identification numbers (director IDs).<sup>164</sup> A director ID is a 15-digit identifier given to a director (or someone who intends to become a director) who has verified their identity with ABRS. The ID can be obtained for free and will make it easier for regulators to trace directors' relationships with companies over time. It is a critical tool used to provide transparency of director activity and help to detect potential director involvement in unlawful activity,<sup>165</sup> such as phoenix activity,<sup>166</sup> which may have otherwise remained undetected. The national reporters noted that the ABRS continues its administration of director identification numbers.<sup>167</sup> In 2022-2023, 1.7 million

<sup>162</sup> OPTR Yearbook on Taxpayers' Rights (2022), at sec. 1.2., available at [https://www.ibfd.org/sites/default/files/2023-05/opttr-yearbook-2022\\_for-release-120523.pdf](https://www.ibfd.org/sites/default/files/2023-05/opttr-yearbook-2022_for-release-120523.pdf) (accessed 9 Feb. 2024).

<sup>163</sup> The ABRS website launched on 6 Oct. 2022 with the director identification number (director ID) platform live from 31 Mar. 2022.

<sup>164</sup> The introduction of a director ID was already contemplated by the Australian government back in 2017. See OPTR, *The IBFD Yearbook on Taxpayers' Rights 2017* sec. 1.2. (IBFD 2018).

<sup>165</sup> OPTR Yearbook on Taxpayers' Rights (2022), at sec. 1.2., available at [https://www.ibfd.org/sites/default/files/2023-05/opttr-yearbook-2022\\_for-release-120523.pdf](https://www.ibfd.org/sites/default/files/2023-05/opttr-yearbook-2022_for-release-120523.pdf) (accessed 9 Feb. 2024).

<sup>166</sup> Illegal phoenix activity is a practice in which companies liquidate, wind up or are abandoned to avoid paying debts.

<sup>167</sup> AU: OPTR Report (2023) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 1.

director IDs were issued,<sup>168</sup> and approximately 85% of directors now have a director ID, having successfully verified their identity.

In addition, the Australian government has announced an independent review of the Modernising Business Registers (MBR) programme in the 2023-2024 financial year.<sup>169</sup> The outcomes from the review will inform the programme's future.

In **Bolivia**, as from 2023, the TINs and commercial registration numbers are identical. In addition, in the procedure of obtaining a TIN, a physical verification has been implemented.<sup>170</sup>

The **Costa Rican** tax administration has published a circular letter providing sign-in procedures and requirements for accessing the Tax Authority Platform (*Plataforma de Trámites Virtuales* (TRAVI)).<sup>171</sup> Petitions made to the tax administration through the platform should in principle be made using digital signatures in order to prevent the impersonation of taxpayers. Only in exceptional cases will physical signatures (dully notarized) be allowed.<sup>172</sup>

Mixed signals were reported by the **United States**. The IRS created the Taxpayer Protection Program (TPP) to identify and stop the processing of returns filed by identity thieves to prevent the issuance of fraudulent refunds. However, the systems for detecting and preventing identity theft have in the past struggled with high false detection rates. On the positive side, in calendar year 2022, the false detection rate fell to 47%, from 61% in calendar year 2021.<sup>173</sup> However, taxpayers who are victims of tax-related identity theft are waiting an average of nearly 19 months for the IRS to process their returns and send their refunds, posing serious problems as noted in the National Taxpayer Advocate's Annual Report to Congress.<sup>174</sup>

In addition, and contrary to the standstill in previous years, two positive shifts were reported as to the minimum standard relating to religious sensitivities in this area.<sup>175</sup>

First, the Institutional Strategic Plan of the **Honduran** Tax Administration (SAR) for the year 2023 includes within its institutional compass, a section on gender equity, which mentions the following consideration to combat through its institutional activities:<sup>176</sup> "SE 9. Lack of

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<sup>168</sup> AU: Commissioner of Taxation Annual Report 2022-23, p 12, available at <https://caat-p-001.sitecorecontenthub.cloud/api/public/content/eba65257d7b04994bb5be907cb8add40> (accessed 9 Feb. 2024).

<sup>169</sup> AU: Commissioner of Taxation Annual Report 2022-23, p 12, available at <https://caat-p-001.sitecorecontenthub.cloud/api/public/content/eba65257d7b04994bb5be907cb8add40> (accessed 9 Feb. 2024).

<sup>170</sup> BO: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 1.

<sup>171</sup> See CR: <https://crecex.com/wp-content/uploads/2023/07/MH-DGT-RES-0010-2023-Condicion-de-uso-para-la-plataforma-de-Tr%C3%A1mites-Virtual.pdf> (accessed 9 Feb. 2024).

<sup>172</sup> CR: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 1.

<sup>173</sup> US: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 1.

<sup>174</sup> See US: National Taxpayer Advocate, *Annual Report to Congress 2023* pp. 78-86, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 9 Feb. 2024).

<sup>175</sup> See OPTR Report (2022), at sec. 1.2.

<sup>176</sup> HN: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 2.

awareness of the different types of violence and oppression suffered by women and LGBTQ+ people for reasons that add to gender, such as class, ethnicity, culture, spiritual belief”.<sup>177</sup>

Second, the **United States**’ tax authorities issued regulations in February 2023 adopting an administrative exemption to e-file mandates.<sup>178</sup> By way of derogation from the standard procedure, an exemption from electronic filing requirements may be provided for filers for whom using technology conflicts with their religious beliefs.<sup>179</sup>

### 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:**

Bulgaria, Italy

**Shifted away from the minimum standard:**

None

**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:**

None

**Shifted away from the best practice:**

None

There were no significant changes in 2023 in respect of the trend in favour of protecting the confidentiality of taxpayers regarding the information handled by third parties for tax purposes, with the exception of **Bulgaria**. As of 1 January 2023, a new provision regarding data protection was inserted into the Bulgarian Tax and Social Security Procedure Code. Financial institutions and the operators of platforms explicitly outlined should be compliant with GDPR requirements under EU law. A platform operator, for whom an obligation to provide information arises, may use a third party as a service provider, including another platform operator, for the fulfilment of complex verification obligations. The responsibility for fulfilling the due diligence obligations rests with the platform operator providing the information.<sup>180</sup>

In **Italy**, the Taxpayers’ Bill of Rights has recently been amended in the framework of a comprehensive tax reform, thereby introducing a specific provision that strengthens the confidentiality of taxpayers’ data and information. On the basis of this provision, the tax authorities are prohibited from disclosing confidential information.<sup>181</sup> The status of the

<sup>177</sup> See HN: <https://www.sar.gob.hn/download/acuerdo-numero-sar-233-2022-numero-36056-de-fecha-20-de-octubre-2022-contentivo-de-la-aprobacion-del-marco-estrategico-institucional-del-sar-que-debe-regir-los-planes-operativos-anuales-poa-de-c/> (accessed 9 Feb. 2024).

<sup>178</sup> US: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 2.

<sup>179</sup> US: Treas. Reg. §§ 301.6011-2(c)(6)(ii); 301.6011-3(b)(2); 301.6011-5(b)(2); and 301.6037-2(b)(2).

<sup>180</sup> BG: OPTR Report (2023) (Academia), Questionnaire 2, Question 3.

<sup>181</sup> IT: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 3.

Taxpayers' Bill of Rights is now that of implementation of all constitutional principles, EU law and ECHR.

Like last year,<sup>182</sup> no changes were reported in relation to the best practice that requires that, where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax.

### 2023 Relevant Case Law – European Court of Justice

<b>Case</b>	<b>C-615/21 <i>Napfény-Toll</i></b>	
<b>Date</b>	13 July 2023	
<b>EU Charter Articles</b>	Article 6 (Right to an effective remedy and to a fair trial)	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
The issue is whether the principles of legal certainty and effectiveness of EU law preclude legislation and the administrative practice related to it, under which, in relation to VAT, the limitation period in respect of the right of the tax authorities to assess that tax is to be suspended for the whole duration of judicial review, regardless of the number of repeat administrative tax procedures following those reviews and with no ceiling on the cumulative duration of the suspensions of that period, including in cases where the court ruling on a decision of the tax authority concerned taken as part of a repeat procedure following on from an earlier court decision finds that that tax authority failed to comply with the guidance contained in that court decision.	The principles of legal certainty and effectiveness of EU law must be interpreted as not precluding legislation of a Member State or the related administrative practice, under which, in relation to VAT, the limitation period in respect of the right of the tax authorities to assess that tax is suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure has had to be repeated following those reviews and with no ceiling on the cumulative duration of the suspensions of that period, including in cases where the court ruling on a decision of the tax authority concerned taken as part of a repeat procedure, following on from an earlier court decision, finds that that tax authority failed to comply with the guidance contained in that court decision.	In line with AG Rantos' Opinion to this case, it is apparent from the Court's case law that the reasonableness of the period taken for the judgment must be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities.

#### 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, Colombia

**Shifted away from the minimum standard:**

None

<sup>182</sup> See OPTR Report (2022), at sec. 1.3.



**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:**

Botswana, Bulgaria, Colombia, Costa Rica, Guatemala, Italy, Netherlands

**Shifted away from the minimum standard:**

None

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

**Shifted towards/matched the best practice:**

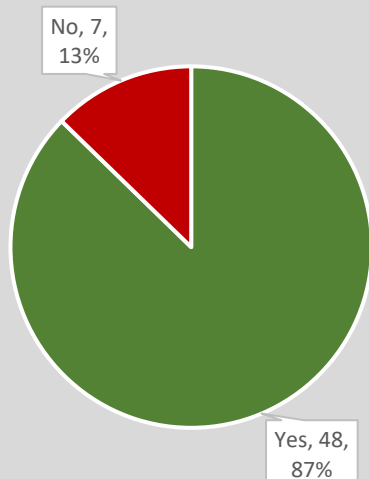
Botswana, Guatemala, Netherlands, Spain, United States

**Shifted away from the best practice:**

None

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

62 responses



**Yes:** Argentina, Australia, Austria, Belgium, Bolivia, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, Hungary, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (2), Nepal, Netherlands, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, Ukraine, United Kingdom, United States, Venezuela

**No:** Bahamas, Barbados, Bosnia and Herzegovina, Guyana, Jamaica, Mexico (1), New Zealand, Trinidad and Tobago

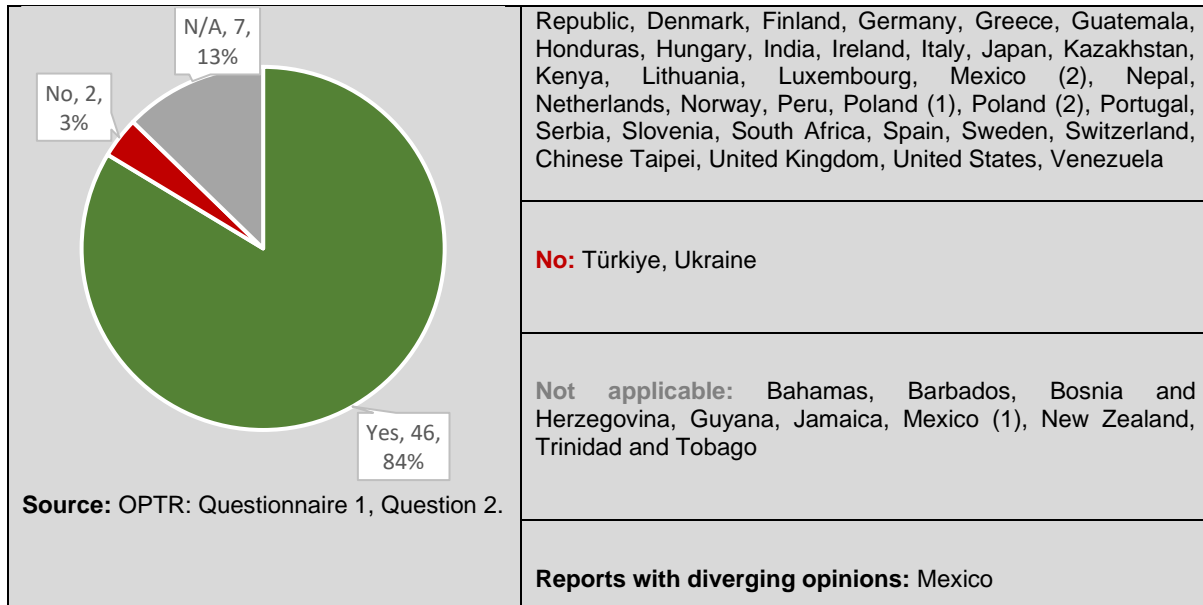
**Source:** OPTR: Questionnaire 1, Question 1.

**Reports with diverging opinions:** Mexico

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

62 responses

**Yes:** Argentina, Australia, Austria, Belgium, Bolivia, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech



The **Australian** tax authorities (ATO) continue to use data to pre-fill income tax returns. In some cases, the pre-filled data is used to prompt taxpayers to check prior year returns where the pre-filling differs from other taxpayers in similar circumstances.<sup>183</sup> According to the Commissioner of Taxation's Annual Report, data analytics were used to, inter alia, provide real-time prompts to taxpayers to check their amounts and send informative pre-fill messages to clients to consider the tax consequences of their crypto asset sales.<sup>184</sup>

In **Botswana**, a system of self-assessment was implemented, which includes guidelines for taxpayers.<sup>185</sup>

As from 1 January 2023, **Bulgarian** sellers on platforms are required to correct information about them when the platform operator has reasons to believe that the seller's data may be inaccurate based on an enquiry about a particular seller received from the competent authority. Measures have been introduced to ensure the correctness of information on sellers operating through platforms. In such cases, the seller will have to submit reliable supporting documents, data or information from an independent source.

In **Colombia**, 5.2 million pre-filled income tax returns were made available to taxpayers through electronic services,<sup>186</sup> which is an increase from 4.8 million as reported in the 2022 Yearbook.<sup>187</sup> These tax returns incorporate the content of the information reported by third parties and may be modified by the taxpayer. Furthermore, 1.2 million VAT returns were pre-populated by the tax administration based on the information obtained from electronic

<sup>183</sup> See AU: OPTR Report (2023) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 4.

<sup>184</sup> AU: Commissioner of Taxation Annual Report 2022-23, p 36, available at <https://caat-p-001.sitecorecontenthub.cloud/api/public/content/eba65257d7b04994bb5be907cb8add40> (accessed 9 Feb. 2024).

<sup>185</sup> BW: OPTR Report (2023) (Academia), Questionnaire 2, Question 5.

<sup>186</sup> The Colombian tax authorities have modified the applicable regulations, obliging individuals to file income tax returns electronically. See [Individuals Must File Income Tax Returns Electronically, Says National Tax Authority](#), News IBFD.

<sup>187</sup> See OPTR Report (2022), at sec. 1.4.



invoicing, and 51,979 national excise tax returns were prepared.<sup>188</sup> The Colombian authorities have also enabled a new consultation module in their electronic computer services. In this module, taxpayers can consult the data reported regarding them in the beneficial ownership information register of legal entities and other reporting entities.<sup>189</sup>

In the above-mentioned administrative circular (see section 1.2.),<sup>190</sup> the **Costa Rican** tax authorities have provided that the possibility to amend information when using the electronic platform of the tax authorities (TRAVI) is by way of exception not possible due to personal conditions.<sup>191</sup>

The virtual agency of the **Guatemalan** tax administration has provided a useful tool for reviewing the information of the taxpayer and permits them to make changes if required.<sup>192</sup>

In **Italy**, the Taxpayers' Bill of Rights was amended, currently expressly providing that all state administrations shall comply with the right of *audi alteram partem* and access to tax administrative documentation, the protection of legitimate expectations, the prohibition of *ne bis in idem*, the principle of proportionality and the duty to correct administrative acts. The same provisions are valid as principles for the regions and local authorities which adapt their respective systems in compliance with their respective autonomies.<sup>193</sup>

In the **Netherlands**, taxpayers can (under certain conditions) already request access to their personal tax file held by the tax authorities. In 2023, a law was enacted that, as of 31 December 2025, codifies this right and opens the possibility that if the tax authorities decline to give this access, the taxpayer will have a right to appeal this decision.<sup>194</sup>

In order to improve communication with taxpayers, the **Spanish** tax administration has announced simplification of language in its most common documents.<sup>195</sup> This was based on a commitment established in its 2020-2023 strategic plan. Accordingly, the tax administration has modified eight categories of communication and notification to taxpayers, such as personal income tax documentation requirements, proposals for tax assessments, and documents of representation and of the rights and guarantees of the taxpayer. Measures include shortening communication, redesigning the way in which information is presented to

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<sup>188</sup> CO: OPTR Report (2023) ((Tax) Ombudsman Delegate), Questionnaire 2, Question 4.

<sup>189</sup> CO: OPTR Report (2023) ((Tax) Ombudsman Delegate), Questionnaire 2, Question 5.

<sup>190</sup> See CR: <https://crecex.com/wp-content/uploads/2023/07/MH-DGT-RES-0010-2023-Condicion-de-uso-para-la-plataforma-de-Tr%C3%A1mites-Virtual.pdf> (accessed 9 Feb. 2024).

<sup>191</sup> CR: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 5.

<sup>192</sup> GT: OPTR Report (2023) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 5.

<sup>193</sup> IT: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 5.

<sup>194</sup> NL: OPTR Report (2023) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 5. See also Tweede Kamer der Staten-Generaal, 36 418 Wijziging van enkele belastingwetten en enige andere wetten (Belastingplan 2024), Amendment Nr. 110, ISSN 0921 – 7371.

<sup>195</sup> ES: OPTR Report (2023) (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 5.



taxpayers (by, for example, including graphic elements) and including a summary on the first page of communications and notifications.<sup>196</sup>

Like in the last two years,<sup>197</sup> in the **United States**, the IRS made available additional information through taxpayer online accounts and through online tools.<sup>198</sup> The IRS also promoted its online tools through press releases and social media (the so-called IRS Tax Tips).

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<sup>196</sup> See ES: [https://sede.agenciatributaria.gob.es/Sede/La\\_Agencia\\_Tributaria\\_simplifica\\_el\\_lenguaje\\_de\\_sus\\_documentos\\_mas\\_habituales\\_para\\_mejorar\\_la\\_comunicacion\\_con\\_el\\_contribuyente.htm](https://sede.agenciatributaria.gob.es/Sede/La_Agencia_Tributaria_simplifica_el_lenguaje_de_sus_documentos_mas_habituales_para_mejorar_la_comunicacion_con_el_contribuyente.htm) (accessed 10 Feb. 2024).

<sup>197</sup> See also OPTR Report (2022), at sec. 1.4.

<sup>198</sup> US: OPTR Report (2023) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 5.

## 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<b>Application No. 46821/16 <i>Kimberli-Klark Ukrayina</i> against Ukraine</b>
<b>Date</b>	28 March 2023
<b>ECHR Articles</b>	Article 1 of Protocol 1 (Protection of property)
<b>Facts</b>	<p>The applicant company's request to have the VAT rate changed from 20% to 7% in view of the nature of the goods it imported (medical goods) was refused by the tax authorities. This decision was based on two grounds. First, the applicant had itself defined the rate in its tax declaration. Second, the goods the applicant imported could not be considered "medical" according to the new legislation. This reasoning was accepted by the High Administrative Court of Ukraine in its final decision of 28 January 2015. The applicant company complains under article 1 of Protocol 1 that the domestic law which led to the interference with its property rights lacked stability and clarity.</p> <p>In its judgment, the ECtHR will have the opportunity to comment on the taxpayer's right to correct inaccuracies in information by the taxpayers themselves and on the standards of clarity and foreseeability in the context of article 1 of Protocol 1 to the Convention.</p>

## 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<b>Application No. 13730/15 <i>Tatiana Ceachir</i> against the Republic of Moldavia</b>
<b>Date</b>	28 March 2023
<b>ECHR Articles</b>	Article 6 (Right to a fair trial)
<b>Facts</b>	<p>The application concerns the right to a fair hearing, in particular an alleged violation of the right to adversarial proceedings and equality of arms because of having been unable to access a document regarding the calculation by the Cadaster Agency of the taxes due on immovable property.</p> <p>This case features a rather rare reliance on the equality-of-arms principle.</p>

### 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:**

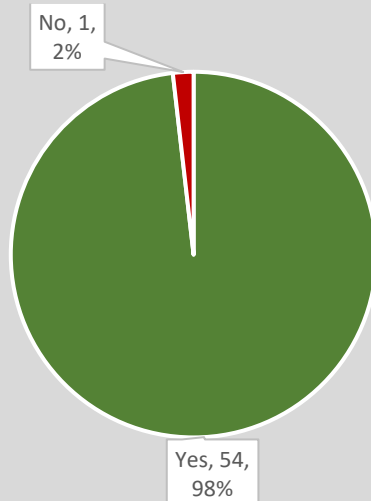
Australia, Greece, United Kingdom, United States

**Shifted away from the minimum standard:**

None

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

62 responses



Source: OPTR: Questionnaire 1, Question 3.

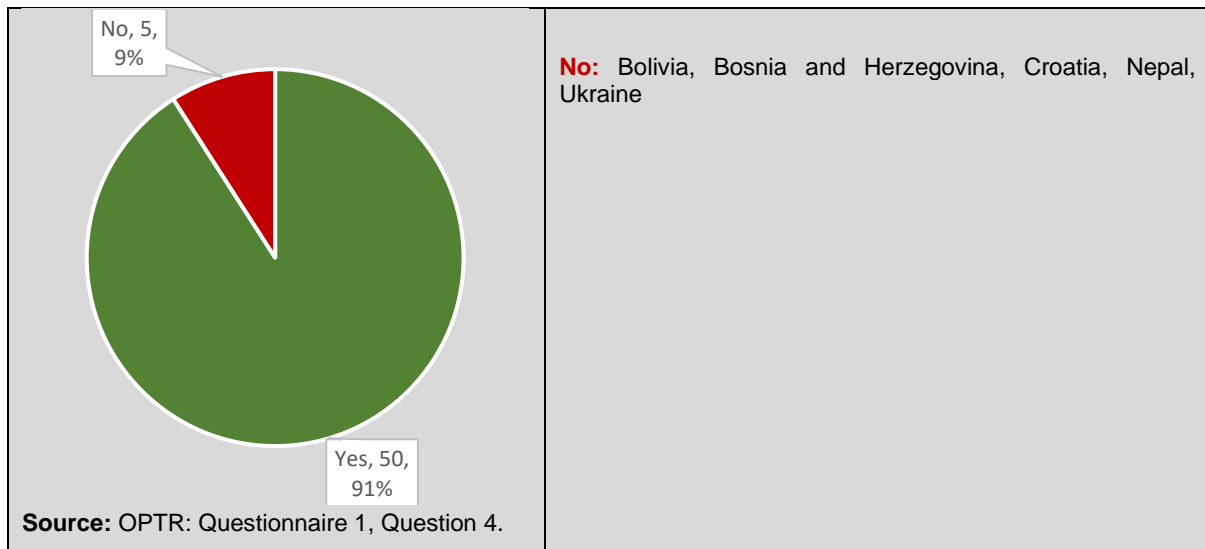
**Yes:** Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Luxembourg, Mexico (1), Mexico (2), Nepal, Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Trinidad and Tobago, Türkiye, Ukraine, United Kingdom, United States, Venezuela

**No:** Lithuania

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

62 responses

**Yes:** Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Trinidad and Tobago, Türkiye, United Kingdom, United States, Venezuela



The trend towards implementing and improving systems to prevent impersonation or interception of e-communications with taxpayers was once more maintained in 2023.<sup>199</sup>

For the second year in a row, **Australia** has taken measures to increase cybersecurity,<sup>200</sup> following last year's significant upgrade to myGovID.<sup>201</sup> During 2022-23, the ATO took several measures, such as: (i) external scrutineer assessments of corruption risk exposure; (ii) analysis of ATO insider threat strategy and management; and (iii) potential gaps and improvement opportunities in the ATO's non-technical cyber controls, such as governance frameworks, policies and procedures to prevent data breaches, and organizational readiness to respond to data breaches beyond technical remediation.<sup>202</sup>

In **Greece**, all taxpayers were required to update their email addresses and appoint a second contact person and second email address for communication with the tax authorities.<sup>203</sup>

In the **United Kingdom**, HMRC published several documents in the area of cybersecurity, including guidance on keeping login details safe, usage of QR codes and sending text messages. On several occasions, they provided updates alerting taxpayers on specific information it has communicated to them by email. This information includes communications on managing pension schemes, making tax digital, Pillar Two, tax credit and self-assessment

<sup>199</sup> See also OPTR Report (2022), at sec. 1.5.

<sup>200</sup> AU: OPTR Report (2023) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 6.

<sup>201</sup> See also OPTR Report (2022), at sec. 1.5.

<sup>202</sup> AU: Commissioner of Taxation Annual Report 2022-23, p 40, available at <https://caat-p-001.sitecorecontenthub.cloud/api/public/content/eba65257d7b04994bb5be907cb8add40> (accessed 9 Feb. 2024).

<sup>203</sup> GR: OPTR Report (2023) (Tax Administration), Questionnaire 2, Question 6.

requirements, gift aid and tax-free childcare. In relation to phone calls, HMRC set out specific times within which it would contact, by phone, taxpayers on specific issues.<sup>204</sup>

Lastly, the **United States**, like in the previous year, noted a positive shift.<sup>205</sup> The IRS implemented a new taxpayer authentication platform that is consistent with federal guidance and migrated around 30 online applications onto the new platform.<sup>206</sup> Furthermore, the IRS has significantly expanded the functionality of taxpayer and tax professional online accounts in 2023, including the ability to respond online to several high-volume notices.<sup>207</sup> However, as noticed by the National Taxpayer Advocate, it is not always possible to communicate electronically with the agency, and online communication functions are not robust.<sup>208</sup>

### 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:**

Brazil, China (People’s Rep.), Italy

**Shifted away from the minimum standard:**

Germany, Honduras

A mixed trend can be noted in the area of cooperative compliance, with some countries moving towards the minimum standard but, at the same time, two countries shifting away.

For the second year in a row, a positive shift in this area was observed in **Brazil**.<sup>209</sup> In 2023, the Brazilian Constitution was amended in the context of a tax reform. The reform introduced (among other measures) the cooperation principle into the tax system. Furthermore, the Federal Revenue Service launched a pilot project of cooperation compliance (CONFIA). This project aims to enhance the relationship between taxpayers and tax authorities, avoiding litigation and improving compliance with tax obligations. Lastly, the state of São Paulo enacted Law 17,843/23, which prescribes the settlement of tax disputes. Comparing it to the federal settlement programme, there is a provision that assures the right to challenge tax debts on grounds of consolidated judicial case law, regardless of the case having been settled or not.<sup>210</sup>

<sup>204</sup> UK: OPTR Report (2023) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 6.

<sup>205</sup> See also OPTR Report (2022), at sec. 1.5.

<sup>206</sup> US: OPTR Report (2023) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 5.

<sup>207</sup> See also US: Treasury Inspector General for Tax Administration, Inflation Reduction Act: Assessment of the IRS’s Efforts to Deliver Expected Improvements for the 2023 Filing Season (2023-IE-2010), pp. 2-4, available at <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf> (accessed 10 Feb. 2024).

<sup>208</sup> See US: National Taxpayer Advocate, *Annual Report to Congress 2023* pp. 87-100, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 10 Feb. 2024).

<sup>209</sup> See also OPTR Report (2022), at sec. 1.6.

<sup>210</sup> BR: OPTR Report (2023) (Academia), Questionnaire 2, Question 7.

In **China (People's Rep.)**, tax compliance agreements are concluded with large enterprises that have been assessed to have a high degree of tax compliance. The system works on a voluntary basis.<sup>211</sup>

**Germany** reports a setback. In 2023, a system of cooperative compliance was established for test purposes, for which taxpayers may apply for participation.<sup>212</sup> However, the tax authorities decide at their own discretion whether taxpayers may participate. In 2029, the system will be evaluated.<sup>213</sup>

As already reported in the 2022 Yearbook,<sup>214</sup> a **Honduran** pilot project on cooperative compliance for large taxpayers was discontinued following a change in the tax administration,<sup>215</sup> and cooperative compliance was removed from the tax administration's strategic aims.<sup>216</sup>

Lastly, the **Italian** Council of Ministers has approved a decree strengthening the cooperative compliance programme. One of the main measures includes a gradual reduction of the revenue or turnover threshold to access the programme.<sup>217</sup>

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<sup>211</sup> CN: OPTR Report (2023) (Tax Administration), Questionnaire 2, Question 7.

<sup>212</sup> DE: Art. 97 § 38 EGAO.

<sup>213</sup> DE: OPTR Report (2023) (Taxpayers/Tax Practitioners, Tax Administration, Academia), Questionnaire 2, Question 7.

<sup>214</sup> See also OPTR Report (2022), at sec. 1.6.

<sup>215</sup> HN: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 7.

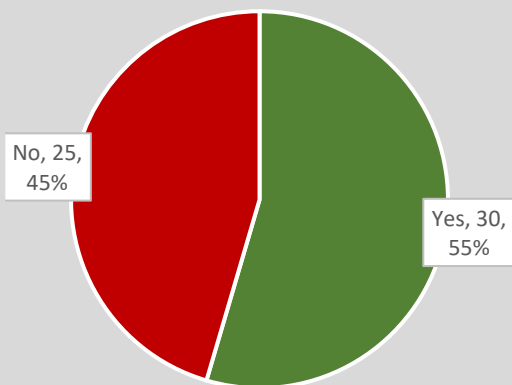
<sup>216</sup> Available at HN: <https://www.sar.gob.hn/download/acuerdo-numero-sar-233-2022-numero-36056-de-fecha-20-de-octubre-2022-contentivo-de-la-aprobacion-del-marco-estrategico-institucional-del-sar-que-debe-regir-los-planes-operativos-anuales-poa-de-c/> (accessed 11 Feb. 2024).

<sup>217</sup> See [Council of Ministers Preliminarily Approves Decree Strengthening Cooperative Compliance Programme](#), News IBFD.



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

62 responses



Source: OPTR: Questionnaire 1, Question 5.

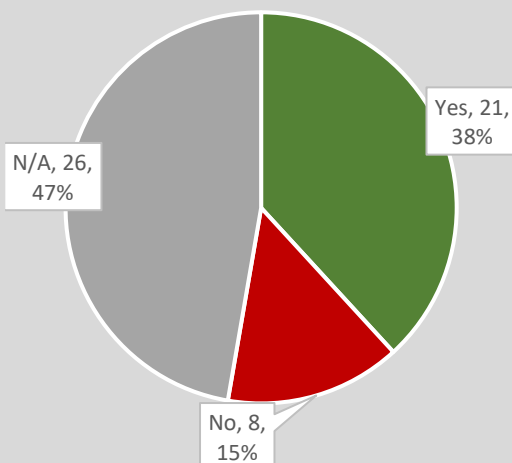
**Yes:** Australia, Austria, Belgium, Brazil (1), Brazil (2), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Denmark, Finland, Germany, Ireland, Italy, Japan, Kazakhstan, Lithuania, Mexico (2), Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States

**No:** Argentina, Bahamas, Barbados, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria (1), Bulgaria (2), Bulgaria (3), Czech Republic, Greece, Guatemala, Guyana, Honduras, Hungary, India, Jamaica, Kenya, Luxembourg, Mexico (1), Nepal, Peru, Serbia, Chinese Taipei, Trinidad and Tobago, Türkiye, Ukraine, Venezuela

**Reports with diverging opinions:** Mexico

**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?**

62 responses



**Yes:** Australia, Austria, Brazil (1), Brazil (2), China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Ireland, Italy, Japan, Kazakhstan, Lithuania, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, United Kingdom, United States

**No:** Belgium, Canada, Denmark, Finland, Germany, Mexico (2), Netherlands, New Zealand, Switzerland

**Not applicable:** Argentina, Bahamas, Barbados, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria (1), Bulgaria (2), Bulgaria (3), Czech Republic, Greece, Guatemala, Guyana, Honduras, Hungary, India, Jamaica, Kenya, Luxembourg, Mexico (1), Nepal, Peru, Serbia, Chinese Taipei, Trinidad and Tobago, Türkiye, Ukraine, Venezuela

Source: OPTR: Questionnaire 1, Question 6.	
	Reports with diverging opinions: Mexico

### 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:**

Botswana, Costa Rica, Greece, Honduras, Mexico, Spain, United States

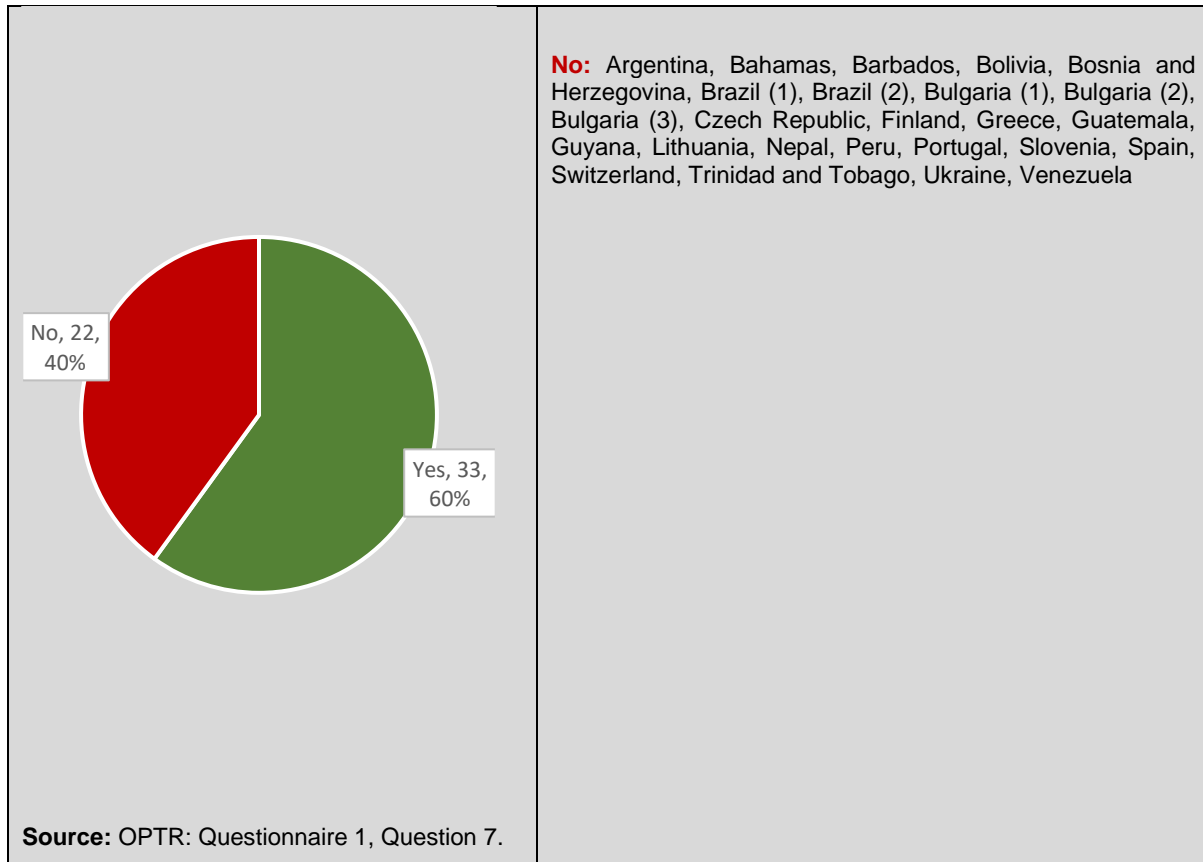
**Shifted away from the minimum standard:**

None

Previous Yearbooks mentioned a trend of increasing tax compliance services since the beginning of the COVID-19 pandemic.<sup>218</sup> This trend has once more continued. No less than seven jurisdictions have reported positive developments, even surpassing last year’s positive result for six jurisdictions.

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?	
62 responses	<p><b>Yes:</b> Australia, Austria, Belgium, Botswana, Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Denmark, Germany, Honduras, Hungary, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Poland (1), Poland (2), Serbia, South Africa, Sweden, Chinese Taipei, Türkiye, United Kingdom, United States</p>

<sup>218</sup> See also OPTR Report (2022), at sec. 1.7.



**Botswana** reports that physical in-person support was made available in remote areas (so-called taxpayer support drives).<sup>219</sup>

As already mentioned in this Yearbook (see section 1.2.), the **Costa Rican** tax authorities have provided that the possibility to amend information when using the electronic platform of the tax authorities (TRAVI) is by way of exception not possible due to personal conditions. In addition, the tax administration has included information on its webpage containing contact details of universities that offer services to taxpayers with respect to their tax compliance obligations.<sup>220</sup>

The **Greek** Independent Authority for Public Revenue (IAPR) has continued the implementation of its plan to make more services available online or remotely (e.g. by video conference).

In **Honduras**, the tax authorities (*Servicio de Administración de Rentas (SAR)*) have opened tax offices in Choloma, Intibucá and Roatán, areas with the highest demand for services.<sup>221</sup>

<sup>219</sup> BW: OPTR Report (2023) (Academia), Questionnaire 2, Question 8.

<sup>220</sup> CR: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 8.

<sup>221</sup> HN: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 8.

The new offices were opened in order to meet a greater demand for services and to reduce transportation costs for the population.<sup>222</sup>

The **Mexican** tax authority strengthened remote assistance during 2023 through its web site, phone calls, chat, mobile applications and social media.<sup>223</sup> During the second trimester of 2023, the tax authorities reportedly provided a total of 7,657,332 services to taxpayers using the mobile application called SAT ID.<sup>224</sup>

On 11 July 2023, the **Spanish** Supreme Court declared the invalidity of several tax provisions that obliged all taxpayers to file their personal income tax return by electronic means.<sup>225</sup> As a result of this judgement, Royal Decree-Law 8/2023 of 27 December 2023 has amended the Personal Income Tax Law. The obligation for taxpayers to e-file their tax returns may be established, provided that the tax administration ensures personalized attention to taxpayers who require assistance in complying with their tax obligations.<sup>226</sup>

In line with last year's Yearbook,<sup>227</sup> the **United States** also noted several positive changes, but, at the same time, the national reports mentions that more progress is needed.<sup>228</sup> This seems to be a structural problem, as the 2021 Yearbook already mentioned low levels of service, which adversely impacted taxpayers.<sup>229</sup> Congress provided increased funding for tax clinics and free tax preparation programs for 2023.<sup>230</sup> As already reported,<sup>231</sup> in August 2022, Congress provided significant new funding for the IRS, including USD 3.2 billion for taxpayer services and USD 4.8 billion for business systems modernization.<sup>232</sup> Thanks to this funding, the IRS hired additional staff, which increased the level of service available by phone and in person in 2023. However, the level of service varied by phone line, and the IRS still answered just 35% of all calls received.<sup>233</sup> Also, tax professionals reported that telephone assisters were often unable to provide the help needed.<sup>234</sup> Regarding in-person Taxpayer Assistance Centers

<sup>222</sup> HN: <https://www.sar.gob.hn/2023/01/autoridades-de-sar-inauguran-nuevas-oficinas-tributarias-en-intibuca-y-choloma-para-reducir-los-costos-de-traslado-a-mas-contribuyentes/> (accessed 11 Feb. 2024).

<sup>223</sup> MX: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 8.

<sup>224</sup> MX: [http://omawww.sat.gob.mx/cifras\\_sat/Documents/ITG\\_2023\\_2T.pdf](http://omawww.sat.gob.mx/cifras_sat/Documents/ITG_2023_2T.pdf) (accessed 11 Feb. 2024).

<sup>225</sup> This obligation was established by a regulatory norm (particularly, through a Ministerial Order) without justifying why all taxpayers were considered to have access and capacity to file the tax return by electronic means. This obligations also violated article 14(3) of the Common Administrative Procedure Law.

<sup>226</sup> ES: OPTR Report (2023) (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 8.

<sup>227</sup> See also OPTR Report (2022), at sec. 1.7.

<sup>228</sup> US: OPTR Report (2023) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

<sup>229</sup> See also OPTR Report (2021), at sec. 1.7.

<sup>230</sup> US: Consolidated Appropriations Act, 2023, Pub. L. 117-328.

<sup>231</sup> See also OPTR Report (2022), at sec. 1.7.

<sup>232</sup> US: Inflation Reduction Act, Pub. L. No. 117-169.

<sup>233</sup> See US: National Taxpayer Advocate, *Annual Report to Congress 2023* p. 35, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 11 Feb. 2024).

<sup>234</sup> See US: National Taxpayer Advocate, *Annual Report to Congress 2023* p. 45, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 11 Feb. 2024).



(TACs), service also improved. The IRS answered 34% of calls on the TAC appointment line,<sup>235</sup> up from 15% the previous year.<sup>236</sup> The IRS opened or reopened 50 TACs in FY 2023, and TACs served more taxpayers than in 2022; however, the IRS fell short of its goal of fully staffing all TACs, and some were closed or unable to open because of staffing shortages.<sup>237</sup> As in 2022, the IRS opened selected TACs on Saturdays during tax season.<sup>238</sup>

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<sup>235</sup> See US: National Taxpayer Advocate, *Annual Report to Congress 2023* p. 3, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 11 Feb. 2024).

<sup>236</sup> See also OPTR Report (2022), at sec. 1.7.

<sup>237</sup> See US: National Taxpayer Advocate, *Annual Report to Congress 2023* p. 38, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 11 Feb. 2024).

<sup>238</sup> US: OPTR Report (2023) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

## 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:**

Belgium, Brazil, Costa Rica, Guatemala, Honduras, Italy, United Kingdom

**Shifted away from the best practice:**

In 2023, significant steps were taken to cultivate a positive dialogue between taxpayers and tax authorities, aligning with the ongoing commitment to the best practice at hand.

Across various countries, these steps were spurred by both case law developments and the initiatives of national legislators.

In **Belgium**, the Supreme Court, in its judgment of 2 March 2023 (F.21.0156.F),<sup>239</sup> underscored the importance of fostering a positive interaction between taxpayers and tax authorities through the “right to be heard” enshrined in article 346 of the Belgian Income Tax Code of 1992 (BITC92), which mandates that tax authorities issue a prior notification, commonly known as a “notice of change”, outlining the reasons for proposed modifications when altering income or other details provided by taxpayers in their tax returns.

In **Brazil**, following Provisional Measure 1152 of 22 December 2022,<sup>240</sup> Law 14.596 of 14 June 2023<sup>241</sup> harmonized Brazilian transfer pricing rules with international standards<sup>242</sup> and introduced mechanisms – such as advance pricing agreements (APAs)<sup>243</sup> and a penalty

<sup>239</sup> The judgment is available at <https://juportal.be/content/ECLI:BE:CASS:2023:ARR.20230302.1F.3/FR> (accessed 21 Feb. 2024). In the case addressed by the Court, the taxpayer had classified its remuneration from Luxembourg sources as “exempted” foreign income. The Belgian tax authorities, however, argued that this income could only be exempted if the taxpayer could prove physical presence in Luxembourg during the relevant period, and since the taxpayer’s income tax return did not report such physical presence, the tax authorities proceeded to tax the Luxembourg income. The Belgian Supreme Court deemed this taxation invalid, emphasizing the obligation of Belgian tax authorities to issue a “notice of change” before altering facts in a tax return. See BE: OPTR Report (2023) (Taxpayers/Tax Practitioners, Judiciary, Academia), Questionnaire 2, Question 9.

<sup>240</sup> Provisional Measure 1152 (22 Dec. 2022), available at [https://www.planalto.gov.br/ccivil\\_03/\\_Ato2023-2026/2023/Lei/L14596.htm](https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Lei/L14596.htm) (accessed 15 Feb. 2024). See the previous edition of this Yearbook and, in particular, BR: OPTR Report Brazil (1) (2022) (Academia), Questionnaire 2, Question 9.

<sup>241</sup> Law 14.596 (14 Jun. 2023), available at [https://www.planalto.gov.br/ccivil\\_03/\\_Ato2023-2026/2023/Lei/L14596.htm](https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Lei/L14596.htm) (accessed 15 Feb. 2024).

<sup>242</sup> See BR: OPTR Report Brazil 1 (2023) (Taxpayers/Tax Practitioners, Judiciary, Academia), Questionnaire 2, Question 9. See also BR: *Brazil Adopts New Transfer Pricing Rules* (21 Jun. 2023), News IBFD; *Federal Revenue Service Extends Deadline for Public Consultation on New Transfer Pricing Rules* (26 Jun. 2023), News IBFD; and *Federal Revenue Service Issues Normative Instruction Clarifying New Transfer Pricing Rules* (11 Oct. 2023), News IBFD.

<sup>243</sup> See OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* para. 4134 ss. (OECD 2017), Primary Sources IBFD. In the literature, for a general overview on APAs (both domestic and international), see, inter alia, M. Markham, *Advance Pricing Agreements – Past, Present and Future* (Wolters Kluwer 2012).

protection regime<sup>244</sup> – to promote compliance and prevent disputes between taxpayers and tax authorities.

In **Honduras**, the passing of the new Tax Justice Bill was surrounded by various avenues for public discourse, involving academia, civil associations and various political and non-political entities. Notably, multiple discussion sessions led by the Committee of the National Congress of Honduras generated over 102 suggestions for modifications to the draft.<sup>245</sup>

In **Italy**, a substantial amendment to Law 212 of 27 July 2000, known as the Taxpayers' Bill of Rights, was introduced through Legislative Decree 219 of 30 December 2023. This amendment incorporated the "right to be heard" under article 6-bis of the Taxpayers' Bill of Rights. According to this provision,<sup>246</sup> all actions undertaken by the Italian Revenue Agency, excluding "automatic" notices of assessment triggered by errors and miscalculations identified in the annual tax return must undergo a preliminary dialogue with the taxpayer. The Italian Revenue Agency must from 2024 onwards furnish the taxpayer with a draft of the notice of assessment, allowing them 60 days to provide observations and comments. If, despite the taxpayer's input, the tax authorities proceed to issue a notice of assessment, they are obligated to elucidate the reasons for rejecting the taxpayer's observations. Failure to engage in this preliminary phase renders the notice of assessment null and void, subject to review by the Tax Court.

In other countries, national reports indicated that tax authorities themselves actively promoted a more collaborative environment with taxpayers.

In **Guatemala**, throughout 2023, the tax administration has consistently facilitated conflict resolution meetings for taxpayers before issuing formal tax adjustments, nurturing a positive dialogue between the parties.<sup>247</sup> In **Costa Rica**, the tax administration established a forum

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<sup>244</sup> See *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* secs. 4.18.-4.28 (OECD 2017), Primary Sources IBFD: "Improved compliance in the transfer pricing area is of some concern to OECD member countries and the appropriate use of penalties may play a role in addressing this concern. However, owing to the nature of transfer pricing problems, care should be taken to ensure that the administration of a penalty system as applied in such cases is fair and not unduly onerous for taxpayers. [...] [I]t would be unfair to impose sizable penalties on taxpayers that made a reasonable effort in good faith to set the terms of their transactions with associated enterprises in a manner consistent with the arm's length principle."

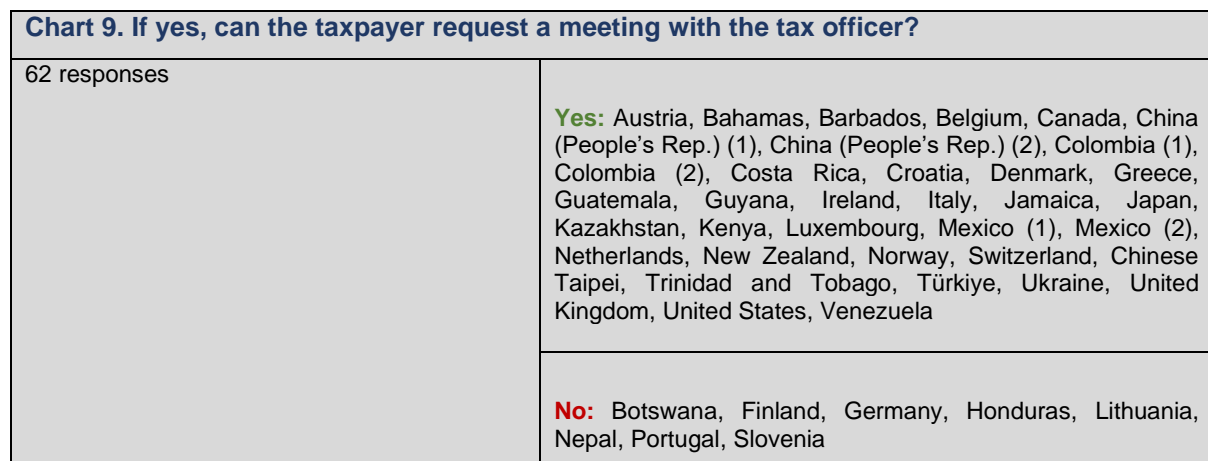
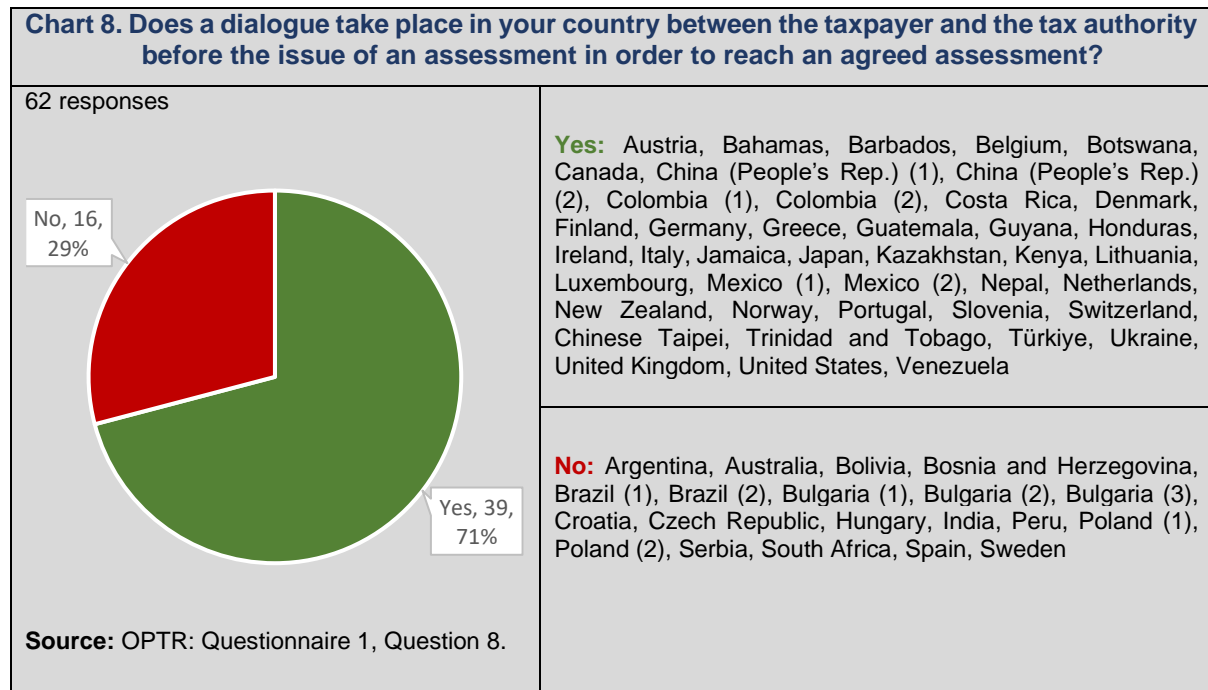
<sup>245</sup> Reports of public hearings are available at Public Hearings: [https://congresonacional.hn/noticias/audiencias\\_publicas](https://congresonacional.hn/noticias/audiencias_publicas) (accessed 15 Feb. 2024). The socialization of the Tax Justice Bill, however, has not been without controversy. For example, the Honduran Council of Private Enterprise (COHEP) and other representatives of the business sector have labeled this law as harmful to the economy and have accused the government of not carrying out a real socialization, but rather an imposition of ideas through presentations (see <https://www.elheraldo.hn/honduras/cohep-alerta-paquetazo-tributario-aumento-costo-canasta-basica-ley-justicia-tributaria-gobierno-xiomara-castro-honduras-ME13174190>). See also HN: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 9.

<sup>246</sup> The provision is available at <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2000-07-31&atto.codiceRedazionale=000G0265&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=0&qld=ba617726-23fe-4e4e-8e0e-b6421ac316c5&tabID=0.14778980133922914&title=lbl.dettaglioAtto> (accessed 22 Feb. 2024).

<sup>247</sup> See <https://www.prensalibre.com/economia/la-sat-esta-usando-mas-el-mecanismo-legal-de-solucion-de-conflictos-con-los-contribuyentes-y-presento-los-primeros-resultados/> (accessed 22 Feb. 2024). See also GT: OPTR Report (Taxpayers/Tax Practitioners) Questionnaire 2, Question 9. Additionally, in years 2021 and 2022, the tax administration published a report regarding the types of schemes that have been put in place for evading the payment of capital gains tax in real estate transactions and informed taxpayers about the implementation



involving prominent national taxpayers, fostering a constructive dialogue between the two parties.<sup>248</sup> Finally, in the **United Kingdom**, HMRC updated its Code of Governance for Resolving Tax Disputes by providing greater clarity and transparency in its processes.<sup>249</sup>

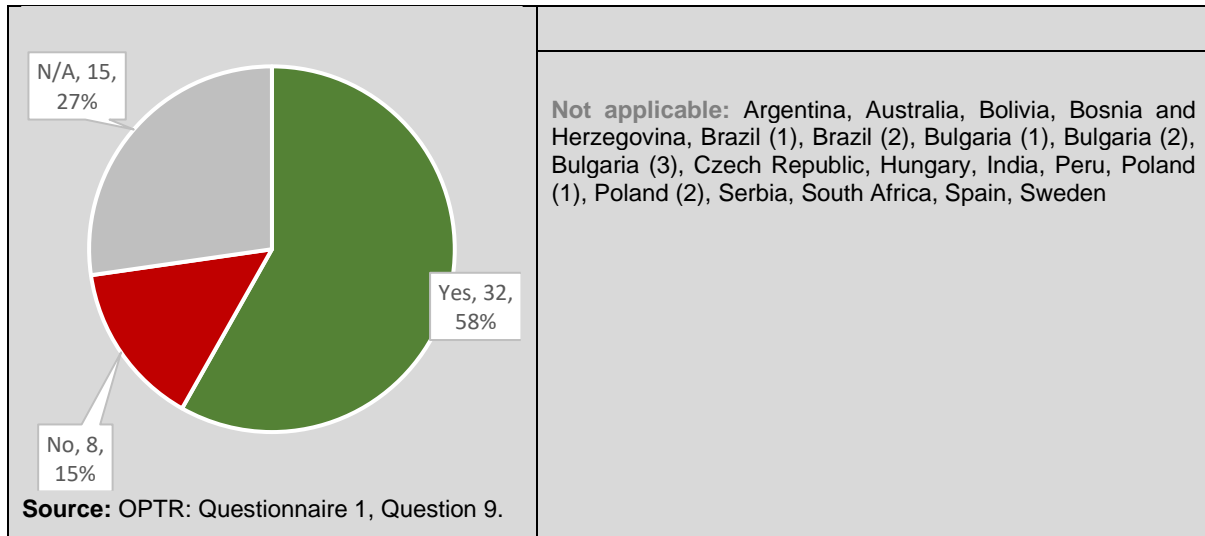


of new technologies and information systems that will significantly facilitate the fight against similar evasive strategies in the future. See the report available at <https://portal.sat.gob.gt/portal/noticias/tipologias-de-incumplimiento-tributario-detectadas-por-sat-en-compraventa-de-bienes-inmuebles/> (accessed 9 Feb. 2024).

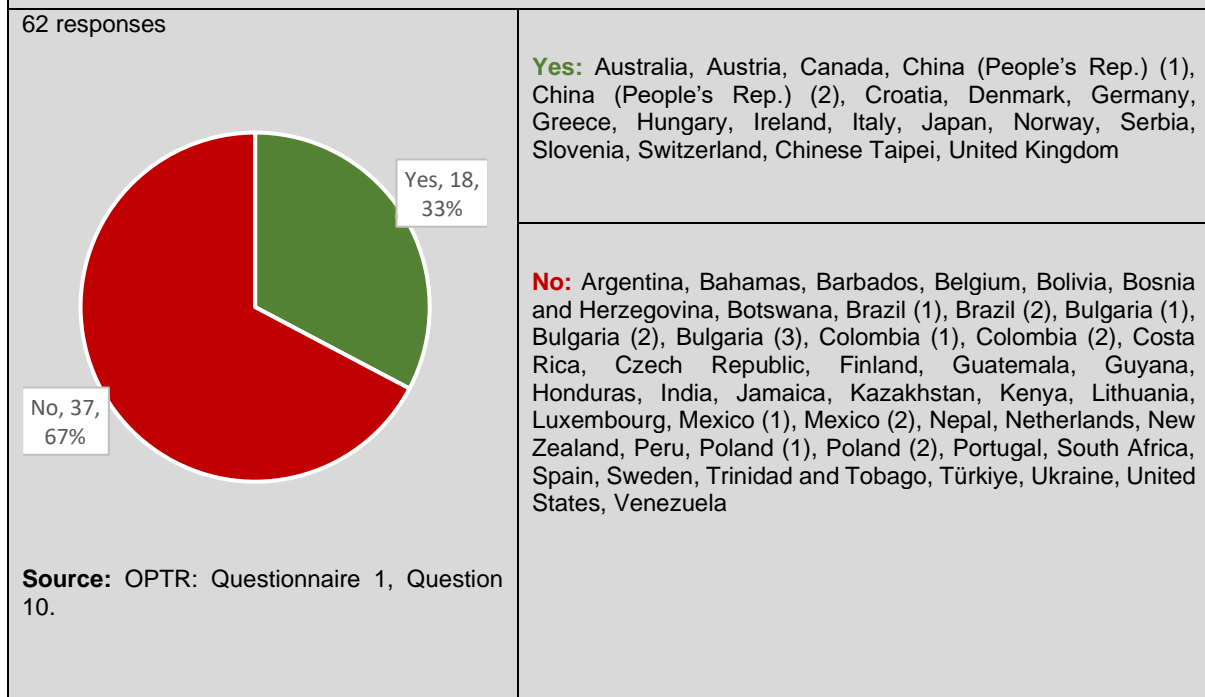
<sup>248</sup> Information about the Foro de Grandes Contribuyentes Nacionales (Big National Taxpayers Forum), is available at <https://www.hacienda.go.cr/docs/N3QueEsElForoDeDialogo.pdf> (accessed 22 Feb. 2024).

<sup>249</sup> The updates also include a link to the remits for its dispute resolution boards, available at <https://www.gov.uk/government/publications/dispute-resolution-governance-board-remits/tax-disputes-resolution-board-remit> (accessed 20 Feb. 2024).





**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?**



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

**Shifted towards/matched the best practice:** Belgium, Botswana, Japan, Serbia, Spain, Türkiye,

**Shifted away from the best practice:**

United Kingdom, United States

Denmark

The pandemic acted as a catalyst for the widespread adoption of e-filing. Measures such as electronic invoicing, digital taxpayer folders and incentivizing businesses with electronic account document filing marked significant efforts by jurisdictions globally to balance the dynamics between taxpayers and tax authorities. However, this progress came at the expense of an increased reporting burden.

The previous year showed developments across various regions.<sup>250</sup> In 2023, this trend gained even more momentum, with several countries endorsing e-filing through new legislations and case law.

**Botswana** enhanced features to improve its “self-assessment system”,<sup>251</sup> while **Belgium** introduced a regulation through the Royal Decree of 15 March 2023 enabling taxpayers to receive “proposed simplified returns” exclusively through electronic channels.<sup>252</sup>

**Serbia**, following an amendment to article 38(9) of the Law on Tax Procedure and Tax Administration (effective as of 1 January 2023), mandated the submission of the tax return for complementary global personal income tax exclusively through electronic means.<sup>253</sup>

The **United Kingdom**, through The Income Tax (Pay As You Earn) (Amendment) Regulations 2023<sup>254</sup> and The Social Security (Contributions) (Amendment No. 2) Regulations 2023,<sup>255</sup> now mandates that employers deliver returns (P11D and P11D(b)) electronically.<sup>256</sup>

**Spain** reported two notable improvements.

Firstly, Law 13/2023 modified article 120.3 of the General Tax Law, empowering taxpayers to submit a corrective self-assessment when the initial assessment harms their interests. This modification eliminates the need for a specific rectification procedure, providing flexibility and responsiveness to taxpayers facing unintended consequences of their initial filings.

Secondly, the High Court of Galicia, in a judgment of 28 November 2023, aligned with proposal 3/2022 from the Tax Ombudsman and recognized the right of taxpayers to make non-malicious or non-repeated mistakes in tax matters without incurring penalties. This progressive stance acknowledges that inadvertent errors during tax return submissions should

<sup>250</sup> See, *amplius*, OPTR Report (2022), at pp. 60-63.

<sup>251</sup> See BW: OPTR Report (2023) (Academia), Questionnaire 2, Question 10.

<sup>252</sup> See [https://etaamb.openjustice.be/nl/koninklijk-besluit-van-15-maart-2023\\_n2023041206.html](https://etaamb.openjustice.be/nl/koninklijk-besluit-van-15-maart-2023_n2023041206.html) (accessed 28 Feb. 2024). See also BE: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 10.

<sup>253</sup> See RS: OPTR Report (2023) (Academia), Questionnaire 2, Question 10.

<sup>254</sup> This measure (as well as its explanatory note) is available at <https://www.legislation.gov.uk/ukxi/2023/307/made> (accessed 21 Feb. 2024).

<sup>255</sup> This measure (as well as its explanatory note) is available at <https://www.legislation.gov.uk/ukxi/2023/308/made> (accessed 21 Feb. 2024).

<sup>256</sup> See UK: OPTR Report (2023) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

not lead to punitive measures, fostering a more lenient and understanding approach to unintentional non-compliance with tax legislation.<sup>257</sup>

The surge in e-filing during 2023 was facilitated not only by current legislation but also by measures taken in previous years.

For instance, in 2016, **Japan**<sup>258</sup> issued the so-called My-Number-Card, a credit card-sized individual identification card with diverse applications, including online tax filing. According to the Ministry of Internal Affairs and Communications, by December 2023, the number of cardholders had reached 91,542,953, constituting 73% of the total Japanese population,<sup>259</sup> a significant increase from the 15,624,405 cardholders in 2018, representing about 12.2% of the population.<sup>260</sup> This growth in My-Number-Card holders correlated with a notable increase in e-filing percentages for both individual and corporate income tax returns. Indeed, according to the National Tax Agency, in Fiscal Year 2022 (April 2022-March 2023), the percentage of tax returns using the Internet (e-Tax) increased significantly:<sup>261</sup> e-filing of individual income tax returns shifted from 44.0% in 2018 to 65.7% in 2023; e-filing of corporate income tax returns shifted from 82.1% in 2018 to 91.1% in 2023.<sup>262</sup>

In other countries, technological progress was driven by infrastructure updates. Notably, through General Communique 552 (published in the Official Gazette on 7 October 2023),<sup>263</sup> **Türkiye** launched the “Digital Tax Office”. This application, developed by the Turkish Revenue Administration, aims to consolidate all electronic tax services under a unified platform, streamlining processes and providing taxpayers with a more integrated and efficient digital experience.<sup>264</sup>

Finally, a positive shift emerged in the **United States**.<sup>265</sup> Since the start of the COVID-19 pandemic, the IRS has struggled to administer the tax system. Its challenges were due partly to the paper backlogs that developed when the agency closed its processing centres and offices early in the pandemic and partly to the need to divert resources from its core tax processing responsibilities to administer financial relief programmes that Congress

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<sup>257</sup> In this vein, the 2023 Annual Tax and Customs Control Plan, approved in February 2023, also underscores the consideration of taxpayers’ history of compliance when imposing tax penalties. See ES: OPTR Report (2023) (Academia), Questionnaire 2, Question 10 and the related attachment.

<sup>258</sup> See JP: OPTR Report (2023) (Academia), Questionnaire 2, Question 10.

<sup>259</sup> The data regarding 2023 is available on the Ministry’s website at [https://www.soumu.go.jp/main\\_content/000921473.pdf](https://www.soumu.go.jp/main_content/000921473.pdf) (accessed 21 Feb. 2023).

<sup>260</sup> The data regarding 2018 is available on the Ministry’s website at [https://www.soumu.go.jp/main\\_content/000588084.pdf](https://www.soumu.go.jp/main_content/000588084.pdf) (accessed 21 Feb. 2023).

<sup>261</sup> Information as to the percentage of tax returns that were filed via the Internet or the National Tax Agency’s website is available at <https://www.e-tax.nta.go.jp/topics/0408pressrelease01.pdf> (accessed 18 Feb. 2023).

<sup>262</sup> For large corporations whose capital is higher than JPY 100 million, it has been mandatory to file their tax return data via the electronic filing system since 2020.

<sup>263</sup> Available at <https://www.resmigazete.gov.tr/eskiler/2023/10/20231007-9.htm> (accessed 21 Feb. 2024).

<sup>264</sup> See TR: OPTR Report (2023) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 10.

<sup>265</sup> See US: OPTR Report (2023) (Academia), Questionnaire 2, Question 10.



authorized.<sup>266</sup> For 3 years in a row, the IRS failed to pay timely refunds to taxpayers. The IRS also struggled to process taxpayers' tax returns, correspondence and requests for a CDP appeal.<sup>267</sup> These processing delays resulted in the IRS's records of taxpayer accounts being inaccurate, which led the agency to automatically send erroneous automated levies.

To address these challenges, several measures were adopted in 2022. The IRS temporarily suspended its Automated Levy Program (ALP).<sup>268</sup> Furthermore, it created and implemented an automated tool to rectify errors related to the Recovery Rebate Credit and changes to refundable credits (Earned Income Tax Credit (EITC) and Child Tax Credit (CTC)), resulting in expedited refunds for over 12 million taxpayers compared to 2021.<sup>269</sup> In addition, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) to the IRS, instructing the implementation of scanning technology to machine-read paper-filed tax returns in time for the 2023 filing season.<sup>270</sup>

Following the enactment of the Inflation Reduction Act (IRA) in August 2022, the Department of the Treasury and the IRS initiated efforts to develop a Strategic Operating Plan. This plan aimed to identify the highest priority opportunities for delivering transformational change for taxpayers, including the expanding of electronic filing and processing of documents to identify and resolve issues more efficiently.<sup>271</sup>

Throughout 2023, the agency made some progress. In particular: (i) the IRS opened an online portal allowing businesses to file Forms 1099 for free;<sup>272</sup> (ii) taxpayers filing electronically Form 1040-X, Amended U.S Individual Income Tax Returns were enabled to direct deposit and enter

<sup>266</sup> See National Taxpayer Advocate, *National Report to Congress (2022)* pp. 2-3, available at <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/> (accessed 17 Feb. 2023).

<sup>267</sup> Id., at p. 213: "Taxpayers who receive a Notice of Intent to Levy and a Final Notice are advised to request a hearing with Appeals. When the notice is issued, it is recorded on the IRS's central taxpayer account database. However, if the taxpayer's response is not entered into the database within ten weeks, the IRS's Automated Levy Program (ALP) generates a levy. Many taxpayers' CDP requests remained unopened until after the ten-week deadline, resulting in the issuance of erroneous automated levies."

<sup>268</sup> See id., at p. 214; and US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 9.

<sup>269</sup> See National Taxpayer Advocate, *National Report to Congress (2022)* p. 2, available at <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/> (accessed 17 Feb. 2023); and US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 10.

<sup>270</sup> See E.M. Collins, *Getting Rid of Kryptonite: The IRS Should Quickly Implement Scanning Technology to Process Paper Tax Returns*, National Taxpayer Advocate Blog (15 Apr. 2022), available at <https://www.taxpayeradvocate.irs.gov/news/nta-blog-getting-rid-of-the-kryptonite-the-irs-should-quickly-implement-scanning-technology-to-process-paper-tax-returns/> (accessed 18 Feb. 2023). Specifically, the TAD directed the IRS to (i) implement technology to automate the processing of paper-filed returns prepared with tax software by the start of the 2023 filing season; and (ii) automate the processing of handwritten paper-filed returns by the start of the 2023 filing season if possible or, if not, by the start of the 2024 filing season.

<sup>271</sup> See IRS Publication 3744 (Apr. 2023), *Internal Revenue Service Inflation Reduction Act Strategic Operating Plan FY2023 – 2031* pp. 22-23 and 46-48, available at <https://www.irs.gov/pub/irs-pdf/p3744.pdf> (accessed 20 Feb. 2024).

<sup>272</sup> See IRS News Releases IR-2023-14 (25 Jan. 2023), available at <https://www.irs.gov/newsroom/irs-opens-free-portal-to-file-information-returns-new-electronic-option-can-reduce-millions-of-paper-forms-1099-estimated-to-be-filed-by-businesses-in-2023> (accessed 20 Feb. 2024).

their banking or financial institution information for quicker delivery of refunds;<sup>273</sup> and (iii) as announced by the IRS Commissioner in November 2022<sup>274</sup>, the agency implemented the use of scanning technology to digitize and process certain tax returns, further streamlining and modernizing its operations.<sup>275</sup>

The global efforts toward enhancing electronic filing systems have generally followed a positive trajectory. However, negative developments have surfaced in **Denmark**.<sup>276</sup> Following a 2021 investigation into the digital solutions of the Danish Customs and Tax Administration, the Ombudsman scrutinized compliance with general administrative law and tax procedures. The focus of this investigation was on the administrative law requirement that e-filing should be feasible not only for taxpayers but also for their chosen representatives. The preliminary evaluation revealed that 32 IT systems did not meet the requirement of enabling e-filing for the chosen representative of the taxpayer. Consequently, the Ombudsman expressed concern about the administration's support for the right to representation. The Ombudsman also believed that the tax administration's plan for further work on legal representation raised concerns about the timeline, regardless of the potential extent and complexity of the work.<sup>277</sup>

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<sup>273</sup> Previously, taxpayers who filed Form 1040-X with the IRS had to wait for a paper check for any refund, a step that added time to the amended return process. See IRS News Releases IR-2023-22 (9 Feb. 2023), available at <https://www.irs.gov/newsroom/new-irs-feature-allows-taxpayers-electronically-filing-amended-returns-to-choose-direct-deposit-to-speed-refunds> (accessed 20 Feb. 2024).

<sup>274</sup> See Letter from Doug O'Donnell, Acting Comm'r Internal Revenue, to Sen. Ron Wydman, Chair, Comm. on Fin., (22 Nov. 2022), mentioned in the National Taxpayer Advocate, *National Report to Congress* p. 211 (2022), available at <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/> (accessed 17 Feb. 2023)

<sup>275</sup> See National Taxpayer Advocate, *National Report to Congress (2022)* pp. 14-17, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 21 Feb. 2024). This report, however, also shows that the vast majority of paper-filed returns are still processed by hand (at p. 14): "The IRS has high aspirations for accomplishing the paperless processing of all tax returns by FS 2025 and will provide taxpayers the option to submit paperless correspondence to the IRS as early as FS 2024. By July 14, 2023, however, the IRS had scanned only about 500,000 Forms 940, just over 200,000 Forms 941, and 38,000 paper Forms 1040 into the IRS's Modernized e-File (MeF) processing system. That is a small portion compared to the nearly 55 million paper tax returns the IRS receives each year. But it is a start. As part of its Strategic Operating Plan (SOP), the IRS stated a goal to scan and digitize millions of business and individual tax returns in 2023; however, with less than one million scanned by mid-July, reaching this goal looks unlikely, but one can hope." The report further shows that taxpayers cannot e-file in many situations (at pp. 15-16): "Despite the significant benefits of electronic filing, there are approximately 150 to 200 IRS forms that taxpayers cannot e-file with the IRS. During 2023, the IRS worked with internal and external stakeholders to determine which additional returns it would pursue to include in its 2024 electronic filing program, considering factors such as tax return volume, cost, and the effort involved in making the return acceptable via electronic filing."

<sup>276</sup> See DK: OPTR Report (2023) (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 10.

<sup>277</sup> See FOB 2023-30, *Understøttelse af partsrepræsentation i Skatteforvaltningens it-systemer*, available at [https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle\\_bsager/2023-30/](https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/2023-30/) (accessed 21 Feb. 2024). Despite these challenges, there was a positive note in the investigation into the Danish Customs and Tax Administration's Facebook profile. The focus was on the guidance provided on the profile, analysing a total of 2,024 postings in April 2022. The Ombudsman found that the administration generally responded appropriately to inquiries, formulating responses politely, in a friendly and accommodating manner. Importantly, these responses were deemed to stay within the legal framework of the Danish Customs and Tax Administration's duty of confidentiality. See FOB 2023-1, *Skattestyrelsens Facebook-profil*, available at [https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle\\_bsager/2023-1/](https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/2023-1/) (accessed 21 Feb. 2024).



### 3. Confidentiality

#### 3.1. General issues

From the perspective of tax authorities, the proliferation of national and international data flows and the storage of personal information unquestionably offer positive implications in terms of compliance and income. With the increasing availability of information and expanding data streams, tax authorities can more effectively monitor and ensure tax payment compliance and reduce the risk of tax fraud or evasion.

However, this greater access to information can also pose significant challenges to taxpayers' rights. The increased surveillance and obligations to disclose information to tax authorities could lead to privacy breaches. This section of the Yearbook demonstrates that both tax authorities and taxpayers are increasingly aware of the importance of privacy and confidentiality. Overall, there is a noticeable positive trend in this regard, indicating progress and improvements in various areas. However, as will be explained below, small but significant exceptions stand out as areas of particular concern.

When it comes to ensuring guarantees of privacy in tax law, specific legal provisions should be put in place to safeguard the confidentiality of taxpayer information (see section 3.2.). In 2023, in contrast to the previous year, only one (albeit positive) shift was reported in this respect.

Another positive trend that can be observed as to the protection of privacy and confidentiality is the increasing use of secure platforms to gain access to sensitive data (see section 3.3.). This trend is particularly important given the growing amount of personal taxpayer information that is stored and transmitted as outlined above.

In addition to conducting regular audits to identify security vulnerabilities and ensure that necessary safeguards are in place to protect taxpayer data, auditing access to data can also be beneficial. Sadly, and in contrast to the previous year, no developments (positive or negative) were reported in this area (see section 3.4.).

In addition to legal guarantees for confidentiality and auditing access to data, some countries have yet again taken administrative measures to emphasize the importance of confidentiality to tax officials (see section 3.5.). In contrast to last year, no reports indicate the appointment of data protection officers among the tax authorities to oversee the implementation of data protection policies (see section 3.6.).

In cases in which a breach of confidentiality occurs, such breach should be investigated fully with an appropriate level of seniority by independent persons (e.g. judges). In this respect, positive actions were surveyed in Greece (see section 3.7.). In this regard, the Hungarian tax authorities have adopted a regulation on the protection of personal data (see section 3.8.).

As indicated in previous editions of this Yearbook, the importance of European rules and practices can be noted in the area of confidentiality. While previous editions referred to the influence of the ECJ's judgments, this year, the Lithuanian report made reference to the European data protection rules (the GDPR) (see section 3.9.).

Unfortunately, once more some negative developments have been noted in 2023 regarding the disclosure of confidential information by revenue authorities or so-called naming and shaming (see section 3.10.). There have been situations reported in which information was deliberately disclosed without authorization (e.g. for political reasons), which is a clear violation of taxpayer rights and can undermine taxpayers' trust in the tax system.

Another particularly worrisome trend in 2023 concerns the supply of information by revenue authorities to other government departments (see section 3.11.). Similarly to last year, several countries reported a shift away from the minimum standard or best practice, and not a single jurisdiction has reported a positive change in these areas. This remains an area that should be further monitored in the years to come.

Last year, there was a standstill as regards the interplay between taxpayer confidentiality and freedom-of-information legislation. However, this year, several developments (both positive and negative) have been reported (see section 3.12.).

In contrast to previous editions of this Yearbook, no new shifts have been reported regarding the minimum standard and best practice on anonymized judgments and rulings (see section 3.13.). Hence, we can conclude that the situation across the surveyed jurisdictions remains stable in this regard.

As already indicated in the 2022 Yearbook,<sup>278</sup> the ECJ case *Orde van Vlaamse Balies* continues to influence the development of legal professional privilege (see section 3.14.), as the Court held that provisions of DAC6 in this respect were at odds with fundamental rights.

### 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:**

Lithuania

**Shifted away from the minimum standard:**

None

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

**Shifted towards/improved the minimum standard:**

None

**Shifted away from the minimum standard:**

None

A specific legal guarantee for confidentiality can be provided through the inclusion of provisions in tax legislation that outline the protection of taxpayer information and the consequences for unauthorized disclosures. In contrast to the previous year,<sup>279</sup> only one

<sup>278</sup> See, on this topic, OPTR Report (2022), at sec. 3.14. Of note in this regard is also the pending case LU: C-432/23, *Ordre des avocats du Barreau de Luxembourg*, on whether legal advice provided by a lawyer on matters of company law — in particular, on setting up a corporate investment structure — fall within the scope of the strengthened protection of exchanges between lawyers and their clients afforded by Article 7 of the Charter of Fundamental Rights of the European Union.

<sup>279</sup> See also OPTR Report (2022), at sec. 3.2.

(albeit positive) shift was reported.

Article 38 of the **Lithuanian** Tax Administration Law was supplemented with provisions regarding: (i) the purpose of publicizing personal data; (ii) specific personal data to be made public; (iii) the period of publication; and (iv) the right of a person to demand the protection of his data and the duties of the tax administrator corresponding to this right. In addition, the rules on provision of documents to taxpayers have been amended, taking into account the requirements of the GDPR, in order to clearly define and consolidate what information the tax administrator has the right to publish about a taxpayer by placing a public notice on his website and under what terms this notice can be published when documents cannot be served by other means

### 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:**

Costa Rica

**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:**

Botswana, China (People's Rep.)

**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:**

China (People's Rep.)

**Shifted away from the best practice:**

None

With regard to access restrictions, two jurisdictions reported positive changes. In **Botswana**, security processes were increased, including access restrictions and log-in verification to access taxpayer information.<sup>280</sup>

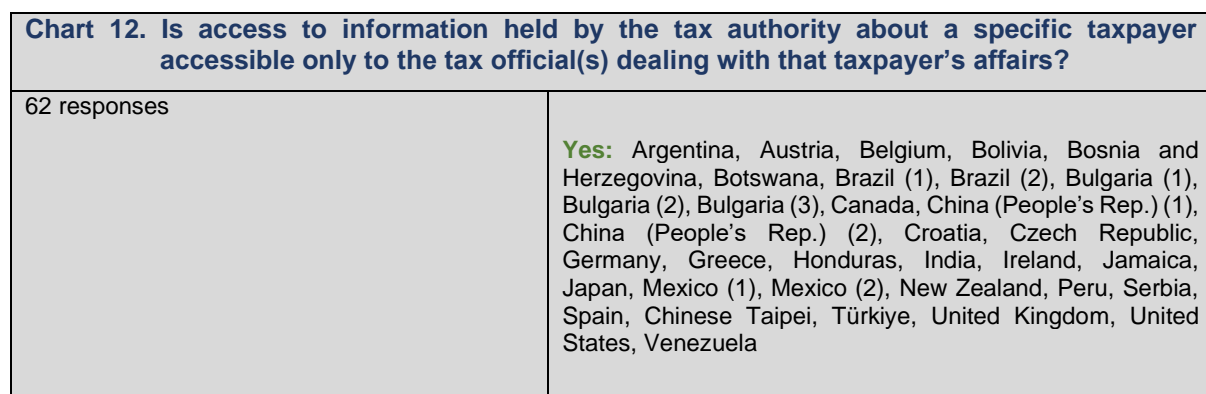
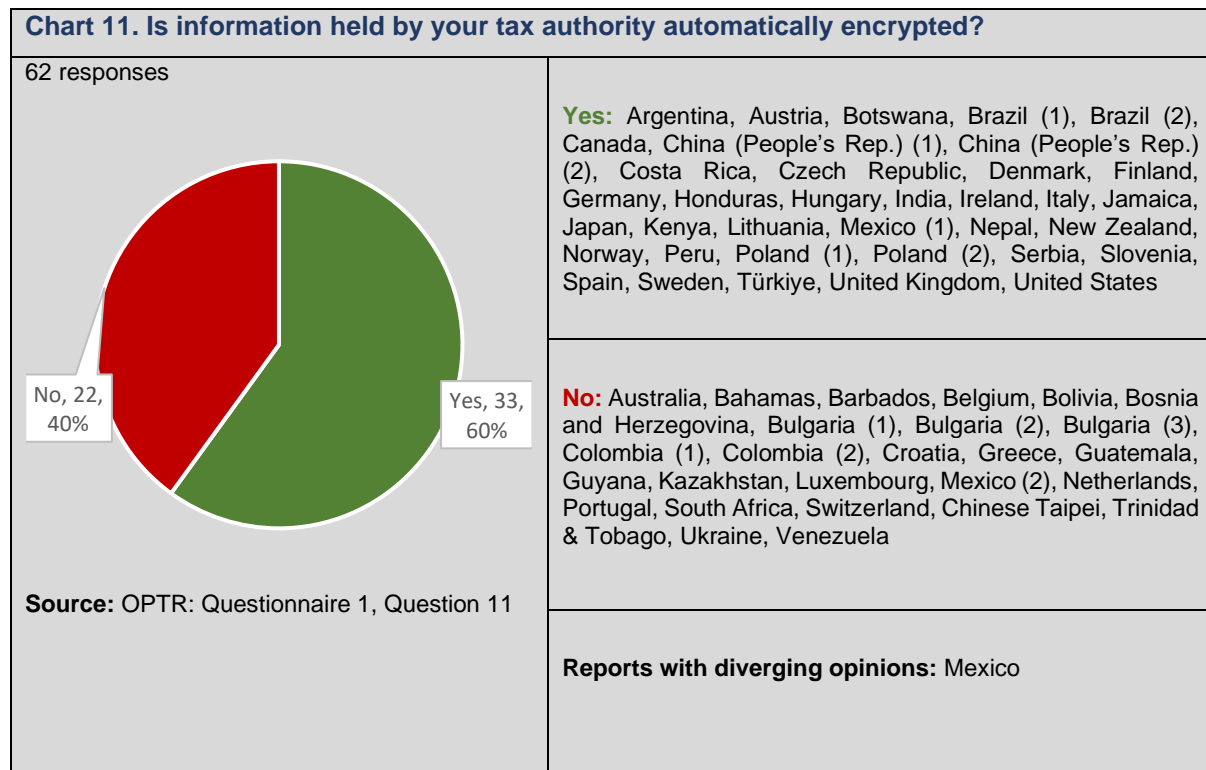
In **China (People's Rep.)**, the tax authority (State Tax Administration, STA) has been strengthening its data security management through the strict implementation of protocols of computer authorization, password accessing, double verification requirement, data permission configuration, data security audit and data tracing, etc. These changes aim to formulate strict and effective measures on monitoring data security and to elevate the data security standard. The STA has also deployed network security devices, such as firewalls, WAFs, intrusion detection and traffic monitoring at network boundaries and important network nodes, to

<sup>280</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 13.



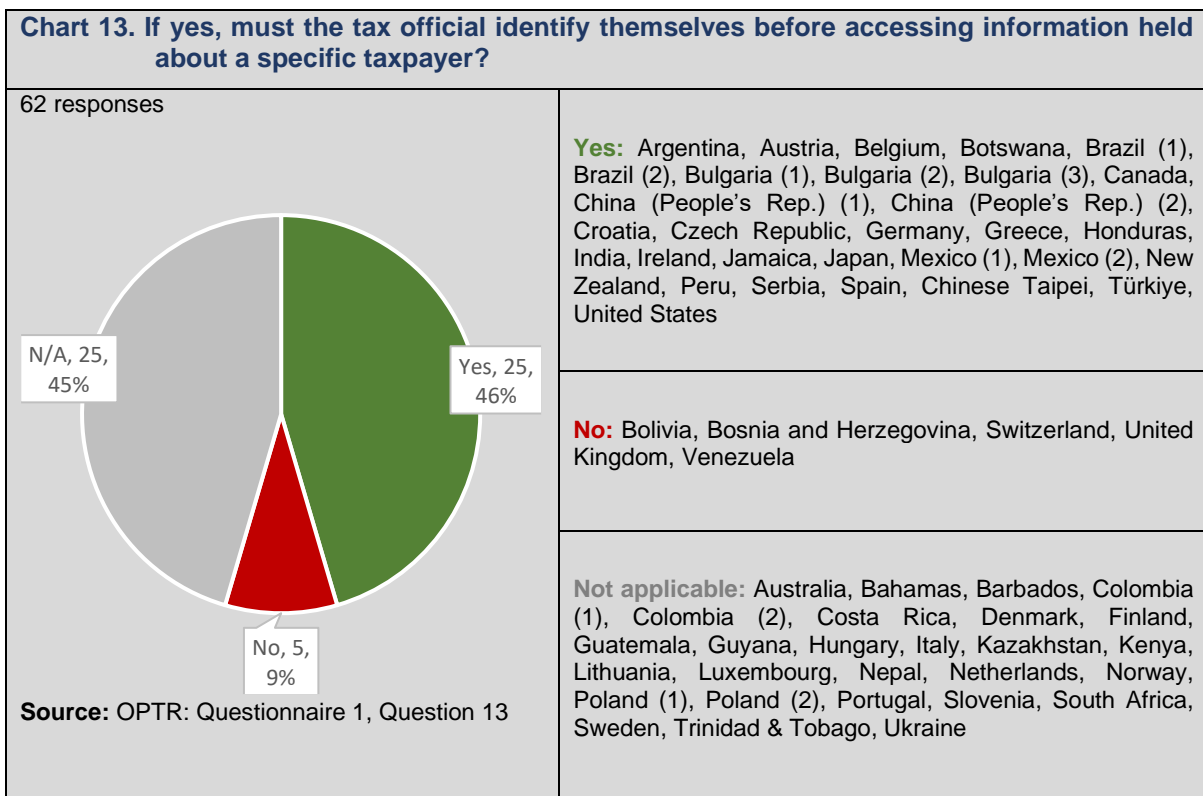
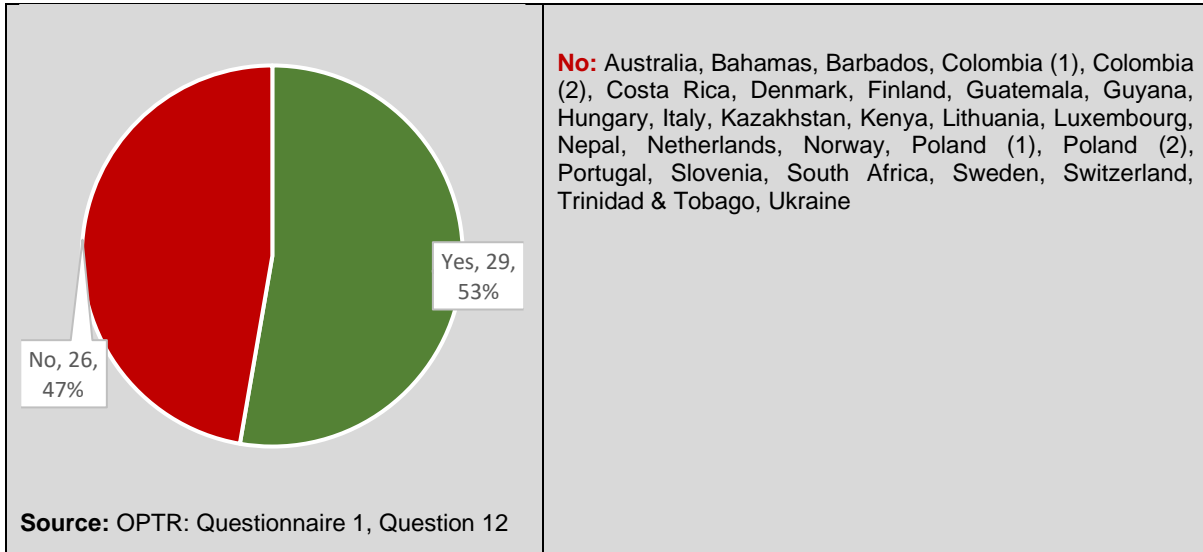
prevent unauthorized data access.<sup>281</sup>

Contrary to last year, for which a standstill was reported, this year one positive development was noticed regarding the best practice to encrypt taxpayers' information. Following a cyberattack by hacker groups in 2022, **Costa Rica** has invested USD 25 million to enhance its protection in order to prevent further attacks.<sup>282</sup>



<sup>281</sup> CN: OPTR Report (Academia), Questionnaire 2, Question 13.

<sup>282</sup> CR: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 11.



### 3.4. Auditing of access

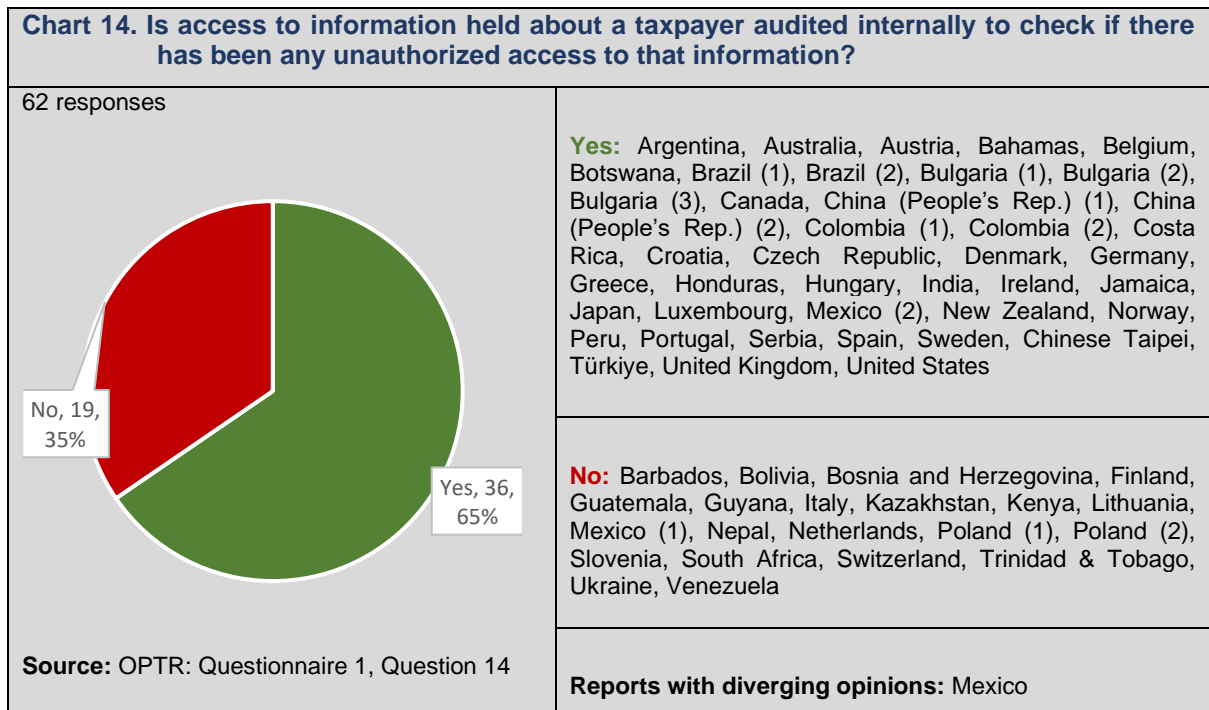
**Minimum standard:** Audit data access periodically to identify cases of unauthorized access

**Shifted towards/improved the minimum standard:**

None

**Shifted away from the minimum standard:**

None



Contrary to the previous year, no developments (positive or negative) were reported in this area.<sup>283</sup>

### 3.5. Administrative measures to ensure confidentiality

**Minimum standard:** Introduce administrative measures emphasizing confidentiality to tax officials

**Shifted towards/improved the minimum standard:**

Colombia, Hungary

**Shifted away from the minimum standard:**

None

Near the end of 2023, the **Colombia** administration carried out a virtual training process for tax officers that included content on confidentiality of information.<sup>284</sup>

In 2023, the president of the **Hungarian** NAV (National Tax and Customs Office) approved a regulation<sup>285</sup> enhancing data protection rights of the taxpayers. Although the national report states that the overall legal framework is enhanced, the report notes that the legal instrument

<sup>283</sup> See also OPTR, General Report on the Protection of Taxpayers' Rights (2022), at sec. 3.4.

<sup>284</sup> OPTR Report ((Tax) Ombudsman Delegate), Questionnaire 2, Question 15.

<sup>285</sup> See HU:

[https://nav.gov.hu/pfile/file?path=/kozadat/altalanos\\_kozzeteteli\\_lista/nav\\_feladat\\_es\\_hataskore\\_1366633265651/nav\\_adatvedelmi\\_szabalyzata/ld\\_nav\\_adatvedelmi\\_szab/A\\_Nemzeti\\_Ado-es\\_Vamhivatal\\_adatvedelmi\\_szabalyzata](https://nav.gov.hu/pfile/file?path=/kozadat/altalanos_kozzeteteli_lista/nav_feladat_es_hataskore_1366633265651/nav_adatvedelmi_szabalyzata/ld_nav_adatvedelmi_szab/A_Nemzeti_Ado-es_Vamhivatal_adatvedelmi_szabalyzata) (accessed 13 Feb. 2024).

in question has a low rank in the hierarchy of norms.<sup>286</sup>

### 3.6. Official responsibility for data confidentiality

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

**Shifted towards/matched the best practice:**

None

**Shifted away from the best practice:**

None

No changes were reported in relation to this best practice.

### 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:**

Greece

**Shifted away from the minimum standard:**

None

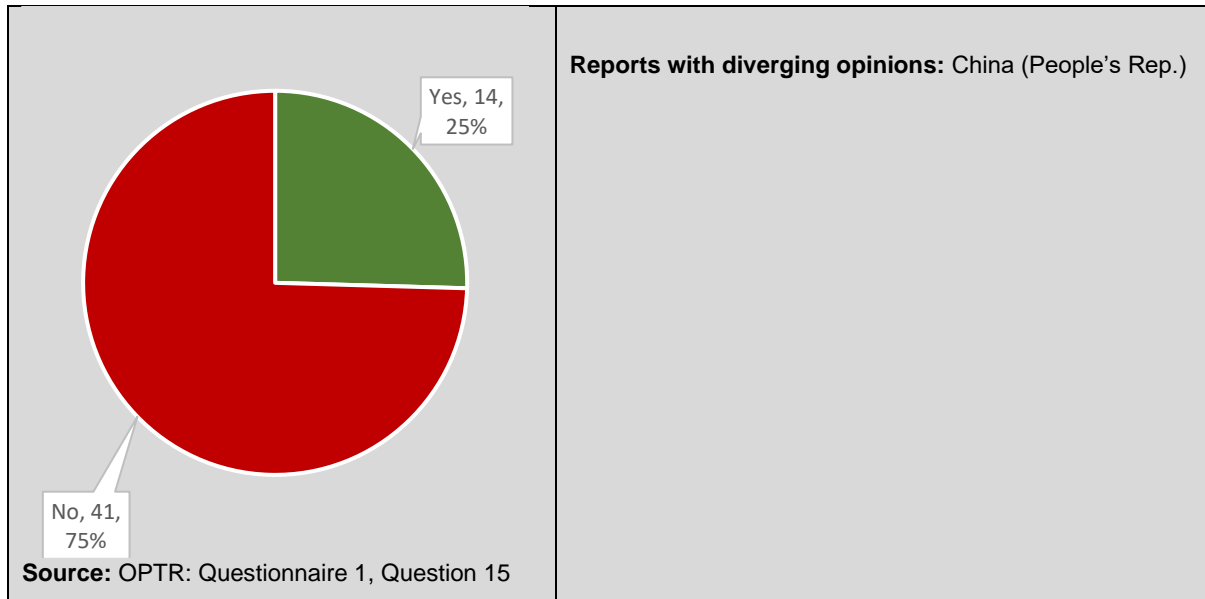
#### Chart 15. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?

62 responses

**Yes:** Argentina, Australia, Austria, Brazil (1), Brazil (2), China (People's Rep.) (1), Germany, Greece, Honduras, Hungary, Luxembourg, Netherlands, New Zealand, Sweden, Chinese Taipei, United States

**No:** Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Guatemala, Guyana, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Lithuania, Mexico (1), Mexico (2), Nepal, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Switzerland, Trinidad & Tobago, Türkiye, Ukraine, United Kingdom, Venezuela

<sup>286</sup> HU: OPTR Report (Academia), Questionnaire 2, Question 15.



In **Greece**, an information leak took place but, according to the national report, the way in which the tax administration handled this leak could be seen as positive. On 1 December 2023, the Greek tax administration sent emails to 89,494 taxpayers who had not paid car taxes for 2018 and had not provided justification in this respect. By mistake, the notification messages to certain debtors included – due to a technical failure – the names and user names (but not any passwords) of other taxpayers. The tax authority informed the European General Data Protection Regulation (GDPR) Authority of the incident. The recipients of the emails were informed that they needed to immediately and permanently delete the messages in question from their inbox, noting that – according to the GDPR – it is prohibited to retain or share information with other persons. Given that the messages sent did not contain any passwords (which are kept in encrypted form and are not recoverable even by the tax authorities) or debt information for other debtors, which were included in these messages, there was no risk of further leakage of personal data. The tax authorities sent instructions to the affected persons for changing the access codes, if they chose to. For this incident, the governor of the tax authority ordered an urgent administrative examination, and the tax authorities publicly apologized.<sup>287</sup>

### 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:**

Hungary

**Shifted away from the minimum standard:**

None

<sup>287</sup> GR: OPTR Report (Tax Administration), Questionnaire 2, Question 16.

In 2023, the Hungarian tax authorities adopted Regulation No. 2047/2023/ELC on the protection of personal data and the disclosure of data of public interest.<sup>288</sup> This regulation deals with infringements of privacy rights and details remedies provided to taxpayers, such as filing an appeal to the Hungarian National Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság*, NAIH).<sup>289</sup>

### 3.9. Exceptions to confidentiality: The general principle

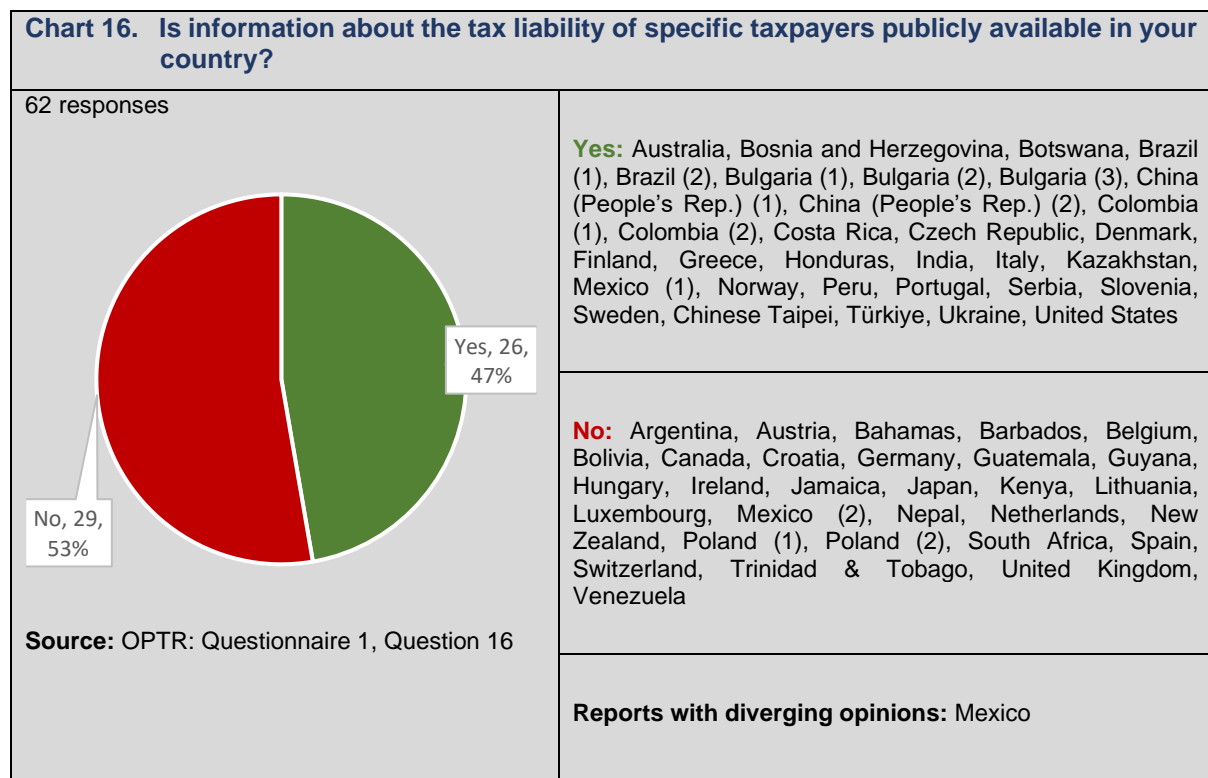
**Minimum standard:** Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted

Shifted towards/improved the minimum standard:

Lithuania

Shifted away from the minimum standard:

None



The influence of the GDPR can be noticed in this area. In **Lithuania**, article 164 of the Law on Tax Administration (“Service of documents to the taxpayer”) has been amended, taking into

<sup>288</sup> HU: [https://nav.gov.hu/pfile/file?path=/kozadat/altalanos\\_kozzeteteli\\_lista/nav\\_feladat\\_es\\_hataskore\\_1366633265651/nav\\_adatvedelmi\\_szabalyzata/ld\\_nav\\_adatvedelmi\\_szab/A\\_Nemzeti\\_Ado-es\\_Vamhivatal\\_adatvedelmi\\_szabalyzata](https://nav.gov.hu/pfile/file?path=/kozadat/altalanos_kozzeteteli_lista/nav_feladat_es_hataskore_1366633265651/nav_adatvedelmi_szabalyzata/ld_nav_adatvedelmi_szab/A_Nemzeti_Ado-es_Vamhivatal_adatvedelmi_szabalyzata) (accessed 18 Feb. 2024).

<sup>289</sup> HU: OPTR Report (Academia), Questionnaire 2, Question 17.

account the requirements of the GDPR in order to clearly define and consolidate what information the tax administrator has the right to publish about the taxpayer, by placing a public notice on his website and under what terms this notice can be published when documents cannot be served by other means.<sup>290</sup> Also, one of the Bulgarian reports mentions compliance with GDPR requirements.<sup>291</sup>

### 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:**

Costa Rica, Lithuania, Spain

**Shifted away from the minimum standard:**

Colombia

**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:**

United Kingdom

As regards “naming and shaming”, mixed positive developments can be reported. On the positive side, in **Costa Rica**, there is no legal obligation to provide access to taxpayers’ information when requested by the general public. According to the national report, the Costa Rican tax administration has, in some cases, declined such requests – making it necessary for the interested parties to request the information by judicial means.<sup>292</sup>

In **Lithuania**, taking into account the fact that non-confidential information is not equivalent to public information, and in order to ensure the protection of personal data, article 38 of the Tax Administration Law was supplemented with provisions regarding (i) the purpose of publicizing personal data; (ii) specific personal data to be made public; (iii) the period of publication; and (iv) the right of a person to demand the protection of their data and the corresponding duties of the tax administrator corresponding to this right.<sup>293</sup>

The judgement of the **Spanish** Supreme Court of 20 January 2023 established that only final tax assessments or final tax penalties can be included in the list of tax defaulters, which is published yearly according to article 95 bis of the Spanish General Tax Act. Moreover, the Supreme Court emphasizes that necessary measures must be taken to prevent the indexing of the list content through Internet search engines and that the list will cease to be accessible

<sup>290</sup> LT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 18.

<sup>291</sup> BG: OPTR Report (Academia), Questionnaire 2, Question 18.

<sup>292</sup> CR: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 19.

<sup>293</sup> LT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 19.

after 3 months of the date of publication. Two other decisions of the Supreme Court of 2 February 2023 are also relevant in this respect. When the tax assessment is related to a crime, the Court affirms that only a criminal conviction for an offence against the Public Treasury will allow the inclusion of the defaulter in the list. In other words, as long as there is no criminal judgement, the defaulter cannot be included in the list regardless of whether the tax debt was suspended.<sup>294</sup>

In **Colombia**, a negative shift was reported. On the occasion of the imposition of the sanction of closure on a large store establishment for failure to comply with the duty to issue electronic billing, the tax administration carried out an act that could be considered naming and shaming. The sanctioned taxpayer was named on a social network, being invited to comply with the electronic invoicing requirements.<sup>295</sup>

In March 2023, the **United Kingdom** Court of Appeal held that HMRC did not require the permission of the First Tier Tax Tribunal before disclosing taxpayer information to another taxpayer.<sup>296</sup> The Court, upholding HMRC's arguments, held that HMRC could disclose such information under section 18(1) of the Commissioners for Revenue and Customs Act 2005. It must be stated, however, that in that case both taxpayers disputed who was liable to the tax in question, so HMRC took the view that such disclosure was in order and was within HMRC's functions. In addition, the Court of Appeal noted that such disclosures could be made in the course of civil proceedings.<sup>297</sup>

### 2023 Relevant Case Law – European Court of Human Rights

<b>Case</b>	<b>Application No. 36345/16 L.B. against Hungary</b>	
<b>Date</b>	14 February 2023	
<b>EU Charter Articles</b>	Articles 7 (Right to respect for private and family life, home and correspondence)	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
In accordance with the 2003 Tax Administration Act, the National Tax and Customs Authority of Hungary published the applicant's personal data (including his name and home address) in a list of major tax debtors (pursuant to section 55(5) of the aforementioned Act) on its website. The list aims to act as a tool to tackle non-compliance with tax regulations. According to the applicant, this publication constitutes an unlawful interference with his right to respect for his private life, as guaranteed by article 8 of the Convention.	The Grand Chamber of the Court has ruled that there has been a violation of article 8 of the Convention.	In overruling the Decision of the ECtHR of 12 January 2021, the Grand Chamber of the ECtHR has stressed the importance of adequate safeguards within the context of the legislative proceedings with respect to "naming and shaming". According to the Grand Chamber of the ECtHR, the publication of the applicant's name and home address concerned information about his private life. Although the adverse effects of the publication of this information

<sup>294</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 19.

<sup>295</sup> CO: OPTR Report ((Tax) Ombudsman Delegate), Questionnaire 2, Question 19.

<sup>296</sup> UK: *Mitchell and Bell v. R & C Commrs* [2023] BTC 6 / [2023] EWCA Civ 261.

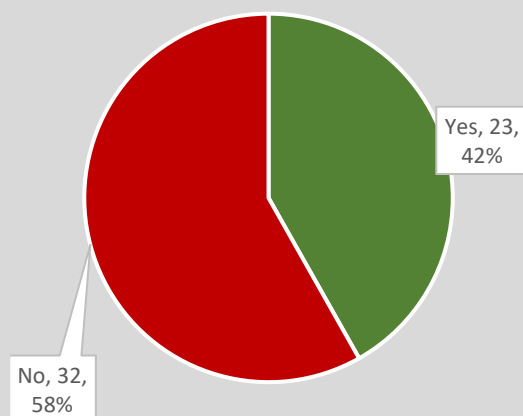
<sup>297</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 19.



<b>Case</b>	<b>Application No. 36345/16 L.B. against Hungary</b>	
<b>Date</b>	14 February 2023	
<b>EU Charter Articles</b>	Articles 7 (Right to respect for private and family life, home and correspondence)	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
		had not been proven to be substantial, the ECtHR considered the publication to constitute an interference with the applicant's right to respect for his private life. Despite the wide margin of appreciation for national authorities in establishing a scheme for the dissemination of personal data of non-compliant taxpayers, the ECtHR ruled that the Hungarian legislator had not respected the principle of data minimalization. The ECtHR ruled that the Hungarian parliament did not consider properly to what extent publication of all the data in question (in particular, the debtor's home address) had been necessary to achieve the original purpose of the collection of relevant personal data in the interest of the economic well-being of Hungary.

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

62 responses



**Source:** OPTR: Questionnaire 1, Question 17

**Yes:** Australia, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Costa Rica, Croatia, Greece, Hungary, Ireland, Kazakhstan, Mexico (1), Mexico (2), Portugal, Serbia, Slovenia, South Africa, Spain, Chinese Taipei, Türkiye, Ukraine, United Kingdom

**No:** Argentina, Austria, Bahamas, Barbados, Belgium, Botswana, Colombia (1), Colombia (2), Czech Republic, Denmark, Finland, Germany, Guatemala, Guyana, Honduras, India, Italy, Jamaica, Japan, Kenya, Lithuania, Luxembourg, Nepal, Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Sweden, Switzerland, Trinidad & Tobago, United States, Venezuela

### 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:**

Costa Rica, Honduras, 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

A particularly worrisome trend has continued in 2023 regarding supply of information to other government departments. Similar to last year,<sup>298</sup> several countries reported a shift away from the minimum standard or best practice, and not a single jurisdiction has reported a positive change in these areas.

In **Costa Rica**,<sup>299</sup> the tax administration submitted information to a congressman about the large taxpayers who have reported losses or no payable tax in their tax returns.<sup>300</sup>

In **Honduras**, news is reported about the publication of confidential taxpayer information on politicians, more specifically members of Parliament. According to the affected taxpayers, the information is made public for political reasons.<sup>301</sup> Similarly, the tax administration (SAR) has published cases of tax evasion by the “10 richest families in Honduras”.<sup>302</sup> Although the names of these families are not published, it has been made clear who the individuals are through descriptions of their companies or the economic groups to which they belong.<sup>303</sup>

<sup>298</sup> See also OPTR (2022), *supra* n. 283, at sec. 3.11.

<sup>299</sup> CR: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 20.

<sup>300</sup> This was included in decision CR: Oficio MH-DM-OF-243-2023 del Ministerio de Hacienda al despacho del diputado Ariel Robles, available at <https://semanariouniversidad.com/pais/los-que-repiten-en-su-declaracion-de-impuesto-cero/> (accessed 20 Feb. 2024).

<sup>301</sup> See HN: <https://www.elheraldo.hn/honduras/maribel-espinoza-denuncia-divulgacion-datos-tributarios-CH15563625> (accessed 20 Feb. 2024).

<sup>302</sup> See HN: <https://www.sar.gob.hn/2023/09/marlon-choa-presenta-denuncia-contra-las-10-familias-que-manegan-el-pais/> (accessed 20 Feb. 2024).

<sup>303</sup> HN: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 19.

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

**Minimum standard:** Freedom of information legislation may allow a taxpayer to access information about themselves. 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:**

Italy, Netherlands

**Shifted away from the minimum standard:**

South Africa

As opposed to the 2023 Yearbook, three jurisdictions have reported shifts regarding the interplay between taxpayer confidentiality and freedom of information legislation.

As already mentioned in section 1.6., the **Italian** Council of Ministers has approved a decree strengthening the cooperative compliance programme.<sup>304</sup>

The **South African** Constitutional Court had to decide a case on the privacy rights of an individual, i.e. J.G. Zuma, the former State President. The case concerned access to tax records by a person other than the taxpayer himself. In other words, the Court was asked to balance the taxpayer’s right to privacy against the rights of access to information.<sup>305</sup> The Court decided in a narrow 5-4 majority that the public interest overrides the privacy of the individual in this case.<sup>306</sup>

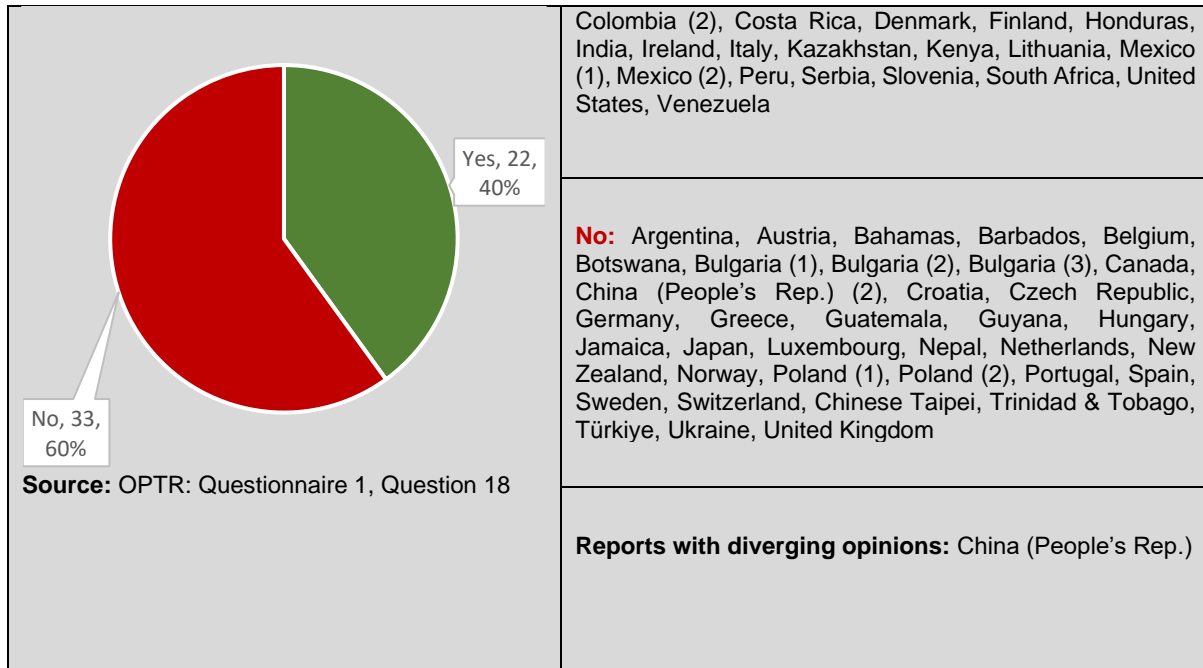
As already mentioned in section 1.4., in the **Netherlands**, taxpayers can already request access to their personal tax file held by the tax authorities. In 2023, a law has been enacted that – as of 31 December 2025 – if the tax authorities decline to give this access, the taxpayer will have a right to appeal to this decision.

<b>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)?</b>	
62 responses	<b>Yes:</b> Australia, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), China (People’s Rep.) (1), Colombia (1),

<sup>304</sup> See [Italy - Council of Ministers Preliminarily Approves Decree Strengthening Cooperative Compliance Programme](#) (23 Nov. 2023), News IBFD.

<sup>305</sup> See <https://www.saflii.org/za/cases/ZACC/2023/13.html> (accessed 20 Feb. 2024).

<sup>306</sup> ZA: *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v. South African Revenue Service and Others* [2023] ZACC 13.



### 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:**

None

**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 new shifts have been reported regarding the minimum standard and best practice on anonymized judgments and rulings in 2023, so the situation across the surveyed jurisdictions remains stable in this regard.

### 3.14. (Legal) professional privilege

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

**Shifted towards/improved the minimum standard:**

Spain

**Shifted away from the minimum standard:**

None

**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:**

Argentina

**Shifted away from the best practice:**

None

**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:**

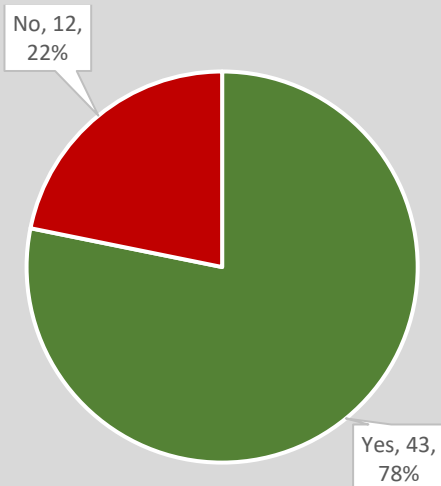
Spain

**Shifted away from the minimum standard:**

None

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

62 responses



Source: OPTR: Questionnaire 1, Question 19

**Yes:** Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Denmark, Finland, Germany, Greece, Guyana, Honduras, Hungary, Italy, Jamaica, Kazakhstan, Kenya, Luxembourg, Mexico (2), Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Sweden, Trinidad & Tobago, Türkiye, United Kingdom, United States, Venezuela

**No:** Argentina, Czech Republic, Guatemala, India, Ireland, Japan, Lithuania, Mexico (1), Nepal, Slovenia, Switzerland, Chinese Taipei, Ukraine

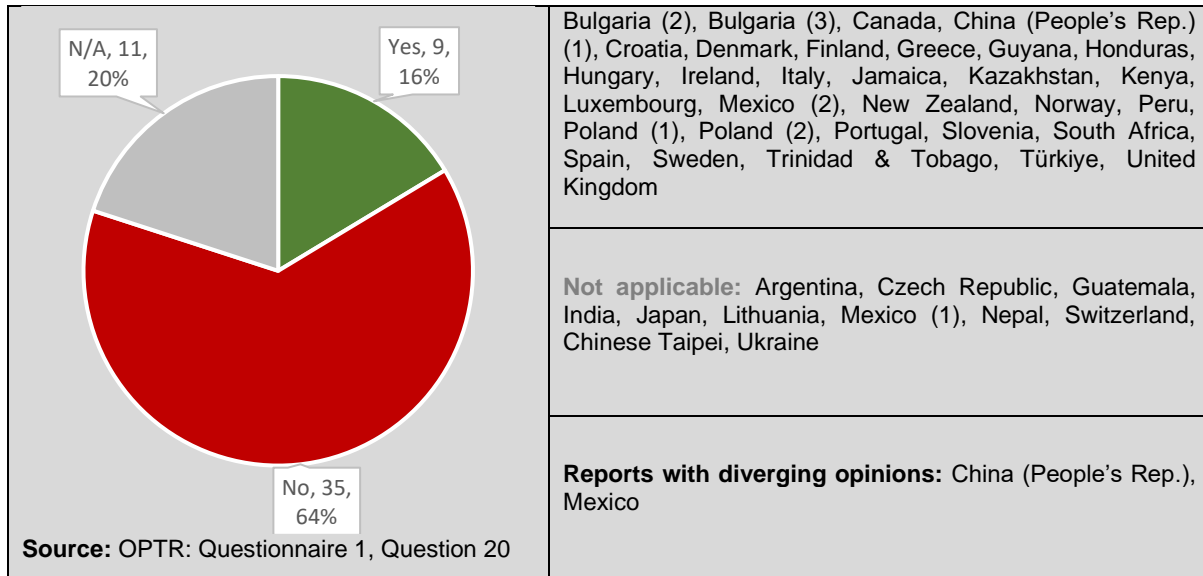
**Reports with diverging opinions:** Mexico

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

62 responses

**Yes:** Bolivia, Botswana, China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Germany, Netherlands, Serbia, United States, Venezuela

**No:** Australia, Austria, Bahamas, Barbados, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1),



In **Argentina**, the legal framework regarding disclosure obligations has been altered in a positive way. In December 2022, the tax authorities (*Administración Federal de Ingresos Públicos*, AFIP) repealed the Tax Planning Reporting Regime (General Resolution 4838/20)<sup>307</sup> and replaced it with the Complementary Information Regime for International Operations (General Resolution 5306/2022).<sup>308</sup> The reporting requirements under this new regime are less stringent and limited to international operations. The repealed resolution was the subject of legal controversy because of the implications of these rules, which could conflict with laws that preserve professional privilege.<sup>309</sup> Several previous rulings had established the incompatibility of the whistleblowing regime for tax planning with professional secrecy.<sup>310</sup>

The **Spanish** Supreme Court (27 February 2023) orders the precautionary suspension of article 45.4.b) 2nd RGAT (*Reglamento General de Aplicación de los Tributos – General Regulation on the Implementation of Taxes*), which transposes DAC6. This is a result of the Judgement of the ECJ of 8 December 2022.<sup>311</sup> In this judgement, the ECJ ruled that this obligation to disclose information imposed on an intermediary lawyer is *not* compatible with article 7 of the Charter of Fundamental Rights of the European Union, which protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients. The ECJ ruled that article 8ab(5) of amended Directive 2011/16 is invalid in the light of article 7 of the Charter, in so far as the Member States' application of that provision has the effect of requiring a lawyer acting as an

<sup>307</sup> Available at AR: <https://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/343338/norma.htm> (accessed 20 Feb. 2024).

<sup>308</sup> Available at AR: <https://www.boletinoficial.gob.ar/detalleAviso/primera/278362/20221227> (accessed 20 Feb. 2024).

<sup>309</sup> See on this topic OPTR (2022), *supra* n. 283, at sec. 3.14.

<sup>310</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 23.

<sup>311</sup> See on this topic OPTR (2022), *supra* n. 283, at sec. 3.14.

intermediary (whereby they are exempt from the reporting obligation laid down in paragraph 1 of article 8ab of that directive on account of the legal professional privilege by which they are bound) to notify without delay any other intermediary who is not their client of that intermediary's reporting obligations under paragraph 6 of that article.

Lastly, another interesting judgment of the Spanish Supreme Court (29 September 2023) dealing with access of tax authorities to the taxpayer's electronic devices should be mentioned. The Supreme Court establishes that the judicial authorization for entering a home is not sufficient to copy, seal, capture, possess or use data extracted from a computer where the activity has taken place outside the home and may affect other fundamental rights, such as the privacy of communications. Therefore, a specific judicial authorization is required. The Court should take the decision in the light of the principles of necessity, appropriateness and proportionality of the measure.<sup>312</sup>

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<sup>312</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 24.

## 4. Normal Audits

### 4.1. Tax audits and their foundational 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. From a procedural aspect, tax audits should be conducted around four fundamental principles of general procedural law, namely (i) proportionality; (ii) *ne 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 – depending on the gravity of the breach – some of its findings might be considered unlawful and, in cases of especially serious breaches, the whole audit should be considered null and void altogether.

It is crucial to emphasize that while there is a trend towards aligning good tax governance with minimum standards, this alone may not suffice. As highlighted by Baker and Pistone, prioritizing tax governance over taxpayers' rights poses a risk to accessing effective legal remedies when tax authorities fall short of complying with established standards.<sup>313</sup> Against this background, it is encouraging to observe that, in 2023, a greater number of jurisdictions have reported aligning with the minimum standards and best practices than deviating from them.

**Minimum standard:** Audits should respect the following principles: (i) proportionality; (ii) *ne bis in idem* (prohibition of double jeopardy); (iii) *audi alteram partem* (right to be heard before any decision is taken); and (iv) *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:**

Spain, Italy

**Shifted away from the minimum standard:**

Botswana

In **Italy**, a recent legal development related to the introduction of a so-called “Taxpayer’s Bill of Rights” has led to a convergence towards the minimum standard of the principles of proportionality, *ne bis in idem* and *audi alteram partem*.<sup>314</sup> For instance, the principle of proportionality now applies to all stages of the process, including fact-finding, tax assessment, imposition of penalties and forced collection.<sup>315</sup> The law also specifies that tax authorities should not exceed what is strictly necessary to ensure accurate tax payment and should not compress taxpayers’ rights beyond what is strictly necessary.

<sup>313</sup> P. Baker & P. Pistone, *General Report*, in *The Practical Protection of Taxpayers’ Fundamental Rights*, sec. 4.1. (IFA Cahiers vol. 100B, 2015), Books IBFD.

<sup>314</sup> IT: Law No. 212 of 27 July 2000, amended by Legislative Decree No. 219 of 30 December 2023, entered into force on 18 January 2024, available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2023-12-30:219> (accessed 20 Mar. 2024).

<sup>315</sup> IT: Art. 10-ter Law No. 212 of 27 July 2000, amended by Legislative Decree No. 219 of 30 December 2023, entered into force on 18 January 2024.



**Spain** has reported a general improvement in terms of the convergence of tax audits with the minimum standard.<sup>316</sup>

**Belgium** continues the shift towards the minimum standard, based on a 2022 legislative change that made it possible for some tax officials to be vested with the capacity of judicial police officers.<sup>317</sup> Thus, any proceeds of investigations where such tax officials take part in can be used simultaneously in both criminal and tax proceedings. This avoids double gathering of evidence in light of the *ne bis in idem* principle but also in light of the proportionality principle and the administrative burden of taking part in multiple parallel procedures over the same factual pattern.

A contrary development has been observed in **Botswana** due to the vastly unrestricted powers of tax officials to carry on searches and seize taxpayers' documentation.<sup>318</sup>

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

**Shifted towards/improved the minimum standard:**

Belgium, Guatemala

**Shifted away from the minimum standard:**

None

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 imposes the least burdensome impact on taxpayers – has been reportedly shifted towards the minimum standard in several jurisdictions.

**Belgium** has reported a shift towards the minimum standard based on a new jurisprudence according to which a request by the tax authorities for a complete copy of a taxpayer's digital data is unlawful, as it does not strike a fair balance between social and individual interests.<sup>319</sup> A complete copy of all digital data would always result in obtaining information that is irrelevant for tax purposes and (probably) also private or confidential data from third parties. Moreover, by demanding a copy of all digital data from the taxpayer, the tax authorities violate the purpose of the tax audit and conduct a covert "fishing expedition".

The tax administration in **Guatemala** has been reported to show greater flexibility with respect to the time frame within which a taxpayer must provide the requested information, allowing deviations from the statutory deadline of 3 days, as long as the taxpayer manages to provide at least some information within the deadline.<sup>320</sup>

<sup>316</sup> See ES: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 25.

<sup>317</sup> See BE: OPTR Report (2022) (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 25.

<sup>318</sup> See BW: Income Tax Act (1973), sec. 70. See also BW: OPTR Report (Academia), Questionnaire 2, Question 25.

<sup>319</sup> See also BE: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 26.

<sup>320</sup> GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

A continued convergence with the minimum standard is observed in **Chile**, where a proposed 2022 tax reform aimed to establish clearer guidance on the information that a taxpayer has the right not to provide.<sup>321</sup>

A shift away reported in **Bulgaria** last year is still not reversed, as tax authorities request an ever-increasing amount of documentation and information during audits – even when large parts of this information are not of any relevance to the scope of the audit or, even worse, are already available to the tax authorities or other public authorities.<sup>322</sup>

Banks in **Chinese Taipei** continue to be required to collect and provide to tax authorities reports on personal accounts with high-frequency transactions in an attempt to capture undeclared income from online sales performed by individuals.<sup>323</sup>

**Best practice:** In the application of *ne 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, Italy

**Shifted away from the best practice:**

None

The *ne 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 and a given tax.

For tax proceedings, *nebis 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, within the scope of the audit. The sole exception is facts that become known after the audit is completed.

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

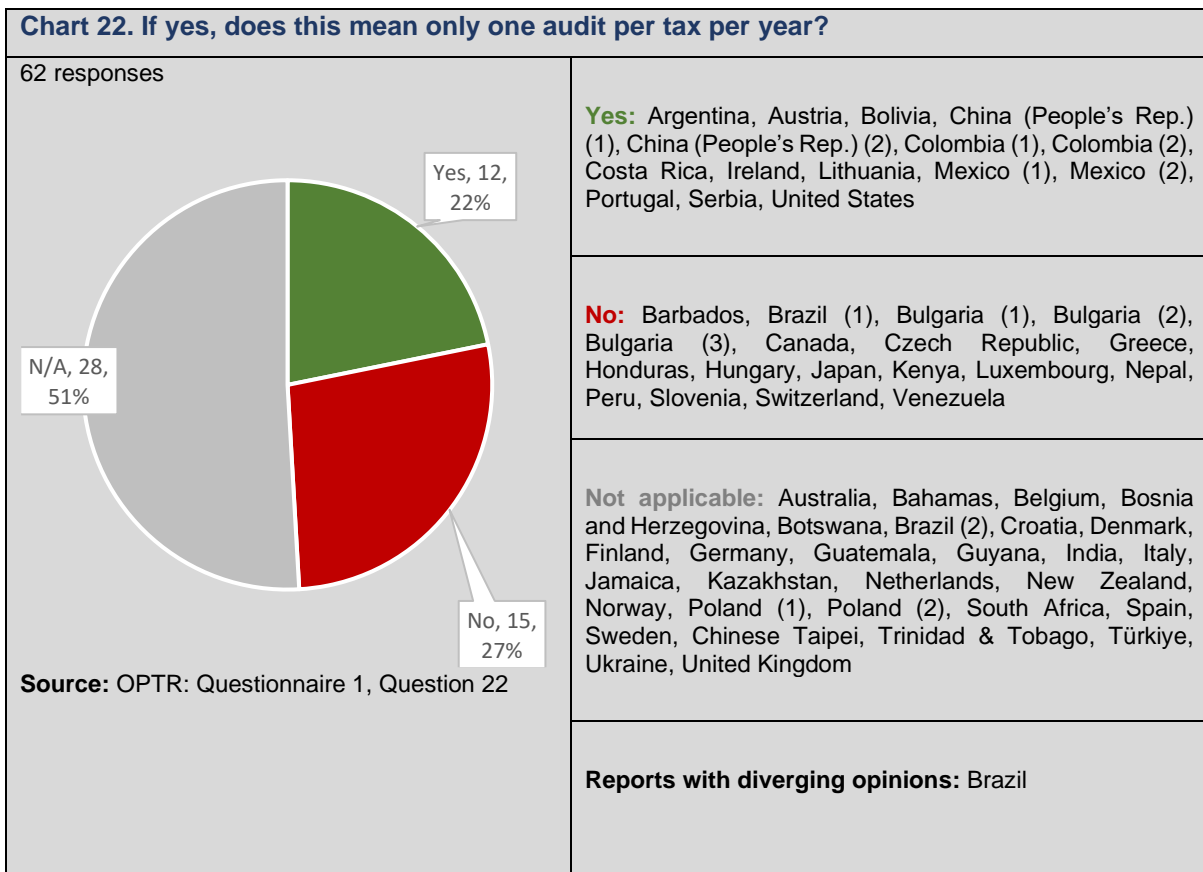
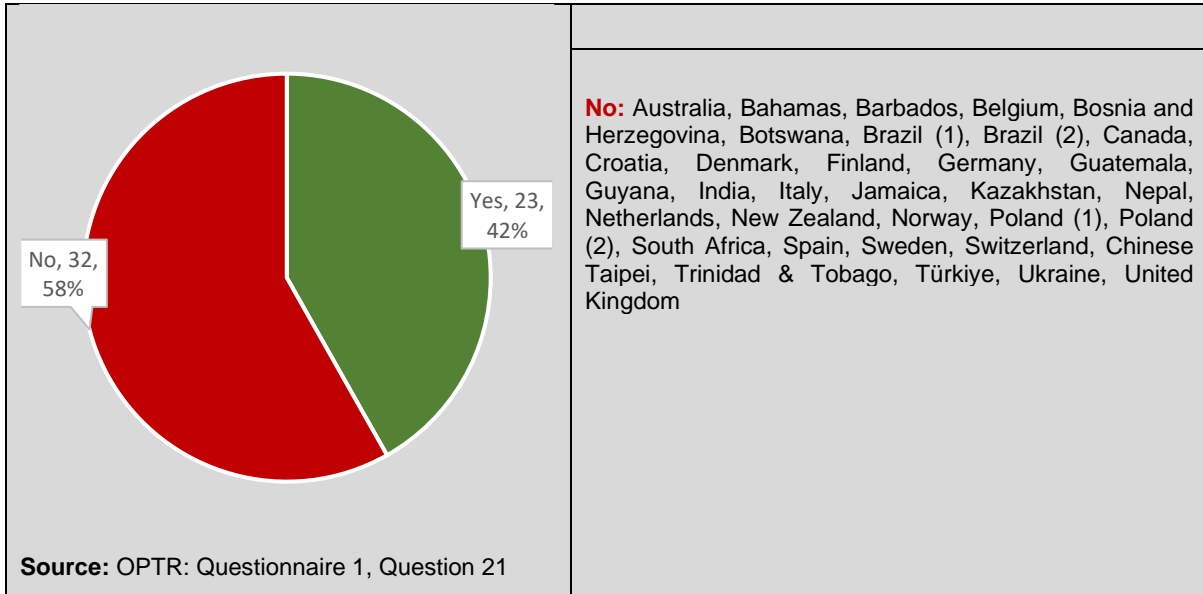
62 responses

**Yes:** Argentina, Austria, Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Czech Republic, Greece, Honduras, Hungary, Ireland, Japan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Peru, Portugal, Serbia, Slovenia, United States, Venezuela

<sup>321</sup> CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

<sup>322</sup> See BG: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

<sup>323</sup> The information is available at <https://ctee.com.tw/news/tax-law/668744.html> (accessed 19 Feb. 2023). See also TW: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.



In **Spain**, even if the *ne bis in idem* principle does not apply in tax audits in the strict sense, there are two judgments from the Supreme Court that represent a shift towards the best practice.

According to a judgement of the Supreme Court of 28 September 2023, the preclusive effects of a resolution that ends a limited verification procedure extend not only to those tax elements on which the tax administration has expressly ruled but also to any other tax element verified in the context of the procedure.<sup>324</sup>

According to a judgement of the Supreme Court of 21 September 2023, without an express statement for the expiration of a tax audit (management procedure) initiated by means of a tax return, it is not possible to initiate a subsequent tax audit (inspection procedure). Documents and evidence obtained in the expired procedure cannot be incorporated into this new procedure without such statement of expiration.

In **Italy**, a new provision added to the Taxpayer's Bill of Rights allows taxpayers to have tax authorities conduct the assessment action related to each tax only once per tax period, unless specific rules state otherwise (for example, due to formal or procedural defects in an administrative act).<sup>325</sup> While this rule specifically applies to the receipt of notices of assessment and not tax audits as such, it is worth mentioning this development in hopes of an expansion of *ne bis in idem* to include tax audits in the future.

**Minimum standard:** In the 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, Italy

**Shifted away from the minimum standard:**

None

The amended **Italian** Taxpayer's Bill of Rights includes a provision that requires the principle of *audi alteram partem* to be followed.<sup>326</sup> This means that all acts issued by the tax authorities, except for "automatic" notices of assessment based solely on mistakes and miscalculations found in the annual tax return, will be served only after a preliminary discussion with the taxpayer has been conducted. The tax authorities shall provide the taxpayer with a draft of the notice of assessment, and the taxpayer will have 60 days to provide feedback and comments. If the tax authorities decide to issue the notice of assessment despite the taxpayer's observations, they must provide a reason for not accepting them. Failure to follow this preliminary phase will result in the notice of assessment being declared void by the tax court.

<sup>324</sup> ES: Supreme Court, [28 Sep. 2023 ], ECLI:ES:TS:2023:3759.

<sup>325</sup> IT: Art. 19-bis Law No. 212 of 27 July 2000, introduced by Legislative Decree No. 219 of 30 December 2023, entered into force on 18 January 2024. See <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2023-12-30:219> (20 Mar. 2024).

<sup>326</sup> IT: Art. 6-bis, Law No. 212 of 27 July 2000, amended by Legislative Decree No. 219 of 30 December 2023, entered into force on 18 January 2024. See <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2023-12-30:219> (20 Mar. 2024).

**Guatemala** has reported a shift towards the minimum standard by allowing taxpayers to attend meetings with tax authorities accompanied by their legal advisers.<sup>327</sup>

**Spain** is still moving towards the minimum standard based on a 2022 decision by the Supreme Court, endowing private parties with the right to take effective part in tax proceedings and be heard before a final decision is taken. To that end, the Supreme Court ruled that within the context of an audit with limited scope, the scope can be extended only when clearly communicated to the taxpayer prior to initiating investigation into the relevant period.<sup>328</sup>

### 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<i>Tatiana CEACHIR v. the Republic of Moldavia No. 13730/15</i> <sup>329</sup>
<b>Date</b>	28 March 2023
<b>ECHR Articles</b>	Article 6
<b>Facts</b>	The applicant owns a house and land for which she pays tax. Despite the law allowing re-evaluation of real estate only once every 3 years, the tax office calculated the tax payable by her differently every year. Her attempt to contest a new evaluation and establish the correct manner of calculating her tax was dismissed as unfounded. The applicant complains that she was never allowed to see the calculation of the Cadastre agency, which was the basis for fixing the tax payable by her. She was unable to challenge it in court and had to prove her submissions, contrary to the procedural rule that – in administrative proceedings – the burden of proof falls on the tax authorities.

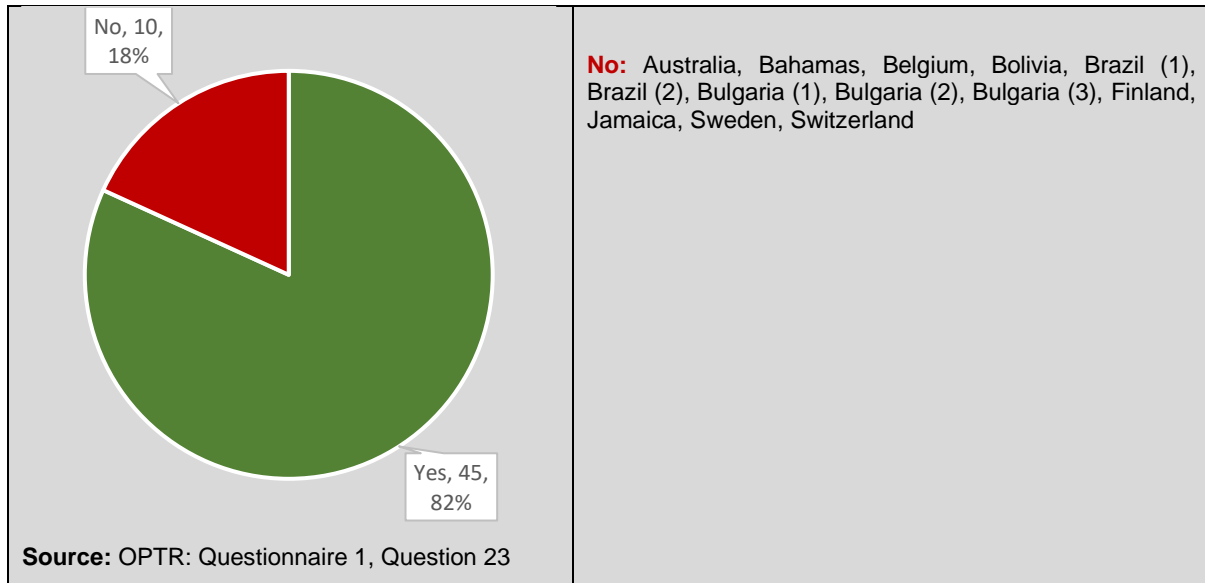
**Chart 23. Does the principle *audi alteram partem* apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?**

62 responses	<p><b>Yes:</b> Argentina, Austria, Barbados, Bosnia and Herzegovina, Botswana, Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Nepal, Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Chinese Taipei, Trinidad &amp; Tobago, Türkiye, Ukraine, United Kingdom, United States, Venezuela</p>
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<sup>327</sup> GT: OPTR Report (Taxpayer/Tax Practitioner), Questionnaire 2, Question 28.

<sup>328</sup> ES: Supreme Court, 3 May 2022, Judgment 509/2022. See also ES: OPTR Report (2022) (Taxpayer/Tax Practitioner, Ombudsperson, Academia), Questionnaire 2, Question 28.

<sup>329</sup> See MD: ECtHR, 28 Mar. 2023, no. 13730/15, *Tatiana CEACHIR v. the Republic of Moldavia*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-224441%22%5D%7D> (accessed 15 Feb. 2024).



**Minimum standard:** In the 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

In 2023, there were no reported changes regarding the right to remain silent.

A new law that was introduced in **Belgium** in 2022 continues to allow the tax authorities to levy substantial penalties on taxpayers and third parties who are not complying with their obligations to cooperate in the context of a tax audit.<sup>330</sup> In a similar vein, it has been reported that, in the **United States**, the right against self-incrimination cannot be relied upon to refuse to file a tax return.<sup>331</sup>

## 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:**

Hungary, Spain

**Shifted away from the best practice:**

None

<sup>330</sup> BE: OPTR Report (2022) (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 29.

<sup>331</sup> US: OPTR Report (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 29. See US: United States Court of Appeals, Ninth Circuit, 28 Feb. 1980, *United States v. Neff*, 615 F.2d 1235 (9th Cir. 1980).

In **Hungary**, the current year’s guideline refers to the ones from previous years thereby allowing the taxpayer to have a good overview of the tax authorities’ guideline policy and also providing access to regional plans.<sup>332</sup>

A decision of 6 February 2023 of the General Directorate of the tax administration has approved the general guidance of the 2023 Annual Audit Plan for Taxes and Customs in **Spain**, continuing the convergence already reported in the 2022 Yearbook.<sup>333</sup>

Conversely, in **Chinese Taipei**, the guidelines for tax audits are kept only as an internal secret.<sup>334</sup>

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

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

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

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

Although there have been no shifts regarding this best practice, it is worth noting that both **Botswana** and **Chinese Taipei** report that the domestic laws do not provide any possibilities to request an audit.<sup>335</sup>

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)?	
62 responses	<p><b>Yes:</b> Costa Rica, Finland, Guatemala, Honduras, India, Italy, Kazakhstan, New Zealand, Portugal, Serbia, Ukraine</p>
	<p><b>No:</b> Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Germany, Greece, Guyana, Hungary, Ireland, Jamaica, Japan, Kenya, Lithuania,</p>

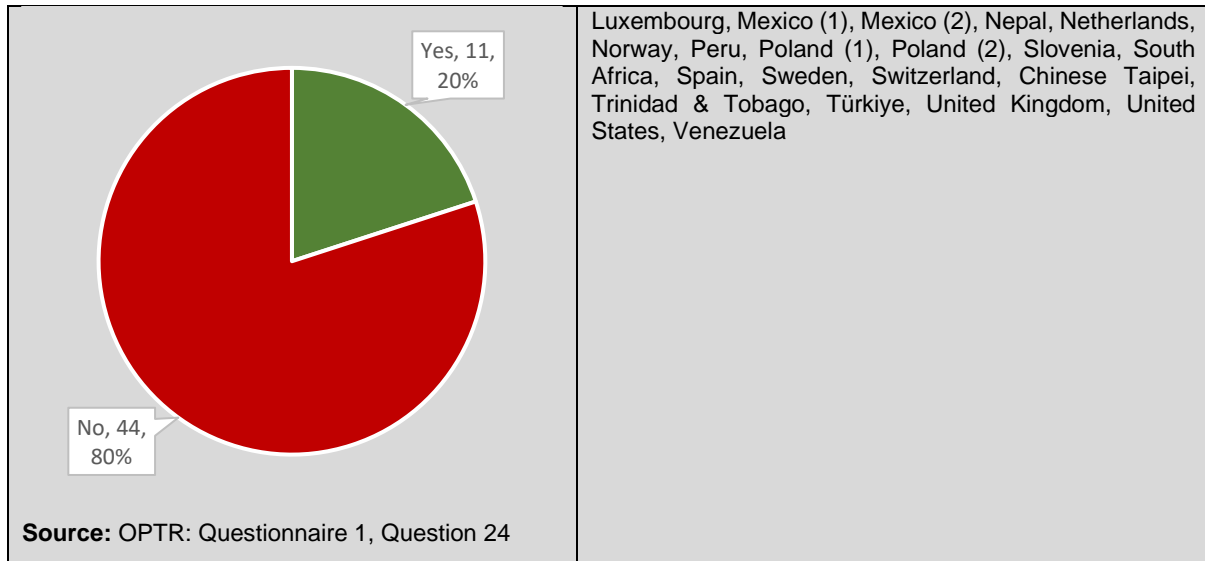
<sup>332</sup> HU: OPTR Report (Academia), Questionnaire 2, Question 30.

<sup>333</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 30.

<sup>334</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 30.

<sup>335</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 32; and TW: OPTR Report (Academia), Questionnaire 2, Question 32.





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

**Shifted towards/improved the minimum standard:**

Brazil, Spain

**Shifted away from the minimum standard:**

None

**Best practice:** When 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 frame and targets. They should then disclose any additional evidence in their possession to the taxpayer.

**Shifted towards/matched the best practice:**

Germany

**Shifted away from the best practice:**

None

In 2023, the **German** provisions for audits have been revised. In particular, tax authorities may reach an agreement with the taxpayer about meetings on a regular basis and a general framework for the audit procedure.<sup>336</sup>

In a **Spanish** Supreme Court decision, it was established that the tax administration must communicate in the first notice to the taxpayer the following information: the way in which the procedure begins; the means of verification used; the reasons that justify it; the cause of the discrepancy with the value included in the self-assessment; and the indications of a lack of

<sup>336</sup> See DE: § 199 (1) (2) and (3) of the *Abgabenordnung* [Fiscal Code]; and DE: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration, Academia), Questionnaire 2, Question 33.



agreement between it and the real value.<sup>337</sup> Similarly, in **China (People's Rep.)**, prior to the commencement of a tax audit, taxpayers subject to inspection should be informed of the estimated timing and information required for the audit, except for situations where an advance notification would compromise the audit.<sup>338</sup>

A significant departure from the best practice continues to be observed in **Colombia**, on the basis of a legislative measure that provides for determining income on a deemed basis and with very limited possibilities for the taxpayers to appeal such assessments.<sup>339</sup> The new regime is applicable to taxpayers who fail to submit a tax return and, in the event that such taxpayers do not explicitly reject the deemed assessment, the latter becomes final with no possibility of appeal.

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

<b>Shifted towards/improved the minimum standard:</b>	<b>Shifted away from the minimum standard:</b>
None	None

### 4.3. Time limits for normal audits

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

<b>Shifted towards/matched the best practice:</b>	<b>Shifted away from the best practice:</b>
Germany	None

**Germany** has reported a shift towards the best practice by fixing a maximum period of 5 years for the suspension of statute of limitations with regard to tax assessments applicable in the event of audits.<sup>340</sup>

This is a continuation of a trend of convergence already reported last year where, in **Colombia**, the Supreme Administrative Court has ruled on the suspension of the statute of limitations of income tax returns in the sense that – for the statute of limitations term to be suspended – it is necessary that the tax inspection is effectively carried out and not just notified by the tax authorities.<sup>341</sup> Similarly, **Mexico** continues the convergence with the best practice

<sup>337</sup> ES: Supreme Court, 23 Jan. 2023, ECLI:ES:TS:2023:184; and ES: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 33.

<sup>338</sup> CN: OPTR Report (Tax Administration), Questionnaire 2, Question 33.

<sup>339</sup> See CO: Law 2277 of 2022, available at <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883> (accessed 22 Feb. 2023). See also CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 33.

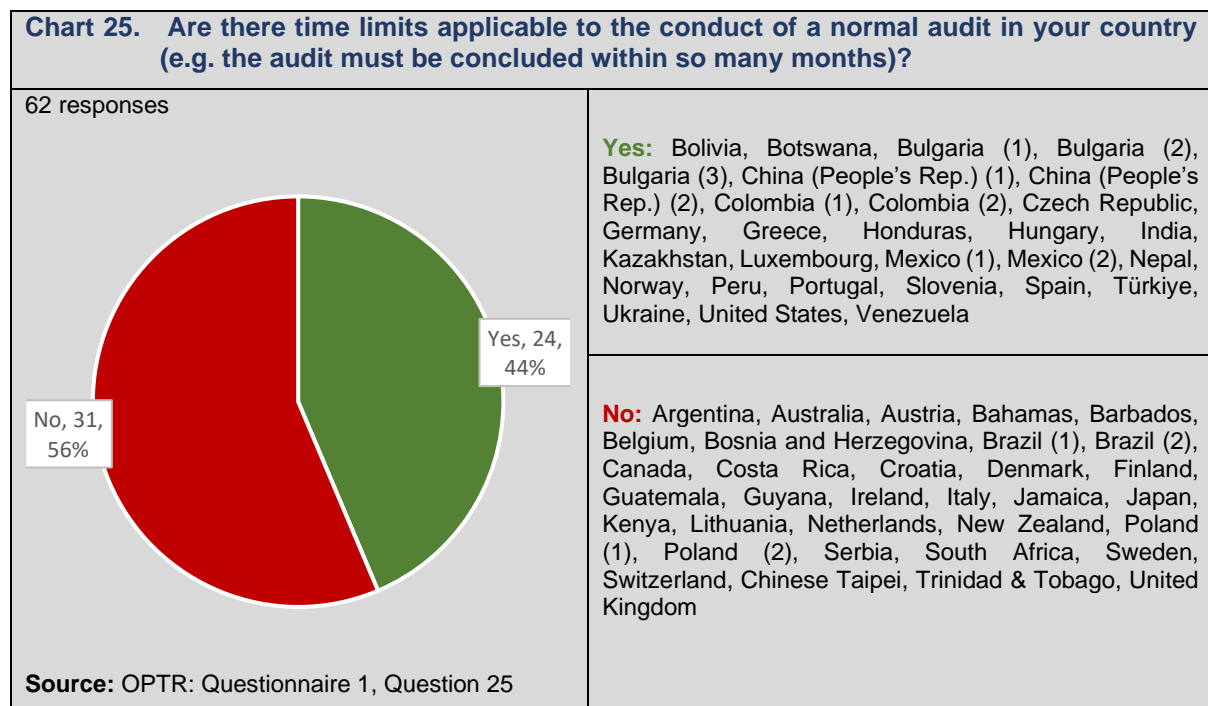
<sup>340</sup> See DE: § 171 (4) (3) of the Fiscal Code.

<sup>341</sup> See CO: [Supreme Administrative Court Rules on Suspension of Statute of Limitations](#) (2 June 2022), News IBFD (accessed 25 Feb. 2023).

by fixing the applicable time limits when the tax authorities engage in international exchange of information to 2 years from the moment of the first information request.<sup>342</sup>

The reverse developments continue to impact **Belgium** where a new law of 20 November 2022 has radically increased the time limits for conducting audits and imposing taxes, thereby shifting away from the best practice.<sup>343</sup>

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 44% of surveyed countries reported time constraints applicable to tax audits, as illustrated in Chart 25.



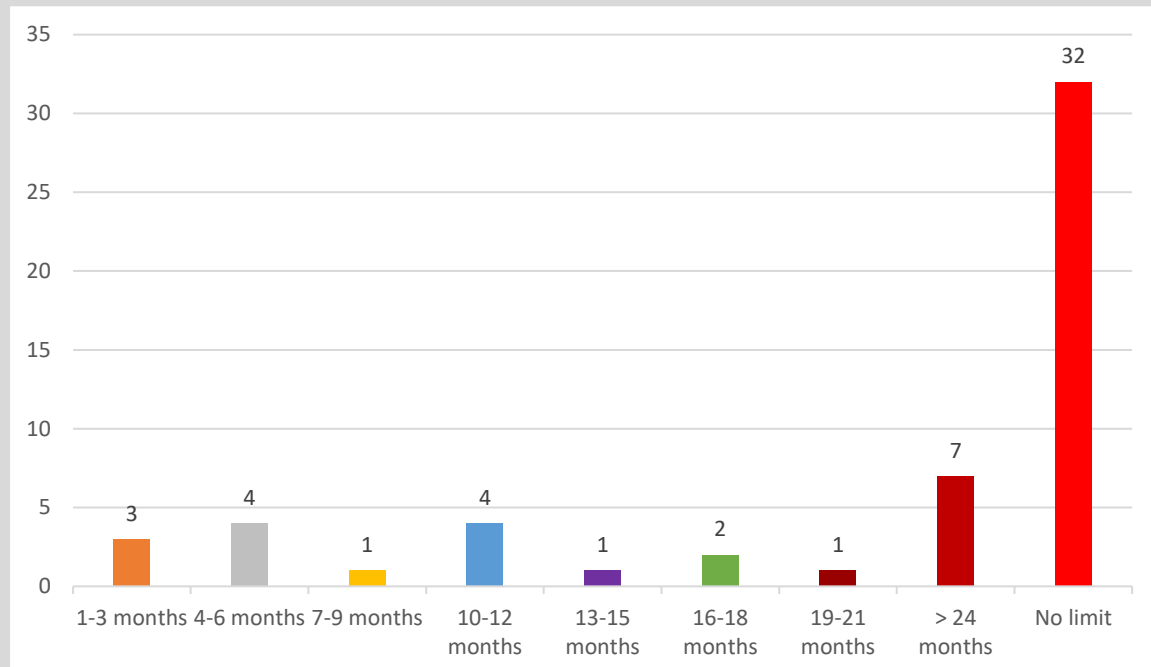
The notion of a “reasonable” time limit is not easily determined and varies greatly among jurisdictions based on their specific legal context and background, in terms of a formal timeline and efforts to reduce the average time spent on a tax audit.

<sup>342</sup> 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, art. 46-a, available at [https://www.dof.gob.mx/index\\_113.php?year=2021&month=11&day=12](https://www.dof.gob.mx/index_113.php?year=2021&month=11&day=12) (accessed 25 Feb. 2023). See also MX: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 35.

<sup>343</sup> BE: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 35.

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

62 responses



**Source:** OPTR: Questionnaire 1, Question 26

**1-3 months:**

China (People's Rep.) (1), China (People's Rep.) (2), Hungary, Ukraine

**4-6 months:**

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

**7-9 months:**

Honduras

**10-12 months:**

Bolivia, Kazakhstan, Mexico (1), Peru, Türkiye

**13-15 months:**

Mexico (2)

**16-18 months:**

Greece, Spain

**19-21 months:**

India

**More than 24 months:**

Botswana, Colombia (1), Colombia (2), Czech Republic, Germany, Nepal, Norway, United States

**No limit:**

Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Canada, Costa Rica, Croatia, Denmark, Finland, Guatemala, Guyana, Ireland, Italy, Jamaica, Japan, Kenya, Lithuania, Luxembourg, Netherlands, New Zealand, Poland (1), Poland (2), Serbia, South Africa, Sweden, Switzerland, Chinese Taipei, Trinidad & Tobago, United Kingdom

**Reports with diverging opinions:** Mexico

**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:

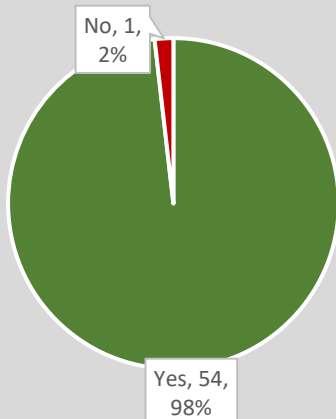
None

Shifted away from the minimum standard:

None

**Chart 27. Does the taxpayer have the right to be represented by a person of their choice in the audit process?**

62 responses



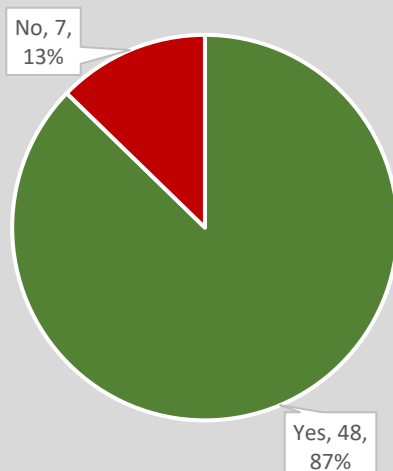
Source: OPTR: Questionnaire 1, Question 27

**Yes:** Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, Hungary, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Nepal, Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Trinidad & Tobago, Türkiye, Ukraine, United Kingdom, United States, Venezuela

**No:** Guyana

**Chart 28. May the opinion of independent experts be used in the audit process?**

62 responses



Source: OPTR: Questionnaire 1, Question 28

**Yes:** Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guyana, Honduras, Hungary, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Lithuania, Luxembourg, Mexico (1), Mexico (2), Nepal, Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad & Tobago, Türkiye, Ukraine, United Kingdom, United States, Venezuela

**No:** Argentina, Bosnia and Herzegovina, Botswana, Canada, Guatemala, Kenya, Chinese Taipei

#### 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.

<p><b>Shifted towards/improved the minimum standard:</b></p> <p>None</p>	<p><b>Shifted away from the minimum standard:</b></p> <p>Luxembourg</p>
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Recent case law in **Luxembourg** demonstrates that, in certain cases, the final audit report is not systematically notified to the taxpayer who, in such cases, could only access it at a later stage of the procedure.<sup>344</sup>

In **Chinese Taipei**, the report is generally not made available to taxpayers, who are only informed of the result, the amount payable and a brief set of reasons.<sup>345</sup>

**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.

<p><b>Shifted towards/matched the best practice:</b></p> <p>None</p>	<p><b>Shifted away from the best practice:</b></p> <p>None</p>
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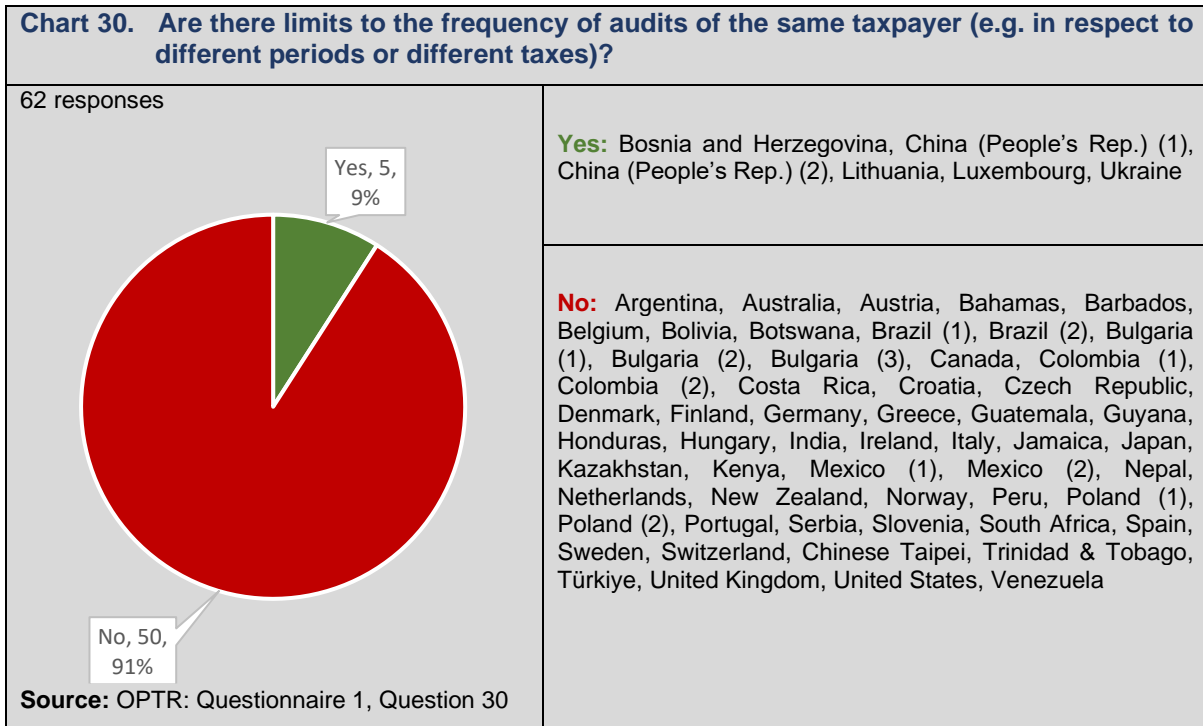
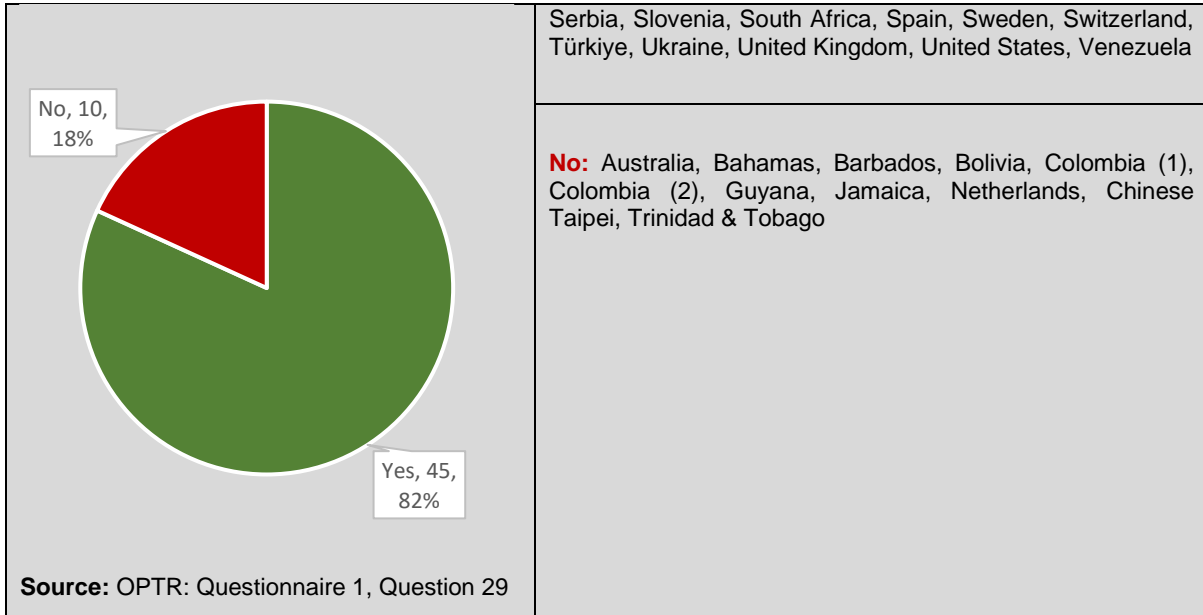
**Best practice:** Following an audit, a report should be prepared even if the audit does not result in an additional tax or refund.

<p><b>Shifted towards/matched the best practice:</b></p> <p>None</p>	<p><b>Shifted away from the best practice:</b></p> <p>None</p>
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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?	
62 responses	<p><b>Yes:</b> Argentina, Austria, Belgium, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, Hungary, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Nepal, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal,</p>

<sup>344</sup> LU: *Cour Administrative* (Administrative Court), 6 June 2023, n° 45790, ECLI:LU:TADM:2023:45790, p. 13 available at <https://ja.public.lu/45001-50000/45790.pdf> (accessed 13 Feb. 2024); and LU: *Cour Administrative* (Administrative Court), 15 June 2023, n°48144C, ECLI:LU:CADM:2023:48144, p. 22 available at <https://ja.public.lu/45001-50000/48144C.pdf> (accessed 13 Feb. 2024).

<sup>345</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 37.



## 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:**

Botswana, Hungary

**Shifted away from the best practice:**

None

**Hungary** has reported a shift towards the best practice by introducing more targeted and refined audits, thereby limiting more intensive audits to only instances where using such would be strictly necessary.<sup>346</sup>

As regards the limited nature of the powers of the tax administration in the context of these audits, **China (People's Rep.)** appears not to have reversed the trajectory in the direction of a shift towards the fulfilment of the best practice, following the Regulations on Tax Audit Work that had been revised in 2021. The Regulations clarified 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. The criminal investigation authority usually acts based on the cases handed over by tax agencies or other governmental institutions.<sup>347</sup>

### 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 their right to silence, and their statements should not be used in the audit procedure.

**Shifted towards/improved the minimum standard:**

None

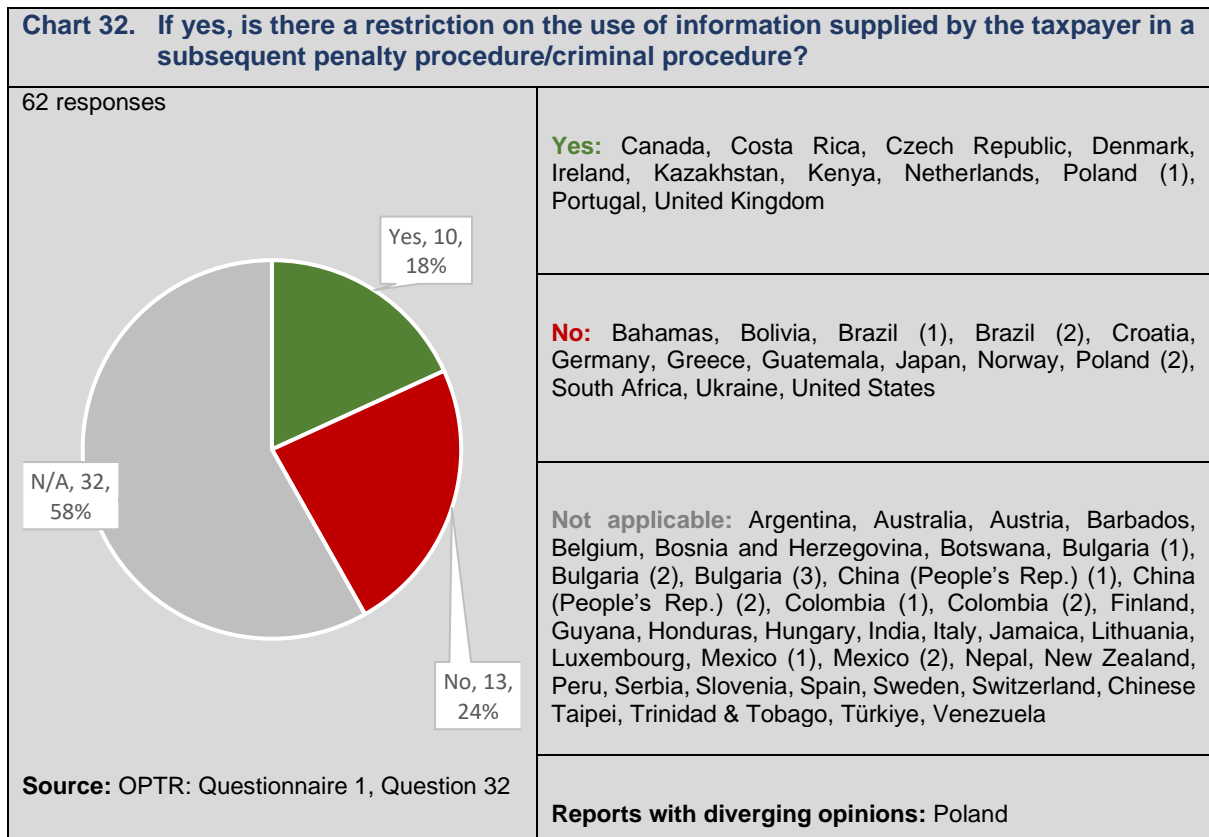
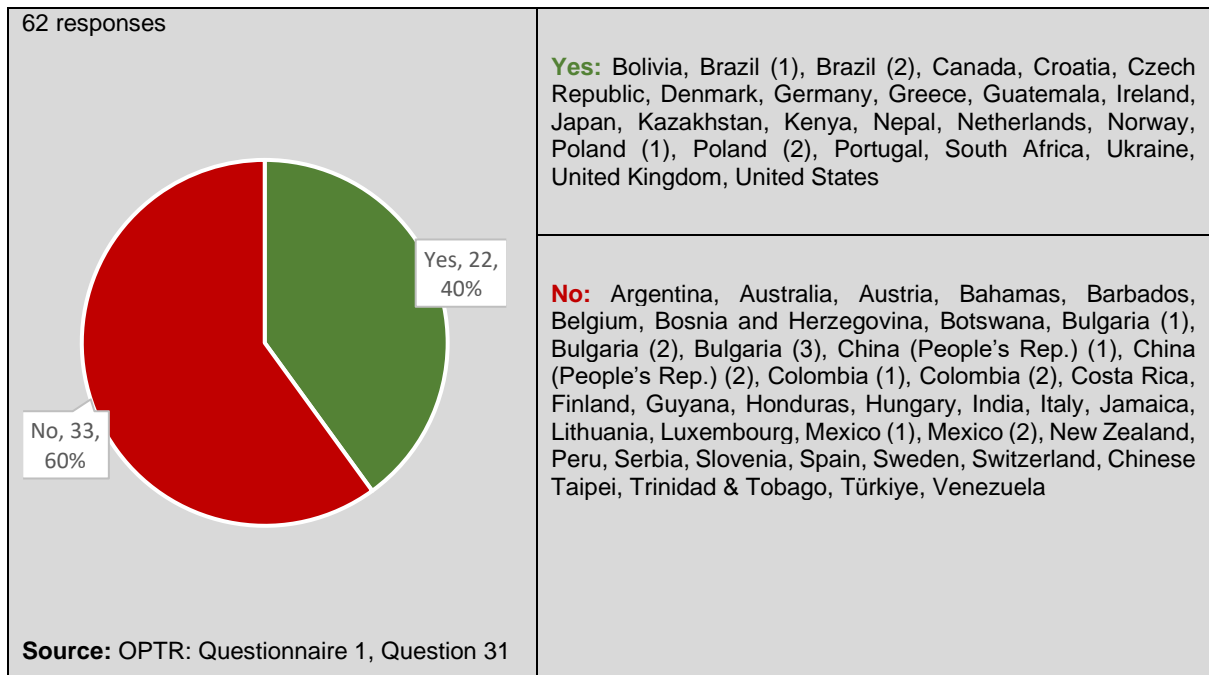
**Shifted away from the minimum standard:**

Botswana

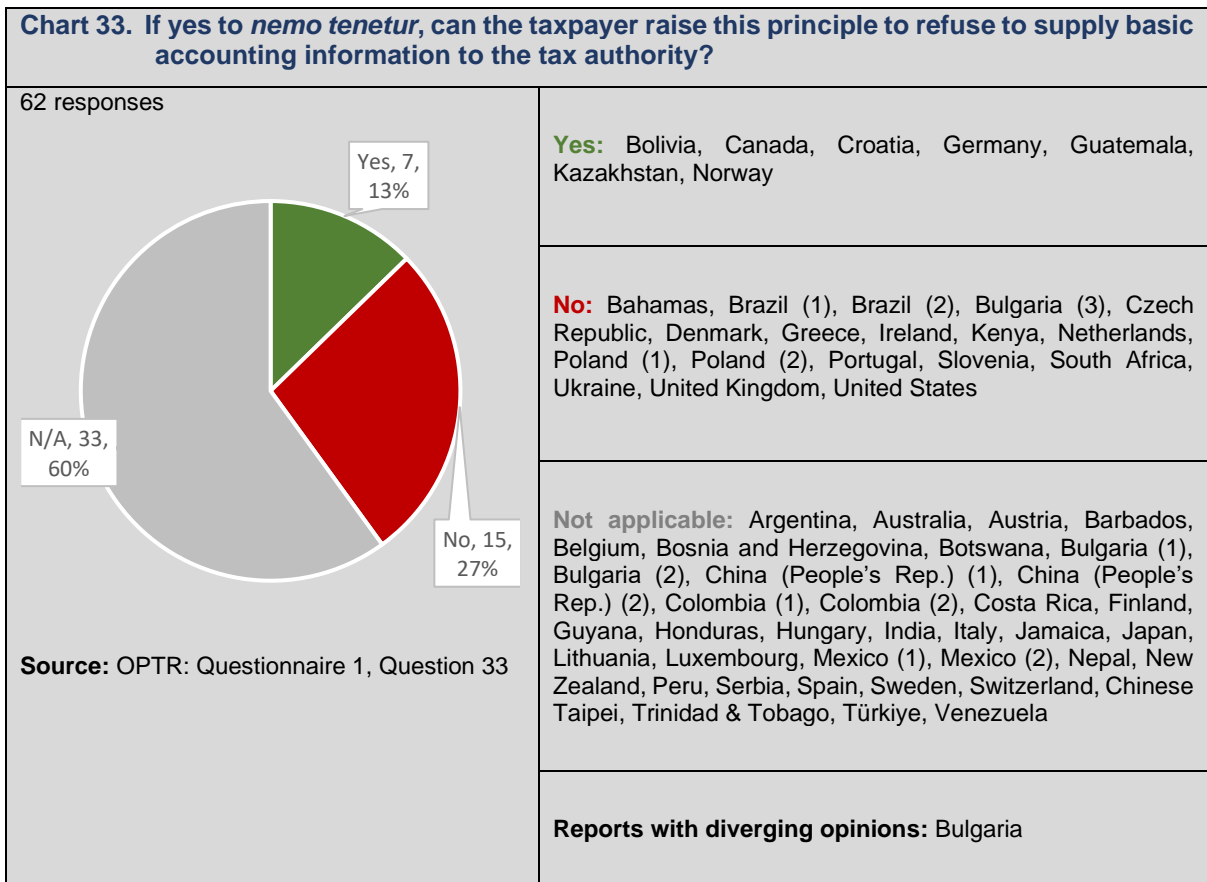
**Chart 31. Is the *nemo tenetur* principle applied in tax investigations (i.e. the principle against self-incrimination)?**

<sup>346</sup> HU: OPTR Report (Academia), Questionnaire 2, Question 39.

<sup>347</sup> See CN: Order No. 52 of the State Administration of Taxation, Provisions on the Procedures for Handling Tax Audit Cases (12 July 2021), available at <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5166617/content.html> (accessed 26 Feb. 2023); 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](http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065631.htm) (accessed 26 Feb. 2023); 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](http://www.gov.cn/zhengce/content/2020-08/14/content_5534841.htm) (accessed 26 Feb. 2023). See also CN: OPTR Yearbook (2022) (Academia), Questionnaire 2, Question 39.







**Botswana** has reported a shift away from this minimum standard, as no provision in the Income Tax Act guarantees the right to remain silent.<sup>348</sup> This marks a concerning global trend where tax audits, carrying possible criminal law implications, persist under administrative tax procedures instead of criminal law procedural rules. The latter offers a broader spectrum of fundamental rights protection. This is also reflected in last year's shift away from the minimum standard that was reported in **Colombia**, where the taxpayers' statements made during the audit process can be obtained and used even when it is foreseeable that the taxpayer may have committed a crime.<sup>349</sup>

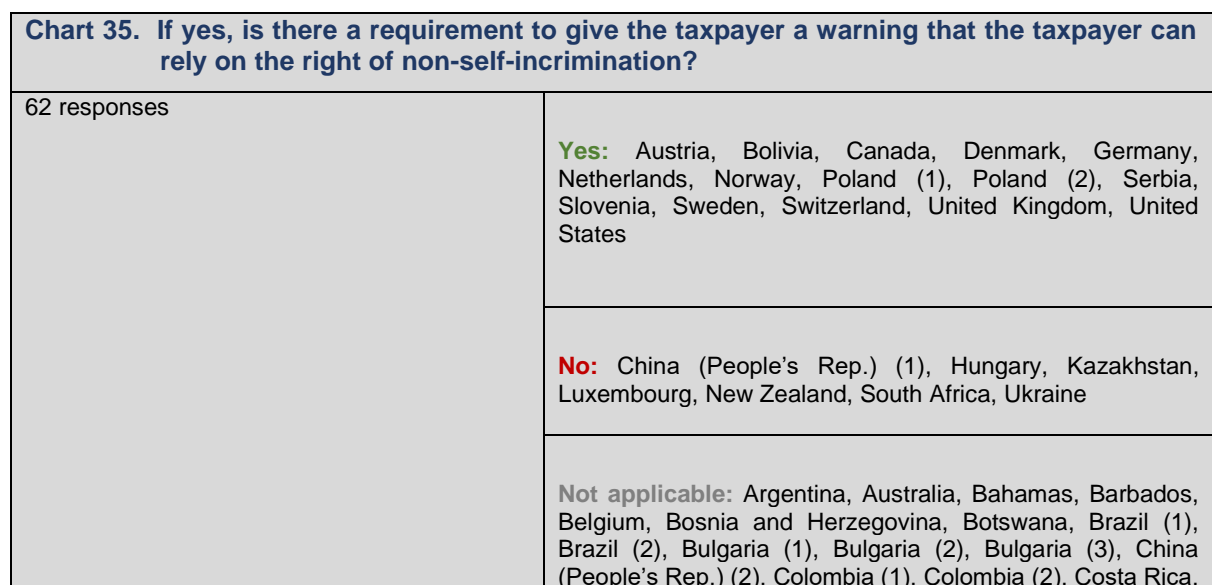
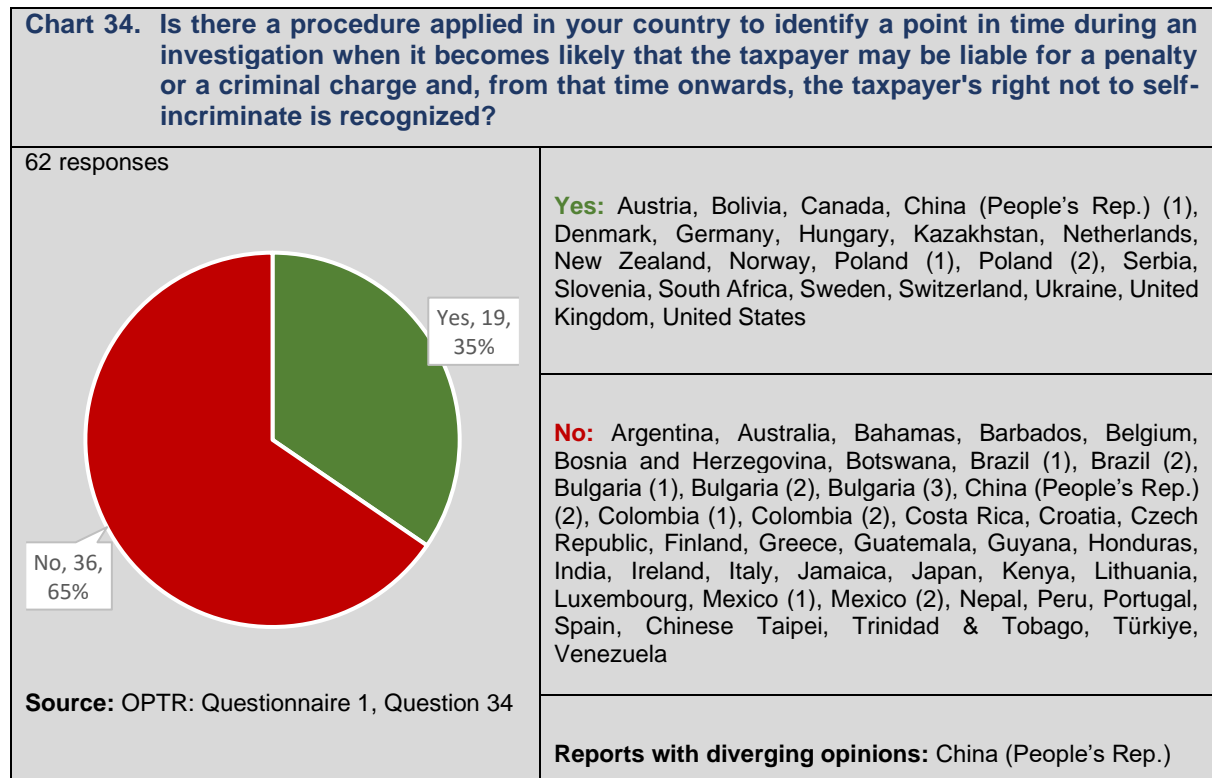
Contrary to this, in **Chinese Taipei**, if a case involves both a criminal and an administrative procedure, the administrative limb would be suspended until the criminal one is concluded to a certain stage. Only from this point onwards would the administrative procedure resume, adopting all evidence and information already gathered.<sup>350</sup>

<sup>348</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 40.

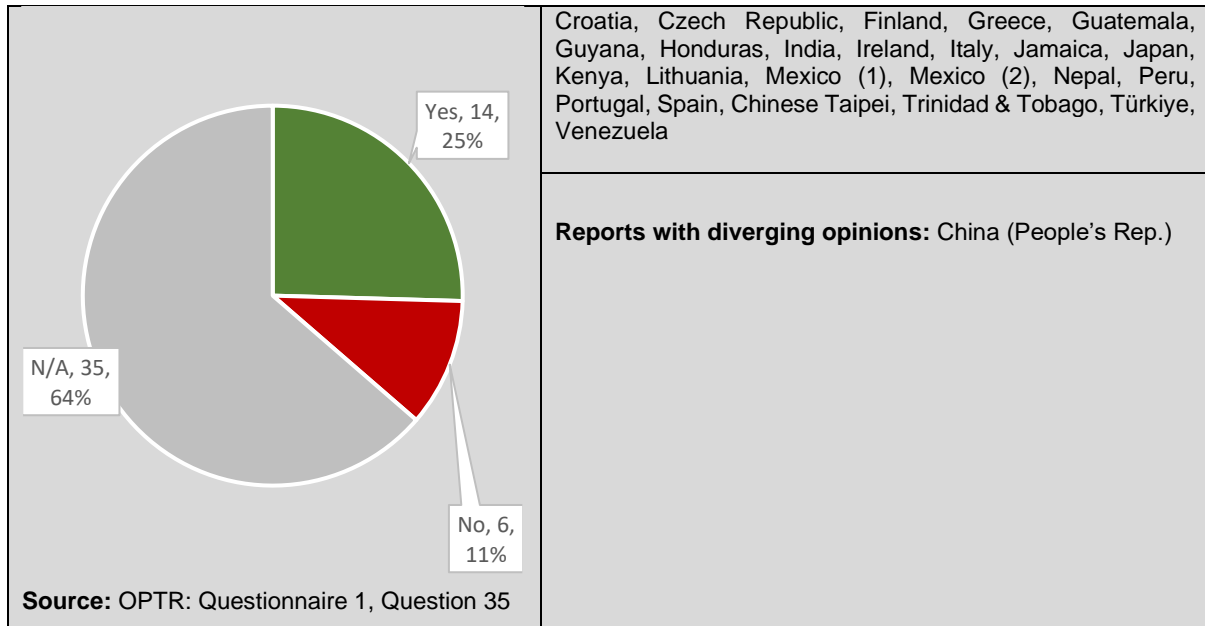
<sup>349</sup> CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 40.

<sup>350</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 40.

**Chile** will continue to move towards the convergence with the minimum standard by giving taxpayers the opportunity to provide information and cooperate in the context of a criminal case in order to reduce their tax liability.<sup>351</sup>



<sup>351</sup> CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 40.



### 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:**

Belgium

**Shifted away from the minimum standard:**

Botswana

In **Belgium**, the tax authorities are allowed to enter the premises of the taxpayer (other than residences) without prior authorization of the judiciary and to examine all books and documents located in the premises. In a judgement of 6 October 2023, the Court of Cassation ruled that the right to inspect professional premises grants the competent officials the right to examine books and documents located in closed cupboards, rubbish bins or refrigerators in the premises where the taxpayer's professional activities are carried out. However, when the taxpayer opposes the investigation, the consultation of the books and documents cannot take place without an explicit authorization by the judiciary.<sup>352</sup>

<sup>352</sup> BE: Hof van Cassatie, 6 Oct. 2023, F.22.0082.F, available at [https://expert.taxwin.be/nl/tw\\_juri/document/cass20231026-f-22-0124-n-nl](https://expert.taxwin.be/nl/tw_juri/document/cass20231026-f-22-0124-n-nl) (accessed 20 Mar. 2024).

## 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<i>EPIDAVR S.R.L. v. the Republic of Moldova No. 29895/16</i> <sup>353</sup>
<b>Date</b>	2 November 2023
<b>ECHR Articles</b>	Article 6, 8, Protocol 1, Article 1
<b>Facts</b>	The applicant company's premises were searched due to suspected tax evasion. The search warrants authorized by the judiciary were broad, lacked relevant reasons and resulted in the seizure of documents, servers, money and other objects allegedly used in connection with tax evasion. The applicant claims that the broad search warrants gave unfettered discretion to the investigator and, as a result of the seizures, the company was no longer able to operate, thereby violating their fundamental rights.

**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:**

Botswana

In **Botswana**, the authorities have an unfettered power to enter any premises without prior judicial ratification, thereby marking a shift away from the minimum standard.<sup>354</sup>

Conversely, in **Chinese Taipei**, entering and searching taxpayers' premises can be conducted by the prosecution office only for criminal law purposes and when pre-authorized by a court, with the tax authorities having no such powers.<sup>355</sup>

<sup>353</sup> See MD: ECtHR, 2 Nov. 2023, no. 29895/16, *EPIDAVR S.R.L. v. the Republic of Moldova*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-229059%22%5D%7D> (accessed 15 Feb. 2024).

<sup>354</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 42.

<sup>355</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 42.

## 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<i>Konstyantyn Valentynovych TSYRKUN v. Ukraine No. 81481/17</i> <sup>356</sup>
<b>Date</b>	19 June 2023
<b>ECHR Articles</b>	Article 8
<b>Facts</b>	In the context of proceedings related to a tax evasion scheme, the lawfulness of the search of the applicant’s home without a court warrant is at issue. According to the applicable law, authorities may enter private property and carry out search operations without prior judicial authorization in “urgent circumstances connected to saving human lives, property or the immediate apprehension of individuals suspected of having committed a criminal offense”. However, the law requires post facto judicial authorization for the search operations. The applicant alleges a violation of article 8 of the Convention.

**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:**  
Belgium

**Shifted away from the minimum standard:**  
Botswana

**Best practice:** When 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:**  
Belgium

**Shifted away from the best practice:**  
Botswana

**Belgium** has reported a shift towards the best practice due to a judgment of the Court of Cassation according to which, in order for tax officials to enter a home or occupied premises, there must be not only an authorization by a police judge but also an explicit consent by the taxpayer, who must be present for the entire duration of the inspection.<sup>357</sup>

However, this development must be put in the context of a shift away reported last year, which continues to affect the outcome if the search was unlawfully conducted. In a decision from 2022, the Court of Cassation in Belgium held that illegally obtained evidence cannot be excluded “by definition”, but the decision whether it is to be allowed should be tested against the principles of good administration and the right to a fair trial.<sup>358</sup>

<sup>356</sup> See UA: ECtHR, 19 Jun. 2023, no. 81481/17, *Konstyantyn Valentynovych TSYRKUN v. Ukraine*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-225994%22%5D%7D> (accessed 15 Feb. 2024).

<sup>357</sup> BE: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 43.

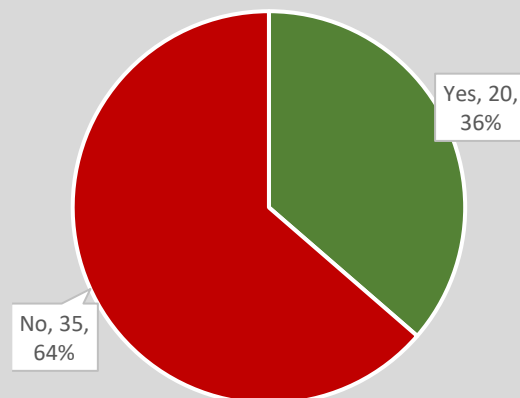
<sup>358</sup> See BE: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 43.

## 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<i>Jurgis LIEPNIEKS v. Latvia No. 24779/22</i> <sup>359</sup>
<b>Date</b>	11 January 2023
<b>ECHR Articles</b>	Article 8, Protocol 1, Article 1
<b>Facts</b>	During a search conducted at the home of the applicant and his spouse, electronic devices and documents were seized regarding criminal proceedings involving tax evasion and money laundering allegedly committed by the applicant's wife. Numerous personal documents and electronic devices belonging to the applicant containing information about his private life, family and professional activities were confiscated and have yet to be returned to the applicant until the date of lodging of the application.

**Chart 36. Is authorization by a court always needed before the tax authority may enter and search premises?**

62 responses



**Yes:** Bahamas, Barbados, Bolivia, Brazil (1), Brazil (2), Croatia, Finland, Germany, Guatemala, Guyana, Ireland, Jamaica, Japan, Kenya, Lithuania, Norway, Slovenia, Sweden, Chinese Taipei, Türkiye, United Kingdom

**No:** Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Botswana, Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Czech Republic, Denmark, Greece, Honduras, Hungary, India, Italy, Kazakhstan, Luxembourg, Mexico (1), Mexico (2), Nepal, Netherlands, New Zealand, Peru, Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Switzerland, Trinidad & Tobago, Ukraine, United States, Venezuela

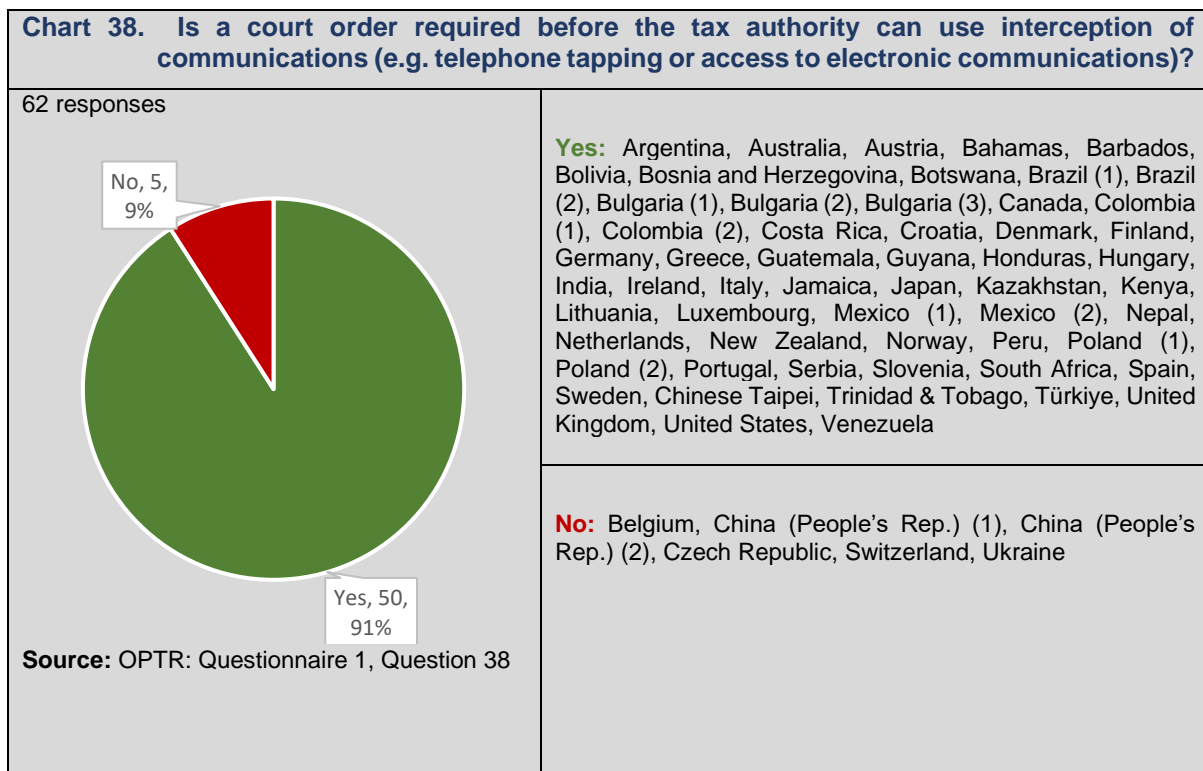
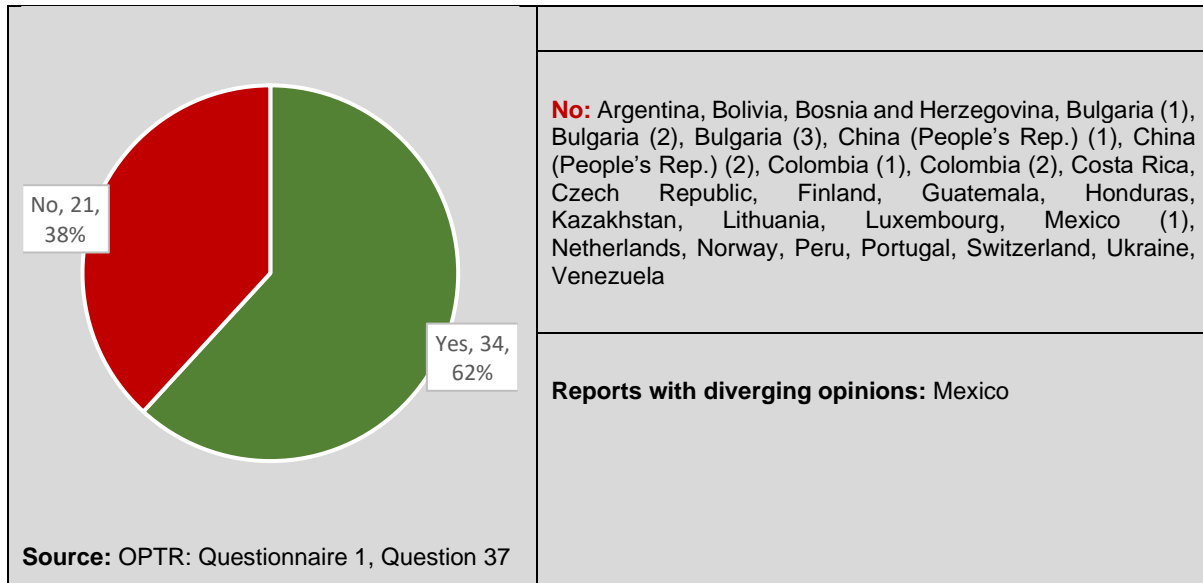
**Source:** OPTR: Questionnaire 1, Question 36

**Chart 37. May the tax authority enter and search the dwelling places of individuals?**

62 responses

**Yes:** Australia, Austria, Bahamas, Barbados, Belgium, Botswana, Brazil (1), Brazil (2), Canada, Croatia, Denmark, Germany, Greece, Guyana, Hungary, India, Ireland, Italy, Jamaica, Japan, Kenya, Mexico (2), Nepal, New Zealand, Poland (1), Poland (2), Serbia, Slovenia, South Africa, Spain, Sweden, Chinese Taipei, Trinidad & Tobago, Türkiye, United Kingdom, United States

<sup>359</sup> See LV: ECtHR, 11 Jan. 2023, no. 24779/22, *Jurgis LIEPNIEKS v. Latvia*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-222939%22%5D%7D> (accessed 15 Feb. 2024).



**Best practice:** Access to bank information should require judicial authorization.

**Shifted towards/matched the best practice:**  
Mexico

**Shifted away from the best practice:**  
Botswana

An interesting development was observed in **Mexico**, where the shift away reported last year was reversed by a Supreme Court decision that found unconstitutional a section of the law that allowed requesting access to banking information without prior judicial authorization.<sup>360</sup> This reverse development demonstrates that countries have yet to find the appropriate balance between the protection of taxpayers’ rights and effective fiscal supervision when it comes to bank information.

Besides this, not many new developments were reported in this area, unlike in previous years. In **Botswana** and **Argentina**, the tax authorities are not bound by financial secrecy and, thus, have broad powers to request information.<sup>361</sup>

In continuing the shift away from the best practice from last year, in **Poland**, the tax authorities are entitled to obtain information about the account of a specific taxpayer – on suspicion of a tax crime – by requesting the information from a bank, but before charging said person. As a result, taxpayers’ bank information is reviewed without their knowledge and without explicit criminal proceedings being initiated.<sup>362</sup> While this certainly allows for some “fishing expeditions”, it also constitutes somewhat of a middle ground between completely unrestricted access and the best practice of requiring judicial authorization.

**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 2022.

**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:**

None

**Shifted away from the minimum standard:**

Botswana

In a shift away from the minimum standard, the domestic law in **Botswana** prescribes unrestricted powers to request and seize specific documentation regarding taxpayers.<sup>363</sup>

<sup>360</sup> MX: The decision is available at <https://sjf2.scjn.gob.mx/detalle/tesis/2027468> (accessed 13 Feb. 2024).

<sup>361</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 44; and AR: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

<sup>362</sup> PO: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

<sup>363</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 46.



## 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:**

Botswana

**China (People’s Rep.)** has adopted the best practice by providing special rules for electronic records, whereby the tax authorities make a copy of the information collection and leave the original medium and records with the taxpayers.<sup>364</sup>

**Minimum standard:** When invasive techniques are applied, they should be limited in time to avoid a disproportionate impact on taxpayers.

**Shifted towards/matched the best practice:**

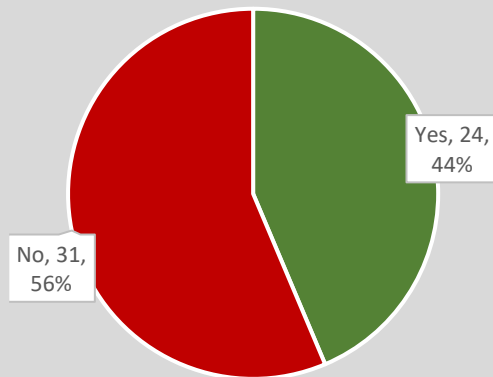
None

**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?**

62 responses



**Yes:** Australia, Austria, Bolivia, Colombia (1), Colombia (2), Costa Rica, Czech Republic, Denmark, Hungary, Ireland, Italy, Jamaica, Kazakhstan, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, United States

**No:** Argentina, Bahamas, Barbados, Belgium, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Croatia, Finland, Germany, Greece, Guatemala, Guyana, Honduras, India, Japan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Nepal, Peru, Serbia, Chinese Taipei, Trinidad & Tobago, Ukraine, United Kingdom, Venezuela

**Source:** OPTR: Questionnaire 1, Question 39

## 6. Reviews and Appeals

### 6.1. The remedies and their functions

<sup>364</sup> See art. 23 of the Regulations on Procedures for Handling Tax Audit Cases, available at <https://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5166617/content.html> (accessed 13 Feb. 2023).

**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:**

Costa Rica, Greece, Italy, United States

**Shifted away from the best practice:**

None

The pandemic provided an impetus across various regions for the e-filing of not only tax returns (see section 2.) but also reviews and appeals. This trend was maintained throughout 2023. For instance, in **Costa Rica**, requests for internal review and judicial appeals have been fully digitalized.<sup>365</sup> Likewise, as of 1 January 2023, in **Greece**, the decision of the governor of the Independent Authority for Public Revenue (A.1165/2002, OJ B' 6009/15-11-2022)<sup>366</sup> mandated that all appeals (as well as relative requests for suspension of the payment of taxes due) before the Dispute Resolution Directorate of the Greek tax administration shall be filed electronically.<sup>367</sup> Furthermore, appeals have been fully digitalized also in **Italy** through the amendment to article 16-bis of the Italian Tax Procedural Code (Decree n. 546/1992) by Decree n. 220/2023,<sup>368</sup> which virtually eliminates any possibility of deviating from electronic methods for filing and depositing judicial appeals.

Developments were also observed in the **United States**,<sup>369</sup> aligning with the goals outlined in the IRS Strategic Operating Plan (referenced in section 2.), which identified key opportunities for implementing transformative changes that benefit taxpayers. A central focus of these objectives involves the expansion of electronic filing and document processing to streamline issue identification and resolution more efficiently. In line with these strategic aims, the IRS has committed to facilitating seamless digital communication with taxpayers, aiming to simplify the process and ensure convenient interaction regarding their cases.<sup>370</sup> This includes the introduction of a Document Upload Tool, allowing taxpayers to respond to all IRS notices electronically.<sup>371</sup> Moreover, efforts have been made to broaden the capacity for appeals to be transmitted electronically from various IRS functions to the Office of Appeals. Additionally, there has been an extension of authorization for taxpayers to engage in encrypted

<sup>365</sup> See Resolution MH-DGT-RES-0010-2023, available at [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=99781&nValor3=136622&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=99781&nValor3=136622&strTipM=TC) (accessed 20 Feb. 2024).

<sup>366</sup> The decision is available at [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=99781&nValor3=136622&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=99781&nValor3=136622&strTipM=TC) (accessed 20 Mar. 2024).

<sup>367</sup> See GR: OPTR Report (Tax Administration), Questionnaire 2, Question 49.

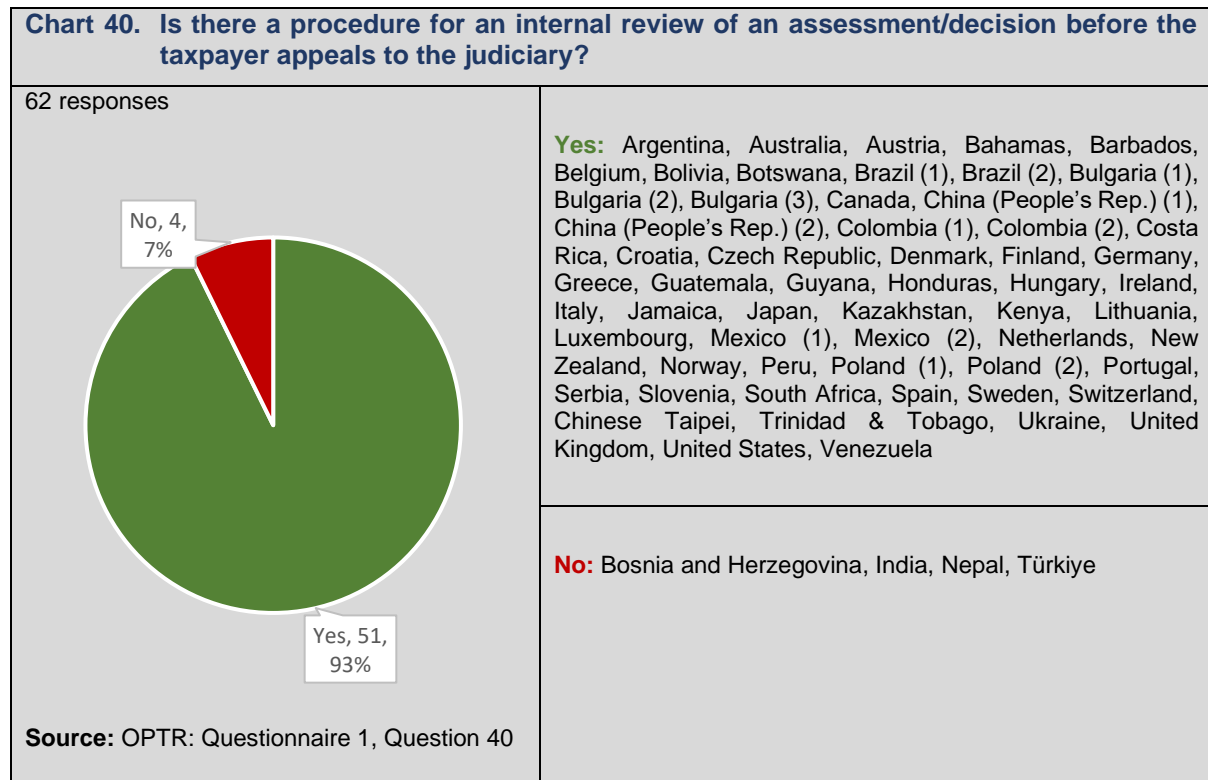
<sup>368</sup> The amended text is available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2018-10-23;119-art16-com4> (accessed 20 Feb. 2024).

<sup>369</sup> See US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 49.

<sup>370</sup> See IRS News Release IR-2023-233 (8 Dec. 2023), *IRS Independent Office of Appeals releases fiscal year 2024 priorities; focus on improving taxpayer service*, available at <https://www.irs.gov/newsroom/irs-independent-office-of-appeals-releases-fiscal-year-2024-priorities-focus-on-improving-taxpayer-service> (accessed 21 Feb. 2024).

<sup>371</sup> See IRS Fact Sheet FS-2023-25 (Nov. 2023), *IRS achieves key Paperless Processing Initiative goal, outlines improvements for filing season 2024*, available at <https://www.irs.gov/newsroom/irs-achieves-key-paperless-processing-initiative-goal-outlines-improvements-for-filing-season-2024> (accessed 21 Feb. 2024).

communications, particularly with the Appeals division. This encompasses the use of digital signatures, as well as the secure receipt and transmission of documents via email, among other methods.<sup>372</sup>



**Minimum standard:** The right to appeal should not depend upon prior exhaustion of administrative reviews.

**Shifted towards/matched the best practice:**

Italy, Spain

**Shifted away from the best practice:**

Belgium, Botswana, Chinese Taipei

In a large number of jurisdictions, access to justice in tax matters requires the prior exhaustion of “administrative review procedures”. These procedures normally have (one or more of) the following characteristics:<sup>373</sup> (i) they are triggered by taxpayers; (ii) they may end either with the annulment or the confirmation of a tax measure (prohibition of *reformatio in pejus*); (iii) they ensure that administrative measures issued by tax authorities comply with the rule of law and, thus, are aimed to protect the interest of the community rather than the rights of individual

<sup>372</sup> See IRS News Release IR-2023-199 (30 Oct. 2023), *IRS extends popular flexibilities set to expire; electronic signatures and encrypted email enhance the taxpayer experience*, available at <https://www.irs.gov/newsroom/irs-extends-popular-flexibilities-set-to-expire-electronic-signatures-and-encrypted-email-enhance-the-taxpayer-experience> (accessed 21 Feb. 2024).

<sup>373</sup> See P. Pistone, *General Report*, in *Tax Procedures* pp. 69-73 (P. Pistone ed., IBFD 2020), Books IBFD.

persons; (iv) they may entail the replacement of an administrative measure with a new one; (v) they are conducted by the same branch of the state government that issued the measure under the review; (vi) they should operate as a “filter” that reduces the number of tax disputes to be addressed at the judicial level; and (vii) they do not automatically suspend the tax collection during the review process, nor the time limits for the appeal of the measure under review.

The need for prior exhaustion of administrative review adds at least one layer of revision to those that are necessary for securing taxpayers’ effective protection, thus increasing the risk of undermining the right to justice within a reasonable period.<sup>374</sup> At the same time, it allows for some uncomplicated cases to be swiftly resolved.

With respect to the minimum standard at hand, for the second year in a row, the only development reported relates to **Spain**.<sup>375</sup> For historical reasons, Spain (like many other EU Member States) maintains specific administrative bodies and procedures for the review of tax measures, but there are diverging views in the literature as to whether such mandatory reviews should be maintained, eliminated or kept on an optional basis.<sup>376</sup> In this context, the Spanish Supreme Court (*Tribunal Supremo. Sala de lo Contencioso*) articulated that administrative reviews are not obligatory under two circumstances: (i) when seeking access to the special process for the protection of fundamental rights (*procedimiento especial de protección de los derechos fundamentales*);<sup>377</sup> and (ii) when the tax administration is solicited for something beyond its capacity to fulfil, such as declaring a law unconstitutional.<sup>378</sup>

It is noteworthy that **Italy**, up until 2023, mandated – in accordance with article 17-bis of Decree No. 546/1992 – that the right to appeal hinged on prior exhaustion of administrative reviews for cases valued below EUR 50,000. However, with the enactment of Decree n. 220/2023 (applicable to appeals filed after 4 January 2024), this requirement was repealed. As a result, appeals no longer necessitate the exhaustion of administrative reviews, marking Italy’s full compliance with the minimum standard.

In contrast to the Spanish case law’s less formalistic approach, the case law in **Belgium** takes an opposing stance. Specifically, the Court of Appeal of Mons<sup>379</sup> deemed a request for administrative review as invalid because it merely expressed disagreement with the taxation and did not furnish factual and legal arguments in support of the claim. Consequently, the

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<sup>374</sup> See C.P. Taboada, *Is the Previous Exhaustion of Administrative Procedures a Necessary Condition to Access Judicial Procedures?*, in *Tax Procedures* pp. 177-196 (P. Pistone ed., IBFD 2020), Books IBFD.

<sup>375</sup> See ES: OPTR Report (Taxpayers/Tax Practitioners, Ombudsperson, Academia), Questionnaire 2, Question 50.

<sup>376</sup> See V.A. García Moreno et al., *Spain*, in *Tax Procedures* pp. 912-914 (P. Pistone ed., IBFD 2020), Books IBFD.

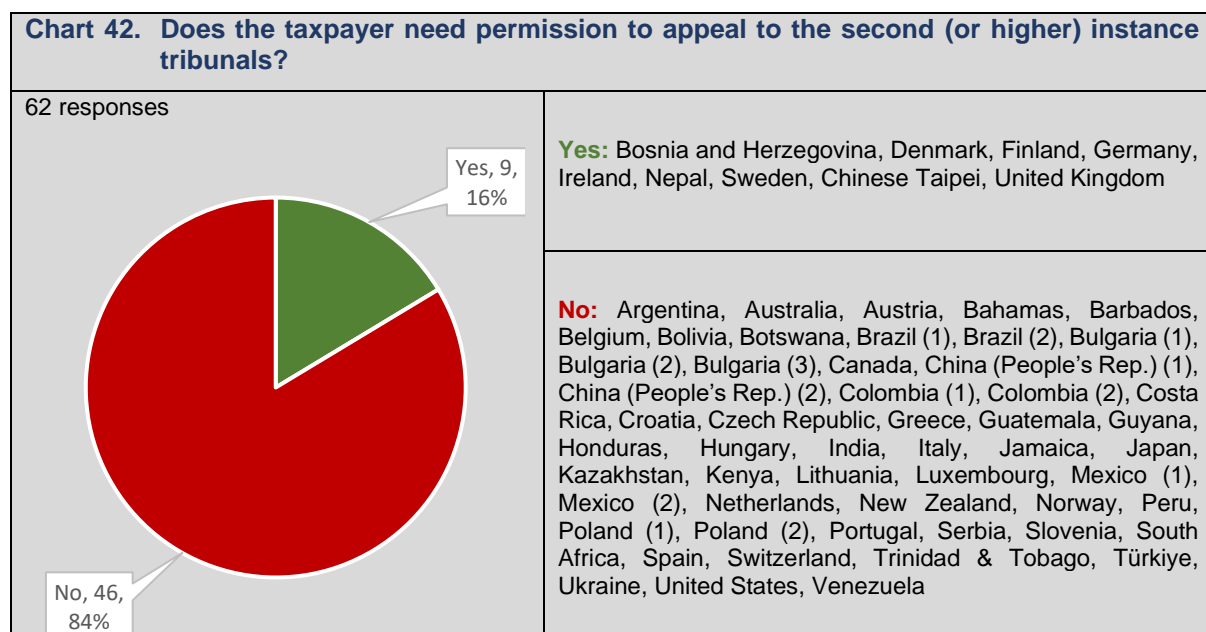
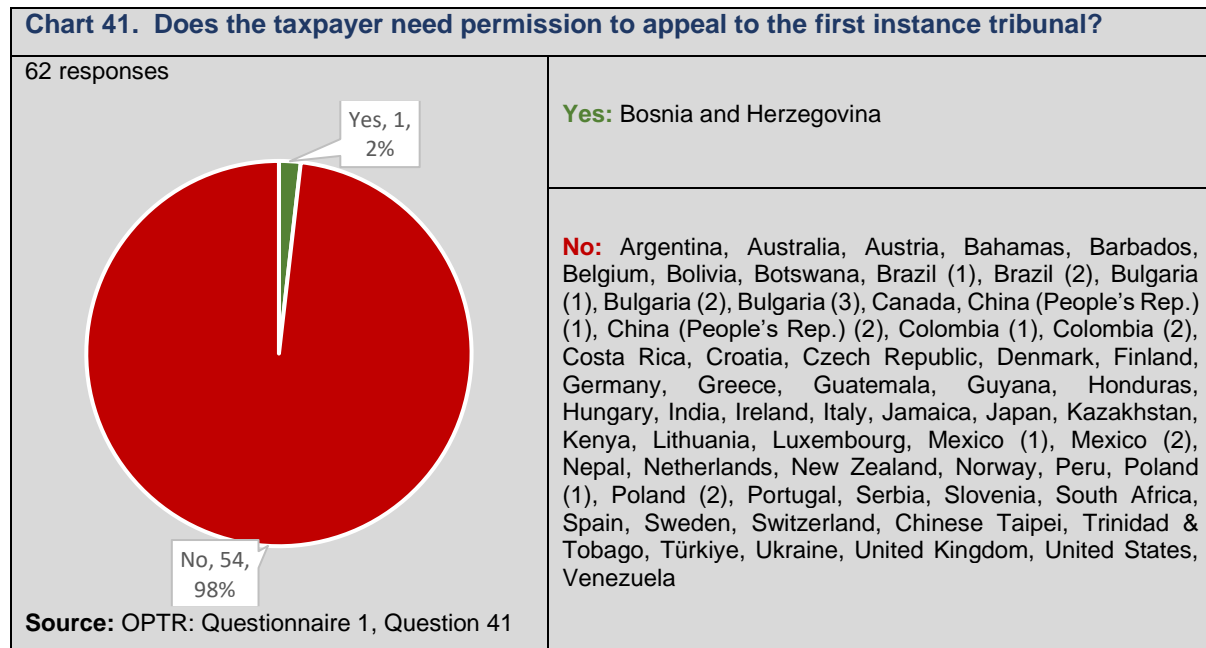
<sup>377</sup> See ES: Supreme Court, 22 Dec. 2021, judgment 1580/2021, available at <https://www.poderjudicial.es/search/documento/AN/9944313/Personal%20interino/20220506> (accessed 21 Feb. 2023).

<sup>378</sup> See ES: Supreme Court, 20 July 2023, judgment 10832/2023, available at <https://www.poderjudicial.es/search/documento/AN/9944313/Personal%20interino/20220506> (accessed 21 Feb. 2024).

<sup>379</sup> See BE: *Hof van Beroep/Cour d’Appel* (Court of Appeals) Mons, 8 Mar. 2023, 2021/RG/734. See also BE: OPTR Report (Taxpayers/ Tax Practitioners, Academia), Questionnaire 2, Question 50.

appeal before the Court was considered inadmissible, as adherence to the obligation of submitting a valid administrative appeal was deemed a prerequisite for accessing the judiciary.

Negative developments have also been reported in **Botswana**<sup>380</sup> and **Chinese Taipei**, as according to the Taiwan Tax Collection Act, access to judiciary still depends upon prior exhaustion of administrative reviews.<sup>381</sup>



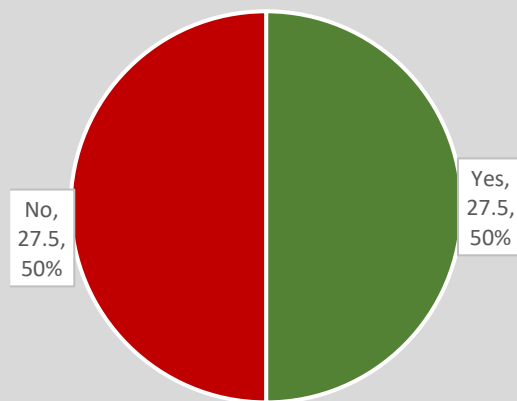
<sup>380</sup> See BW: OPTR Report (Academia), Questionnaire 2, Question 50.

<sup>381</sup> See TW: OPTR Report (Academia), Questionnaire 2, Question 50.

Source: OPTR: Questionnaire 1, Question 42

**Chart 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?**

62 responses



Source: OPTR: Questionnaire 1, Question 43

**Yes:** Argentina, Austria, Bosnia and Herzegovina, Botswana, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.) (1), Croatia, Czech Republic, Finland, Germany, Greece, Guatemala, Honduras, India, Ireland, Japan, Kazakhstan, Lithuania, Luxembourg, Mexico (1), Mexico (2), Nepal, Peru, Poland (1), Poland (2), Slovenia, Spain, Switzerland, Chinese Taipei, Türkiye

**No:** Australia, Bahamas, Barbados, Belgium, Bolivia, Brazil (1), Brazil (2), Canada, China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Denmark, Guyana, Hungary, Italy, Jamaica, Kenya, Netherlands, New Zealand, Norway, Portugal, Serbia, South Africa, Sweden, Trinidad & Tobago, Ukraine, United Kingdom, United States, Venezuela

**Reports with diverging opinions:** China (People's Rep.)

**Note: Exceptionally, in this case, no rounding up has been implemented in the pie chart in order to depict that both outcomes are equally represented across the survey countries.**

**2023 Relevant Case Law – European Court of Human Rights**

<b>Case</b>	<i>DEA 7.CO v. Albania</i> , No. 65320/09 <sup>382</sup>	
<b>Date</b>	27 June 2023	
<b>ECHR Articles</b>	Article 6(1) – Article 1 of Protocol No. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
The case concerns the right of access to a court to challenge a tax liability notice imposing a duty to pay underreported tax and additional surcharges and penalties. The applicant was denied an examination of the merits of its challenge of the tax notice by the Directorate of Tax Appeals on the grounds that the applicant had	The Court found that the case did not disclose any appearance of a violation of the applicant company's right of access to court under article 6, §1 of the Convention. The complaint under article 1 of Protocol No. 1 to the Convention before the Court is inadmissible for non-exhaustion of domestic remedies.	The ECtHR concluded that the right of access to a court is not absolute and may be subject to limitations. In this respect, the ECtHR stated that the requirement to pre-pay the principal amount of the reassessed tax debt before challenging the debt assessment did not constitute a

<sup>382</sup> See AL: ECtHR, 27 Jun. 2023, no. 65320/09, *DEA 7.CO v. Albania*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-226128%22%5D%7D> (accessed 24 Feb. 2024).

<b>Case</b>	<i>DEA 7.CO v. Albania</i> , No. 65320/09 <sup>382</sup>	
<b>Date</b>	27 June 2023	
<b>ECHR Articles</b>	Article 6(1) – Article 1 of Protocol No. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>failed to comply with section 43 of the Tax Procedures Act, according to which, before challenging a tax obligation, a taxpayer must pay the principle of the disputed amount.</p> <p>The applicant's appeal before the Commission of Tax Appeals was refused based on the same grounds.</p> <p>The judicial appeals of the applicant were equally denied due to the failure to pre-pay the principal amount of the reassessed tax debt before challenging the debt reassessment, which led to the non-exhaustion of the administrative limb of the process.</p> <p>Before the ECtHR, the applicant complained under article 6(1) of the Convention about the denial of access to a court for the purpose of challenging its tax obligations.</p> <p>The applicant also complained under article 1 of Protocol No. 1 that the tax liability imposed an excessive burden on the peaceful enjoyments of its possessions.</p>		<p>disproportionate burden for the applicant's company.</p> <p>This conclusion was mainly derived from the fact that the applicant only challenged the very obligation to pay the tax and not its inability to comply with that obligation.</p> <p>Therefore, the ECtHR did not conclude a violation of article 6, §1 of the Convention.</p>

## 6.2. Length of the procedure

**Best practice:** Reviews and appeals should not exceed 2 years.

**Shifted towards/matched the best practice:**

China (People's Rep.), Italy

**Shifted away from the best practice:**

None

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, the completion of tax reviews and appeals within a reasonable time is crucial not only for the protection of taxpayers' rights to a fair trial, but also for the right to certainty about their tax liability.



With respect to the best practice at hand, after a swinging trend reported in 2021 and 2022, through 2023, national reports only show developments in **China (People’s Rep.)**.<sup>383</sup> Both in regards to administrative reviews and judicial proceedings, it has been reported that the legislative framework ensures strict timelines for the completion of the proceedings. In particular, as to the former, the newly revised “Administrative Reconsideration Law” of People’s Republic of China (effective on 1 January 2024)<sup>384</sup> states that (i) applications for administrative reviews must be submitted within 60 days upon the date of knowledge of a specific administrative act<sup>385</sup> (article 9); and (ii) the administrative review organ shall, as a general rule,<sup>386</sup> make a decision within 60 days from the date of accepting the application (article 31). Furthermore, as to judicial proceedings, article 88 of the “Administrative Procedure Law” of People’s Republic of China states that a People’s Court hearing an appeal shall, as a rule,<sup>387</sup> render a final judgment within 3 months from the date of receipt of the appeal.

While national reports for both 2022 and 2023 indicate a “no-change” situation,<sup>388</sup> it is worth highlighting that **Italy** appears to be slowly moving towards this best practice. In June 2023, the Italian Ministry of Finance released a report on tax litigation, revealing that the average duration of tax disputes in 2022 was 973 days before second-tier tax courts, marking a 9.9% decrease from 2021 when the average was 1,080 days. Similarly, disputes before first-tier tax courts averaged 571 days, reflecting a 12.4% reduction from the 652 days reported in 2021.<sup>389</sup>

Chart 44. Are there time limits applicable for a tax case to complete the judicial appeal process?	
62 responses	<b>Yes:</b> China (People’s Rep.) (1), China (People’s Rep.) (2), Czech Republic, Honduras, Kazakhstan, Nepal, Chinese Taipei, Ukraine

<sup>383</sup> See CN: OPTR China (People’s Rep.) 2 (Tax Administration), Questionnaire 2, Question 51; on the contrary, CN: OPTR China (People’s Rep.) 2 (Academia), Questionnaire 2, Question 51, highlighted a “no change” situation.

<sup>384</sup> Available at [https://www.gov.cn/yaowen/liebiao/202309/content\\_6901584.htm](https://www.gov.cn/yaowen/liebiao/202309/content_6901584.htm) (accessed 21 Feb. 2024).

<sup>385</sup> Except when the time limit prescribed in laws exceeds 60 days.

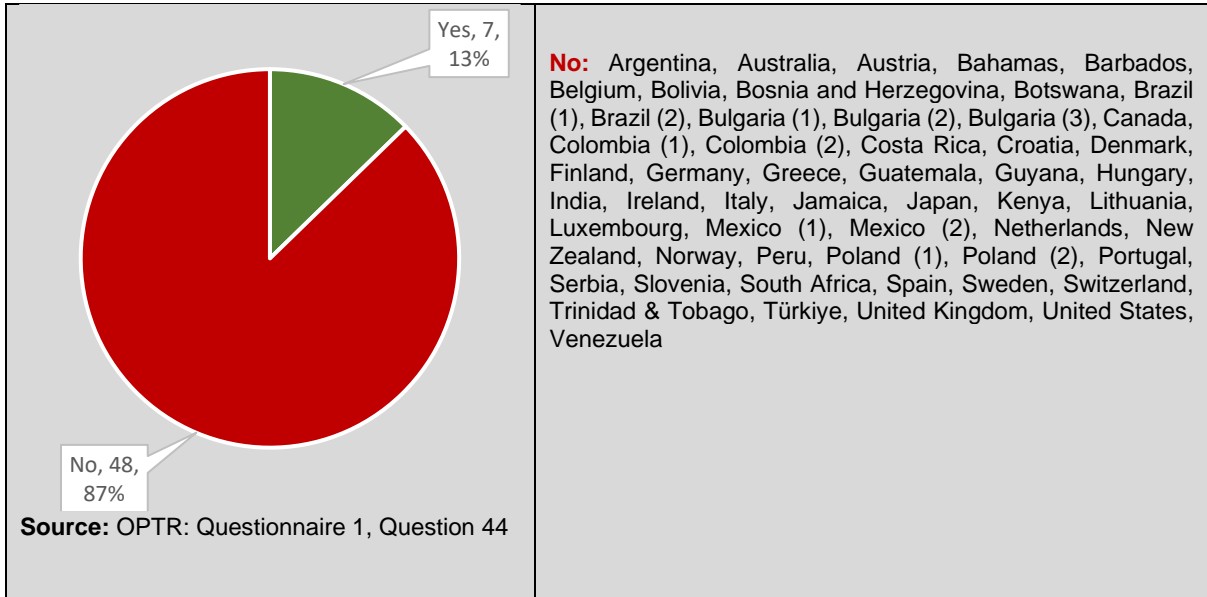
<sup>386</sup> If circumstances are complex, and an administrative reconsideration organ fails to make a decision within the prescribed time limit, the responsible persons of the administrative reconsideration organ may approve a proper extension of the time limit within 30 days, and the extension of the time limit shall be informed to the applicant and the respondent of the application.

<sup>387</sup> Any extension of the aforesaid period as needed under special circumstances shall be subject to the approval of a Higher People’s Court. Where a Higher People’s Court trying an appeal case needs to extend the aforesaid period, the extension shall be subject to the approval of the Supreme People’s Court.

<sup>388</sup> See IT: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 51.

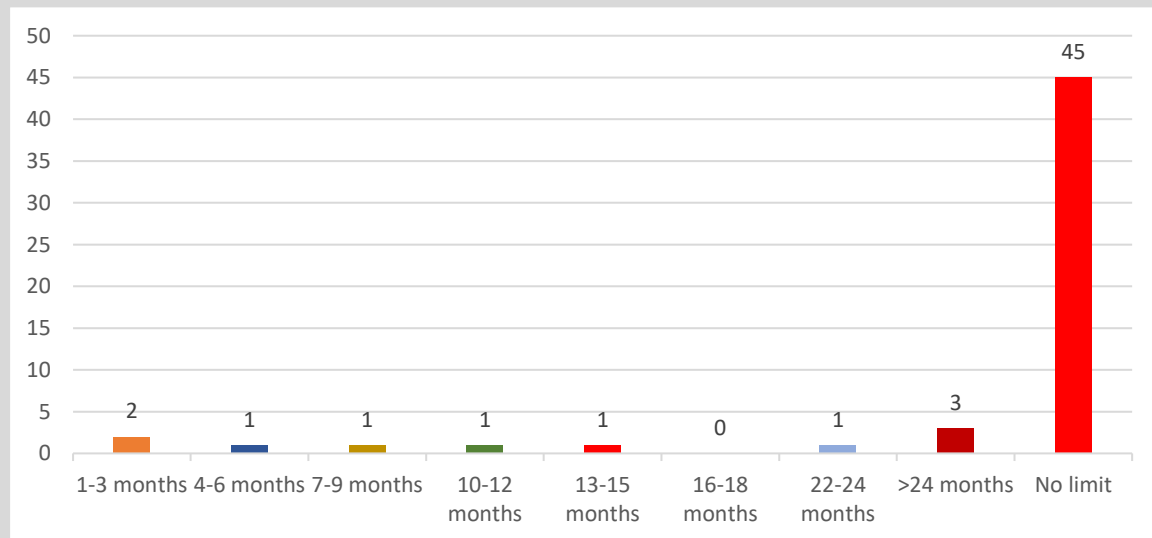
<sup>389</sup> See the report in MEF, *Relazione sul monitoraggio dello stato del contenzioso tributario e sull’attività delle Corti di Giustizia Tributaria* p. 10 (June 2023), available at <https://www.dgt.mef.gov.it/gt/relazione-annuale-sullo-stato-del-contenzioso-tributario> (accessed 22 Feb. 2024).





**Chart 45. If yes, what is the normal time it takes for a tax case to be concluded on appeal?**

62 responses



**Source:** OPTR: Questionnaire 1, Question 45

**1-3 months:**

China (People's Rep.) (2), Nepal, Ukraine

**4-6 months:**

China (People's Rep.) (1)

**7-9 months:**

Chinese Taipei

**10-12 months:**

Kazakhstan

13-15 months:

Serbia

16-18 months:

none

22-24 months:

Honduras

>24 months:

Argentina, Canada, Czech Republic

**No limit:**

Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Colombia (1), Colombia (2), Costa Rica, Croatia, Denmark, Finland, Germany, Greece, Guatemala, Guyana, Hungary, India, Ireland, Italy, Jamaica, Japan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad & Tobago, Türkiye, United Kingdom, United States, Venezuela

**Reports with diverging opinions:** China (People's Rep.)

## 2023 Relevant Case Law – European Court of Justice

<b>Case</b>	<b>C-615/21 - <i>Napfény-Toll</i><sup>90</sup></b>	
<b>Date</b>	13 July 2023	
<b>EU Charter Articles</b>	47	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
The issue is whether the principles of legal certainty and effectiveness of EU law preclude legislation and administrative practice under which, in relation to VAT, the limitation period for tax authorities to issue a tax assessment is to be suspended for the whole duration of judicial review, regardless of the number of repeat administrative tax procedures following those reviews.	The principles of legal certainty and effectiveness of EU law must be interpreted as not precluding legislation of a Member State or the related administrative practice, under which, in relation to VAT, the limitation period in respect of the right of the tax authorities to assess that tax is suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure has had to be repeated following those reviews and with no ceiling on the cumulative duration of the suspensions of that	The second subparagraph of article 47 of the Charter states, inter alia, that everyone is entitled to a hearing within a reasonable time. It is apparent from the Court's case law that the reasonableness of the period taken for the judgment must be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and the competent authorities.

<sup>90</sup> See HU: ECJ, 13 July 2023, Case C-615/21, *Napfény-Toll Kft. V. Nemzeti Adó – és Vámhivatal Fellebbviteli Igazgatósága*, available at <https://curia.europa.eu/juris/document/document.jsf?jsessionid=42D850D6A4AAFD07850E69156BC1FB17?text=&docid=275385&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3530162> (accessed 22 Feb. 2024).

<b>Case</b>	<b>C-615/21 - <i>Napfény-Toll</i></b> <sup>390</sup>	
<b>Date</b>	13 July 2023	
<b>EU Charter Articles</b>	47	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
	period, including in cases where the court ruling on a decision finds that that tax authority failed to comply with the guidance contained in that court decision.	

### 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<b><i>SIA TAVEX v. Latvia</i> No. 36219/19</b> <sup>391</sup>
<b>Date</b>	26 May 2023
<b>ECHR Articles</b>	Article 6(1) and Article 13
<b>Facts</b>	<p>The application concerns the length of administrative proceedings and the lack of domestic remedies in this regard. The State Revenue Service (SRS) carried out a tax audit and, in a decision of 29 November 2012, ordered the applicant company to pay a VAT penalty, additional corporate income tax, late payment and corporate income tax penalty. The appeal lodged by the applicant company with the administrative authority and administrative courts are still ongoing and presently have lasted 10 years and 5 months.</p> <p>The applicant company complains under article 6, §1 – taken alone and in conjunction with article 13 – about the length of administrative proceedings and lack of domestic remedies in this regard.</p>

<sup>391</sup> See LV: ECtHR, 26 May 2023, no. 36219/19, *SIA TAVEX v. Latvia*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-225421%22%5D%7D> (accessed 24 Feb. 2024).

<b>Case</b>	<b>DOYEN SPORTS INVESTMENTS LIMITED v. Portugal No. 5481/21</b> <sup>392</sup>
<b>Date</b>	6 September 2023
<b>ECHR Articles</b>	Article 6(1) and (2) – Article 1 Protocol No. 1
<b>Facts</b>	<p>The application concerns the suspension of various debit operations on the applicant company's bank account based on a suspicion of tax fraud and money laundering activities. The measures have been renewed for almost 2 years without the opportunity for the applicant to take part in adversarial proceedings or to access the case file.</p> <p>Relying on article 1 of Protocol No. 1 to the Convention, the applicant company complains that its right to the peaceful enjoyment of its possessions was infringed, since the imposition of the suspension measure on its bank account was based on mere suspicions. It also alleges that the decisions of the investigating judges in this regard were insufficiently reasoned and that the suspension order remained in place for almost 2 years, without the company ever being given the status of defendant in criminal proceedings (<i>constituição de arguido</i>) or benefiting from adversarial proceedings. It further complains of a lack of access to the case file due to the fact that it was protected by judicial confidentiality (<i>segredo de justiça</i>).</p> <p>Under article 6, §1 of the Convention, the applicant company complains of the excessive length of the proceedings since the order suspending debit operations lasted almost 2 years, with no significant procedural developments.</p> <p>Under article 6, §2 of the Convention, the applicant company submits that its right to the presumption of innocence was breached in that it was compelled to prove the inexistence of tax fraud and money laundering, although it was prevented from having access to the evidence attached to the file.</p>

### 2023 Relevant Case Law – European Court of Human Rights

<b>Case</b>	<b>ANDRZEJ RUCIŃSKI v. Poland, No. 22716/12</b> <sup>393</sup>	
<b>Date</b>	5 October 2023	
<b>ECHR Articles</b>	1 - P1	
	<b>Facts</b>	<b>Decision</b>
	<p>The case concerns a lack of compensation for the applicant's loss of business profits due to decisions taken by the tax authorities that were disproportionate and were made in protracted proceedings covering 3 years.</p> <p>Following a tax audit, the Szczecin Tax Office gave two decisions ordering the seizure of the applicant's assets (mainly bank accounts and business vehicles) to secure the payment of his business's excise tax liabilities.</p>	<p>There has been a violation of article 1 of Protocol No. 1 to the Convention.</p>

<sup>392</sup> See PT: ECtHR, 6 Sep. 2023, no. 5481/21, *DOYEN SPORTS INVESTMENTS LIMITED v. Portugal*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-227882%22%5D%7D> (accessed 24 Feb. 2024).

<sup>393</sup> See PL: ECtHR, 05 Oct. 2023, no. 22716/12, *ANDRZEJ RUCIŃSKI v. Poland*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-227721%22%5D%7D> (accessed 23 Feb. 2024).

Facts	Decision

### 6.3. Alternative dispute resolution

Despite both parties' best efforts, tax assessment conflicts between tax administrations and taxpayers are inevitable. Alternative dispute resolution (ADR) can be necessary to resolve conflicts efficiently. In the end, these instruments provide certainty for both parties and offer the possibility to reach better results in terms of tax policy.

In this area, there seem to be no major developments. Indeed, jurisdictions reporting in 2022 as not having arrangements for ADR (e.g. mediation or arbitration) also gave the same answer for 2023.

Nevertheless, if one considers the international framework, there have been some developments in the context of international tax dispute prevention and/or resolution in the context of the OECD Pillars.<sup>394,395</sup>

Moreover, it should be recalled that in 2021 the United Nations Committee of Experts on International Cooperation in Tax Matters approved the Handbook on Dispute Avoidance and Resolution.<sup>396</sup> 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 MAPs included in tax treaties.<sup>397</sup>

<sup>394</sup> See OECD, *Public Consultation Document Pillar Two – Tax Certainty for the GloBE Rules* (20 Dec. 2022-3 Feb. 2023), available at <https://web-archiv.oe.cd.org/2022-12-20/648356-public-consultation-document-pillar-two-tax-certainty-for-the-globe-rules.pdf> (accessed 22 Feb. 2024); OECD, *Pillar One – Tax certainty for issues related to Amount A*, Public Consultation Document (27 May-10 June 2022); OECD, *Progress Report on the Administration and Tax Certainty Aspects of Pillar One, Public consultation* (6 Oct.-11 Nov. 2022), available at <https://www.oecd.org/tax/beps/progress-report-administration-tax-certainty-aspects-of-amount-a-pillar-one-october-2022.pdf> (for the comments, see <https://www.oecd.org/tax/beps/public-comments-received-on-the-progress-report-on-the-administration-and-tax-certainty-aspects-of-amount-a-of-pillar-one.htm>); and OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS*, available at <https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint-beba0634-en.htm> (accessed on 20 Mar. 2024).

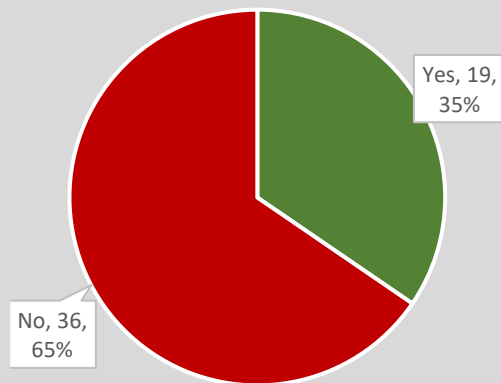
<sup>395</sup> See also R. Danon et al., *The OECD/G20 Global Minimum tax and dispute resolution based on Article 25(3) of the OECD Model, the principle of reciprocity and the GloBE Model Rules*, 14 *World Tax J.* 3 (2022), *Journal Articles & Opinion Pieces IBFD*; and R. Danon et al., *The Global Anti-Base Erosion (GloBE) Rules and Tax Certainty: A Proposed Architecture to Prevent and Resolve GloBE Disputes*, 6 *Intl. Tax Stud.* 2 (2023), *Journal Articles & Opinion Pieces IBFD*.

<sup>396</sup> See United Nations, *Handbook on Dispute Avoidance and Resolution* (2021), available at <https://desapublications.un.org/publications/united-nations-handbook-dispute-avoidance-and-resolution> (accessed on 20 Mar. 2024).

<sup>397</sup> See S. Marsit, *UN Tax Committee Approves Handbook on Dispute Avoidance and Resolution* (22 Apr. 2021), *News IBFD*.

**Chart 46. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?**

62 responses



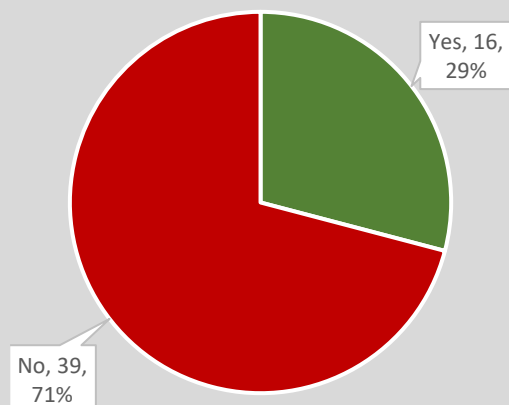
Source: OPTR: Questionnaire 1, Question 46

**Yes:** Australia, Belgium, Brazil (1), Brazil (2), China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Hungary, Ireland, Italy, Kenya, Lithuania, Mexico (1), Mexico (2), Netherlands, Norway, Poland (1), Poland (2), South Africa, Chinese Taipei, United Kingdom, United States, Venezuela

**No:** Argentina, Austria, Bahamas, Barbados, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Guyana, Honduras, India, Jamaica, Japan, Kazakhstan, Luxembourg, Nepal, New Zealand, Peru, Portugal, Serbia, Slovenia, Spain, Sweden, Switzerland, Trinidad & Tobago, Türkiye, Ukraine

**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)?**

62 responses



Source: OPTR: Questionnaire 1, Question 47

**Yes:** Australia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Denmark, Germany, Greece, Guatemala, Honduras, Ireland, Italy, Lithuania, Poland (1), Poland (2), Türkiye, Ukraine, United States

**No:** Argentina, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Finland, Guyana, Hungary, India, Jamaica, Japan, Kazakhstan, Kenya, Luxembourg, Mexico (1), Mexico (2), Nepal, Netherlands, New Zealand, Norway, Peru, Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Trinidad & Tobago, United Kingdom, Venezuela

### 6.4. *Audi alteram partem* and the right to a fair trial

**Minimum standard:** *Audi alteram partem* should apply in administrative reviews and judicial appeals.

<b>Shifted towards/improved the minimum standard:</b>	<b>Shifted away from the minimum standard:</b>
China (People's Rep.)	None

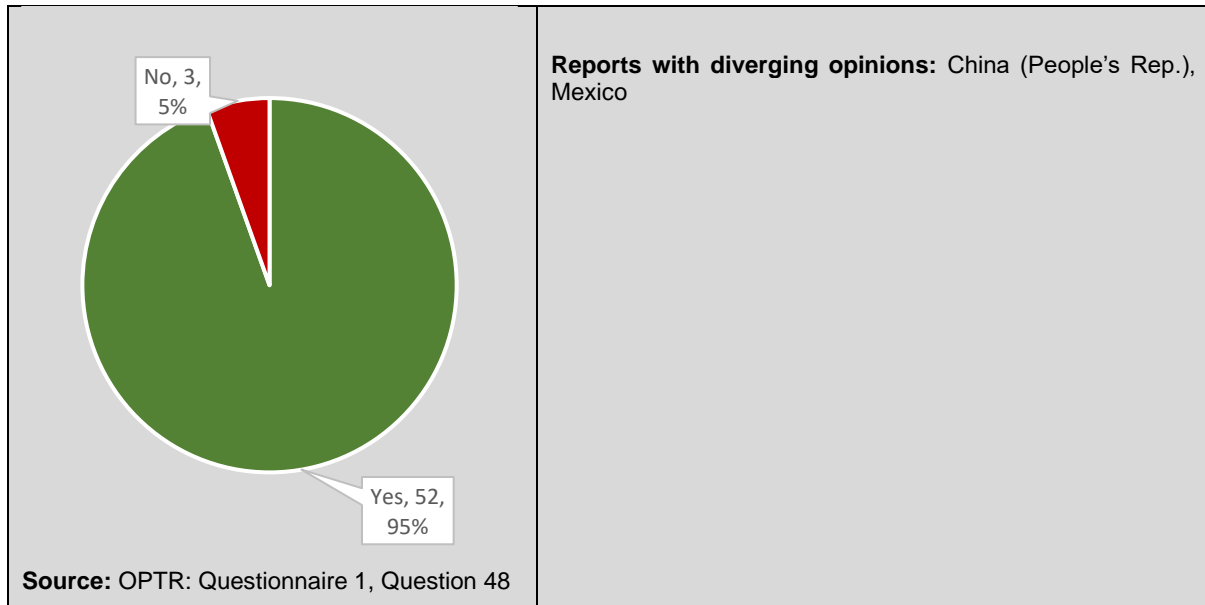
Regarding the minimum standard at hand, a positive trend was reported in **China (People's Rep.)**. According to the newly revised "Administrative Reconsideration Law" of the People's Republic of China (effective on 1 January 2024),<sup>398</sup> the *audi alteram partem* principle now applies also to administrative review proceedings.<sup>399</sup>

Furthermore, even though no additional developments have been reported, the right to a hearing appears somewhat fortified in all those jurisdictions (see section 6.7.) that, in the aftermath of the COVID-19 pandemic, have instituted and reinforced virtual hearings during administrative reviews and judicial appeals.

Chart 48. Is the <i>audi alteram partem</i> principle (i.e. each party has a right to a hearing) applied in all tax appeals?	
62 responses	<p><b>Yes:</b> Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Guyana, Honduras, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (2), Nepal, Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Chinese Taipei, Trinidad &amp; Tobago, Türkiye, Ukraine, United Kingdom, United States, Venezuela</p> <p><b>No:</b> China (People's Rep.) (1), Hungary, Mexico (1), Switzerland</p>

<sup>398</sup> Available at [https://www.gov.cn/yaowen/liebiao/202309/content\\_6901584.htm](https://www.gov.cn/yaowen/liebiao/202309/content_6901584.htm) (accessed 22 Feb. 2024).

<sup>399</sup> Additionally, observers have highlighted that – despite the general requirement for a written review outlined in art. 64 of the Rules on Tax Appeal – if requested by the applicant or deemed necessary by the administrative appeal department, the administrative review department shall engage in a listening session with the opinions of the applicant, respondent and third party. Moreover, it may conduct investigations into the facts involving relevant organizations and personnel. See CN: OPTR Report China (People's Rep.) 2 (Tax Administration), Questionnaire 2, Question 52. On the contrary, CN: OPTR Report China (People's Rep.) 1 (Academia), Questionnaire 2, Question 57 reported a "no change" situation.



### 2023 Relevant Communicated Cases – European Court of Human Rights

- See **Application No. 65320/09, *DEA 7.CO v. Albania***, at section 6.1.

#### 6.5. *Solve et repete*

**Minimum standard:** When 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:**  
None

**Shifted away from the minimum standard:**  
None

The reports for 2023, much like those of preceding years, signify a certain lack of change regarding the minimum standard under scrutiny. For the second consecutive year, there have been no reported instances of improvement or deterioration.

### 2023 Relevant Communicated Cases – European Court of Human Rights

- See **Application No. 65320/09, *DEA 7.CO v. Albania***, at section 6.1.

**Best practice:** An appeal should not require prior payment of tax in all cases.

**Shifted towards/matched the best practice:**  
Honduras

**Shifted away from the best practice:**  
Botswana



With respect to this best practice, 2023 continues to present a swinging trend.

A positive development was reported in **Honduras**. Before 2022, according to article 206 of the Tax Code, for the admission of a claim before the courts of the Administrative Litigation Jurisdiction in tax and customs matters, taxpayers were required to render before the judge sufficient guarantees in favour of the state, according to the following categories: (i) small taxpayers: 5% of the amount of the claim (ii) medium taxpayers: 10% of the amount of the claim; and (iii) large taxpayers: 20% of the amount of the claim.

Even though this measure had a statute of limitations of 5 years that expired in January 2022, in 2023 article 206 was declared unconstitutional by the Supreme Court, and the certification of this judgment was published in the Official Gazette on 17 January 2023.<sup>400</sup>

**United States** reported a “no change” situation. However, it is noteworthy to mention that, although prepayment of taxes is occasionally necessary for judicial appeals, it is not a prerequisite for administrative appeals.<sup>401</sup>

On the contrary, a negative trend was highlighted in **Botswana**. Despite the absence of specific legislation in this regard, reports indicate that the Botswana Unified Revenue Service (B.U.R.S.) might insist on tax payment before entertaining any form of appeal.<sup>402</sup>

Additionally, negative trends were also reported from other countries in 2022 and, regrettably, this adverse situation does not seem to have been rectified in 2023.

In **Argentina**, on 16 August 2022,<sup>403</sup> AFIP issued the General Resolution 5248/22, which has set an extraordinary “one-time” prepayment on account of income tax payable by corporate taxpayers that have obtained extraordinary income derived from the general increase in international prices (the so-called “windfall income tax prepayment”). From a legal perspective, the issue is whether the executive power (through AFIP), by creating administratively a new levy, has violated the constitutional principle of legality.<sup>404</sup> Moreover, a national report highlighted that, due to its nature as a payment on account, the appeal of this advance would not have a suspensive effect.<sup>405</sup>

In **Denmark**, even if this jurisdiction does not require prior payment of tax for the lodging of an appeal, it was reported that the national rules for the calculation of interest on tax claims may

<sup>400</sup> The certification is available at <https://www.sar.gob.hn/download/certificacion-de-sentencia-de-inconstitucionalidad-del-articulo-206-del-codigo-tributario-contenido-en-el-decreto-170-2016-no-36131-de-fecha-17-de-enero-2023/> (accessed 22 Feb. 2024). See also HN: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 53 (BP).

<sup>401</sup> See generally K. Fogg, *Access to Judicial Review in Non-Deficiency Tax Cases*, 73 *The Tax Lawyer* 3 (2020), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3316915](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3316915) (accessed 22 Feb. 2024). See also National Taxpayer Advocate, *2022 Purple Book* pp. 94-98, available at [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21\\_PurpleBook.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook.pdf) (accessed 22 Feb. 2024).

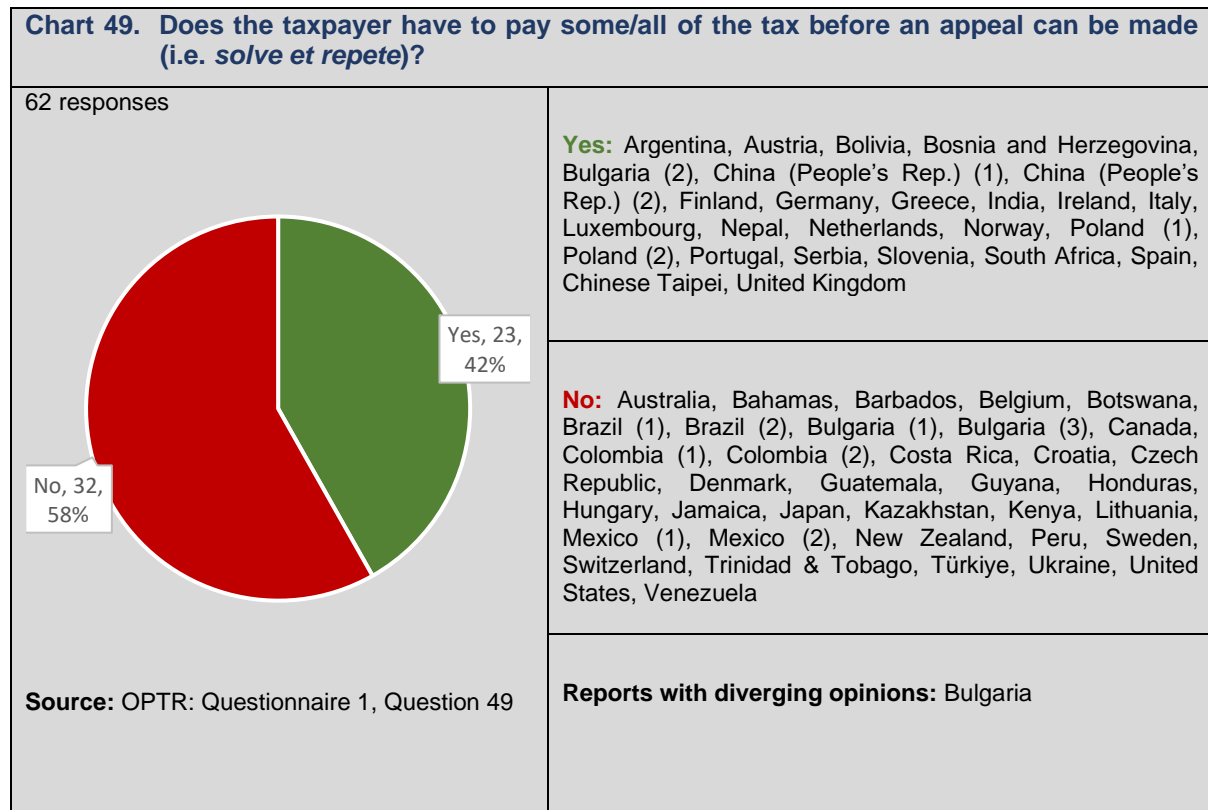
<sup>402</sup> See BW: OPTR Report (Academia), Questionnaire 2, Question 53 (BP).

<sup>403</sup> General Resolution No. 5248/22 is available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/268609/20220816> (accessed 21 Feb. 2023).

<sup>404</sup> See G.O. Teijeiro, *Argentina: Taxation without representation or how to disguise a new tax under the form of an additional prepayment of Income Tax*, *Kluwer International Tax Blog* (25 Aug. 2022) <https://kluwertaxblog.com/2022/08/25/argentina-taxation-without-representation-or-how-to-disguise-a-new-tax-under-the-form-of-an-additional-prepayment-of-income-tax/> (accessed 9 Apr. 2024).

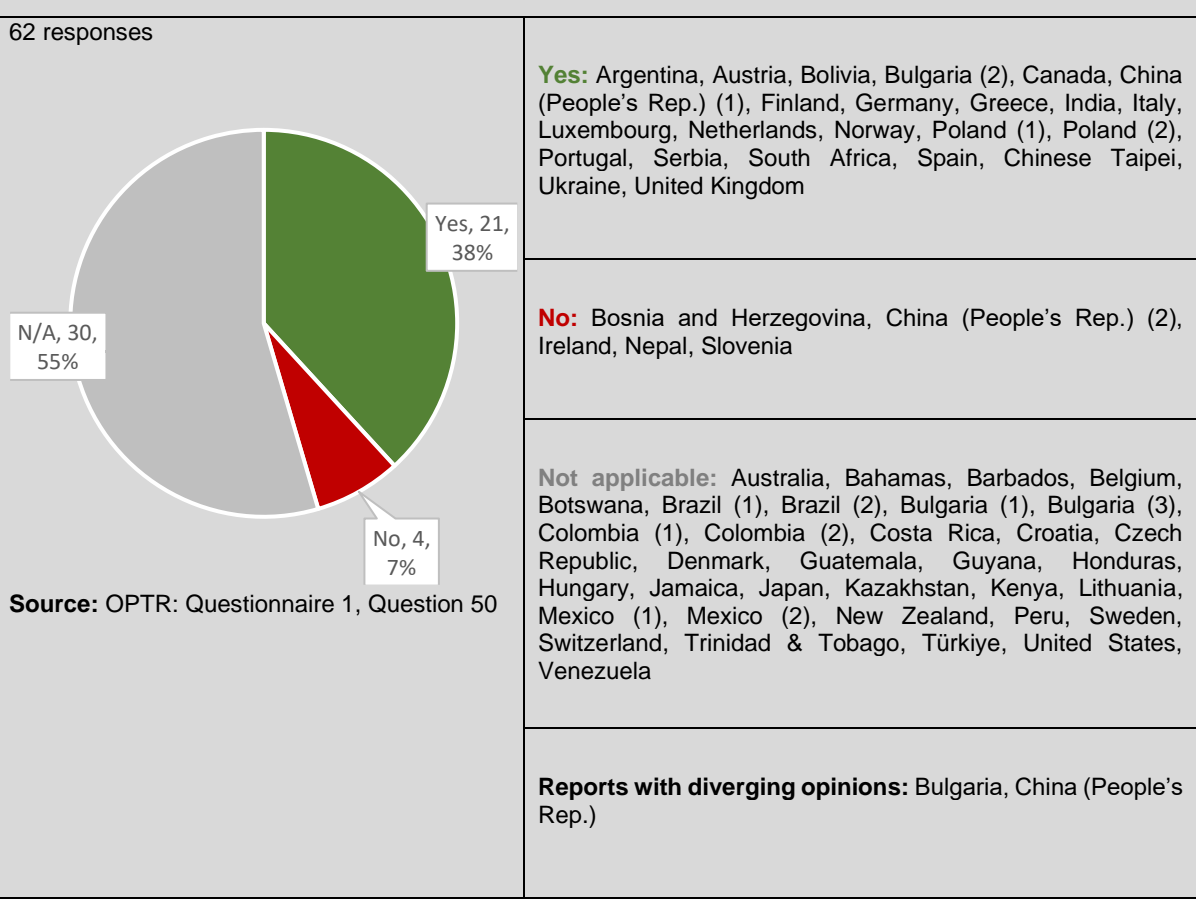
<sup>405</sup> See AR: OPTR Report (2022) (Academia), Questionnaire 2, Question 53 (BP), available at <https://www.ibfd.org/sites/default/files/2023-05/national-report-argentina.pdf> (accessed 22 Feb. 2024).

impair the fulfilment of this best practice. Indeed, the interest rates applied in court cases are very high compared to market rates. Moreover, within the tax area, a special set of rules on calculation of interest on unpaid taxes is applied (which not only includes a very high rate of interest but also compound interest).<sup>406</sup>



<sup>406</sup> See DK: OPTR Report (2022) (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 53 (BP), available at <https://www.ibfd.org/sites/default/files/2023-05/national-report-denmark.pdf> (accessed 22 Feb. 2024). This report also illustrates that, if a taxpayer loses a case in the last instance, the interest claim can be very high and even exceed (significantly) the tax claim itself. The issue typically arises if the taxpayer is successful at the National Tax Tribunal, but the Ministry of Taxation subsequently appeals the National Tax Tribunal's decision before ordinary courts. Indeed, the rules on interest under the Tax Collection Act stipulate that, in this situation, the taxpayer who has paid the tax shall receive a refund of the amount of tax with interest for the period from the date of payment to the date of the National Tax Tribunal's decision. However, if the Ministry of Taxation's appeal is subsequently upheld, the same taxpayer must pay back the tax and interest to the date of the court's decision. -If this last scenario occurs and the proceedings last several years, the claim for interest can be very high. For instance, in the Danish cases on beneficial ownership, the interest claims ended up being almost double the tax claim itself. This situation led to the view that the interest rules envisioned under the Tax Collection Act constitute an obstacle to access to justice, thus entailing a violation of both art. 6 ECHR and art. 47 EU Charter of Fundamental Rights. With respect to these cases, the Danish Supreme Court, in a judgment of 9 January 2023 (Joined Cases Nos. 69/2021, 70/2021 and 79/2021, available at <https://domstol.dk/media/thefi0yn/69-70-79-2021-anonym-dom.pdf>) (accessed 20 Mar. 2024), decided otherwise and found no legal basis for assuming that the rules of the Tax Collection Act entail a violation of the right to a fair trial, thus ruling that interest tax claims must be burdened accordingly to these rules. Nevertheless, as this understanding of the Tax Collection Act meant that the total interest claim was disproportionate with respect to the tax claim, the Supreme Court stated that there are reasons of expediency for parliament to consider whether such consequences are desirable. In this way, the Supreme Court left it to parliament to consider whether the Tax Collection Act should be amended.

**Chart 50. If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?**



**2023 Relevant Communicated Cases – European Court of Human Rights**

- See **Application No. 65320/09, *DEA 7.CO v. Albania***, at section 6.1.

**6.6. Costs of proceedings**

**Best practice:** The state should bear some or all of the costs of an appeal, whatever the outcome.

**Shifted towards/matched the best practice:**

None

**Shifted away from the best practice:**

Botswana

With respect to this best practice, national reports highlighted a negative development in **Botswana**,<sup>407</sup> where – as it occurs in many other jurisdictions<sup>408</sup> (see Chart 51) – the losing party in legal proceedings must pay the legal costs of the successful party.

No positive developments have been reported for 2023. There are, however, some points worth mentioning.

**Australia** continues to engage positively in this best practice, as the Australian Taxation Office (ATO) is required to 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.<sup>409</sup> Moreover, for 2022 it was reported<sup>410</sup> that, in **Denmark**, the Supreme Court<sup>411</sup> has defined the conditions under which taxpayers may qualify for remuneration under the special scheme for legal costs in tax cases.

### 2023 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<i>ELCOMAT D.O.O v. Croatia</i> No. 18510/22 <sup>412</sup>
<b>Date</b>	12 September 2023
<b>ECHR Articles</b>	Article 6(1)
<b>Facts</b>	The application concerns the domestic authorities’ refusal to reimburse the applicant company’s costs of administrative proceedings based on the grounds that the relevant legislation did not provide for reimbursement of fees for legal representation by an advocate in administrative proceedings. The applicant company complains under article 6, §1 of the Convention about the impossibility to recoup the costs of its legal representation.

**Best practice:** Legal assistance should be provided to those taxpayers who cannot afford it.

**Shifted towards/matched the best practice:**

Mexico, United States

**Shifted away from the best practice:**

Botswana

<sup>407</sup> See BW: OPTR Report (Academia), Questionnaire 2, Question 54.

<sup>408</sup> See Questionnaire 1, Question 51.

<sup>409</sup> In this respect, further information is available at <https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Small-business-litigation-funding/> (accessed 22 Feb. 2024).

<sup>410</sup> See DK: OPTR Report (2022) (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 54, available at <https://www.ibfd.org/sites/default/files/2023-05/national-report-denmark.pdf> (accessed 22 Feb. 2024).

<sup>411</sup> See SKM 2022.608 H, available at <https://domstol.dk/media/kvtns1ze/10210-2021-anonym-dom.pdf> (accessed 21 Feb. 2023).

<sup>412</sup> See HR: ECtHR, communicated on 12 Sep. 2023, no. 18510/22, *ELCOMAT D.O.O v. Croatia*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-228042%22%5D%7D> (accessed 24 Feb. 2024).

**Botswana** is negatively engaged also in this area, as the national report shows that this country does not offer pro bono services or legal assistance in tax matters.<sup>413</sup>

On the contrary, in **Mexico**, following an amendment published on 27 December 2021<sup>414</sup> to the relevant guidelines, the powers of *Procuraduría de la Defensa del Contribuyente* (PRODECON) have been further extended to facilitate its tax ombudsperson function and its work as mediator between taxpayers and the Mexican revenue authority. For 2023, it has been reported that PRODECON has granted free advice and legal representation in contentious matters to taxpayers who cannot afford it. Additionally, in November 2023, PRODECON signed an agreement with the PROFEDET (*Procuraduría Federal de la Defensa del Trabajo*) to promote the defence of employees in tax matters.<sup>415</sup>

Positive developments were highlighted also in the **United States**, as Congress provided increased funding for low-income taxpayer representation in calendar year 2023.<sup>416</sup>

Furthermore, **Australia** continues to engage in the positive trend. In 2022, the ATO awarded 14 grants to support the National Tax Clinic programme. The National Tax Clinic programme is a government-funded initiative to help people who may not be able to afford professional advice and representation for their tax affairs. The tax clinics work in partnership with several Australian universities. Specifically, the ATO funds the universities through an open and competitive grant process, and students from the funded universities provide free tax advice and assistance under the supervision of qualified clinic managers. Sessions are offered by telephone or web conferencing, as well as in person at some locations. The ATO has no power over how individual universities manage tax clinics.<sup>417</sup>

Chart 51. Does the loser have to pay the costs in a tax appeal?	
62 responses	<p><b>Yes:</b> Argentina, Australia, Belgium, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (2), Germany, Greece, Guatemala, Ireland, Italy, Kazakhstan, Lithuania, Luxembourg, Netherlands, Norway, Poland (1), Poland (2), Portugal, Serbia, Slovenia, Spain, Switzerland, Türkiye, Ukraine, Venezuela</p>

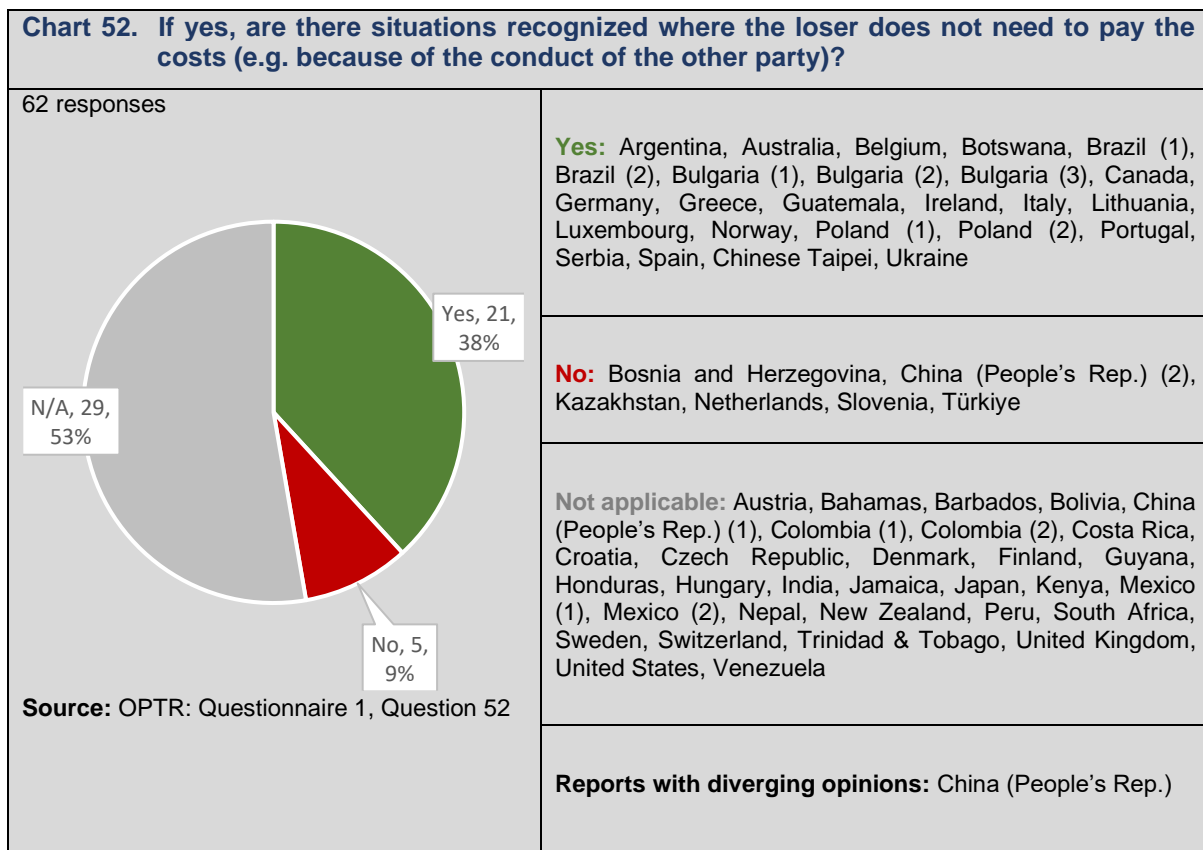
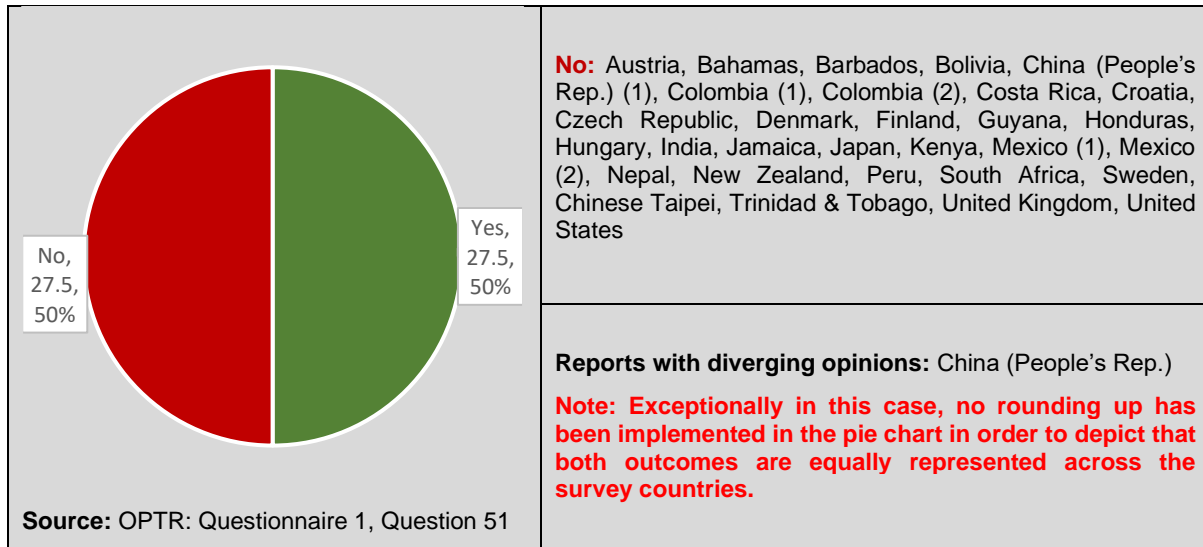
<sup>413</sup> See BW: OPTR Report (Academia), Questionnaire 2, Question 55.

<sup>414</sup> The amendment is available at [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5639421&fecha=27/12/2021#gsc.tab=0](https://www.dof.gob.mx/nota_detalle.php?codigo=5639421&fecha=27/12/2021#gsc.tab=0) (accessed 10 Feb. 2023).

<sup>415</sup> See MX: OPTR Report Mexico 2 (Taxpayers/Tax Practitioner), Questionnaire 2, Question 55.

<sup>416</sup> See Consolidated Appropriations Act 2023, Pub. L. 117-32, available at <https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf> (accessed 20 Mar. 2024). See also US: OPTR Report (Taxpayers/Tax Practitioner, Academia), Questionnaire 2, Question 55.

<sup>417</sup> Information about the National Tax Clinic program is available at [https://www.ato.gov.au/General/Gen/National-Tax-Clinic-program/?=redirected\\_nationaltaxclinic](https://www.ato.gov.au/General/Gen/National-Tax-Clinic-program/?=redirected_nationaltaxclinic) (accessed 21 Feb. 2023). See also AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 55, available at <https://www.ibfd.org/sites/default/files/2023-05/national-report-australia.pdf> (accessed 22 Feb. 2024).



### 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:**

Botswana

The transparency resulting from the publicity of hearings is acknowledged as a pivotal element in ensuring a “fair trial”.<sup>418</sup> This transparency encompasses the entire legal process, including the proceedings and the final judgment of the judge, and acts as a deterrent against the potential occurrence of “secret justice” beyond public scrutiny. Public hearings, indeed, serve a dual purpose: they offer immediate visibility, allowing every adult citizen to actively participate in the legal process and directly witness the administration of justice. Furthermore, they ensure a mediated form of publicity that reaches a broad audience, significantly contributing to upholding the public’s right to information about legal proceedings and the actions of public authorities. However, in this case, the collective right must be balanced with the rights of the individual, whereby there are cases in which the private rights might require a derogation from the general aim of maximization of transparency, to be assessed in the light of the principle of proportionality and other relevant legal principles.<sup>419</sup>

From this perspective, the importance of procedural publicity in shaping a democratic society is undeniable, fostering openness in the legal system and keeping the public informed about judicial developments and the functioning of governmental bodies. However, it is essential to recognize that the obligation to hold a public hearing should not be absolute but carefully balanced.

In the realm of taxation, for example, as tax administrations delve into facts and circumstances pertinent to tax matters, discussions may touch upon sensitive issues for taxpayers. This, in itself, constitutes an intrusion into their affairs and – if not handled appropriately – could compromise the taxpayers’ right to privacy by disclosing delicate information or industrial secrets (see section 3 of this yearbook). Therefore, taxpayers should always retain the right to request the exclusion of the public from a tax appeal hearing.

In this regard, **Botswana** reported a “shift away” from the minimum standard, as the public is not allowed to hear Tribunals’ (BOA) cases, even though no legal provision expressly prescribes that tax matters should always be held “in-camera”.<sup>420</sup>

On the contrary, no positive developments were reported. However, there still are some points worthy of attention.

For example, by comparing the national reports of 2023 with those of 2021,<sup>421</sup> it can be noted that in 2023 at least four jurisdictions (**Argentina, Bolivia, Japan** and **Peru**) have allowed taxpayers to request a hearing in camera (see Chart 53).

Furthermore, it should be mentioned that the COVID-19 pandemic has been transforming the dispute resolution landscape, and various jurisdictions are increasingly permitting virtual

<sup>418</sup> See, for a general overview, J. Kokott & P. Pistone, *Taxpayers in International Law: International Minimum Standards for the Protection of Taxpayer’s Rights* pp. 206-310 (Hart Publishing 2022).

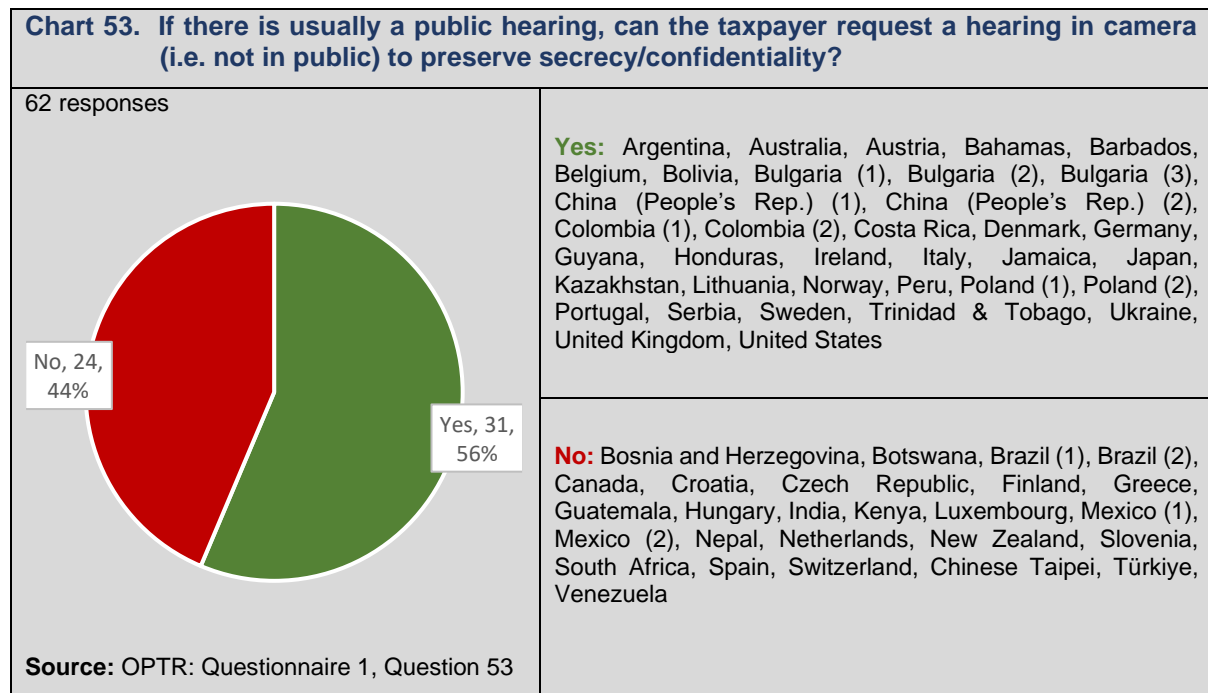
<sup>419</sup> Id.

<sup>420</sup> See BW: OPTR Report (Academia), Questionnaire 2, Question 56.

<sup>421</sup> See Questionnaire 1, Question 53.

hearings. This adjustment, to some degree, not only aids in upholding the confidentiality and secrecy of proceedings when necessary but also contributes to safeguarding economic and procedural efficiency requirements. In such instances, the principle of publicity might occasionally recede, and, indeed, it could be counterproductive in comparison to another equally crucial principle within the framework of a fair process: the right to a reasonable duration of the proceedings.

In **Italy**, for example, Decree 220/2023 amended article 34-bis of Decree n. 546/1992 (Italian Tax Procedure Code), making fully operational the possibility of requesting remote hearings.<sup>422</sup> Moreover, for 2022 it was reported that in **China (People’s Rep.)** local governments, apart from opening online administrative review service platforms on their official websites, have also allowed some steps of review and judicial procedures to be made online during the COVID-19 pandemic.<sup>423</sup>



## 6.8. Publication of judgments and privacy

**Minimum standard:** Tax judgments should be published.

<sup>422</sup> The provision is available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1992;546~art34> (accessed 22 Feb. 2024).

<sup>423</sup> See CN: OPTR Report (2022) (Academia), Questionnaire 2, Question 49, available at <https://www.ibfd.org/sites/default/files/2023-05/national-report-china.pdf> (accessed 22 Feb. 2024). Following the COVID-19 pandemic, the virtual handling of hearings seems to be a general trend in China (People’s Rep.), as well as in other fields of the law. See Kai-Shen Huang et al., *COVID-19 and Dispute Resolution in China: Trends in Arbitration and Litigation*, 18 Asian Journal of Comparative Law 1 (2023).



**Shifted towards/improved the minimum standard:**

Bulgaria, Costa Rica

**Shifted away from the minimum standard:**

China (People's Rep.)

As mentioned earlier, for transparency and certainty, awareness of how the tax rules are interpreted and applied in practice is pivotal.<sup>424</sup> As part of this, the publication of tax judgments plays a vital role in achieving this goal, providing clarity for taxpayers and reducing disputes with tax administrations.

In 2023, steps were taken towards adopting best practices in this regard. **Bulgaria** implemented a new electronic system that not only facilitates easier access to judgments on tax cases but also anonymizes personal data when accessed by parties not involved in the specific case.<sup>425</sup> Meanwhile, in **Costa Rica**, despite a security breach leading to the deletion of information from the judgments archives, a ruling from the Constitutional Court in 2023 confirmed the restoration of affected information online, and taxpayers are now empowered to request any missing information from the tax administration.<sup>426</sup>

It is noteworthy that several countries continue to contribute positively to the trend, as observed in 2022. In **Serbia**, the Administrative Court began publishing judgments on its website, offering an efficient database accessible to interested citizens.<sup>427</sup> Furthermore, a best practice in this area was reported in 2022 from **Guatemala**,<sup>428</sup> where tax judgments have been made publicly available by the tax administration.

Conversely, negative developments were reported in **China (People's Rep.)**. Despite the requirement (since 1 October 2016) to publish judicial decisions on the Chinese Judicial Decision Website (excluding those involving commercial secrets or cases deemed unsuitable for publication), there has been a significant decrease in the number of published decisions from 2022 to 2023. To address this, **China (People's Rep.)** announced in December 2023 the initiation of constructing the National Court Judicial Decision Database, set to become operational in January 2024 and accessible to the public. However, concerns have been

<sup>424</sup> In general, on the notion of transparency and its different declinations, see A. Turina, "Visible though not Visible in Itself". *Transparency at the Crossroads of International Financial Regulation and International Taxation*, 8 *World Tax J.* 3, p. 384 ss. (2016), Journal Articles & Opinion Pieces IBFD.

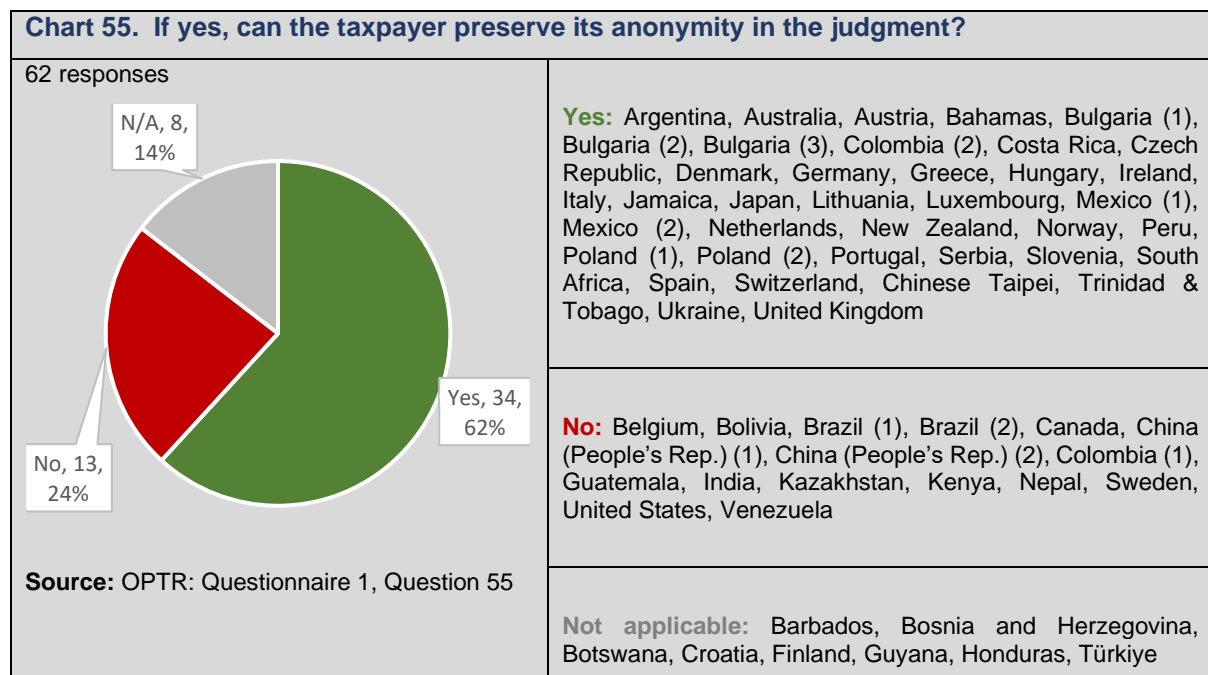
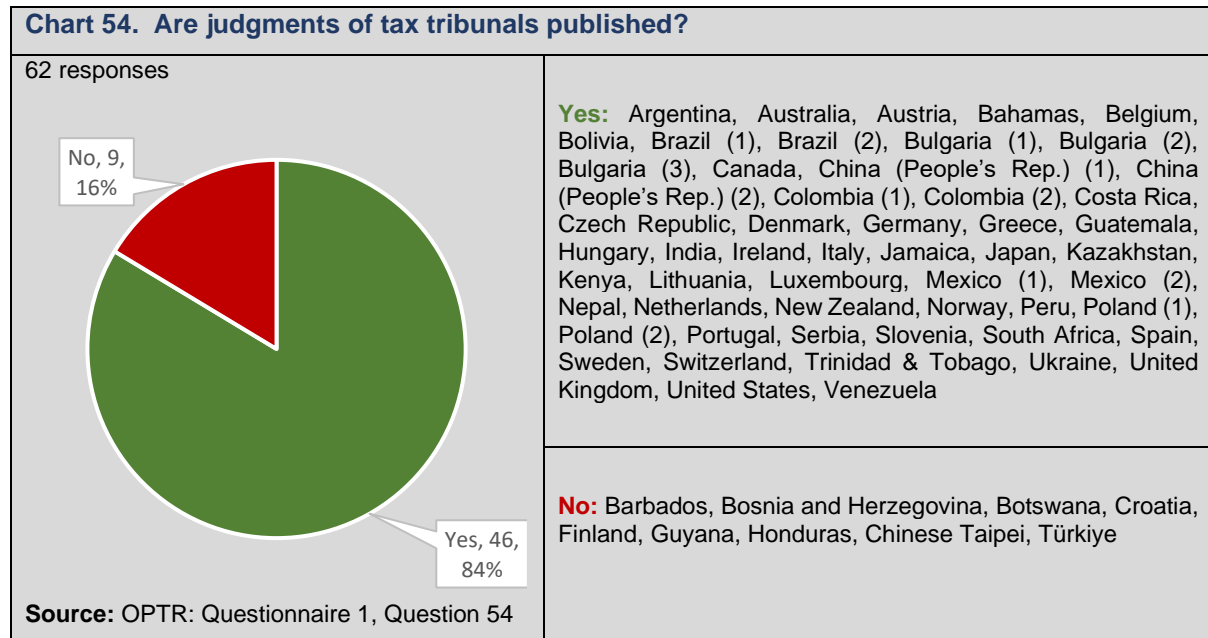
<sup>425</sup> The first version of the portal for electronic access to court cases in Bulgaria was implemented with art. 2 of Ordinance no. 6 from 2017 (available at <https://lex.bg/bg/laws/ldoc/2137175698>) (accessed 20 Mar. 2024), for the performance of procedural acts and certification statements in electronic form of the Bulgarian Supreme Judicial Council. In 2023, the portal for electronic access was updated entirely after consultations with the professional community and now provides for easier access (including through a mobile application) to court cases and decisions. The portal is available at <https://ecase.justice.bg/Case> (accessed 22 Feb. 2024). See BG: OPTR Report (1) (2) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 57.

<sup>426</sup> See CR: Ruling 25136-2023 of the Constitutional Court, available at <https://nexuspi.poder-judicial.go.cr/document/sen-1-0007-1189424> (accessed 22 Feb. 2024). See also CR: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 57.

<sup>427</sup> The database is available at <http://www.up.sud.rs/latinica/sudska-praksa-upravnog-suda> (accessed 18 Feb. 2023) and in English at <http://www.up.sud.rs/english/jurisprudence-of-the-administrative-court> (accessed 18 Feb. 2023). See RS: OPTR Report (2022) (Academia), Questionnaire 2, Question 57, available at <https://www.ibfd.org/sites/default/files/2023-05/national-report-serbia.pdf> (accessed 22 Feb. 2024).

<sup>428</sup> See GT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 57, available at <https://www.ibfd.org/sites/default/files/2023-05/national-report-guatemala.pdf> (accessed 22 Feb. 2024).

raised by national reporters from academia regarding the potentially limited scope of judicial decisions to be published through this system.<sup>429</sup>



<sup>429</sup> See CN: OPTR Report China (People’s Rep.) 1 (Academia), Questionnaire 2, Question 57. On the contrary, CN: OPTR Report China (People’s Rep.) 2 (Tax Administration), Questionnaire 2, Question 57, reported a “no change” situation.

	Reports with diverging opinions: Colombia

## 7. Criminal and Administrative Sanctions

### 7.1. The general framework

**Minimum standard:** Proportionality and *ne bis in idem* should apply to tax penalties

**Shifted towards/improved the minimum standard:**

Brazil, Spain, United States

**Shifted away from the minimum standard:**

Costa Rica

**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:**

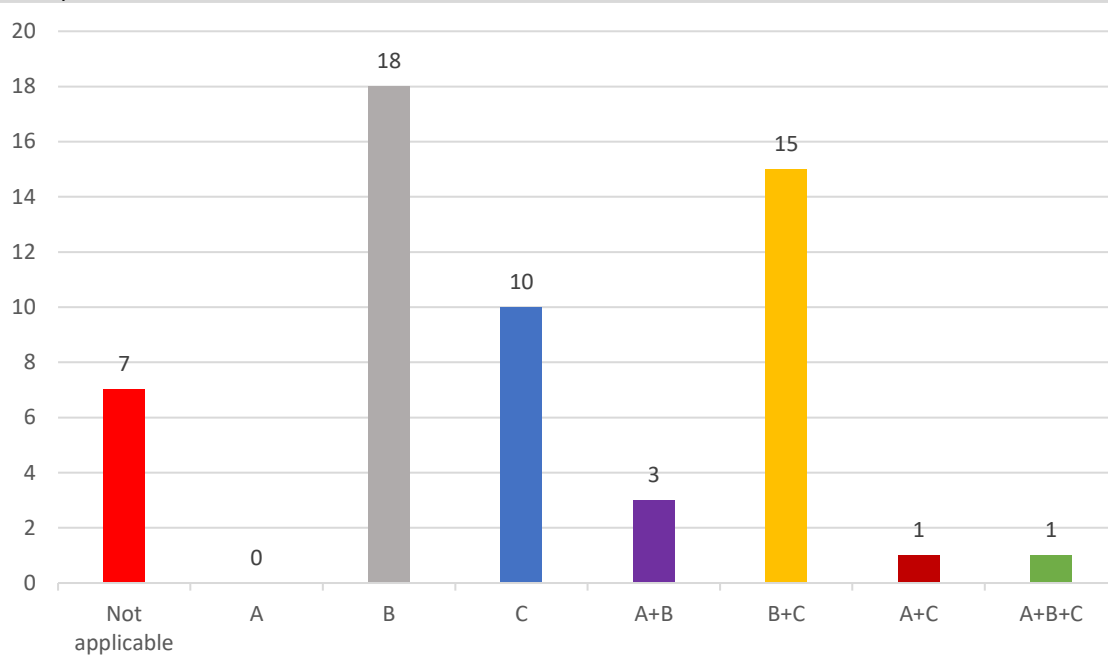
Spain

**Shifted away from the best practice:**

Botswana

**Chart 56. Does the principle *ne 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?**

62 responses



Source: OPTR: Questionnaire 1, Question 56.

**The principle does not apply (Not applicable):**

Denmark, Germany, India, Japan, South Africa, Türkiye, United States

**The imposition of a tax penalty and the tax liability (A):**

None

**The imposition of more than one tax penalty for the same conduct (B):**

Austria, Barbados, Bolivia, Botswana, Brazil (1), Brazil (2), Bulgaria (2), Canada, China (People's Rep.) (2), Colombia (2), Croatia, Czech Republic, Ireland, Italy, Lithuania, Mexico (1), Mexico (2), Peru, Portugal, Switzerland, United Kingdom, Venezuela

**The imposition of a tax penalty and criminal liability (C):**

Australia, Bahamas, Bosnia and Herzegovina, Colombia (1), Finland, Greece, New Zealand, Slovenia, Sweden, Chinese Taipei

**The imposition of a tax penalty and the tax liability; The imposition of more than one tax penalty for the same conduct (A + B):**

Honduras, Hungary, Ukraine

**The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (B + C):**

Argentina, Belgium, Bulgaria (1), Bulgaria (3), China (People's Rep.) (1), Costa Rica, Guyana, Jamaica, Kazakhstan, Luxembourg, Nepal, Netherlands, Norway, Poland (1), Poland (2), Serbia, Spain, Trinidad & Tobago

**The imposition of a tax penalty and the tax liability; The imposition of a tax penalty and criminal liability (A + C):**

Kenya

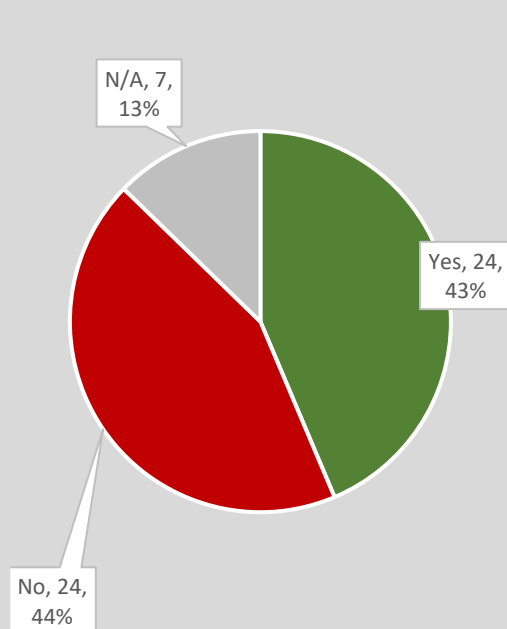
**The imposition of a tax penalty and tax liability; The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (A+B+C):**

Guatemala

**Reports with diverging opinions:** Bulgaria, China (People's Rep.), Colombia

**Chart 57. If *ne 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)?**

62 responses



**Source:** OPTR: Questionnaire 1, Question 57

**Yes:** Argentina, Bahamas, Bolivia, Bosnia and Herzegovina, Botswana, China (People's Rep.) (1), China (People's Rep.) (2), Costa Rica, Finland, Greece, Guatemala, Honduras, Hungary, Ireland, Jamaica, Kazakhstan, Lithuania, Nepal, Netherlands, New Zealand, Norway, Peru, Spain, Sweden, Chinese Taipei

**No:** Australia, Austria, Barbados, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, Colombia (1), Colombia (2), Croatia, Czech Republic, Guyana, Italy, Kenya, Luxembourg, Mexico (1), Mexico (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, Switzerland, Trinidad & Tobago, Ukraine, United Kingdom, Venezuela

**Not applicable:** Denmark, Germany, India, Japan, South Africa, Türkiye, United States

## 2023 Relevant Case Law – European Court of Human Rights

Case	<i>Halet v. Luxembourg</i> <sup>430</sup>	
Date	14 February 2023	
ECHR Articles	Article 10	
Facts	Decision	Comments
<p>In the case in question, the applicant, employed by a private firm which provides auditing, tax advice and business management services (e.g. tax returns and tax rulings), offered an investigative journalist to hand over confidential documents (tax returns) obtained by multinational companies with the assistance of the private firm.</p> <p>Following a criminal complaint of the private firm, the applicant was</p>	<p>There has been a violation of article 10 of the Convention.</p>	<p>Relying on article 10 of the Convention, the applicant held that this criminal conviction had amounted to a disproportionate interference with his right to freedom of expression.</p> <p>Overturing the judgment of the ECtHR of 11 May 2021, the Grand Chamber of the ECtHR ruled that the interference with the right of freedom of expression of the applicant (in particular his freedom to impart information) had not</p>

<sup>430</sup> See LU: ECtHR, 14 Feb. 2023, No. 21884/18, *Halet v. Luxembourg*, available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-223259%22%5D%7D>, (accessed 28 Feb. 2024).

<b>Case</b>	<b><i>Halet v. Luxembourg</i></b> <sup>430</sup>	
<b>Date</b>	14 February 2023	
<b>ECHR Articles</b>	Article 10	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
sentenced to pay a criminal fine and a symbolic sum of compensation for non-pecuniary damages to the private firm.		been necessary in a democratic society.

<b>Case</b>	<b><i>S.C. Zorina International S.R.L. v. Romania</i></b> <sup>431</sup>	
<b>Date</b>	27 June 2023	
<b>ECHR Articles</b>	Article 1 of Protocol No. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The case concerns the sanctions imposed on the applicant company following its sale of goods without issuing a receipt, discovered during a tax audit. The applicant had to forfeit the income, was fined and had its activities suspended for a period of three months. These sanctions were upheld by the Romanian courts.</p> <p>Relying on article 1 of Protocol No. 1 to the Convention, the applicant company complained that the sanctions imposed on it for having failed to issue receipts were disproportionate and thus did not strike a fair balance between the public interest and its property rights, as provided in article 1 of Protocol No. 1.</p>	No violation of article 1 of Protocol No. 1 to the Convention.	The ECtHR concluded that the imposition of sanctions pursued the legitimate aim of combating tax evasion and improving financial responsibility among traders and did not impose an excessive burden on the applicant because of the large margin of appreciation for the authorities, the procedural safeguards available to the applicant and the temporary nature of the sanctions.

<sup>431</sup> See RO: ECtHR, 27 Jun. 2023, No. 15553/15, *S.C. Zorina International s.r.l. v. Romania*, available at <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%7B%22document%22%7D%22itemid%22:%7B%22001-225441%22%7D%7D> (accessed 28 Feb. 2024).

<b>Case</b>	<i>Yasargolu v. Türkiye</i> <sup>432</sup>	
<b>Date</b>	12 September 2023	
<b>ECHR Articles</b>	Article 1 of Protocol No. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The case concerns the confiscation of imported precious metals by the applicant without declaring it to customs and paying applicable duties.</p> <p>Upon overturning of the judgment that had found the applicant guilty of smuggling, the precious metals remained confiscated by the authorities. Relying on article 1 of Protocol No. 1 to the Convention, the applicant complained that his property was confiscated in absence of a final court decision.</p>	<p>There has been a violation of article 1 of Protocol No. 1 to the Convention.</p>	<p>In this decision the Court held that the metal was confiscated in the absence of a final court decision finding him guilty of smuggling. Thus, the Court found that such a measure infringed his right to peaceful enjoyment of his possessions and his right to be presumed innocent.</p>

<b>Case</b>	<i>Andrzej Ruciński v. Poland</i> <sup>433</sup>	
<b>Date</b>	5 October 2023	
<b>ECHR Articles</b>	Article 1 of Protocol No. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>Following a tax audit, the Szczecin Tax Office gave two decisions ordering the seizure of the applicant's assets (mainly bank accounts and business vehicles) to secure the payment of his business's excise-tax liabilities.</p> <p>The case concerns a lack of compensation for the applicant's loss of business profits due to decisions taken by the tax authorities that were disproportionate and were made in protracted proceedings covering 3 years.</p>	<p>There has been a violation of article 1 of Protocol No. 1 to the Convention.</p>	<p>In this decision the Court concluded that the measure taken by Poland in a case involving an applicant who faced significant interference with his property rights due to tax decisions that were later found flawed, constituted an excessive burden on the applicant, leading to the violation of article 1 of Protocol No. 1 to the Convention.</p>

<sup>432</sup> See TR: ECtHR, 12 Sept. 2023, Application No. 78661/11, *Yasargolu v. Türkiye*, available at <https://hudoc.echr.coe.int/eng?i=001-226463> (accessed 28 Feb. 2024).

<sup>433</sup> See PO: ECtHR, 5 Oct. 2023, Application No. 22716/12, *Andrzej Ruciński v. Poland*, available at <https://hudoc.echr.coe.int/fre?i=001-227721> (accessed 28 Feb. 2024).



<b>Case</b>	<b><i>Andrzej Ruciński v. Poland</i></b> <sup>433</sup>	
<b>Date</b>	5 October 2023	
<b>ECHR Articles</b>	Article 1 of Protocol No. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>

<b>Case</b>	<b><i>Waldner v. France</i></b> <sup>434</sup>	
<b>Date</b>	7 December 2023	
<b>ECHR Articles</b>	Article 1 of Protocol No. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
The case concerns the application of a 25% surcharge on the taxable income of certain self-employed professionals (under article 158 of the General Tax Code) because the applicant had not joined an approved association. According to the applicant, this raises an issue under article 1 of Protocol No. 1 to the Convention.	There has been a violation of article 1 of Protocol No. 1 to the Convention.	In this decision the Court concluded that the increase in the applicant's taxable professional income on account of not being a member of an approved association disproportionately interfered with his right to peaceful enjoyment of his possessions.

## 2023 Relevant Applications - European Court of Human Rights

<sup>434</sup> See FR: ECtHR, 7 Dec. 2023, Application No. 26604/15, *Waldner v. France*, available at <https://hudoc.echr.coe.int/fre?i=001-229589> (accessed 28 Feb. 2024).

<b>Case</b>	<b><i>Faraglia v. Italy</i></b> <sup>435</sup>
<b>Date</b>	Communicated on 18 September 2023
<b>ECHR Articles</b>	Article 7 of Protocol No. 4
<b>Facts</b>	The applications concern situations whereby taxpayers had different sanctions imposed upon them as a result of tax proceedings and administrative or criminal proceedings. The applications therefore concern the right not to be tried or punished twice under the jurisdiction of the same state for an offence of which an individual has already been finally acquitted or convicted in accordance with the law and criminal proceedings in that state.
<b>Comments</b>	The issues raised in the case are connected to those already addressed by the ECtHR in the cases <i>A and B v. Norway</i> [GC], Nos. 24130/11 and 29758/11, 15 November 2016; <i>Jóhannesson and Others v. Iceland</i> , No. 22007/11, 18 May 2017; and <i>Milošević v. Croatia</i> , No. 12022/16, 31 August 2021.

<b>Case</b>	<b><i>Tartamella v. Italy</i></b> <sup>436</sup>
<b>Date</b>	Communicated on 6 November 2023
<b>ECHR Articles</b>	Article 6 Convention, Article 7 Convention, Article 1 of Protocol No. 1
<b>Facts</b>	The application concerns the confiscation of the applicant's assets, which were considered to be equivalent to the proceeds of crime (amongst others, tax crimes). The applicants are family members of persons convicted of crimes which give rise to the confiscation of assets "by equivalent means". The national courts established that certain assets formally owned by the applicants in reality belonged to the individuals convicted of tax crimes, leading to the confiscation of these assets.
<b>Comments</b>	The applicants complained under article 6 of the Convention that they could not take part in the criminal proceedings which led to the confiscation, under article 7 of the Convention of the imposition of a penalty for a crime committed by others and under article 1 of Protocol No. 1 to the Convention that the confiscation lacked a foreseeable legal basis with regard to the determination of the ownership of the confiscated assets and was, in any event, disproportionate to the aim pursued. Same issues in Application No. 1823/21 Szilvia KOKA against Italy and Application No. 12868/22 Silvia SANTORELLI against Italy.

<sup>435</sup> See IT: ECtHR, 19 Sept. 2023, No. 20191/16, *Faraglia v. Italia*, available at <https://hudoc.echr.coe.int/eng?i=001-228197> (accessed 28 Feb. 2024).

<sup>436</sup> See IT: ECtHR, 6 Nov. 2023, No. 26338/19, *Tartamella v. Italy*, available at <https://hudoc.echr.coe.int/eng?i=001-229349> (accessed 28 Feb. 2024).

<b>Case</b>	<i>LTD Iliyad v. Georgia</i> <sup>437</sup>
<b>Date</b>	Communicated on 7 November 2023
<b>ECHR Articles</b>	Article 13 Convention, Article 1 of Protocol No. 1
<b>Facts</b>	The application concerns the freezing of all the applicant company's asset in relation to ongoing tax evasion proceedings. The applicant holds that the freezing order did not have a clear and sufficiently delimited legal basis. In addition, the application holds that the order was disproportionate since all the assets, rather than the property equivalent to the amount allegedly owned to the state was frozen and given the absence of an effective domestic remedy against the measures.
<b>Comments</b>	The issues raised in the case are connected to those already addressed by the ECtHR in the cases <i>A and B v. Norway</i> [GC], Nos. 24130/11 and 29758/11, 15 Nov. 2016; <i>Jóhannesson and Others v. Iceland</i> , No. 22007/11, 18 May 2017; and <i>Milošević v. Croatia</i> , No. 12022/16, 31 Aug. 2021. However, the fact that the proportionality concerns the application of a freezing order in relation to an ongoing tax proceeding is a differentiating factor from the previous case law.

## 2022 Relevant Case Law – Court of Justice of the European Union

<b>Case</b>	<b>C-97/21, MV-98</b> <sup>438</sup>	
<b>Date</b>	<b>4 May 2023</b>	
<b>EU Charter Articles</b>	<b>Art. 47, Art. 49(3), Art. 50</b>	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
MV – 98, whose main activity is the purchase and resale of goods, such as cigarettes, operates business premises for that purpose in Bulgaria. During an inspection carried out at those business premises, the Bulgarian tax authorities found that MV – 98 had failed to record the sale of a packet of cigarettes worth BGN 5.20 (approximately EUR 2.60) and to issue the fiscal cash register receipt relating to that sale. On that basis, a finding of an administrative offence under Article 118(1) of the Law on VAT	Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and article 50 of the Charter of Fundamental Rights must be interpreted as precluding national legislation under which a financial penalty and a measure involving sealing of business premises may be imposed on a taxpayer for one and the same offence relating to a tax obligation at the end of separate and autonomous procedures, where those measures are liable to challenge	The case in question relates to the issue of the compatibility with the EU Charter of the duplication of administrative and criminal penalties that are 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. In essence, this case follows principles set out in the judgment of the ECJ in the case <i>Garlsson Real Estate and Others</i> of 20 March 2018 (C-537/16) and in the

<sup>437</sup> See GE: ECtHR, 7 Nov. 2023, No. 4637/23, *LTD Iliyad v. Georgia*, available at <https://hudoc.echr.coe.int/eng?i=001-229296> (accessed 28 Feb. 2024).

<sup>438</sup> See BG: ECJ, 4 May 2023, Case C-97/21, *MV-98*, available at <https://curia.europa.eu/juris/document/document.jsf?jsessionid=787B148FDCD379A6D1BD1C003634FC42?text=&docid=273282&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4764179> (accessed 28 Feb. 2024).

<b>Case</b>	<b>C-97/21, <i>MV-98</i></b> <sup>438</sup>	
<b>Date</b>	<b>4 May 2023</b>	
<b>EU Charter Articles</b>	<b>Art. 47, Art. 49(3), Art. 50</b>	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
was established. The tax authorities then adopted two measures: a financial penalty and a coercive administrative measure involving sealing the premises in question for a period of 14 days. MV – 98 brought an action against the sealing measure before the referring court, claiming that that measure was disproportionate in view of the minimal value of the sale involved and the fact that it was its first offence under article 118(1) of the Law on VAT.	before different courts and where that legislation does not ensure coordination of the procedures enabling the additional disadvantage associated with the cumulation of those measures to be reduced to what is strictly necessary and does not ensure that the severity of all penalties imposed is commensurate with the seriousness of the offence concerned.	case <i>NE</i> of 8 March 2022, C-205/20.

<b>Case</b>	<b>C-412/21, <i>Dual Prod SRL</i></b> <sup>439</sup>	
<b>Date</b>	<b>23 March 2023</b>	
<b>EU Charter Articles</b>	<b>Art. 48 (1), Art. 50</b>	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
Dual Prod is a company authorized to operate in the field of the production of alcohol and alcoholic beverages subject to excise duty. Following a search in its premises, criminal proceedings <i>in rem</i> were initiated for suspected infringements of the Tax Code. In parallel with the initiation of criminal proceedings <i>in rem</i> , the competent administrative authority suspended, for a period of 12 months, the authorization granted to that company to operate as a tax warehouse for products subject to excise duty. That suspension was reduced to 8 months, following an action brought by Dual Prod. At the end of that suspension, that	The Court held the following: Article 48(1) of the Charter (presumption of innocence) precludes an authorisation to operate as a tax warehouse for products subject to excise duty from being suspended for administrative purposes, until the conclusion of criminal proceedings, on the sole ground that the holder of that authorization has been formally charged in those criminal proceedings, if that suspension constitutes a criminal penalty.  Article 50 ( <i>ne bis in idem</i> ) does not preclude a criminal penalty, for infringement of the rules on products subject to excise duty, from being imposed on a legal	The case in question relates to the issue of the compatibility with the EU Charter of the duplication of administrative and criminal penalties that are 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. In essence, this case follows principles set out in the judgment of the ECJ in the case <i>Garlsson Real Estate and Others</i> of 20 March 2018 (C-537/16) and in the case <i>NE</i> of 8 March 2022, C-205/20.

<sup>439</sup> See RO: ECJ, 23 Mar. 2023, Case C-412/21, *Dual Prod SRL*, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=271743&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4764666> (accessed 28 Feb. 2024).

<b>Case</b>	<b>C-412/21, <i>Dual Prod SRL</i></b> <sup>439</sup>	
<b>Date</b>	<b>23 March 2023</b>	
<b>EU Charter Articles</b>	<b>Art. 48 (1), Art. 50</b>	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>administrative authority once more suspended, pursuant to article 369(3)(c) of the Tax Code, the same authorization, for an indefinite period, on the ground that Dual Prod had been formally charged in the criminal proceedings brought against it following the search at its premises.</p>	<p>person who has already been subject, in respect of the same facts, to a criminal penalty that has become final, provided that:</p> <ul style="list-style-type: none"> <li>- the possibility of duplicating those two penalties is provided for by law;</li> <li>- the national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides for only the possibility of a duplication of proceedings and penalties under different legislation;</li> <li>- those proceedings and penalties pursue complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at issue;</li> <li>- there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities; that the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate time frame; and that any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed.</li> </ul>	

In line with 2022, the drift towards the expansion of punitive tax law continued to slow significantly in 2023. There was a notable trend among several countries – Spain and Brazil in particular – towards the strengthening of the principle of proportionality in relation to tax penalties.

In **Brazil**, for example, the strengthening of the principle of proportionality has been put forward in legislative enactments and it has also emerged as a key aspect in several judgments of Brazilian courts. In more detail, newly enacted tax rules have reduced the rate of tax penalty in cases of fraud without reiteration from 150% to 100% and have provided that, if the taxpayer challenges the tax assessment before the administrative council and the assessment is upheld only by a casting vote, all penalties and criminal charges connected thereof shall be dismissed.<sup>440</sup>

Brazilian courts have also played a greater role in affirming proportionality of sanctions in tax matters. In particular, the Superior Court of Justice has affirmed that it is not possible to impose two or more penalties grounded on the same conduct (e.g. penalty for wrongful fulfilment of tax returns and penalty for failure to pay taxes) and it has also upheld the constitutionality of domestic legislation that provides that criminal charges shall not be applicable if the taxpayer has paid relevant taxes, though in delay.<sup>441</sup>

A similar pattern could be seen developing in **Spain**. The Supreme Court has established, in relation to the proportionality of penalties for formal infractions, that a court can annul the penalty in question without the need to raise an issue of constitutionality regarding that provision.<sup>442</sup> In addition, in a separate decision, the Supreme Court has upheld the *ne bis in idem* principle in punitive tax matters, by indicating that the tax authorities cannot initiate or continue administrative proceeding aimed at sanctioning the taxpayer if criminal responsibility is declared prescribed.<sup>443</sup>

In other countries, such as the **United States**, the situation is less clear and shifts in proportionality have been witnessed in both directions. On the one side, the US Supreme Court has held, in relation to penalties for failure to file a Report of Foreign Bank and Financial Accounts (FBAR), that, if a taxpayer's failure to file the FBAR report is not wilful, the relevant penalty applies per form that was not filed, rather than per bank account. This decision is notable as it significantly reduces penalties for taxpayers with multiple overseas bank accounts, in a way that is proportional in light of the taxpayer's conduct.<sup>444</sup> On the other side, the National Taxpayer Advocate has reported that the US government has become more aggressive at asserting that the taxpayer has incurred in a violation of tax law with wilful conduct, which may ultimately lead to the imposition of "draconian" penalties in relation to violations that are made in good faith.<sup>445</sup>

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<sup>440</sup> See BR: OPTR Report (Academia), Questionnaire 2, Question 58. See also BR: Law n. 14.689/23, 20 Sept. 2023, available at [https://www.planalto.gov.br/ccivil\\_03/\\_ato2023-2026/2023/lei/L14689.htm](https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/lei/L14689.htm) (accessed 28 Feb. 2024).

<sup>441</sup> See BR: OPTR Report (Academia), Questionnaire 2, Question 58.

<sup>442</sup> See ES: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58. See also ES: Sala de lo Contencioso Administrativo, Section 2<sup>a</sup>, judgments No. 1093/2023 of 25 Jul. 2023 and No.103/2023 of 26 Jul. 2023.

<sup>443</sup> See ES: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 59. See also ES: Sala de lo Contencioso Administrativo, Section 2<sup>a</sup>, judgment No. 1104/2023 of 27 July 2023.

<sup>444</sup> See US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58.

<sup>445</sup> See US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58. See also US: IRS National Taxpayer Advocate's 2023 Annual Report to Congress, available at <https://www.taxpayeradvocate.irs.gov/reports/2023-annual-report-to-congress/full-report/> (accessed 28 Feb. 2024).

Also in other countries, the framework is somewhat blurred. For example, in **Chinese Taipei**, statutory rules provide that violations of administrative and criminal obligations are deemed as one action with respect to the imposition of relevant sanctions. However, the case law interprets the concept of one action under the law in a narrow perspective, with the result that the separate imposition of administrative and criminal punishment over the same facts is a recurring situation.<sup>446</sup>

The drift towards the expansion of punitive tax law is however significant in certain countries. In **Costa Rica**, for example, there are cases in which courts do not fully take into consideration the principle of proportionality. This occurs in those instances in which courts apply penalties notwithstanding the fact that the taxpayer has incurred in minor violation of the law and has complied to the obligations provided by law with only a short delay.<sup>447</sup>

A shift toward proportionality of sanctions in tax matters is nonetheless notable within the *supranational jurisprudence*. This can be witnessed both in the case law of the ECtHR and in the case law of the ECJ.

As a matter of fact, in recent years, there has been an expansion in the powers of tax authorities to impose criminal and administrative tax sanctions at EU level. However, until recently, this trend has not been accompanied by a commensurate strengthening of sanction-related rights. In response, the ECJ and the ECtHR have increasingly been called upon to clarify the scope of EU and ECHR principles regarding punitive sanctions. In this respect, recent case law highlights a growing recognition of the principle of proportionality in matters relating to punitive tax sanctions.

In connection thereof, a trend can be seen, especially in the ECtHR jurisprudence, that highlights the growing recognition of the punitive character of confiscation measures. As the case *Yasargolu v. Türkiye* as well as the applications *Faraglia v. Italy* and *Tartamella v. Italy* show, confiscation measures not only call into question the principle of proportionality, but also pose additional complex issues related to the fact that confiscation measures can take many forms, depending on the applicable law and the circumstances of the case, and that there is therefore a degree of ambiguity as to whether confiscation measures should be classified as punitive in nature. In this regard, it remains unclear whether forfeiture should be considered as a type of criminal punishment to be applied in addition to a custodial sentence or a fine, or whether it should be qualified only as a mechanism to recover the proceeds of the tax evasion and, ultimately, to fully eliminate the economic benefit derived by the taxpayer as a result of the illegal conduct.

At the same time, the concurrence of criminal and administrative sanctions in respect of substantially identical facts remains a matter of debate. It is recognized that the *ne bis in idem* rules are being loosened and it is now settled that the concurrence of administrative and criminal proceedings over the same facts, through their “close connection in space and time”, as well as the presence of so-called indirect penalties, do not run counter to the *ne bis in idem* principle. In practical terms, this trend does not seem to prevent the carrying out of two parallel

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<sup>446</sup> See TPE: OPTR Report (Academia), Questionnaire 2, Question 59.

<sup>447</sup> See CSTR: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58. See also CSTR: Ruling of the Administrative Court 2506-2023, available at <https://nexuspi.poder-judicial.go.cr/document/sen-1-0034-1186043> (accessed 28 Feb. 2024).



sets of proceedings arising from the same factual circumstances and the imposition, eventually, of two sets of sanctions. This has been strengthened through jurisprudential interpretations that ratify that the only remedy to *ne bis in idem* seems to be the proportionality of the concurrently applicable sanctions.<sup>448</sup>

In a broader perspective, as the *S.C. Zorina International S.R.L. v. Romania* demonstrates, complexities remain for the ECtHR in ensuring a fair balance between the objective to ensure proportionality in punitive matters in adherence to the Convention and the goal to ensure that states are not deprived of a margin of appreciation in the adoption and interpretation of domestic provisions in punitive matters. In this context, ultimately, applying the principle of proportionality poses a formidable challenge, as the escalating number of cases brought before the ECtHR heightens the risk of proliferating inconsistencies and contradictions over time.

As regards the jurisprudence of the ECJ a notable trend can be highlighted, which is in line with previous case law. In essence, as the cases *MV-98* and *Dual Prod SRL* underline, the CJEU aims to ensure that a comprehensive assessment of both criminal and administrative penalties associated with the relevant illicit conduct is made when imposing punishment. Without such consideration, the objective of the *ne bis in idem* principle would be undermined, as the mere existence of a “close connection in space and time” would not provide a substantive mechanism to prevent the disproportionate duplication of penalties.

These decisions have two implications. First, they confirm, in line with the *Menci* case law, that the permissibility of concurrent tax sanctions under the *ne bis in idem* principle depends fundamentally on a proportionality assessment. Put simply, if there is a mechanism in place whereby cumulative punitive sanctions are aggregated and evaluated based on the criterion of proportionality, the simultaneous imposition of punitive measures through parallel proceedings is considered irrelevant from a fundamental rights perspective. Second, they reinforce the view that the interpretation of the *ne bis in idem* principle does not preclude the initiation of two simultaneous sets of proceedings based on the same facts, leading to the possible imposition of two sets of sanctions.

## 7.2. Voluntary disclosure

**Best practice:** Voluntary disclosure should lead to a reduction of penalties

Shifted towards/matched the best practice:

United States

Shifted away from the best practice:

Lithuania

**Minimum standard:** Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures

Shifted towards/improved the minimum standard:

Shifted away from the minimum standard:

<sup>448</sup> 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 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).

None

None

As a counterbalance to the relevance of criminal and administrative sanctions (as can be inferred 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 have in the past flourished, especially in the wake of the lengthening of the effects of the COVID-19 pandemic. It could also be argued that the dire global economic situation, and the need for countries to raise revenue, contributed to this trend. However, as the situation slowly improved in 2023, it appears that fewer voluntary disclosure regimes have been introduced worldwide in 2023.

Some states have even decided to wind down existing voluntary disclosure schemes. For example, in **Lithuania**, the Law on Tax Administration, besides having increased the amount of punitive sanctions, has provided that, even in the case of voluntary disclosure, the tax penalty due by the taxpayer cannot be reduced for an amount lower than 20% of calculated unpaid taxes.<sup>449</sup>

Nonetheless, other countries have decided to strengthen voluntary disclosure regimes that lead to a reduction of tax penalties.

In particular, in the **United States**, the IRS announced new voluntary disclosure programs for specific situations.<sup>450</sup> In addition, as a general rule, sanctions for deficiencies on tax returns can be avoided through timely disclosure. However, it should be noted that voluntary disclosure regimes may not be available in all circumstances; for example, voluntary disclosure mechanisms are not available in those instances in which the IRS acquires third-party information in connection to the non-compliance before the voluntary disclosure takes place.<sup>451</sup>

**Chart 58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?**

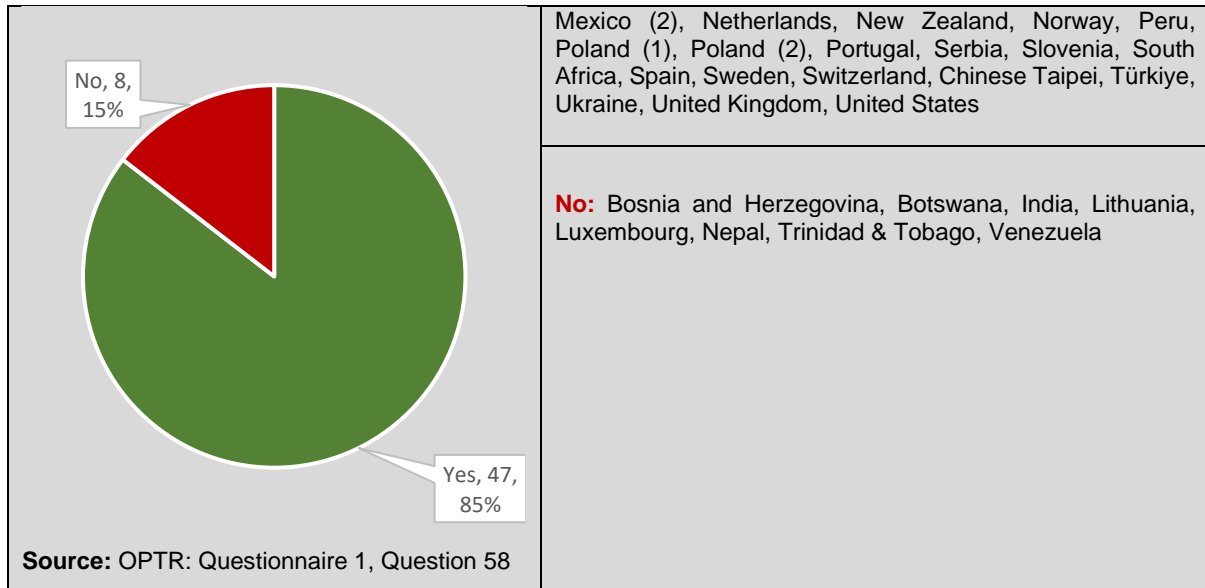
62 responses

**Yes:** Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Mexico (1),

<sup>449</sup> See LT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 60. See also LT: Law on Amendment of Articles 2, 3, 12, 13, 25, 26, 32, 33, 38, 39, 40-1, 87, 88, 99, 104-2, 126, 139 and Annex, Addition of Article 63-1 to the Tax Administration Law of the Republic of Lithuania No. IX-2112, 13 Dec. 2022, version in force from 1 May 2023, available at <https://eseimas.lrs.lt/portal/legalAct/lt/TAD/9477dac27d2811edbdcebd68a7a0df7e?jfwid=-pcl9fel15> (accessed 28 Feb. 2024).

<sup>450</sup> See US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 60.

<sup>451</sup> See US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 60. See also US: the IRS Criminal Investigation voluntary disclosure program, available at <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-voluntary-disclosure-practice> (accessed 28 Feb. 2024).



It should also be highlighted that many countries had already adopted voluntary disclosure regimes back in 2021 and several countries have also extended, at least until 2022, the scope of voluntary disclosure regimes in the wake of the COVID-19 pandemic emergency.

## 8. Enforcement of Taxes

### 2023 Relevant Case Law – Inter-American Court of Human Rights

Case	Date	ACHR Articles	Facts	Decision
Case of <i>García Rodríguez et al. v. Mexico</i> (Serie C N°482)	25 January 2023	5 (Right to Humane Treatment) 7 (Right to Personal Liberty) 8 and 24 (Right to a Fair Trial, Right to Judicial Protection)	Two people were accused without legal evidence of the murder of a woman. Both people were tortured by the police, and both remained in preventive detention for 17 years with the judicial process pending (without a conviction). Both sued the state of Mexico before the IACtHR for the violation of their human rights. The plaintiffs requested compensation for consequential damages, loss of profits (direct and indirect), compensation measures for contributions (taxes), and moral or non-pecuniary damages. In tax matters, the state of Mexico continued to collect taxes from these two people during the period of unjustified confinement. Therefore, they specifically requested that the tax obligations not be collected from them due to the circumstances they had experienced due	<i>Judgment (Preliminary Objections, Merits, Reparations and Costs). IACtHR</i>  The IACtHR accepted the lawsuit, establishing various measures of reparation to the rights of the plaintiffs. But the Court did not agree to exclude the plaintiffs from paying taxes generated during the 17 years of illegal detention carried out by the state. The IACtHR agreed to condemn the state of Mexico to pay, for each of the plaintiffs, compensation for consequential damage and loss of profits, in the amount of USD 50,000 (fifty thousand dollars); and for compensation for non-pecuniary damage the amount of USD 50,000 for each one. Regarding the other requests, including tax matters, the ruling states that “324. This Court has established in its case law that pecuniary damage encompasses the loss of or detriment to the victims’ income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case. Likewise, the Court has developed the concept of non-pecuniary damage and has established that this may include both the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are very significant to them, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family. However, since it is not possible to assign a precise monetary value to non-pecuniary damage, this can only be compensated, for the purposes of comprehensive reparation to victims, through the payment of a sum of money or the delivery of goods or services that can be estimated in monetary terms, as prudently determined by the Court, applying judicial discretion and the principle of equity.” [Original version of the judicial decision in English]

			<p>to actions of the state of Mexico. The plaintiffs claimed for each one, for various legal reasons, close to USD 1 million.</p> <p>In tax matters, the plaintiffs asked the IACtHR "N°322 [...] "g) to order the Mexican State to send the pertinent communications to the domestic federal, state and municipal authorities, so that in accordance with their internal procedures and based on the applicable legislation, they may determine the annulment, waiver or administrative cancellation of any pending payment of duties or contributions, as well as any type of tax credit derived from non-compliance with federal, state and municipal obligations corresponding to the victims [Foot Note 286: "They explained that this situation is due to the fact that the illegal deprivation of liberty to which the alleged victims were subjected, resulted in non-compliance with their tax obligations that could not be covered during</p>	
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			<p>the entire time they were illegally deprived of their liberty. Therefore, such noncompliance (with the accompanying surcharges and updates) is due to the detrimental effect generated by the deprivation of freedom, since they had no possibility of continuing with their lives and receiving financial benefits from their economic activities to allow them to meet those obligations.]"</p> <p>[Original version of the judicial decision in English]</p>	

**Minimum standard: Collection of taxes should never deprive taxpayers of their minimum necessary for living**

**Shifted towards/improved the minimum standard:**

Lithuania, Mexico

**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, entailing both an efficient collection of taxes and a balanced protection of taxpayers. Enforcement entails greater powers for the tax administration in the collection of taxes due,<sup>452</sup> and the greater the tax administration's powers, the greater the risks

<sup>452</sup> The ECJ decision 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 European Union for the same excise taxes due. As stated by the decision, "[i]n 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

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.<sup>453</sup>

Coming out of a global pandemic and economic crisis, funds have been scarce for most states for the last 4 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.

Several countries have continued to keep in place such measures in 2023, also in light of the complex economic situation caused by the conflict in Ukraine and the consequent spiralling of energy and commodity prices worldwide. However, a downward trend can be witnessed, with the overall number of measures enacted in 2023 greatly lower than in previous years.

In particular, **Lithuania** enacted a measure to ensure that, considering the rising cost of living, tax collection does not deprive taxpayers of the minimum necessary for living. In this regard, rules were introduced that increase the tax-free income to an amount that currently is set at EUR 747.<sup>454</sup>

It is also worth considering the jurisprudence of supranational courts. In this regard, an interesting case was decided by the Inter-American Court of Human Rights on 25 January 2023, in the case *Garcia Rodriguez v. Mexico*. The interesting aspect of the case lies in the principle affirmed by the Court, namely that an individual subject to an illegal and long deprivation of liberty should be exempt from paying taxes as the individual had no possibility to generate income during the time in which they were held in prison.

**Best practice:** Authorization by the judiciary should be required before seizing assets or banking accounts

Shifted towards/matched the best practice:

South Africa

Shifted away from the best practice:

Botswana

**Chart 59. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?**

62 responses

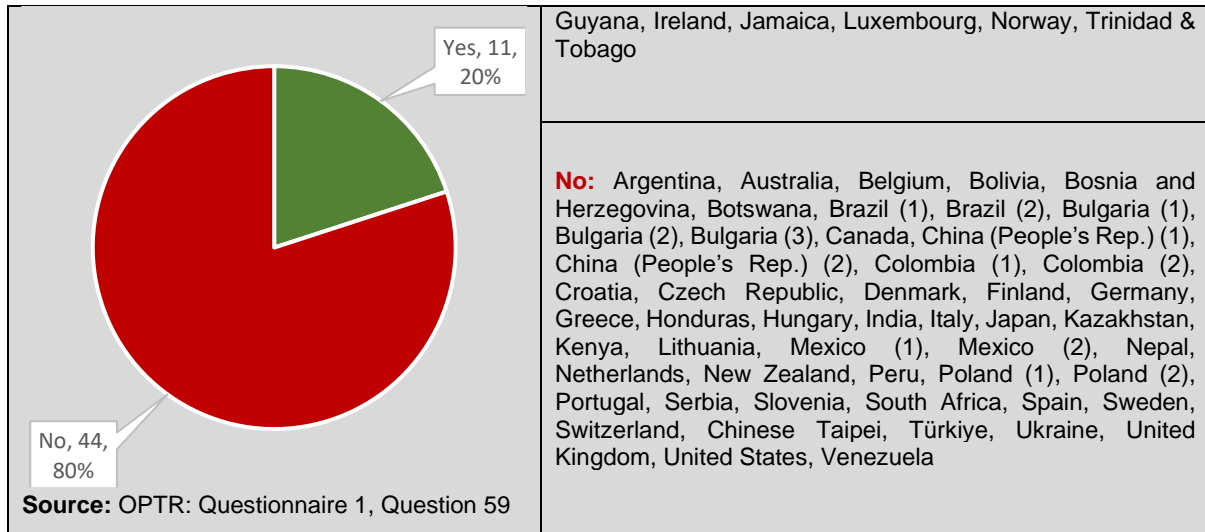
**Yes:** Austria, Bahamas, Barbados, Costa Rica, Guatemala,

which are already subject to excise duty recovery in the Member State in which the requested authority is situated". ES: ECJ (Fifth Chamber), 24 Feb. 2021, Case C-95-19, *Agenzia delle Dogane v. Silcompa SpA*, available at <https://www.courthousenews.com/wp-content/uploads/2021/02/silcompa-ECJ.pdf> (accessed 5 Mar. 2021).

<sup>453</sup> Baker & Pistone, *supra* n. 340, at sec. 5.1.

<sup>454</sup> See LT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 62. See also LT: Law on Amendment of Article 20 of the Law on Personal Income Tax of the Republic of Lithuania No. IX-1007, available at: <https://eseimas.lrs.lt/portal/legalAct/lt/TAD/46060d509f1711ee8172b53a675305ab> (accessed 28 Feb. 2024).





Unlike previous years, in which no surveyed jurisdiction reported measures impacting judicial authorities' powers of review of decisions made by tax administrations to seize assets or bank account deposits, in 2023 there were some developments in this area.

In particular, in **Botswana**, legislation was enacted that provides that decisions made by the tax administration to seize assets or bank account deposits are not subject to authorisation by judicial authorities.<sup>455</sup>

In the opposite direction, in **South Africa**, courts have increased the level of protection for taxpayers in connection with seizure measures sought by the South African tax authorities to seize assets held abroad.<sup>456</sup>

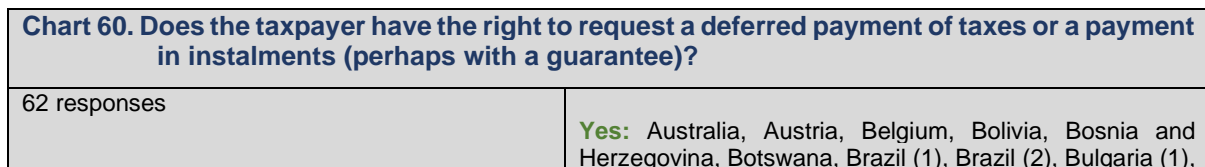
**Minimum standard: Taxpayers should have the right to request delayed payment of arrears**

Shifted towards/improved the minimum standard:

None

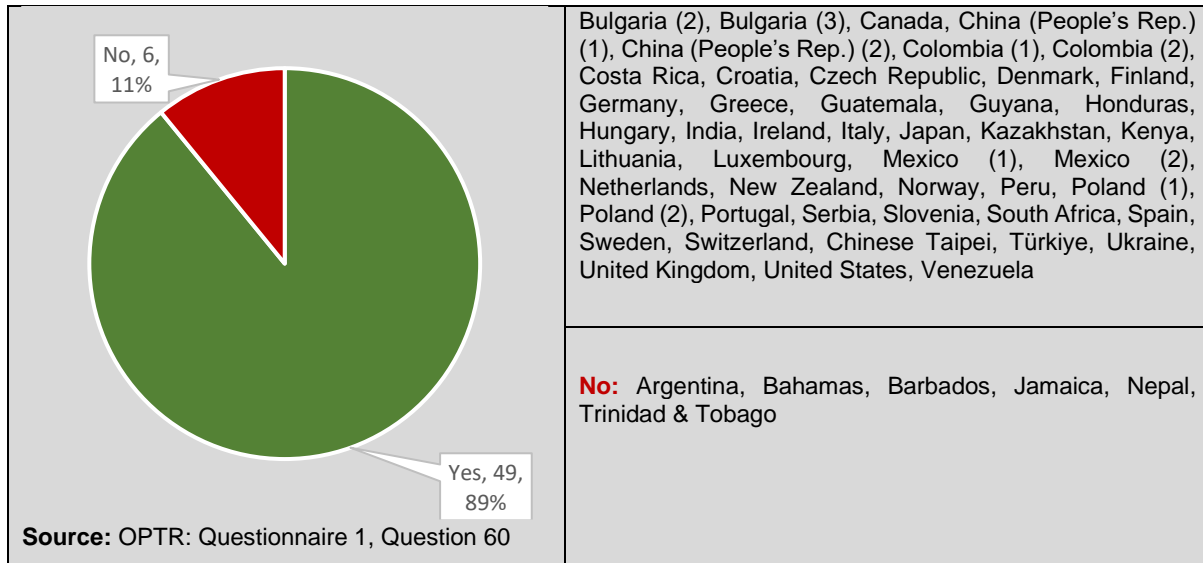
Shifted away from the minimum standard:

None



<sup>455</sup> See BOT: OPTR Report (Academia), Questionnaire 2, Question 63. See also BOT: § 70, Chapter 52:01 of the Income Tax of Botswana, available at: <https://botswanalaws.com/consolidated-statutes/principle-legislation/income-tax> (accessed 28 Feb. 2024).

<sup>456</sup> See SA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 63. See also SA: judgment of the North Gauteng High Court, Pretoria of 24 Jul. 2023, *Commissioner for the South African Revenue Services v. Agrizzi and Another*, No. 45008/2021, available at: <https://www.saflii.org/za/cases/ZAGPPHC/2023/604.html> (accessed 28 Feb. 2024).



As described at the beginning of this section, means have been scarce for several taxpayers for the years 2020-2022 due to the pandemic and the economic crisis resulting from it. The energy crisis and the war in Ukraine have worsened the situation. Consequently, several countries introduced, on top of existing COVID-specific measures, measures to aid taxpayers in 2020-2022, including extensions of payment of taxes and of deadlines for reporting obligations.

Unlike previous years, however, no surveyed jurisdiction reported measures impacting the right of taxpayers to request delayed payment of areas in 2023.

**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:**

Botswana

**Shifted away from the best practice:**

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.

Few surveyed jurisdictions however reported measures impacting the position of taxpayers in connection thereto in 2023. A notable exception is **Botswana**, where it is reported that plans with the tax authorities are now ordinarily put into place in order to allow taxpayers to defer payment and prevent bankruptcy.<sup>457</sup>

**Minimum standard: Temporary suspension of tax enforcement should follow natural disasters**

<sup>457</sup> See BOT: OPTR Report (Botswana), Questionnaire 2, Question 65.

**Shifted towards/improved the minimum standard:**

Guatemala, Norway, Ukraine

**Shifted away from the minimum standard:**

None

Natural disasters are extraordinary situations calling for higher protection of citizens, 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 states to promptly relieve their citizens of their tax and reporting obligations.

Though the effect of the pandemic emergency waned in 2023, some countries continued their policy of extending deadlines for filing tax returns and providing information, as happened in 2020, 2021 and 2022.

That occurred, for example, in the case of **Guatemala**, in which, due to a political crisis, the tax administration has made it possible for taxpayers to delay the presentation of tax declarations.<sup>458</sup>

The state of war in Ukraine and the ensuing political and social complexities have also justified legislative efforts in **Ukraine** to stop tax enforcement activities from 1 August 2023. In addition, statutory rules have forbidden Ukraine tax authorities to undertake measures to collect tax debt incurred before 24 February 2022 from taxpayers whose tax address/place of residence is the territory of Ukraine temporarily occupied by the Russian Federation or the territory where active hostilities are taking place or areas of possible hostilities.<sup>459</sup>

Measures aimed at suspending tax enforcement were also introduced in **Norway**. In particular, a specific legal framework has been introduced with the goal to ensure a more simplified and flexible scheme for deferred payment in connection with the outbreak of COVID-19. However, the provisions that have been adopted are detailed in a general manner, so that the Ministry of Finance of Norway could also issue regulations on deferral of payment for tax and duty claims or reduction of interest in any subsequent crisis situations.<sup>460</sup>

## 9. Cross-Border Situations

Cross-border procedures are becoming increasingly common; presumably, this trend will only continue. As a result of this development, taxpayers’ rights are weakened in practice, as they

<sup>458</sup> See GUAT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 66. See also GUAT: Declaration issued by the Office of the Superintendent of tax administration of Guatemala, 11 Oct. 2023, No. Sat Dsi 1688-2023.

<sup>459</sup> See UKR: OPTR Report (Academia), Questionnaire 2, Question 66. See also UKR: Law of Ukraine of 30 Jun. 2023, No. 3219-IX, Amendments to clause 69 of subsection 10 of Chapter XX “Transitional Provisions” of the Tax Code of Ukraine and other laws of Ukraine regarding the specifics of taxation during martial law, available at: <https://zakon.rada.gov.ua/laws/show/3219-IX#Text> (accessed 28 Feb. 2024).

<sup>460</sup> See NO: OPTR Report (Tax administration), Questionnaire 2, Question 66. See also NO: Regulations on deferral of tax payments etc. to remedy the consequences of the Covid-19 outbreak, available at: <https://lovdata.no/dokument/SF/forskrift/2020-04-07-764?q=Forskrift%20om%20utsettelse%20av%20skatteinnbetalinger> (accessed 28 Feb. 2024).

are generally not involved in the cross-border procedures carried out between states. This situation entails the risk of taxpayers not effectively exercising and protecting their rights in the procedures. However, positive developments have also occurred in the systems to ensure taxpayers' legal standing in terms of access to mutual agreement procedures in article 16(1) of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)<sup>461</sup> 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”.<sup>462</sup> Essentially, this measure served an objective similar to other forms of information gathering and exchange of information, namely to enable the tax administrations to use the information 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.<sup>463</sup> 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*),<sup>464</sup> as described in section 5.2. of this Yearbook.

The surveyed jurisdictions only reported a few developments in 2023 regarding the exchange of information benchmarks monitored by the OPTR. The findings mostly relate to the overall trends, which will be analysed in this section. In 2022, within the **European Union**, the most significant development was the progressive adoption of the Council Directive 2021/514 of the European Union on 22 March 2021 (DAC7).<sup>465</sup> By the end of 2023, all Member States, except **Poland**,<sup>466</sup> had transposed the Directive into national law.<sup>467</sup> Some of the countries have even developed interpretative guidelines. This is the case of **Finland**,<sup>468</sup> **France**,<sup>469</sup>

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<sup>461</sup> [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#) (24 Nov. 2016), Treaties & Models IBFD.

<sup>462</sup> OECD/G20, [Mandatory Disclosure Rules – Action 12: Final Report](#) (OECD 2015), Primary Sources IBFD.

<sup>463</sup> 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.

<sup>464</sup> Id.

<sup>465</sup> Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, Primary Sources IBFD.

<sup>466</sup> M. Olejnicka, [Poland - Council of Ministers Publishes Bill on DAC7 Transposition](#) (15 Feb. 2024), News IBFD.

<sup>467</sup> [DAC6 - DAC7 Implementation Status](#), Tables IBFD.

<sup>468</sup> L. Ambagtsheer-Pakarinen, [Finland: European Union - Tax Administration Issues Guidance on DAC 7 Directive \(1 May 2023\)](#), News IBFD.

<sup>469</sup> P. Burg, [France - Tax Authorities Publish Guidelines on DAC7 Rules](#) (12 Jan. 2023), News IBFD. See also additional guidelines at P. Burg, [France - Tax Authorities Publish Additional Guidelines on DAC7 Rules, Including Penalties](#) (14 Dec. 2023), News IBFD.

**Germany,**<sup>470</sup> **Ireland,**<sup>471</sup> **Italy**<sup>472</sup> and **Slovenia.**<sup>473</sup>

Another legal novelty is the advancement regarding regulating crypto assets in the European Union. By the end of 2022, the proposal of the seventh amendment to the Directive on Administrative Cooperation (2011/16), approved by the Council of the European Union on 08 December 2022 (DAC8) was approved.<sup>474</sup> DAC8's aim is to expand the automatic exchange of information and reporting obligations to cover the gains and profits made from crypto-transactions by EU users.<sup>475</sup> In 2023, the European Council, following consultation with the European Parliament and the European Economic and Social Committee, formally adopted the proposal on 17 October 2023.<sup>476</sup> The proposal was approved under the name Council Directive (EU) 2023/2226 of 17 October 2023, amending Directive 2011/16/EU on administrative cooperation in the field of taxation.<sup>477</sup>

## 9.1. Exchange of information

### 9.1.1. Exchange of information on request: The right of the taxpayer to be informed and to challenge exchange of information

**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:**

Ukraine

<sup>470</sup> A. Perdelwitz, [Germany - Ministry of Finance Issues Guidance on DAC7 Implementation Rules](#) (3 Feb. 2023), News IBFD.

<sup>471</sup> P. Bak, [Ireland - Ireland Issues Technical Guidance on DAC7 Reporting Obligations](#) (6 July 2023), News IBFD, See also additional guidelines at P.Bak, [Ireland - Ireland Issues Registration Guidance on DAC7](#) (8 Nov. 2023), News IBFD.

<sup>472</sup> G. Gallo, [Italy - Tax Authorities Outline Rules on DAC7 Reporting Obligation for Digital Platform Operators](#) (24 Nov. 2023), News IBFD.

<sup>473</sup> N. Ovcar, [Slovenia - Slovenia Issues Guidelines and Model Reporting Rules for Digital Platforms](#) (11 Dec. 2023), News IBFD.

<sup>474</sup> Proposal for a Council Directive COM (2022)707 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

<sup>475</sup> See C. Valério, [European Commission Adopts DAC8 to Cover Cryptoassets, Feedback Period Open](#) (8 Dec. 2022), News IBFD.

<sup>476</sup> Council of the EU, Council adopts directive to boost cooperation between national taxation authorities (DAC8), 17 Oct. 2023, available at <https://www.consilium.europa.eu/en/press/press-releases/2023/10/17/council-adopts-directive-to-boost-cooperation-between-national-taxation-authorities-dac8/> (accessed 15 Feb. 2023).

<sup>477</sup> Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJEU L 1-38, 24.10.2023, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202302226](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302226) (accessed 15 Feb. 2024).

**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:**

Botswana, Honduras, Lithuania, Netherlands

There is a negative tendency already initiated a couple of years ago regarding the minimum standard to notify the taxpayer of cross-border requests for information and, particularly, its best practice to inform the taxpayer of a cross-border request of information. Progressively, a small but constant number of countries keep indicating shifts away from both the standard and the best practice, which indicates a decrease in transparency standards worldwide in this area.

In 2022, due to the open conflict with Russia, **Ukraine**<sup>478</sup> temporarily withdrew the application of the minimum standard to those taxpayers whose tax address/place of residence is located in the territory of Ukraine temporarily occupied by the Russian Federation or in the territory where active hostilities are taking place or areas of possible hostilities.<sup>479</sup> The controlling authorities temporarily stopped applying measures to collect the tax debt incurred by those taxpayers before 24 February 2022. Nonetheless, once the war is over, the intention is to restore the previous legislation that applies this minimum standard and correct other tax-related malpractices.<sup>480</sup>

**Honduras**<sup>481</sup> continues to engage with the progressive deviation from the minimum standard and best practice in this area. In the 2023 edition of the yearbook,<sup>482</sup> the right to be informed in exchange of information cases is not explicitly contemplated in the Honduran Tax Code, but it was a common practice of the tax administration. However, this common practice was abandoned, and the tax administration only informs the taxpayers about exchanging information during a tax audit.<sup>483</sup> Following this tendency, it is worth mentioning that in

<sup>478</sup> UA: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 66.

<sup>479</sup> The legal instrument that habilitated this temporal shift away is the Law of Ukraine of 30 June 2023, No. 3219-IX "On Amendments to the Tax Code of Ukraine and other laws of Ukraine regarding the specifics of taxation during martial law". Particularly, clause 69 of subsection 10 of Chapter XX "Transitional Provisions" of the Tax Code of Ukraine (hereinafter, the Code) is supplemented by clause 69.40, according to which it is established that, temporarily, from 1 August 2023, the control bodies shall not carry out the measures provided for in articles 59 - 60, 87 - 101 of the Code. Law of Ukraine No. 3219 available at: <https://zakon.rada.gov.ua/laws/show/3219-IX#Text> (accessed 15 Feb. 2024).

<sup>480</sup> See Interview to a former head of the Tax Service, Yevgena Oleynikov, 28 Oct. 2021, <https://www.epravda.com.ua/publications/2021/10/28/679162/> and see also V. Novak & M.P. Berenson, *Law Compliance by Taxpayers and Economic Recovery of Ukraine*, 2023 Ukrainian Parliamentary Institute. Available at: <https://www.kcl.ac.uk/kri/assets/taxpayer-compliance-and-ukraines-recovery-ukrainian-2023.06.01.pdf> (accessed 16 Feb. 2024).

<sup>481</sup> HN: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 67.

<sup>482</sup> See OTPR Yearbook (2022), sec. 9.1, p. 166.

<sup>483</sup> See HN: SAR - *Nota de Prensa SAR RRPP 034-2022 Gobierno de Honduras firma convención que permitirá investigar defraudación en paraísos fiscales*, 11 July 2022, available at <https://www.sar.gob.hn/2022/07/gobierno-de-honduras-firma-convencion-que-permitira-investigar-defraudacion-en-paraisos-fiscales/> (accessed 16 Feb. 2024).



September 2023, the OECD gave a call of attention in an official notification. The letter highlighted that notifications to taxpayers are only required when there is an open administrative file, but this does not happen in cases of EOI because a file is not opened when receiving a request of information. However, this exception is not clearly stated due to the way domestic law is written. Therefore, the OECD recommended indicating more clearly the exception from notifying taxpayers in cases of EOI procedures.<sup>484</sup>

Also on the negative side, **Botswana**<sup>485</sup> indicated a shift away from this practice. The Botswanan Income Tax Act omits the right to inform the taxpayer whenever an exchange of information occurs,<sup>486</sup> which is interpreted as not requiring the tax administration to inform the taxpayer.<sup>487</sup> The same happens with EU Member States such as **Lithuania**.<sup>488</sup> In the case of **Lithuania**, a modification of article 39 of the Law on Tax Administration established that information received within the framework of an EOI procedure can be used for non-tax purposes as long as these further treatments for other purposes are foreseen in the EU norms and the signed international treaties.<sup>489</sup> However, this modification does not mention to inform taxpayers about the future treatment of their information.

In the case of the **Netherlands**, the State Secretary of Finance, followed a research project that analysed the consequences of the CJEU judgment of 6 October 2020.<sup>490</sup> As a result of that analysis, an open letter to the Second Chamber was issued, communicating the position the tax authorities might take.<sup>491</sup> The message given was that irrespective of the developments in the CJEU case law, the Dutch tax authorities do not consider there are sufficient compelling reasons to change the legislation since the taxpayers have plenty of mechanisms and broad guarantees to claim an effective remedy and challenge the lawfulness of the exchange of information order if considered unlawful.<sup>492</sup> In short, the Ministry of Finance is reluctant to

<sup>484</sup> See HN: OECD, *Implementación del Estándar de intercambio de información Previa Petición en Honduras*, 11 Sept. 2023, p. 5, available at:

<https://www.slideshare.net/AlexanderAlvarez658267/implementacindelestndardeintercambiodeinformacinpreviapdf> (accessed 16 Feb. 2024).

<sup>485</sup> BW: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 66.

<sup>486</sup> See BW: Income Tax Act (Cap 52:01) available at [https://www.burs.org.bw/phocadownload/Revenue\\_laws/CAP%2052-01%20Income%20Tax%20Act.pdf](https://www.burs.org.bw/phocadownload/Revenue_laws/CAP%2052-01%20Income%20Tax%20Act.pdf) (accessed 16 Feb. 2024).

<sup>487</sup> See OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Botswana 2023 (Second Round, Supplementary Report): Peer Review Report on the Exchange of Information on Request, Global Forum on Transparency and Exchange of Information for Tax Purposes*, (OECD 2023), p. 86.

<sup>488</sup> NL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 67.

<sup>489</sup> See LT: Amendment of Articles 2, 3, 12, 13, 25, 26, 32, 33, 38, 39, 40-1, 87, 88, 99, 104-2, 126, 139 and Annex, Addition of Article 63-1 to the Tax Administration Law of the Republic of Lithuania No. IX-2112, date of adoption 13 December 2022 (TAR, 2022-12-22, Nr. 2022-26362). Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9477dac27d2811edbdcebd68a7a0df7e?jfwid=-pcl9fel15> (accessed 16 Feb. 2024).

<sup>490</sup> CJEU, 6 Oct. 2020, C-245/19 and C-246/19, ECLI: EU:C:2020:795.

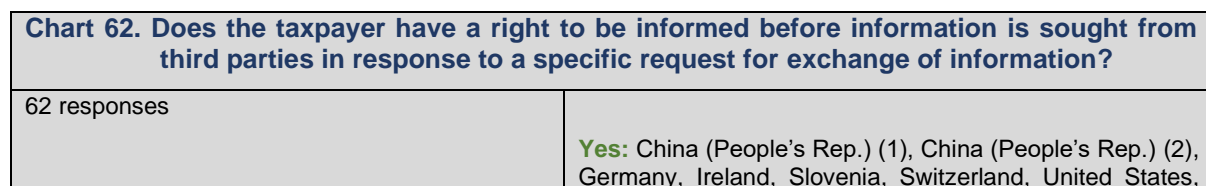
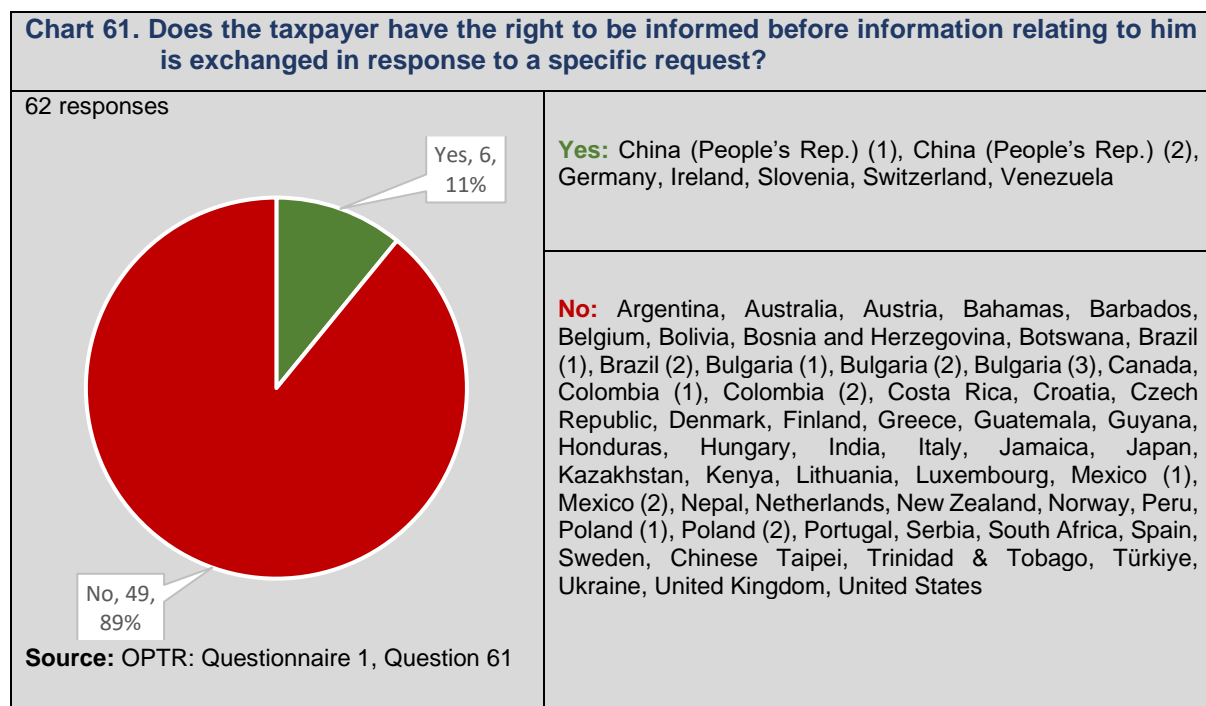
<sup>491</sup> See M.L.A. van Rij, *Onderzoek rechtsbescherming in de WIB*, 8 februari 2023, available at: <https://open.overheid.nl/documenten/ronl-7bacc3f3ca2c6121d1eef0e91a1bda1e776eac13/pdf> (accessed 16 Feb. 2024).

<sup>492</sup> Staatssecretaris Van Rij, *Rechtsbescherming in de WIB*, p. 8.



widen the current framework of rights and guarantees for taxpayers. The only concession announced was for those information holders who consider that an information obligation has been unlawfully imposed in the context of a particular investigation and may request the reimbursement of the costs directly related to such compliance. In this narrow case, the tax authorities can decide to give the information holder a legal remedy before claiming an effective remedy before the administrative courts.

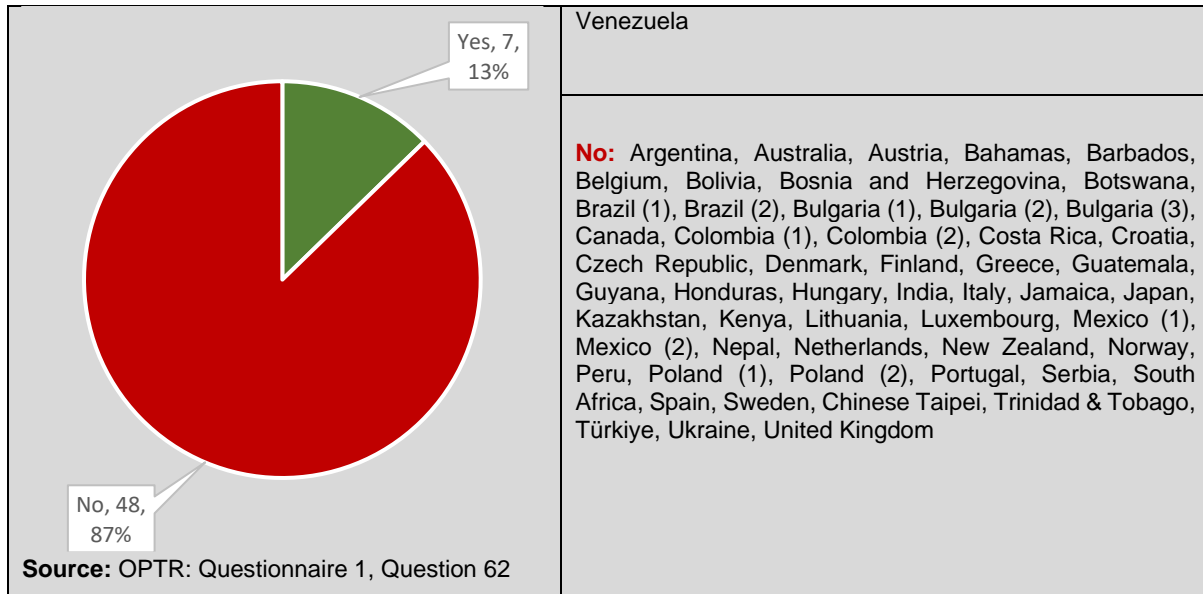
At least, on the positive side, in the **United States**,<sup>493</sup> despite there being no formal change to legislation, its recent domestic case law confirms that at least the taxpayer can challenge the summons the IRS issues at the request of a third country in certain circumstances.<sup>494</sup>



Available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/02/08/rechtsbescherming-in-de-wib> (accessed 16 Feb. 2024).

<sup>493</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2 (Development Survey), Question 67.

<sup>494</sup> The Opinion of the US Court of Appeals states that "evidentiary hearing is warranted only when the taxpayers 'can point to specific facts or circumstances plausibly raising an inference of bad faith' by the Service." (US Court of Appeals, *Samuel Barnaby Dyer Coriat et al. v. United States*, 11th Cir No. 23-11648 (order issued 12/4/2023), p.6. Available at: <https://law.justia.com/cases/federal/appellate-courts/ca11/23-11648/23-11648-2023-12-04.html> (accessed 16 Feb. 2024).



As a critical element of a democratic state, the rule of law prescribes that a taxpayer must be informed before 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 also allow the exchange of information to be used as evidence to benefit the taxpayer.

**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:**

Slovenia

**Shifted away from the best practice:**

Botswana

**Slovenia**<sup>495</sup> amended the Tax Procedure Act<sup>496</sup> to be in line with the General Data Protection Regulation (GDPR).<sup>497</sup> The data protection guarantees are expanded to new categories of data covered by the Directive on Administrative Cooperation.<sup>498</sup> The amendment intends to grant more protection to taxpayers' data when processing personal data within a cross-border

<sup>495</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 68.

<sup>496</sup> SI: [Tax Procedure Act](#) (Official Gazette of the Republic of Slovenia, No. 163/2022, ZDavP-2N).

<sup>497</sup> 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.

<sup>498</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

exchange of information procedure. On the negative side, **Botswana**,<sup>499</sup> still does not grant any particular assistance to taxpayers during the EOI procedures since no rules or guarantees are foreseen in the Income Tax Act.<sup>500</sup>

**Best practice:** Provisions should be included in tax treaties setting specific conditions for exchange of information

**Shifted towards/matched the best practice:**

None

**Shifted away from the best practice:**

None

No significant changes are reported in 2023. In the previous edition, **Brazil**<sup>501</sup> reported a positive development regarding the inclusion of provisions setting specific conditions for exchange of information in tax treaties. The country has not reported any further developments. Therefore, it continues to engage in such practice.<sup>502</sup>

### 9.1.2. A disturbing development: The removal of the right of the taxpayer to be notified in certain states under international pressure

Since the OECD Forum on Transparency and Exchange of Information applied pressure on countries to repeal the taxpayers' right to be informed prior to the exchange of information in 2015, numerous countries have unfortunately removed this right. As mentioned in the section above,<sup>503</sup> several countries during 2023 have experienced a shift away from the minimum standard and best practices surrounding the taxpayers' right to be notified or informed that a request of information has been made.

**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?**

62 responses

**Yes:** Hungary, Luxembourg, Netherlands

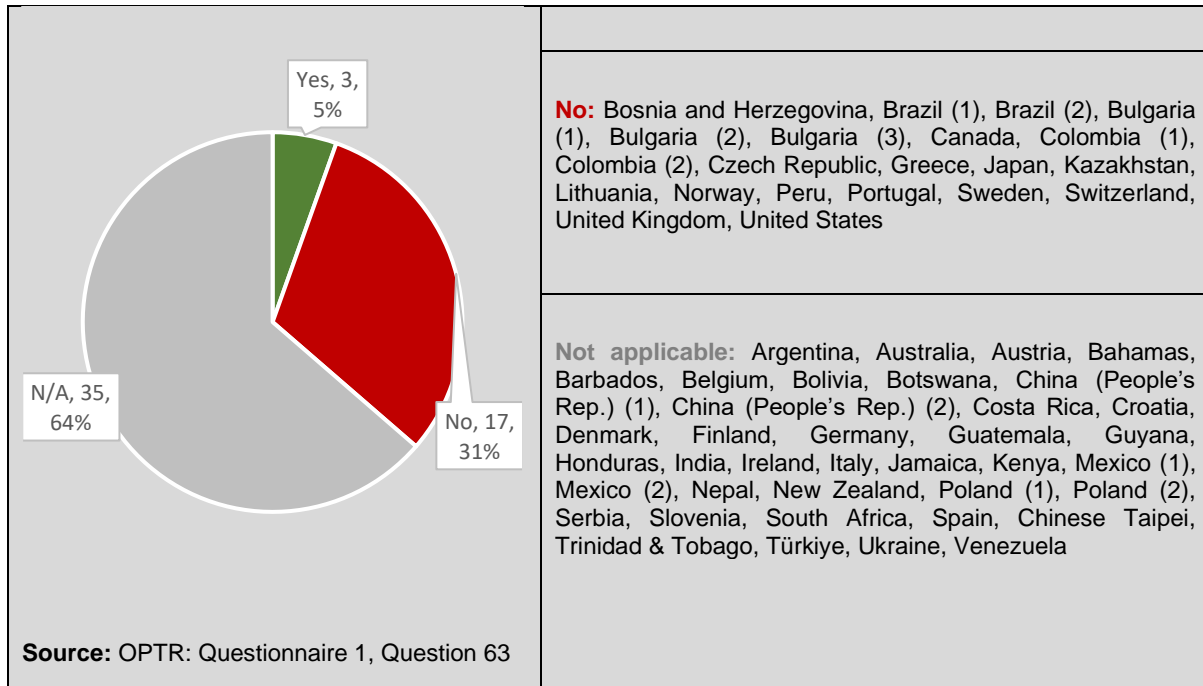
<sup>499</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 68.

<sup>500</sup> See BW: Income Tax Act (Cap 52:01) available at [https://www.burs.org.bw/phocadownload/Revenue\\_laws/CAP%2052-01%20Income%20Tax%20Act.pdf](https://www.burs.org.bw/phocadownload/Revenue_laws/CAP%2052-01%20Income%20Tax%20Act.pdf) (accessed 16 Feb. 2024) and see OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Botswana 2023 (Second Round, Supplementary Report): Peer Review Report on the Exchange of Information on Request, Global Forum on Transparency and Exchange of Information for Tax Purposes*, (OECD 2023), p. 86.

<sup>501</sup> BR: Yearbook (2022), sec. 9.1.1, p. 168.

<sup>502</sup> It must be mentioned that this is a divergent opinion between the participants in the questionnaire. Members of the academia (**Brazil 1**) do not share the opinion that there has been an improvement. On the contrary, they consider that the indicated practice of inclusion of exchange of information provisions in the tax treaties has remained the same.

<sup>503</sup> See sec. 8.1.1.



### 9.1.3. Additional safeguards in connection with exchange of information on request

**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:**

None

No developments were reported in this regard in 2023. However, as mentioned, in **Botswana**,<sup>504</sup> the Income Tax Act omits to regulate the necessity of having judicial authorization if the information sought has to be required from third parties. Also, it could be relevant to highlight that in the **United States**<sup>505</sup> taxpayers have the right to be informed before information is sought from third parties,<sup>506</sup> even though no judicial authorization is necessary to request that information. However, taxpayers are not entitled to notice of third-party summons issued to aid in collecting assessed taxes.<sup>507</sup>

#### 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?

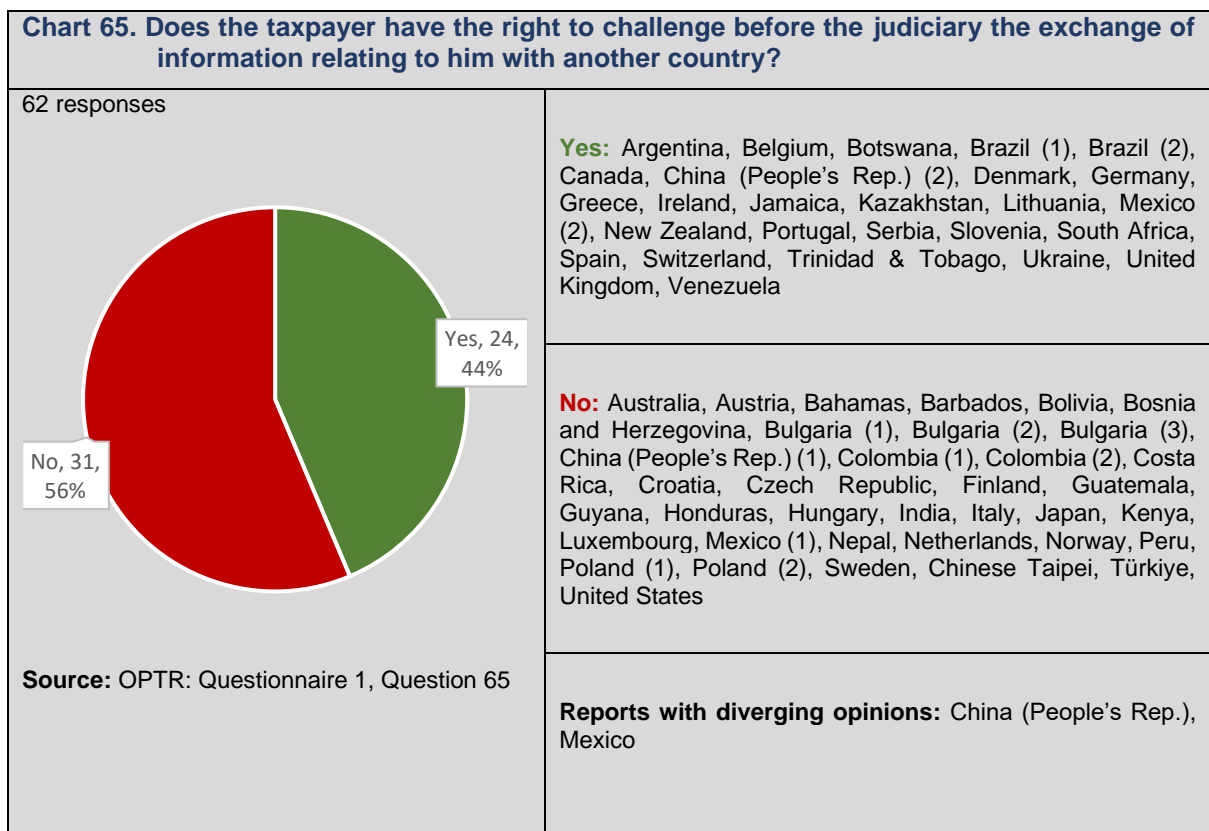
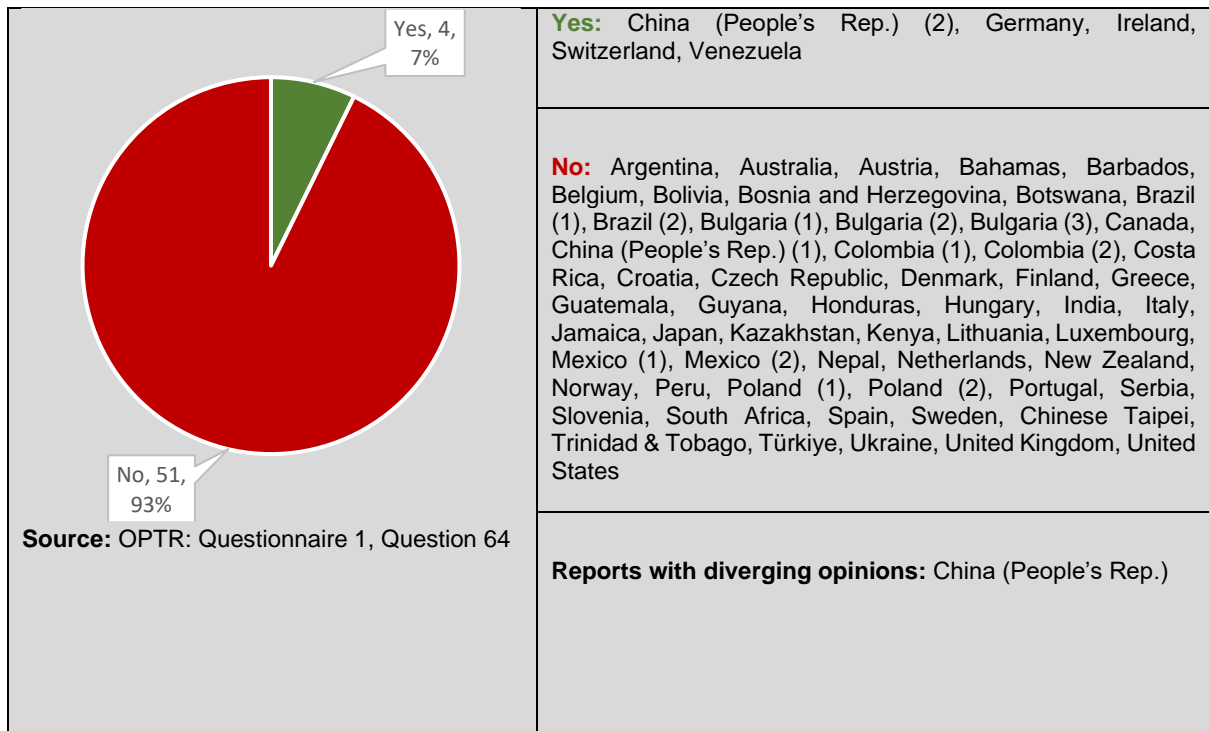
62 responses

<sup>504</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 70.

<sup>505</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2 (Development Survey), Question 70.

<sup>506</sup> See 26 U.S. Code, Subchapter A - Examination and Inspection, IRC 7602(c), 7609(a).

<sup>507</sup> See 26 U.S. Code, Subchapter A - Examination and Inspection IRC 7609(c)(2)(D)(i). See also Supreme Court of the United States, *Polselli, et al., v. Internal Revenue Service*, No. 21-1599 (18/5/2023) available at <https://www.law.cornell.edu/supct/pdf/21-1599.pdf> (accessed 16 Feb. 2024).



**Best practice:** The taxpayer should be given access to information received by the requesting state

**Shifted towards/matched the best practice:**

China (Peoples' Rep.) (2)

**Shifted away from the best practice:**

None

**China (People's Republic)**<sup>508</sup> has adopted this best practice in recent years after the tax reform of 2021.<sup>509</sup> Taxpayers may apply to access information held exclusively by the tax authorities. The tax authorities will evaluate if they grant access to the sought information by the taxpayer. This evaluation will be done according to the provisions of the MAP or the relevant bilateral double tax treaty for the particular case.

Regarding the consolidation of trends first observed in 2022, **Chile**<sup>510</sup> reported an update in the tax authorities' approach to the administrative interpretation of taxpayers' rights within mutual agreement procedures, which entails access to information on the MAP.<sup>511</sup>

**Chart 66. Does the taxpayer have the right to see any information received from another country that relates to him?**

62 responses

**Yes:** Argentina, Belgium, Bolivia, Bulgaria (2), Canada, China (People's Rep.) (2), Costa Rica, Czech Republic, Denmark, Germany, Hungary, India, Ireland, Lithuania, Netherlands, Norway, Peru, Poland (1), Poland (2), Serbia, Slovenia, Spain, Sweden, Switzerland, Venezuela

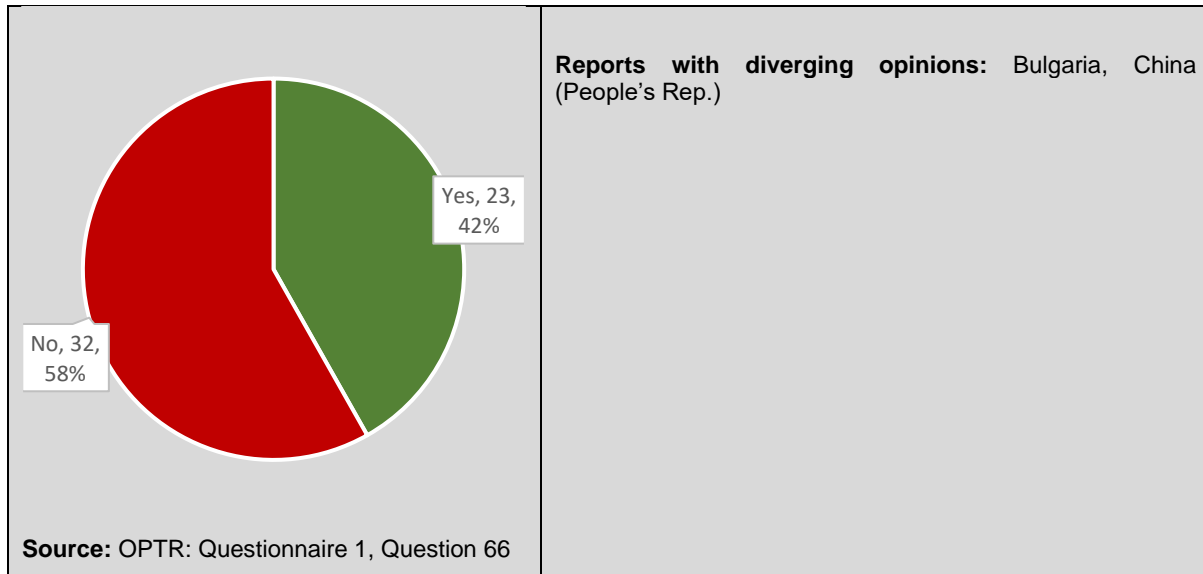
**No:** Australia, Austria, Bahamas, Barbados, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (3), China (People's Rep.) (1), Colombia (1), Colombia (2), Croatia, Finland, Greece, Guatemala, Guyana, Honduras, Italy, Jamaica, Japan, Kazakhstan, Kenya, Luxembourg, Mexico (1), Mexico (2), Nepal, New Zealand, Portugal, South Africa, Chinese Taipei, Trinidad & Tobago, Türkiye, Ukraine, United Kingdom, United States

<sup>508</sup> CN: OPTR Report (Tax Administration), Questionnaire 2, Question 71.

<sup>509</sup> See Provisions on the Procedures for the Handling of Tax Auditing Cases (Issued by Order No. 52 of the State Taxation Administration on July 12, 2021, effective from August 11, 2021) Available at: [https://guangdong.chinatax.gov.cn/gdsw/stsw\\_yhssyshj2022E\\_zcwj\\_zxzc/2023-01/30/content\\_7278e53368c84247adc9c2661343a8c8.shtml](https://guangdong.chinatax.gov.cn/gdsw/stsw_yhssyshj2022E_zcwj_zxzc/2023-01/30/content_7278e53368c84247adc9c2661343a8c8.shtml) (accessed 16 Feb. 2024).

<sup>510</sup> CL: Yearbook (2022), sec. 9.1.3, p. 171.

<sup>511</sup> See CL: *Departamento de Normas Internacionales, Subdirección Normativa Oficina de Gestión y Apoyo en Jurisprudencia Subdirección Jurídica*, Circular Letter No. 13 of 2022, 18 Mar. 2022, available at [https://www.sii.cl/normativa\\_legislacion/circulares/2022/circu13.pdf](https://www.sii.cl/normativa_legislacion/circulares/2022/circu13.pdf). (accessed 20 Mar. 2024).



**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:**

None

**Shifted away from the best practice:**

None

No developments were reported in this regard in 2023. However, **Chinese Taipei** has clarified that even though no changes occurred, according to the Taxpayers' Right Protection Act, the evidence obtained as a result of the illegal investigation carried out by the tax authorities or the personnel appointed by the taxation administration cannot be used as the basis to start a tax assessment, except when the obtaining of evidence involved a minor illegality and ignoring that evidence might harm the public interest.<sup>512</sup>

**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 2023. **Chinese Taipei** clarified<sup>513</sup> that according to the newly effective bilateral double tax treaty between Chinese Taipei and the Republic of Korea, the information exchange clause neither regulates the taxpayers' right to

<sup>512</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 72.

<sup>513</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 73.



confidentiality during the procedure to exchange information,<sup>514</sup> nor are there other references to grant its protection.

**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:**

Botswana

**Shifted away from the minimum standard:**

None

No developments were reported in this regard in 2023. Again, **Chinese Taipei** clarified<sup>515</sup> the lack of data protection in the new double tax treaty with the Republic of Korea. Nevertheless, **Botswana**<sup>516</sup> indicated that its Data Protection Act<sup>517</sup> guarantees that data processors shall inform the data subjects about the purposes of the data process or, in some cases, if the data are being transferred to a third party. According to article 49, sending personal data to a third country may only occur if the third country ensures adequate protection. Even though the Data Protection Act is quite generalist and does not explicitly mention that the tax administration verifies evidence of data protection, this particular clause should be enough to grant this minimum standard of data protection to the personal data of taxpayers.<sup>518</sup>

#### 9.1.4. Automatic exchange of financial information: The different issues of taxpayer protection

**Best practice:** For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights

**Shifted towards/matched the best practice:**

None

**Shifted away from the best practice:**

Botswana, Slovenia

<sup>514</sup> See art. 26 Agreement Between the Taipei Mission in Korea and the Korean Mission in Taipei for the avoidance of double taxation and the prevention of fiscal evasion concerning taxes on income. Available at: <https://www.mof.gov.tw/Eng/singlehtml/f48d641f159a4866b1d31c0916fbcc71?cntId=e1e57a4211474ff9b5d63a83b30dcf10> (accessed 16 Feb. 2024).

<sup>515</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 74.

<sup>516</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 74.

<sup>517</sup> See articles 28 to 30 of the [Data protection Act](#), N° 32/2018 of 10/8/2028.

<sup>518</sup> See article 49.1 to 49.4 of the [Data protection Act](#), N° 32/2018 of 10/8/2028 to check the safeguards required by Botswana from third countries.

**Slovenia**<sup>519</sup> informed about how the new Tax Procedure Act expanded the automatic exchange of information to platform operators, adopting DAC7.<sup>520</sup> So, platform operators are now obliged to report the data on each vendor’s business activities through digital platforms, which will automatically transmit the data. However, if the platform operator deals with financial information, nothing is foreseen in the new Tax Procedure Act about informing the affected taxpayers<sup>521</sup> to exercise their data protection rights before the proposed exchange occurs.

Also, in the case of **Botswana**, despite the Data Protection Act providing a minimum standard of data protection, it does not contemplate that taxpayers should be notified with enough time to exercise their data protection rights whenever an automatic exchange of financial information takes place.<sup>522</sup>

## 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:

None

Shifted away from the minimum standard:

None

No developments were reported in this regard in 2023. Nevertheless, in 2022, **Chile**<sup>523</sup> also declared a shift towards regarding this minimum standard. **Chile** indicated that Circular Letter No. 13 of 2022 was issued to let taxpayers know how to access a MAP.<sup>524</sup> It developed a detailed explanation of how to proceed to request a MAP from the Chilean competent authorities and a detailed description of the MAP itself. **Chile** continues to engage in such practice.

**Best practice:** Taxpayers should have a right to participate in a mutual agreement procedure by being heard and being informed as to progress of the procedure

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

<sup>519</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 75.

<sup>520</sup> See Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJ L 104, (2021), pp. 1-26.

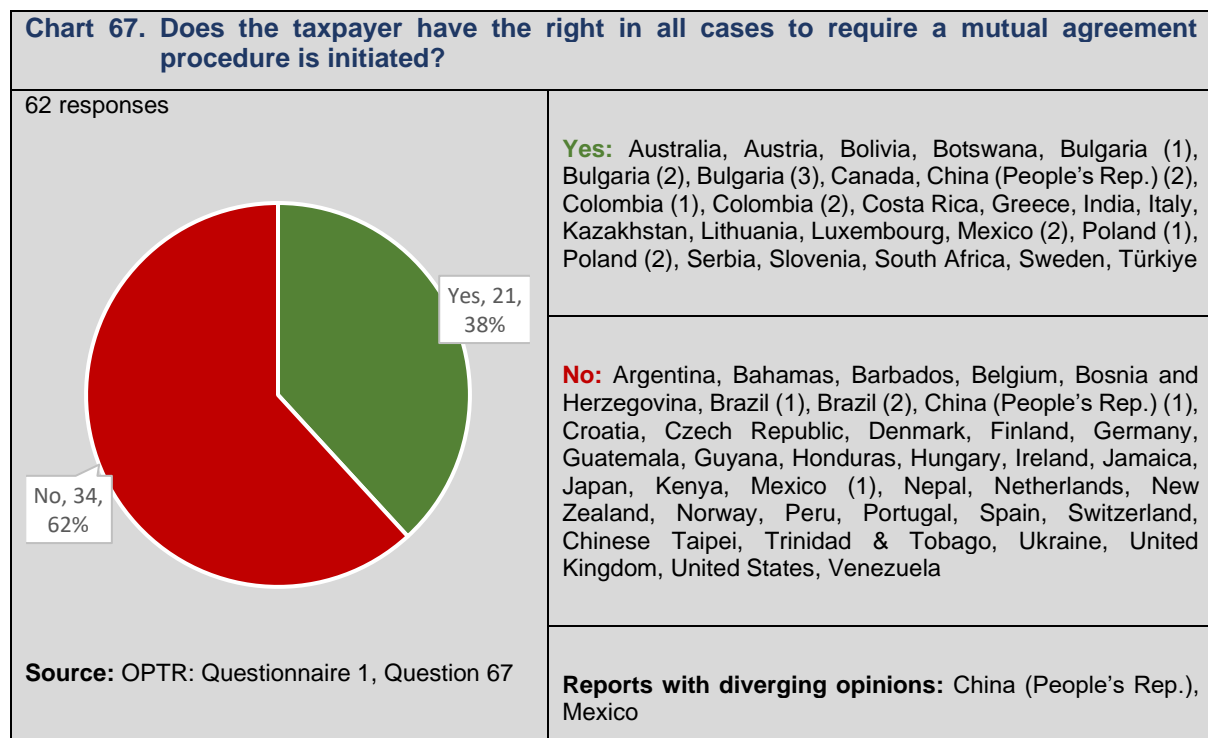
<sup>521</sup> SI: See article 248.č and 255.z to 255.ar [Tax Procedure Act](#) (Official Gazette of the Republic of Slovenia, No. 163/2022, ZDavP-2N).

<sup>522</sup> BW: OPTR Report (Academia), Questionnaire 2, Question 75.

<sup>523</sup> CL: Yearbook (2022), sec. 9.1.3, p. 174.

<sup>524</sup> See CL: *Departamento de Normas Internacionales, Subdirección Normativa Oficina de Gestión y Apoyo en Jurisprudencia Subdirección Jurídica*, Circular Letter No. 13 of 2022, 18 Mar. 2022, Point 2, available at [https://www.sii.cl/normativa\\_legislacion/circulares/2022/circu13.pdf](https://www.sii.cl/normativa_legislacion/circulares/2022/circu13.pdf). (accessed 20 Mar. 2024)

One of the significant 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. Similarly, the EU Tax Dispute Resolution Mechanism<sup>525</sup> also provides better taxpayer protection at the EU level. Again, no developments were reported in this regard in 2023. However, the report from **Chinese Taipei**<sup>526</sup> also informs about the lack of taxpayers’ rights in the MAP. Following the same clarifying intention, the **United States**<sup>527</sup> reporter informed that, even though no changes were developed in this matter, it is relevant to let the reader know that US residents can request assistance from the US competent authorities if they think that there are possibilities of double taxation within the framework of double tax treaties signed by the United States.<sup>528</sup> However, the US competent authorities can decide whether to accept or reject the request and also require prefilling procedures in some instances.<sup>529</sup>



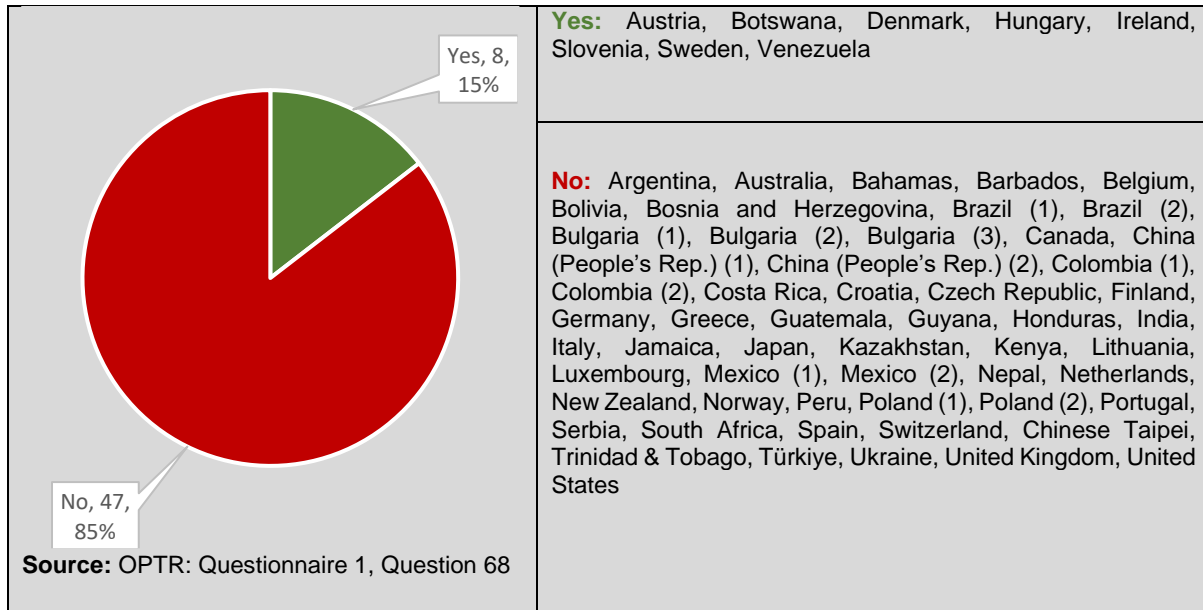
<sup>525</sup> Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, Primary Sources IBFD.

<sup>526</sup> TW: OPTR Report (Academia), Questionnaire 2, Question 77.

<sup>527</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 77.

<sup>528</sup> See IRS Rev. Proc. 2015-40, 2015-35 IRB 236, available at <https://www.irs.gov/pub/irs-irbs/irb15-35.pdf> and <https://www.irs.gov/pub/irs-drop/rp-15-40.pdf>. (accessed 17 Feb. 2024).

<sup>529</sup> See IRS Rev. Proc. 2015-40, secs. 7 and sec. 3, available at <https://www.irs.gov/pub/irs-drop/rp-15-40.pdf> (accessed 17 Feb. 2024).



## 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; rather, taxes must be the outcome of the citizens' consent.

The ECtHR has reconfirmed this year that States have a wide margin of discretion in the shaping of its tax policy (in: ECtHR: Application No. 35648/10, *Locascia and Others v. Italy*), and thus are not to be held liable for any performance stemming from citizens' expectations of what their tax money would be spent on. However, in general terms and not related to the case, it is clear that a direct link exists between consent of the taxpayer and the just spending of taxpayers' contributions and the perceived legitimacy of taxation.

Ideally, taxpayers should be involved in shaping the legislation via public consultation that is adequate in communication, accessibility and duration for the deadline to reply. Besides, tax legislation should 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 taxpayers' 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 – to a certain extent – retroactively. However, this should be the last resort and done only exceptionally under circumstances explicitly stated, narrowly drafted and interpreted. Nonetheless, this is not always the case for different reasons, which will be analysed further below.

Perhaps because 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, 2023 continued to be 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 2023, its policy of public consultation on several of its proposals. This process is described in more detail in section [10.3](#).

A further consideration with regard to the general framework under review concerns legal certainty. The principle of legal certainty is an essential aspect of the principle of legality, which, with reference to matters of taxation, prescribes that tax legislation that obliges a taxpayer to pay that tax contains “all the essential elements defining the substantive features [of that tax]”, allowing the taxpayer “to be in a position to foresee and calculate the amount of tax due and determine the point at which it becomes payable”, as defined so by the ECJ and based on the case law of the ECtHR and common constitutional traditions of the EU Member States (Cases C-566/17 and joined Cases C-885/19 P, C-898/19 P).

As can be read from this basic definition, which thus has applicability for EU Member States and for States that are party to the ECHR, yet broad enough to encompass the rudimentary scope of the principle of legality of taxation and the principle of legal certainty that comes with it, tax legislation should allow a taxpayer to determine when a tax becomes payable and how much tax it would be liable to pay.

In that regard, a case from the ECtHR dealing with legal certainty in Ukraine (Application No. 68447/12, *Dovbyshev v. Ukraine*) sheds an interesting light on both legal certainty as a legal principle and other rules and principles that come to the aid of taxpayers. The use of the wrong type of legislative procedure left a taxpayer with a higher licensing fee to pay after the national budget was already adopted and thus should have become final. The taxpayer successfully challenged this change before the ECtHR, where the Court considered that the Taxpayer Liability Act included a clause that ambiguities would be interpreted to the advantage of the taxpayer. The Court found a breach of the property rights of the applicant due to the fact that the law was enacted without following the proper procedures.

This basic protection of the rights of taxpayers that follows from the general system should ideally be supplemented by more substantive protection of the rights of taxpayers in statements of taxpayers’ rights (on which, see further Section 12.2).

### 2023 Relevant Case Law – European Court of Human Rights

<b>Case</b>	<b>Application No. 68447/12, <i>Dovbyshev v. Ukraine</i></b>	
<b>Date</b>	30 November 2023	
<b>EU Charter Articles</b>	Article 1 of protocol 1.	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
The applicant was confronted with an increase in the licensing fee for his gambling business, whereby the fee increase was adopted after the national budget adoption. The applicant, therefore, held that this practice was contrary to the principle of legal certainty. The	The Court held that, due to the fact that there is no dispute over the validity of the prohibition to change the relevant fees with a State Budget Act contained in the Taxation System Act, the fact that this legislative route was chosen creates an inconsistency. Given the fact that the tax laws of	The case confirms a longer line of case law of the Court on the principle of lawfulness, and the “Court reiterates that the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise

<b>Case</b>	<b>Application No. 68447/12, Dovbyshev v. Ukraine</b>		
<b>Date</b>	30 November 2023		
<b>EU Charter Articles</b>	Article 1 of protocol 1.		
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>	
Taxation System Act that was in force at the time contained a prohibition on the changing of tax rates by means of State Budget Acts. The parties agreed that the requirement for the applicant to pay extra fees for the licences had amounted to an interference with his rights under Article 1 of Protocol No. 1 to the Convention but disagreed as to whether that interference had been lawful and proportionate. However, the defendant held that because the budget was not deemed unconstitutional, the new taxes should be deemed to not infringe on the rights of the applicant.	Ukraine at that time contained a clause in the Taxpayer Liability Act that ambiguities would be interpreted to the advantage of the taxpayer, the Court concluded that the interference with the applicant's property rights were not lawful and foreseeable, and thus found a violation of Art. 1 of Protocol No. 1 to the Convention.	and foreseeable in their application (see <i>Beyeler v. Italy</i> [GC], no. 33202/96, § 109, ECHR 2000-I)." (See para. 10 of the present judgment).	

<b>Case</b>	<b>Application No. 35648/10, Locascia and Others v. Italy</b>		
<b>Date</b>	19 October 2023		
<b>EU Charter Articles</b>	Articles 2, 6, 8, 13 & Article 1 of Protocol 1 (Right to life, Right to a fair trial, Right to respect for private and family life, Right to an effective remedy, Protection of property)		
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>	
The case concerns the 'waste disposal crisis' in Campania, an Italian region where the non-collection and disposal of waste lead the Italian prime minister to call a state of emergency. The Italian authorities had already been brought before the CJEU, who rendered a judgment in 2010 that no adequate system was in place and in 2015 reconfirmed that no adequate measures were taken to comply with European Waste legislation as contained in an EU Directive. Because of these failures that continued to persist as found by experts after the CJEU's judgments, the applicants submitted that the failure to take adequate measures and their rights under Articles 2 and	The Court first reiterated that it is difficult to exactly determine the effects of environmental pollution, but that severe pollution clearly has a serious and detrimental effect on individuals' health. Article 8 of the Convention contains not merely a negative obligation but also a positive one to ensure that citizens are protected from pollution. Concerning the taxes, the Court first ruled that tax disputes fall outside the scope of civil rights and obligations, thus making that Article 6 para. 1 is not applicable. The restitution of those taxes are also not a matter to be judged by the Court, as they fall within the wide margin of appreciation of the States when it comes to framing and implementing policy in the area of	The tax aspects of this case are wholly subsidiary to the main concerns, namely the environmental ones. However, the Court does reiterate its long-standing earlier case law that there is a wide margin of discretion for the contracting States in their tax policy. Next to that, the application of the right to a fair trial under Article 6 para. 1 under its civil heading is thus to be interpreted very restrictively.	

<b>Case</b>	<b>Application No. 35648/10, Locascia and Others v. Italy</b>	
<b>Date</b>	19 October 2023	
<b>EU Charter Articles</b>	Articles 2, 6, 8, 13 & Article 1 of Protocol 1 (Right to life, Right to a fair trial, Right to respect for private and family life, Right to an effective remedy, Protection of property)	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
8 of the Convention had been breached. The tax angle to this case is provided by the local taxes that were paid for the disposal of the waste, which the applicants claim restitution of those taxes to them because the problems with the waste disposal in their area had not been resolved. The applicants argue this on the basis of Articles 6 and 13 of the Convention, and Article 1 of Protocol 1.	taxation. The Court concludes that the request for restitution of taxes in this case is inadmissible.	

## 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:**

Türkiye

**Shifted away from the minimum standard:**

Brazil, Bulgaria, and Lithuania

**Best practice:** Retrospective tax legislation should ideally be banned completely

**Shifted towards/matched the best practice:**

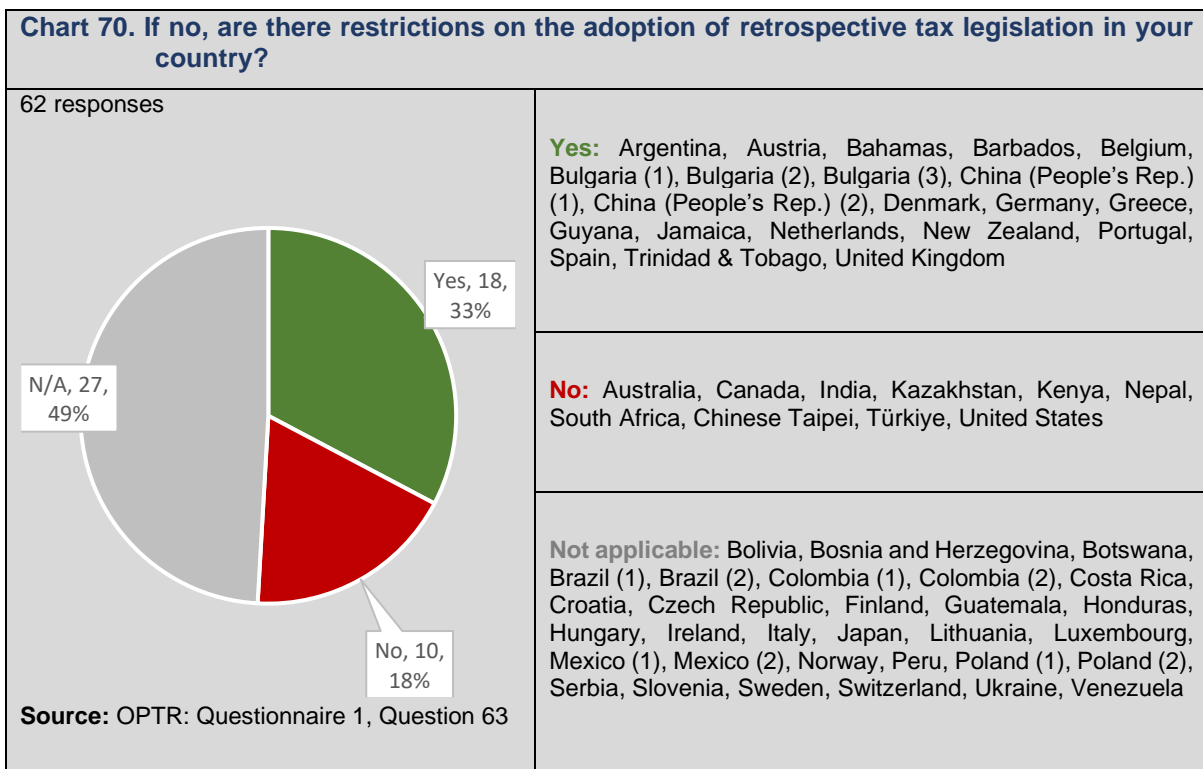
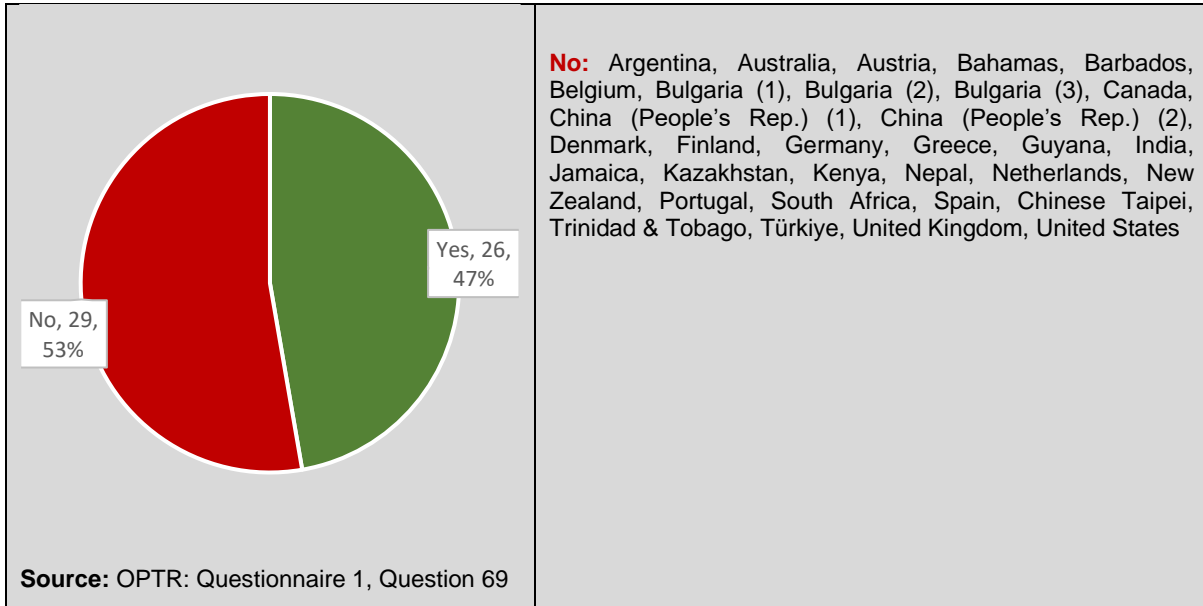
None

**Shifted away from the best practice:**

Argentina, Brazil, and Türkiye

<b>Chart 69. Is there a prohibition on retrospective tax legislation in your country?</b>	
62 responses	<p><b>Yes:</b> Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Guatemala, Honduras, Hungary, Ireland, Italy, Japan, Lithuania, Luxembourg, Mexico (1), Mexico (2), Norway, Peru, Poland (1), Poland (2), Serbia, Slovenia, Sweden, Switzerland, Ukraine, Venezuela</p>





## 2023 Relevant Case Law – European Court of Human Rights

<b>Case</b>	<b><i>TORGOVYY DIM KAMPUS KOTTON KLAB, TOV against Ukraine, No. 22637/16</i></b> <sup>530</sup>
<b>Date</b>	Communicated on 28 March 2023
<b>ECHR Articles</b>	P1 -1
<b>Facts</b>	The application concerns the obligation of the applicant company to pay anti-dumping duties which were imposed retroactively on it 2 years after it had imported certain goods in Ukraine and sold them. The alleged retroactive application occurred as a result of the restoring of the regulation of 29 September 2009 by the courts.

In **Türkiye**, the Constitutional Court, in its ruling (E.23/131, K.23/160, 28.9.2023, Official Gazette of 6 October 2023), upheld the constitutional validity of retrospectively applying additional motor vehicle tax imposed in 2023, following the earthquakes in the eastern part of the country on 6 February 2023. The court asserted that extraordinary events such as natural disasters, which have adverse effects on the economy, may justify retrospective tax legislation, provided it is proportionate.<sup>531</sup>

At the same time, negative developments have arisen in **Brazil** with the enactment of Law 14,754/23, amending the tax regime governing investment funds to introduce retrospective taxation on non-distributed profits evaluated prior to the legislation's implementation. Taxpayers who consented to and made early payments benefited from a nearly 50% reduction in the tax rate. Consequently, it is anticipated that this provision will withstand legal challenges in the judiciary.<sup>532</sup>

Additionally, in **Bulgaria**, regulations implementing ATAD 2 were officially promulgated in State Gazette No. 14 of 18 February 2023, with retrospective effect from 1 January 2023.<sup>533</sup>

Similarly, **Lithuania** swiftly enforced a new tax on the banking sector. On 9 May 2023, the Seimas of the Republic of Lithuania passed Law XIV-1936, the Law of the Republic of Lithuania on Temporary Solidarity Contribution. This law came into effect on 16 May 2023 and remains valid until 17 June 2025. It mandates contributions from banks established and operating within Lithuania in accordance with the Banking Law, as well as from branches of banks and foreign banks licensed in EU and EEA Member States, and financial groups of

<sup>530</sup> See UA: ECtHR, Application No. 22637/16, *TORGOVYY DIM KAMPUS KOTTON KLAB, TOV against Ukraine*, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-224448%22%5D%7D> (accessed 20 Feb. 2024).

<sup>531</sup> See TR: OPTR Report (Academia), Questionnaire 2, Question 78.

<sup>532</sup> See Law No. 14,754/23, available at [https://legislacao.presidencia.gov.br/ficha/?legisla/legislacao.nsf/Viwer\\_Identificacao/lei%2014.754-2023&OpenDocument](https://legislacao.presidencia.gov.br/ficha/?legisla/legislacao.nsf/Viwer_Identificacao/lei%2014.754-2023&OpenDocument) (accessed 20 Feb. 2024). See also: BR: OPTR Report (Academia), Questionnaire 2, Question 78.

<sup>533</sup> See <https://lex.bg/laws/ldoc/2135540562> (accessed 20 Feb. 2024). See also: BG: OPTR Report (Academia), Questionnaire 2, Question 78.

central credit unions operating in accordance with the Law on Central Credit Unions. Contributions for 2023 are calculated based on the period from 16 May 2023, until 31 December 2023.<sup>534</sup>

Moreover, in **Argentina**, the *Administración Federal de Ingresos Públicos* (AFIP) issued General Resolutions 5391 (Official Journal 21/7/23), 5424 (Official Journal 9/28/23) (specifically targeting financial institutions), and General Resolution 5453 (Official Journal 4/12/23) (pertaining to the oil and gas sector), establishing “additional” advances beyond the customary ones for 2023. These resolutions deviated from the established basis for income tax calculation, effectively instituting a tax without proper legal authorization.<sup>535</sup>

In the **United States**, while some retroactive tax laws have been invalidated under the due process clause of the US Constitution, Congress frequently enacts retroactive changes spanning 1-2 years.<sup>536</sup>

### 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:**

Costa Rica, Honduras, Lithuania, and United States

**Shifted away from the best practice:**

Hungary and New Zealand

An effective legislative protection of taxpayers’ rights requires an effective public participation in the legislative process 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 ruled to contradict general codes and violate taxpayers’ rights.

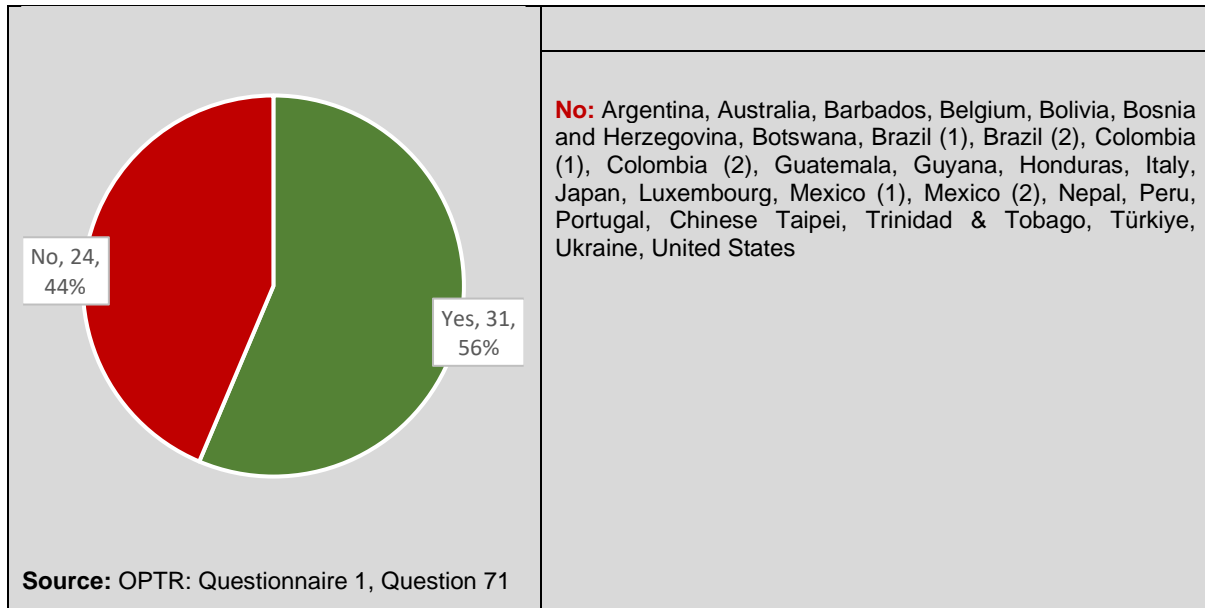
Most surveyed jurisdictions provide public consultation (56%), as evidenced by Chart 71.

Chart 71. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	
62 responses	<p><b>Yes:</b> Austria, Bahamas, Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, India, Ireland, Jamaica, Kazakhstan, Kenya, Lithuania, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom, Venezuela</p>

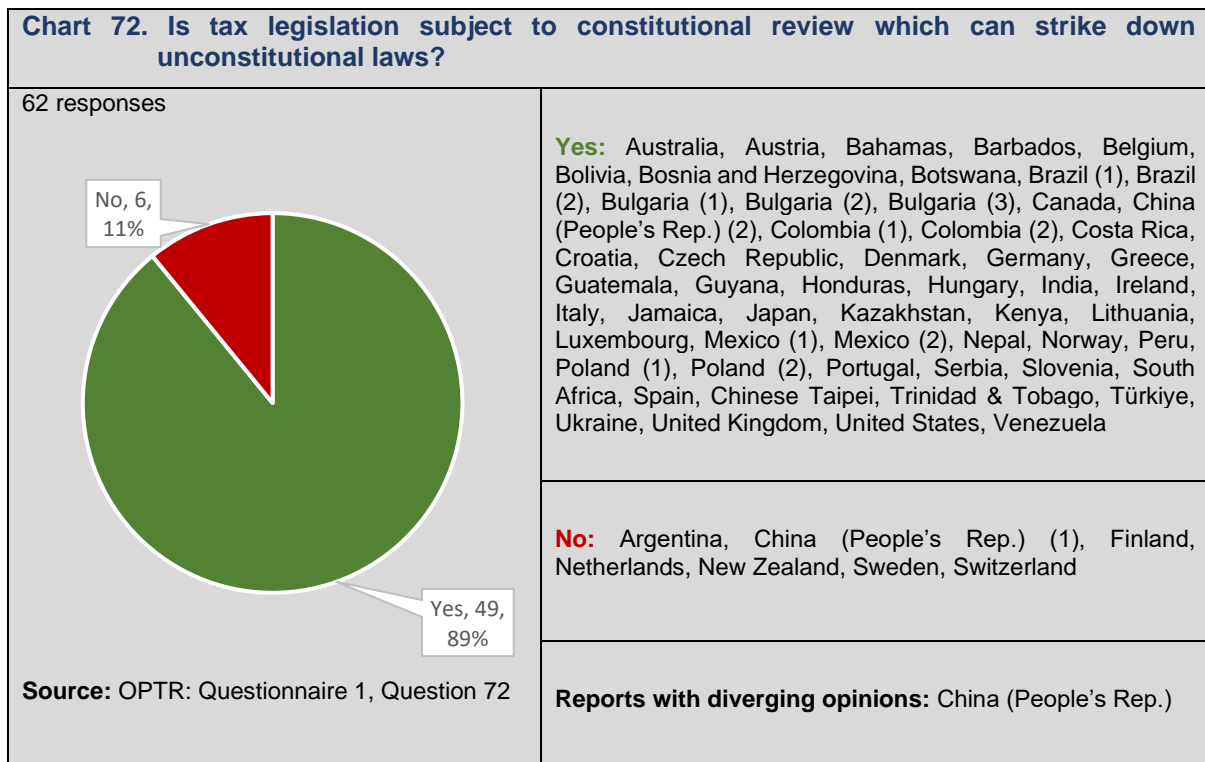
<sup>534</sup> See Law of the Republic of Lithuania on Temporary Solidarity Contribution No. XIV-1936 (TAR, 15-05-2023, No. 2023-09152). The text of the law is published and available only in the Lithuanian language: <https://www.e-tar.lt/portal/lt/legalAct/e463dc90f32611ed9978886e85107ab2> (accessed 20 Feb. 2024). See also: LT: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 79.

<sup>535</sup> See AR: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 79.

<sup>536</sup> See E.K. Lunder et al., *Constitutionality of Retroactive Tax Legislation*, Congr. Rsch. Serv. R42791 (25 Oct. 2012), available at <https://sgp.fas.org/crs/misc/R42791.pdf> (accessed 20 Feb. 2024). See also US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 79.



The vast majority (89%) also stated that judicial review is part of their constitutional systems, as Chart 72 shows.



Overall, 2023 continued to be the scene of significant growth in the public consultation of tax matters. A noteworthy number of countries brought the discussion of a wide range of regulatory reforms to the public arena. A good example is **Costa Rica**, where, throughout 2023, several tax reforms have been proposed in parliament. As part of this process,

parliament conducted public consultations with various institutions, including the Faculty of Law of the University of Costa Rica, the Chamber of Commerce, and others, regarding these tax reforms.<sup>537</sup>

Furthermore, in **Honduras**, positive strides have been made regarding public engagement in the government's tax reform strategy. The Tax Justice Law has undergone extensive consultations across diverse public platforms. During public hearings, representatives from 23 organizations spanning civil society, private enterprise, economic sectors and political spheres participated actively. Notably, a total of 102 recommendations were forwarded to the special commission of the National Congress for consideration in the final report drafting process.<sup>538</sup>

Similarly, in **Lithuania**, a requirement was implemented in 2023 mandating the State Tax Inspectorate to solicit public input before issuing generalized interpretations of tax laws. Furthermore, specific regulations have been established to delineate procedures for drafting generalized explanations of tax laws, coordinating with the state or other institutions, seeking public feedback prior to the publication of official opinions by the tax administrator regarding the application of tax laws, and publishing the prepared and approved interpretations.<sup>539</sup>

That is also the case in the **United States**, where there is no specific public consultation procedure dedicated to tax legislation. However, bills must undergo the legislative process, typically allowing the public some opportunity to provide input through their representatives. Continuing the trend observed in 2023, taxpayers have persistently contested elements of IRS guidance for non-compliance with the public notice and consultation process outlined in the Administrative Procedure Act (APA). For instance, in *Southern California Emergency Medicine Inc. v. Werfel* (C.D. Cal.), 2023 Tax Notes Today Federal 231-2 (5 Dec. 2023), taxpayers sought to invalidate guidance related to employee retention credits. Although the government has defended these cases, it has also responded by issuing proposed regulations with public consultation periods, as evidenced by IR-2023-74 (10 Apr. 2023) addressing micro-captive transactions.<sup>540</sup>

In **Chinese Taipei**, public consultation processes have been conducted prior to any changes

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<sup>537</sup> See Taxpayers' rights under the Tax Code, available at [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?nValor1=1&nValor2=6530](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=6530) (accessed 20 Feb. 2024). See also: CR: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 79.

<sup>538</sup> See Public Hearings, available at [https://congresonacional.hn/noticias/audiencias\\_publicas](https://congresonacional.hn/noticias/audiencias_publicas); Opinion Commission received 102 suggestions for modification of the Tax Law, available at <https://www.elheraldo.hn/honduras/comision-congreso-nacional-sugerencias-ley-tributaria-KG13513393> (accessed 20 Feb. 2024). See also: HN: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 79.

<sup>539</sup> See Law on Amendment of Articles 2, 3, 12, 13, 25, 26, 32, 33, 38, 39, 40-1, 87, 88, 99, 104-2, 126, 139 and Annex, Addition of Article 63-1 to the Tax Administration Law of the Republic of Lithuania No. IX-2112, date of adoption 13 December 2022 (TAR, 2022-12-22, Nr. 2022-26362) The text of the law is published and available only in the Lithuanian language: <https://www.e-tar.lt/portal/lt/legalAct/e463dc90f32611ed9978886e85107ab2> (accessed 20 Feb. 2024). See also: LT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 79.

<sup>540</sup> See S. Galvin, *Year in Review - Administrative Procedure Act, Procedurally Taxing* (29 Dec. 2022), available at <https://perma.cc/L8GH-R9SY> (accessed 20 Feb. 2024). See IRS REG-106134-22, 87 Fed. Reg. 75,185. See also US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 79.

in tax laws for many years.<sup>541</sup>

Regardless of this intense consultation activity, a few jurisdictions have reported a shift away from the best practice. Also, despite what appears to be intense consultation activity,<sup>542</sup> **New Zealand** reported minimal use of public consultation, even setting aside the usual tax policy process.<sup>543</sup> Similarly, in **Botswana**, there are no statutory requirements or regulations mandating public consultation.<sup>544</sup>

In **Hungary**, the practical implementation of the law regarding public consultation is ineffective. The European Union has criticized the Hungarian government for insufficient consultation in the context of the so-called conditionality procedure, as evidenced by Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, as published in OJ L 325 (2022), p. 94, pp. 54-58. Civil organizations have characterized the government's efforts

<sup>541</sup> See TW: OPTR Report (Academia), Questionnaire 2, Question 79.

<sup>542</sup> See NZ: Inland Revenue PUB00330: GST – goods purchased on deferred payment terms (24 Dec. 2021), available at <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00330> (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00357: GST and finance leases (17 Dec. 2021), available at <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00357> (accessed 10 Mar. 2022); NZ: Inland Revenue ED0235: Reporting requirements for domestic trusts (30 Nov. 2021), available at <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), available at <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), available at <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), available at <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), available at <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), available at <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), available at <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), available at <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), available at <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), available at <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), available at <https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00359a> (accessed 10 Mar. 2022). Please note that some of the hereby referred links may expire over time in connection with the concerned public consultations. See also K. Holmes, *Inland Revenue Seeks Public Comment on Draft Non-Resident GST Registration Statement* (16 Feb. 2021), News IBFD.

<sup>543</sup> See Tax and social policy engagement framework, available at <https://www taxpolicy.ird.govt.nz/publications/2019/2019-other-policy-engagement-framework> (accessed 20 Feb. 2024). See also: NZ: OPTR Report (Academia), Questionnaire 2, Question 79.

<sup>544</sup> See BW: OPTR Report (Academia), Questionnaire 2, Question 79.



in public consultation as superficial and lacking genuine engagement.<sup>545</sup>

It should also be reported that the EU Commission launched other public consultation initiatives in 2023, covering a common set of rules for EU companies to calculate their taxable base while ensuring a more effective allocation of profits between EU Member States (BEFIT).<sup>546</sup>

## 11. Revenue Practice and Guidance

### 11.1. The general framework

Transparency is usually associated in the taxation field with ending bank secrecy and tax evasion.<sup>547</sup> However, transparency has become a keyword for contemporary governance and accountability, as it implies accessing public information.<sup>548</sup> The more information there is, the more certainty citizens have regarding their governments' compliance. This same approach applies to taxpayers and their tax obligations. The more legal material taxpayers can access, the better they will comprehend the object of tax law. Therefore, the awareness of legal material improves legal certainty and, thus, increases the protection of taxpayers' rights. For this reason, accessing tax authorities' binding guidance regarding the interpretation of legal material boosts legal certainty<sup>549</sup> and becomes a sign of good governance.<sup>550</sup>

### 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

**Shifted towards/improved the minimum standard:**

Colombia (2), Costa Rica, Italy, Netherlands

**Shifted away from the minimum standard:**

None

<sup>545</sup> See Position statement of ten civil organisations, 27 July 2022, available at <https://helsinki.hu/latszatintezkedesek-a-kormany-tarsadalmi-egyeztetesrol-szolo-javaslataban/> (accessed 20 Feb. 2024). See also: HU: OPTR Report (Academia), Questionnaire 2, Question 79.

<sup>546</sup> See European Commission, *Public Consultation: Business in Europe: Framework for Income Taxation (BEFIT)*, available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13463-Business-in-Europe-Framework-for-Income-Taxation-BEFIT-en> (accessed 20 Feb. 2024).

<sup>547</sup> OECD/G20, *Tax Transparency*, available at <https://www.oecd.org/tax/beps/tax-transparency/> (accessed 6 Feb. 2023).

<sup>548</sup> T. Erkkilä, *Transparency in Public Administration*, in *Oxford Research Encyclopedia of Politics*, available at <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1404> (accessed 6 Feb. 2023).

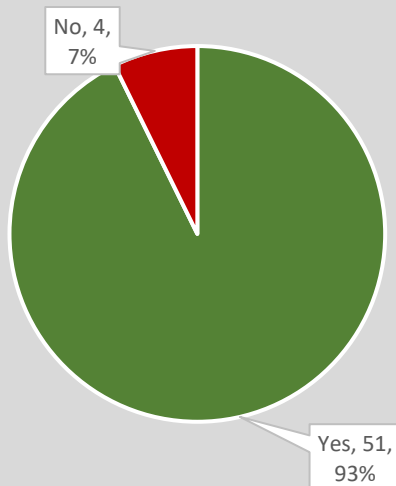
<sup>549</sup> See Baker & Pistone, *supra* n. 340, at 68.

<sup>550</sup> See A. Pham et al., *Tax Literacy: A Canadian Perspective*, 64 *Canadian Tax Journal/Revue fiscale canadienne* 4, pp. 987-1007 (2020), available at <https://ssrn.com/abstract=3766406> (accessed 6 Feb. 2023).



**Chart 73. Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars) as to how it applies your tax law?**

62 responses



Source: OPTR: Questionnaire 1, Question 73

**Yes:** Australia, Austria, Bahamas, Barbados, Belgium, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Guatemala, Honduras, Hungary, India, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Nepal, Netherlands, New Zealand, Norway, Peru, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, Ukraine, United Kingdom, United States, Venezuela

**No:** Argentina, Bolivia, Guyana, Trinidad & Tobago

The general tendency towards compliance with this minimum standard, underpinned by the digitalization of tax administrations, continued in 2023. States have progressed in taking measures to improve the minimum standards regarding access to relevant materials. Some positive developments have been reported by **Colombia**,<sup>551</sup> **Costa Rica**,<sup>552</sup> **Italy**<sup>553</sup> and the **Netherlands**.<sup>554</sup>

In 2022, **Colombia**,<sup>555</sup> together with **Poland**<sup>556</sup> and **Mauritius**,<sup>557</sup> reported advancements, centralizing all the types of legal material in one single database to make it easier for taxpayers to access all types of tax information. Both countries continue engaging in this practice this year, and **Colombia**, in particular, has improved the search engine of the electronic

<sup>551</sup> CO: OPTR Report (Tax Ombudsperson), Questionnaire 2 (Development Survey), Question 80. It shall be disclosed that there is a discrepancy on this matter between the representatives of the Taxpayers/Tax Practitioners, Academia (Colombia 1) and from the representatives of the Tax Ombudsperson (Colombia 2).

<sup>552</sup> HR: OPTR Report (Tax Practitioners, Academia), Questionnaire 2 (Development Survey), Question 80.

<sup>553</sup> IT: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2 (Development Survey), Question 80.

<sup>554</sup> NL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 80.

<sup>555</sup> See CL: OPTR Yearbook (2022), sec. 11.2, p. 186.

<sup>556</sup> See PL: OPTR Yearbook (2022), sec. 11.2, p. 186.

<sup>557</sup> See MU: OPTR Yearbook (2022), sec. 11.2, p. 186.

consultation service implemented in October 2022. The improvement allows a more precise search of regulations and tax and judicial rulings.<sup>558</sup>

In the case of **Costa Rica**, Resolution number 25136/2023 of the Constitutional Court of 6 October 2023, stated that the Costa Rican Tax Digest “*Digesto Tributario*” is a tool that is fully updated and for which communications channels are in place, dismissing the taxpayer’s allegations. The Tax Digest is a computer tool part of the Costa Rican legal information system website (SCIJ, acronym in Spanish) where the user can consult updated information on Resolutions, Guidelines and Circulars, among others, of the General Directorates, as well as tax rulings of the Administrative Tax Court. It was demonstrated that the website has been duly enabled and constantly updated and that the users can even contact the civil servants operating the webpage via the option “contact us” to send their queries or requests and obtain documents that have not been published.<sup>559</sup>

After **Italy**’s tax reform, the amendment of article 1, paragraph 3-bis, Law 212 of 27 July 2000 by the Legislative Decree no. 219 of 30 December 2023<sup>560</sup> establishes as one of the governing principles of all levels of tax administrations (i.e. state, regional and local) the respect for the right of *audi alteram partem* (right to be heard) and the right to access to tax administrative documentation. This substantial change tries to embody all Italian tax law. However, nothing specific has been further developed to detail how the taxpayer can exercise this right. Therefore, considering that this amendment guarantees the right of the taxpayer to access administrative documents or documents, material, rulings and other guidance held by the tax administrations, the mechanisms to execute such rights are implied to be the ones that Law 241 of 7 August 1990 regulates for administrative proceedings.<sup>561</sup>

Regarding the **Netherlands**, as was already announced by the Dutch State Secretary of Finance on 16 September 2022,<sup>562</sup> the tax authorities’ expert group will start sharing their official positions as of 2023.<sup>563</sup> The **Netherlands** counts 26 knowledge groups within the Tax and Customs Administration. For transparency reasons, since 30 March 2023, the Dutch Tax and Customs Administration has been publishing the knowledge groups’ opinions.<sup>564</sup> The

<sup>558</sup> See the search engine at DIAN, *Motor de búsqueda doctrina*, available at <https://www.dian.gov.co/normatividad/doctrina/Paginas/DireccionGestionJuridica.aspx> (accessed 13 Feb. 2024).

<sup>559</sup> See the Resolution of the Costa Rican Constitutional Court in the following link <https://nexuspi.poder-judicial.go.cr/document/sen-1-0007-1189424> (accessed 13 Feb. 2024).

<sup>560</sup> See Decreto Legislativo 30 dicembre 2023, n. 219, Gazzeta Ufficiale della repubblica Italiana, serie generale n.2, 3 gennaio 2024. Available at: <https://www.gazzettaufficiale.it/eli/gu/2024/01/03/2/sg/pdf>. (accessed 20 Mar. 2024)

<sup>561</sup> See by arts. 22 et seq., Legge 7 agosto 1990, n. 241, *Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi*. Available at: <https://www.commissioneaccesso.it/media/49026/legge%207-8-1990%20n.%20241-agg.2015.pdf>. (accessed 20 Mar. 2024)

<sup>562</sup> See OPR Yearbook (2022), n. 603, sec. 11.2, p. 187 Letter of the State Secretary of Finance to the Parliament (in Dutch), available at <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/10/21/antwoorden-op-kamervragen-over-het-niet-publiceren-van-kennisgroepstandpunten> (accessed 13 Feb. 2024).

<sup>563</sup> See OPR Yearbook (2022), sec. 11.2, p. 187.

<sup>564</sup> See the announcement of the Dutch Tax and Customs authorities available at: <https://centraalaanspreekpuntpensioenen.belastingdienst.nl/website-met-standpunten-kennisgroepen-gelanceerd/> (accessed 13 Feb. 2024).

publication of such opinions intends to clarify what the tax authorities think about the tax issues submitted to the knowledge groups. The taxpayer can consult the opinions via a specific website designed for such purpose.<sup>565</sup>

**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:

Spain

Shifted away from the minimum standard:

Botswana

As of January 2024, approximately 66% of the world's population has Internet access. However, this means that 34% of the world's population still does not have access to the Internet;<sup>566</sup> this is compared to 2022. Therefore, a high percentage of taxpayers might be unable to access relevant legal material with the same ease as those who can easily access a database that gathers all types of relevant information via the Internet. Nevertheless, some countries try to adapt to this situation.

In the case of **Spain**,<sup>567</sup> the Supreme Court, with its decision 953/2023 of 11 July 2023, declared the nullity of articles 9.1, 15.1 and 4, as well as the first final provision, section one of Order HAC/277/2019, of 4 March, which obliged citizens to interact electronically with the tax administration for the declaration of the personal income tax return,<sup>568</sup> due to a regulatory insufficiency for the establishment of electronic means as the only channel for submitting the personal income tax return. For the moment, the tax administration has announced the due study of the measures together with different Forums and Associations of Tax Professionals to assess the sufficiency of the assistance in completing the tax return.<sup>569</sup> Such study results and proposals will be transferred to the Tax Ombudsperson Council to make a report providing recommendations and actions to take in the following income tax return campaign. Furthermore, in December 2022, the tax administration announced the agreement of a collaboration protocol on matters of information and assistance to those taxpayers over 65 years old, excluding them from the mandatory appointment system and giving them priority to be attended physically and by phone. It is worth mentioning that, before the above-mentioned Spanish Supreme Court Judgment, the Spanish tax administration announced in this agreement the will to review the most frequently used models and forms by older people and,

<sup>565</sup> See the Knowledge groups' website to consult their positions available at: <https://kennisgroepen.belastingdienst.nl/> (accessed 13 Feb. 2024).

<sup>566</sup> See Datareportal, *Digital around the world*, available at <https://datareportal.com/global-digital-overview#:~:text=There%20are%205.16%20billion%20internet,higher%20in%20many%20developing%20economies> (accessed 14 Feb. 2024).

<sup>567</sup> ES: OPTR Report (Taxpayers/Tax Practitioners/Tax Ombudsperson, Academia), Questionnaire 2 (Development Survey), Question 81.

<sup>568</sup> See Sentence of the Spanish Supreme Court 953/2023, of 11 July 2023 available at <https://www.poderjudicial.es/search/AN/openDocument/a6a7f09cdc1155bda0a8778d75e36f0d/20230728> (accessed 17 Feb. 2024).

<sup>569</sup> See BOE, Additional Disposition 6, *BOE* 310, 28 Dec. 2023, pp. 172748 available at <https://www.boe.es/boe/dias/2023/12/28/pdfs/BOE-A-2023-26452.pdf> (accessed 14 Feb. 2024).

in particular, those corresponding to electronic procedures, in order to simplify and clarify the texts and operating instructions.<sup>570</sup>

Additionally, to assist taxpayers who might not have internet access, **Chinese Taipei's**<sup>571</sup> tax administration allows them to access tax information via telephone and physically visit the tax office. Also, **Botswana**<sup>572</sup> reported that there is no required legislation or rules for online access to laws and material, and there is a voluntary application for e-services.<sup>573</sup>

### 11.3. Binding rulings

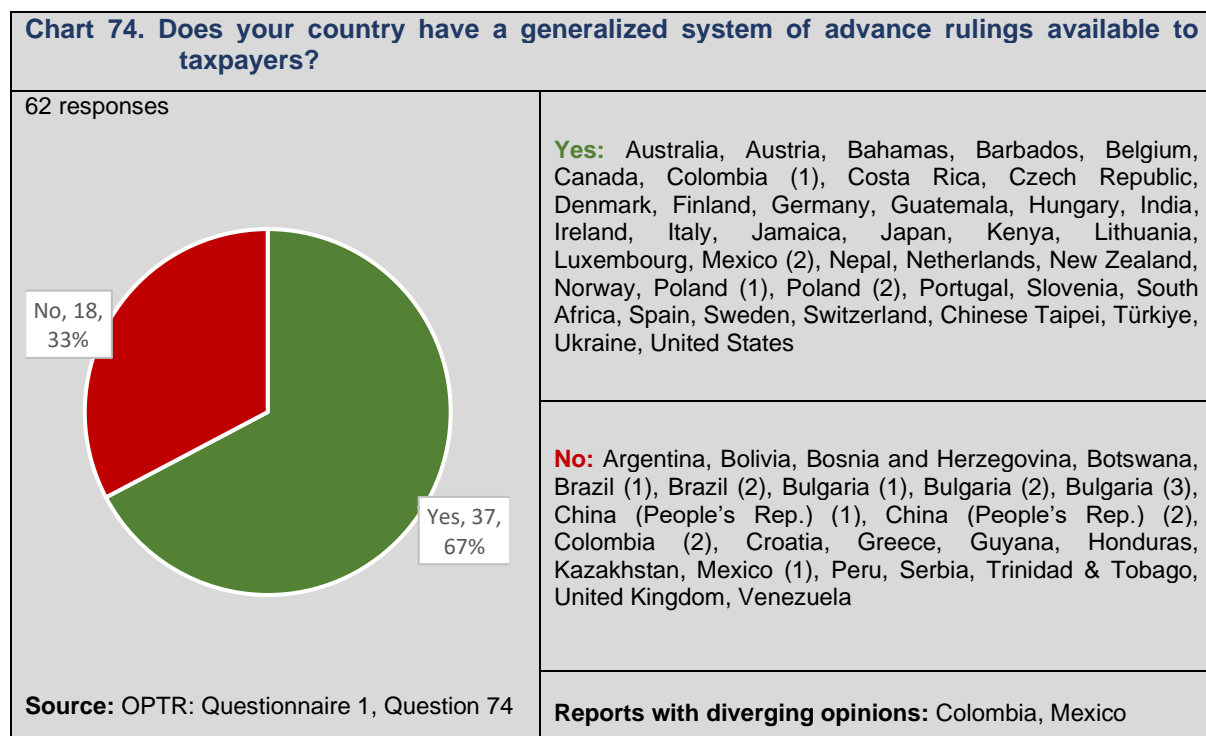
**Minimum standard:** Binding rulings should only be published in anonymized form

**Shifted towards/improved the minimum standard:**

Costa Rica

**Shifted away from the minimum standard:**

Botswana



<sup>570</sup> See Ministerio de hacienda y Función Pública, *La Agencia Tributaria y la Plataforma de Mayores y Pensionistas firman un protocolo de colaboración en materia de información y asistencia*, Nota de Prensa, 19 december 2022, available at [https://sede.agenciatributaria.gob.es/static\\_files/Sede/Actualidad/Notas\\_prensa/2022/19-12-22\\_NP\\_AEAT\\_Protocolo\\_asistencia\\_personas\\_mayores.pdf](https://sede.agenciatributaria.gob.es/static_files/Sede/Actualidad/Notas_prensa/2022/19-12-22_NP_AEAT_Protocolo_asistencia_personas_mayores.pdf) (accessed 14 Feb. 2024).

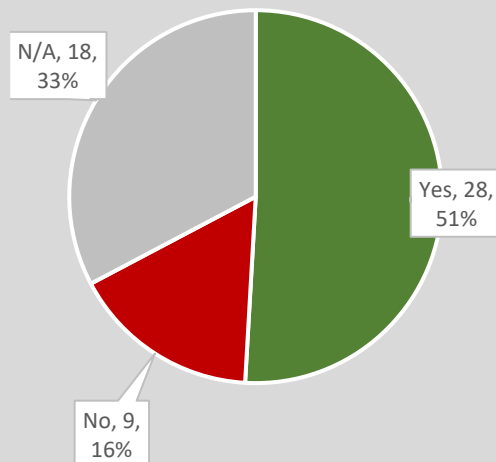
<sup>571</sup> TW: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 81.

<sup>572</sup> BW: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 81.

<sup>573</sup> See Botswana Unified Revenue Service, *Application for E-Services*, available at [https://www.burs.org.bw/images/img/APPLICATION\\_FOR\\_E\\_Services\\_FORM.pdf](https://www.burs.org.bw/images/img/APPLICATION_FOR_E_Services_FORM.pdf) (accessed 14 Feb. 2024).

**Chart 75. If yes, is it legally binding?**

62 responses



**Source:** OPTR: Questionnaire 1, Question 75

**Yes:** Australia, Austria, Belgium, Costa Rica, Czech Republic, Denmark, Finland, Germany, Guatemala, Hungary, India, Japan, Kenya, Luxembourg, Mexico (2), Nepal, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, United States

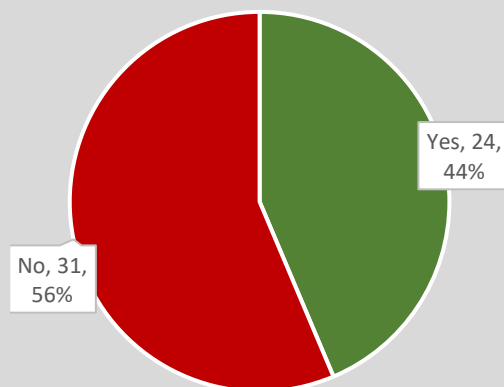
**No:** Bahamas, Barbados, Canada, Colombia (1), Ireland, Italy, Jamaica, Lithuania, Türkiye, Ukraine

**Not applicable:** Argentina, Bolivia, Bosnia and Herzegovina, Botswana, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.) (1), China (People's Rep.) (2), Colombia (2), Croatia, Greece, Guyana, Honduras, Kazakhstan, Mexico (1), Peru, Serbia, Trinidad & Tobago, United Kingdom, Venezuela

**Reports with diverging opinions:** Colombia, Mexico

**Chart 76. If a binding ruling is refused, does the taxpayer have a right to appeal?**

62 responses



**Source:** OPTR: Questionnaire 1, Question 76

**Yes:** Argentina, Australia, Austria, Belgium, Botswana, Brazil (1), Brazil (2), China (People's Rep.) (2), Colombia (1), Colombia (2), Denmark, Finland, Germany, Honduras, Hungary, India, Ireland, Kenya, Lithuania, Mexico (2), Nepal, Poland (1), Poland (2), Portugal, Slovenia, Ukraine, United Kingdom, Venezuela

**No:** Bahamas, Barbados, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), Costa Rica, Croatia, Czech Republic, Greece, Guatemala, Guyana, Italy, Jamaica, Japan, Kazakhstan, Luxembourg, Mexico (1), Netherlands, New Zealand, Norway, Peru, Serbia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Trinidad & Tobago, Türkiye, United States

**Reports with diverging opinions:** China (People's Rep.), Mexico

There are few changes to report compared to last year’s position regarding anonymizing binding rulings when published. In the case of **Botswana**,<sup>574</sup> no binding rulings are prescribed, and, therefore, no legislation requires anonymisation. Conversely, **Costa Rica**<sup>575</sup> anonymizes binding rulings issued by the tax administration when the requesting party is a private entity.<sup>576</sup> The fact that no further changes have been reported, on a general basis, since 2021 indicates that the minimum standard of anonymization of published binding rulings has been consolidating as a good administration practice worldwide.

### 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:**

Costa Rica

**Shifted away from the minimum standard:**

Botswana

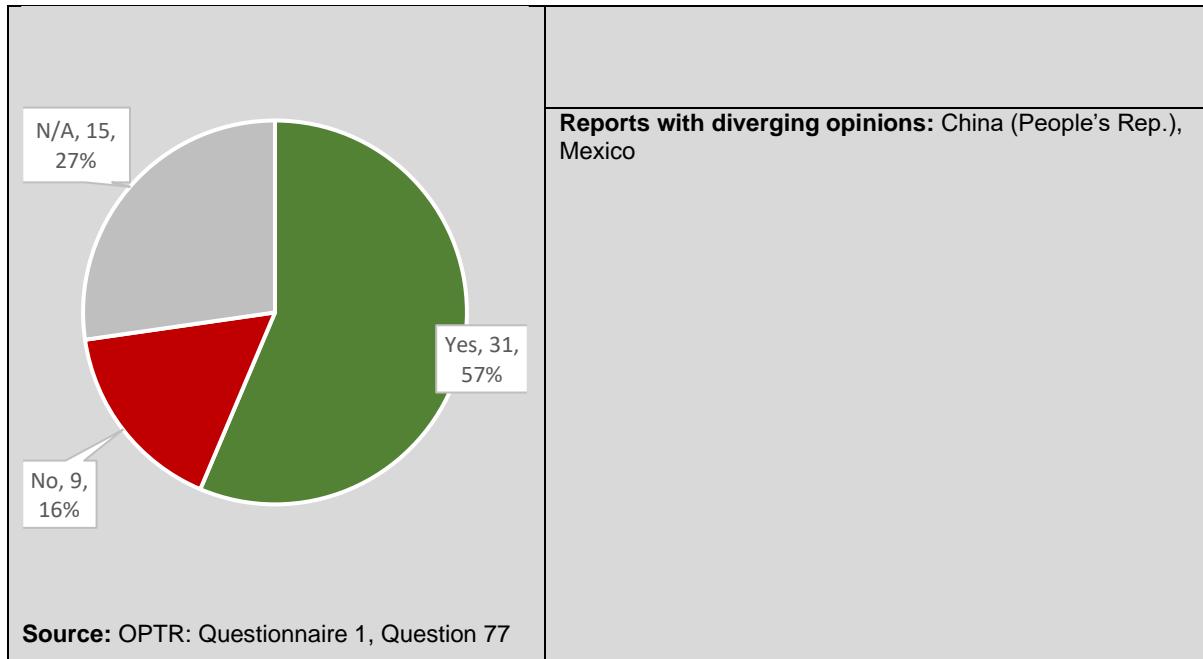
Chart 77. If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	
62 responses	<p><b>Yes:</b> Australia, Austria, Botswana, Brazil (1), Brazil (2), Canada, China (People’s Rep.) (1), Colombia (1), Colombia (2), Costa Rica, Denmark, Finland, Germany, Greece, Guatemala, Honduras, India, Ireland, Japan, Kazakhstan, Kenya, Lithuania, Mexico (2), Nepal, Netherlands, Norway, Poland (1), Poland (2), Portugal, Slovenia, Spain, Chinese Taipei, Ukraine, United Kingdom, Venezuela</p>
	<p><b>No:</b> Barbados, Belgium, Bosnia and Herzegovina, Croatia, Hungary, Peru, Sweden, Switzerland, United States</p>
	<p><b>Not applicable:</b> Argentina, Bahamas, Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People’s Rep.) (2), Czech Republic, Guyana, Italy, Jamaica, Luxembourg, Mexico (1), New Zealand, Serbia, South Africa, Trinidad &amp; Tobago, Türkiye</p>

<sup>574</sup> BW: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 82.

<sup>575</sup> CR: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 82.

<sup>576</sup> See as an example of how the anonymization works available at [https://scij.hacienda.go.cr/scij\\_mhda/docjur/mhda\\_docjur.aspx?nBaseDato=1&nDocJur=24814](https://scij.hacienda.go.cr/scij_mhda/docjur/mhda_docjur.aspx?nBaseDato=1&nDocJur=24814) (accessed 14 Feb. 2024).





The principle of good faith is a cornerstone in all legal relations, as it is “a sense of loyalty to and respect for the law”.<sup>577</sup> It becomes especially relevant in a relationship where one of the parts is a public administration, and the other is an individual or an entity due to the lack of balance between the powers of the parts. This is the case with the relationship between tax administrations and their taxpayers. As part of the principle of legal certainty, taxpayers have the right to rely on the guidance provided by the tax authorities. Therefore, considering the minimum standard, whenever a revenue authority publishes proven inaccurate guidance, it should subsequently apply only prospectively.

The tendency seems to apply the publicly available guidelines only in a prospective manner. However, **Botswana**<sup>578</sup> indicated that no legislation or case law guarantees that the new guidelines are not retroactively applied. In the case of **Costa Rica**, whenever there is a change in the criterion followed by the tax authorities, the reform of the previously known guidelines is applicable from the next day of the publication onwards and not retroactively.<sup>579</sup>

Even though there are no changes in **Denmark's**<sup>580</sup> legislation, it is worth mentioning that the Danish Supreme Court, in the case SKM 2023.146 H of 8 March 2023,<sup>581</sup> added some new

<sup>577</sup> E. Smith & N. Barber, *Good Faith in Public Law*, University of Oxford – Faculty of Law (20 Jan. 2022), available at <https://www.law.ox.ac.uk/news/2022-01-20-good-faith-public-law> (accessed 6 Feb. 2023).

<sup>578</sup> BW: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 83.

<sup>579</sup> See CR: as an example of guideline applicable only prospectively: Dirección General de Tributación, *Criterio Institucional DGT-CI-001-2022 Diferencial cambiario en el Impuesto sobre Ganancias y Pérdidas de Capital ante inversiones en instrumentos financieros* <https://www.hacienda.go.cr/docs/DGT-CI-001-2022DifCambImpGanK.pdf> (accessed 15 Feb. 2024).

<sup>580</sup> DK: OPTR Report (Academia), Questionnaire 2 (Development Survey), Question 83.

<sup>581</sup> See DK: Danish Supreme Court Sentence SKM 2023.146 H of 8 March 2023, Case BS-41984/2021-HJR, A,B and C v. *Skatteministeriet*, available at [https://domstol.fe1.tangora.com/media/-300016/files/41984-21\\_anonym.pdf](https://domstol.fe1.tangora.com/media/-300016/files/41984-21_anonym.pdf) (accessed 15 Feb. 2024).



limits regarding protecting legitimate expectations. The Supreme Court stated that the formal protection based on published legal guidance from the Danish Customs and Tax Administration cannot be extended to situations where the guidance is not in accordance with the law, confirming the positioning of previous case law. The legal issue started with the interpretation of the Danish Capital Gains Act, where the Supreme Court's opinion diverged from the one expressed in the guidelines of the Customs and Tax Administration. However, the Supreme Court noted that the interpretation of the Customs and Tax Administration did not clearly follow the Danish Capital Gains Act and the principle of transparency.<sup>582</sup> For this reason, the High Court considered that taxpayers could not rely on the tax authorities' interpretative guidelines, which interfered with the principle of legitimate expectations.

**Denmark's** reinforcement of the principle of legitimate expectations with such case law is reminiscent of **Belgium's** 2022 Supreme Court decision<sup>583</sup> that enhanced the level of protection of the principle of legal certainty. **Belgium** continues to engage in what was stated in that judgment, which changed how taxpayers could rely on the position taken by the tax administration. The fact that the Flemish tax authorities (VlaBel) took a "new" view in an administrative decision that differs from the text of the relevant legal provision in the Flemish Tax Code. Based on this "new" position, VlaBel taxed the beneficiaries more burdensomely.<sup>584</sup> The Supreme Court confirmed that the "new" taxation was contrary to the principle of legal certainty and issued a reminder that the general principles of good administration include the right to legal certainty and that these principles also apply to tax administration.<sup>585</sup> Following up also on **Mexico's**<sup>586</sup> amendment of the tax authorities' guidelines, with rule 3.13.19 of 2022 RMF<sup>587</sup>, in the previous edition of the Yearbook concerns were expressed about the levels of legal certainty for taxpayers due to the supposed inaccuracy of the modified precept.<sup>588</sup> It generated doubts about the correct application of the tax rules for the following year (2023). However, no further concerns have been reported in that sense, which is an indicator that, so far, the new position has not impacted negatively on the principle of legal certainty.

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<sup>582</sup> Id.

<sup>583</sup> See BE: Cass., 21 Apr. 2022, VLAAMS GEWEST contra F., F.20.0150.N, available at <https://juportal.be/content/ECLI:BE:CASS:2022:ARR.20220421.1N.7/NL> (accessed 15 Feb. 2024).

<sup>584</sup> See J. Van Cauwerghe, *Legal certainty prevails even if position of the Tax Authorities was contra legem*, Linklaters (13 May 2022), available at <https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2022/may/13/supreme-court-confirms-the-principle-of-legal-certainty-even-if-the-position-of-the-tax-authorities> (accessed 6 Feb. 2023).

<sup>585</sup> See BE: Cass., 21 Apr. 2022, VLAAMS GEWEST contra F., F.20.0150.N, point 2, available at <https://juportal.be/content/ECLI:BE:CASS:2022:ARR.20220421.1N.7/NL> (accessed 15 Feb. 2024).

<sup>586</sup> See OPTR Yearbook (2022), sec. 11.4, p. 191.

<sup>587</sup> The specific guidelines are called *Resolución Miscelánea Fiscal* (RMF). This is a yearly valid document that gathers the guides dictated by the tax authorities. See MX: Resolución Miscelánea Fiscal para 2022 y su anexo 19, 27 Dec. 2021, available at [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5639466&fecha=27/12/2021](https://www.dof.gob.mx/nota_detalle.php?codigo=5639466&fecha=27/12/2021) (accessed 15 Feb. 2024).

<sup>588</sup> It should be highlighted that there were discrepancies between the different national reporters. This particular amendment was suggested by the Mexican reporters representing taxpayers and tax practitioners. Meanwhile, reporters representing academia did not indicate further changes to take into account regarding this matter.

## 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 enact their powers and, at the same time, meet their obligations. The necessary framework can be shaped in different ways to ensure the adequate protection of taxpayers' rights.

### 12.2. Statements of taxpayers' rights: Charters, service charters and taxpayers' bills of rights

**Minimum standard:** Adoption of a charter or statement of taxpayers' rights should be a minimum standard

**Shifted towards/improved the minimum standard:**

None

**Shifted away from the minimum standard:**

None

**Best practice:** A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited

**Shifted towards/matched the best practice:**

None

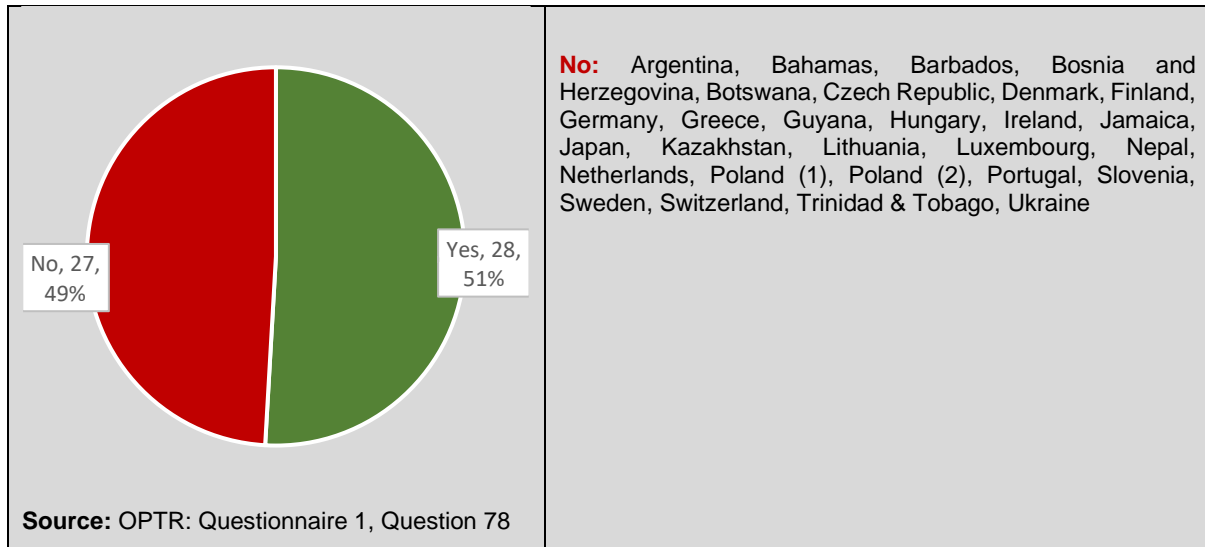
**Shifted away from the minimum standard:**

Australia

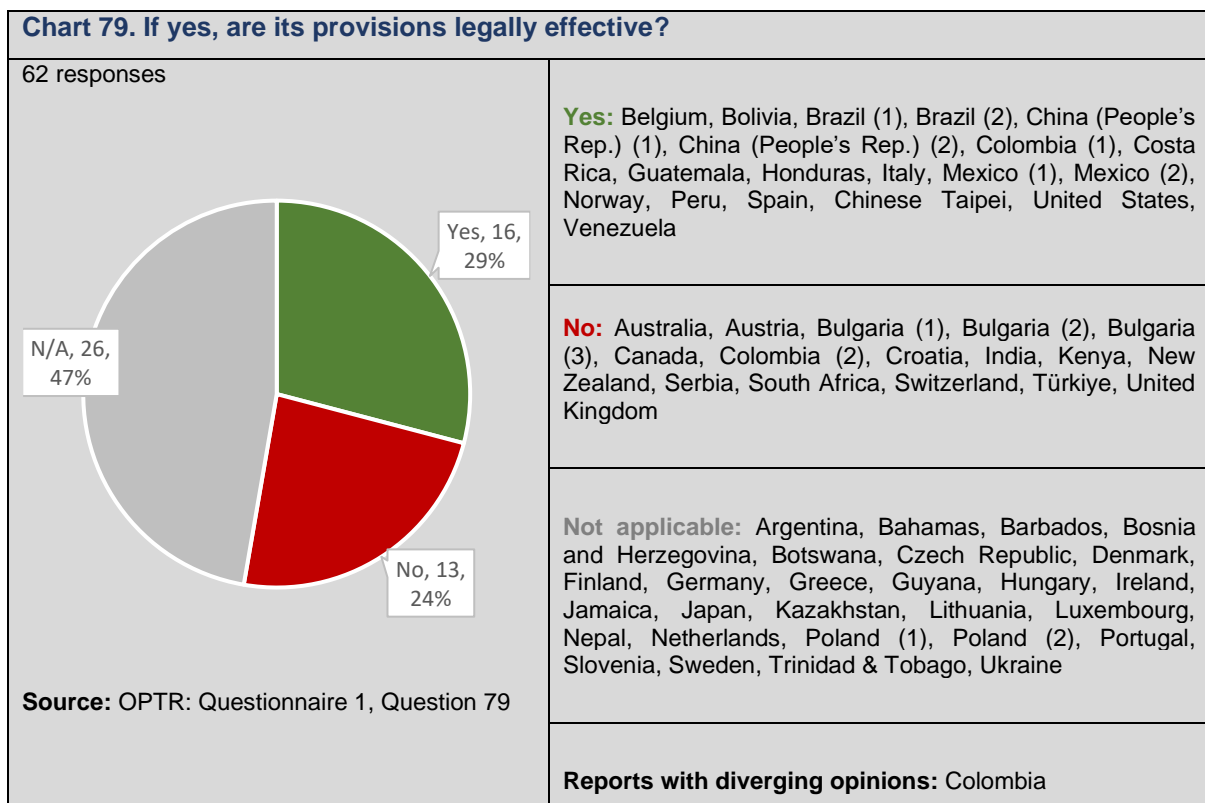
Enacting a set of norms identifying taxpayers' rights can take various forms, such as a taxpayers' bill of rights or taxpayers' charters. They may also have different normative statuses (e.g. constitutional and statutory levels). These different types of norms provide an institutional framework of certainty regarding the scope of taxpayers' rights and the tax authorities' powers and obligations, which can also be defined through service charters.

As illustrated by Chart 78, 51% 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?	
62 responses	<p><b>Yes:</b> Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Colombia (1), Colombia (2), Costa Rica, Croatia, Guatemala, Honduras, India, Italy, Kenya, Mexico (1), Mexico (2), New Zealand, Norway, Peru, Serbia, South Africa, Spain, Chinese Taipei, Türkiye, United Kingdom, United States, Venezuela</p>



However, 24% of them have reported that these provisions are not legally effective, as illustrated by Chart 79, which is an improvement compared to the 31% reported in 2022.



## 2023 Relevant Case Law – Inter-American Court of Human Rights

Case	<b>Case of <i>García Rodríguez et Al. v. Mexico</i>, Serie C No. 482<sup>589</sup></b>	
Date	25 January 2023	
ACHR Articles	5 (Right to Humane Treatment) 7 (Right to Personal Liberty) 8 and 24 (Right to a Fair Trial, Right to Judicial Protection)	
Facts	Decision	Comments
<p>Two people were accused without legal evidence of the murder of a woman. Both people were tortured by the police, and both remained in preventive detention for 17 years with the judicial process pending (without a conviction). Both sued the state of Mexico before the IACtHR for the violation of their human rights.</p> <p>The plaintiffs requested compensation for consequential damages, loss of profits (direct and indirect), compensation measures for contributions (taxes), and moral or non-pecuniary damages.</p> <p>In tax matters, the state of Mexico continued to collect taxes from these two people during the period of unjustified confinement. Therefore, they specifically requested that the tax obligations not be collected from them due to the circumstances they had experienced due to the actions of the state of Mexico.</p> <p>The plaintiffs claimed for each one, for various legal reasons, close to one million US dollars.</p> <p>In tax matters, the plaintiffs asked the IACtHR “Nº322 [...] “g) to order the Mexican State to send the pertinent communications to the domestic federal, state, and municipal authorities, so that in accordance with their internal procedures and based on the applicable legislation, they may determine the annulment, waiver or administrative cancellation of any pending payment of duties or contributions, as well as any type of tax credit derived from non-</p>	<p><i>Judgment (Preliminary objections, merits, reparations and costs). IACtHR.</i></p> <p>The IACtHR accepted the lawsuit, establishing various measures of reparation to the rights of the plaintiffs.</p> <p>However, <i>the Court did not agree to exclude the plaintiffs from paying taxes generated during the 17 years of illegal detention carried out by the state.</i></p> <p>The IACtHR agreed to condemn the state of Mexico to pay, for each of the plaintiffs, compensation for consequential damage and loss of profits, in the amount of USD 50,000 (fifty thousand dollars); and for compensation for non-pecuniary damage the amount of USD 50,000 for each one.</p> <p>Regarding the other requests, including tax matters, the ruling states that “324. This Court has established in its case law that pecuniary damage encompasses the loss of or detriment to the victims’ income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case. Likewise, the Court has developed the concept of non-pecuniary damage and has established that this may include both the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are very significant to them, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family. However, since it is not possible to assign a precise monetary value to non-pecuniary</p>	<p>In our opinion, an individual (taxpayer) who cannot obtain profits due to a very long and illegal deprivation of liberty, should be exempt from paying taxes. This is even more justified if one considers that it is the state itself that has deprived this person of his right to freedom and has deprived him of the possibility of generating income.</p> <p>The situation described should influence the entire system of taxpayer rights, be it in terms of determining tax obligation, resolution of conflicts between the state and the taxpayer, and the system of tax payments and penalties. This kind of issue should also be considered a constitutional principle in tax matters.</p>

<sup>589</sup> See MX: ICHR, Case of *García Rodríguez et Al. v. Mexico*, Serie C No. 482, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_482\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_482_ing.pdf) (accessed 20 Feb. 2024).

Case	<i>Case of García Rodríguez et Al. v. Mexico, Serie C No. 482</i> <sup>589</sup>	
Date	25 January 2023	
ACHR Articles	5 (Right to Humane Treatment) 7 (Right to Personal Liberty) 8 and 24 (Right to a Fair Trial, Right to Judicial Protection)	
Facts	Decision	Comments
<p>compliance with federal, state and municipal obligations corresponding to the victims” [Footnote 286: “They explained that this situation is due to the fact that the illegal deprivation of liberty to which the alleged victims were subjected, resulted in non-compliance with their tax obligations that could not be covered during the entire time they were illegally deprived of their liberty. Therefore, such noncompliance (with the accompanying surcharges and updates) is due to the detrimental effect generated by the deprivation of freedom since they had no possibility of continuing with their lives and receiving financial benefits from their economic activities to allow them to meet those obligations.”].</p> <p>[Original version of the judicial decision in English]</p>	<p>damage, this can only be compensated, for the purposes of comprehensive reparation to victims, through the payment of a sum of money or the delivery of goods or services that can be estimated in monetary terms, as prudently determined by the Court, applying judicial discretion and the principle of equity” [Original version of the judicial decision in English]</p>	

In 2023, there was no change in the number of countries to adopt a charter or statement of taxpayers’ rights. However, in **Botswana**, taxpayers still lack established rights or standards, and they do not have rights during audits.<sup>590</sup>

Regarding a separate statement of taxpayers’ rights under audit, in **Australia**, in June 2023, the Australian Taxation Office (ATO) unveiled an updated version of the Taxpayers’ Charter, now titled “Our Charter”, significantly reducing its length from over 60 pages to just 3 pages. This revision was prompted, in part, by a review conducted by the Inspector-General of Taxation and Taxation Ombudsman, focusing on the effectiveness of the ATO’s communication of taxpayers’ rights to complain, review and appeal.<sup>591</sup>

In **China (People’s Rep.)**, pursuant to article 15 of the Regulations on Procedures for Handling Tax Inspection Cases (State Taxation Administration Decree No. 52), tax inspections are conducted by two or more inspectors possessing law enforcement qualifications. The subject of the inspection is required to be provided with a tax inspection certificate, served with

<sup>590</sup> See BW: OPTR Report (Academia), Questionnaire 2, Question 84.

<sup>591</sup> See AU: Our Charter, available at <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/ATO-Charter/Our-Charter> (accessed 20 Feb. 2024). See also: AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 84.

a notice of tax inspection, and informed of their rights and obligations. **China (People’s Rep.)** has adhered to the minimum standard and implemented best practices outlined in the Regulations on Procedures for Handling Tax Inspection Cases, published in 2021.<sup>592</sup>

Since 2016, **Chinese Taipei** has implemented the Taxpayers’ Rights Protection Act, which effectively safeguards the rights of taxpayers. Articles 11 to 14 of this Act specifically govern the auditing procedures applied to taxpayers.<sup>593</sup>

### 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 of the normal operations of that authority

**Shifted towards/matched the best practice:**

Spain

**Shifted away from the minimum standard:**

Hungary

**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:**

Hungary

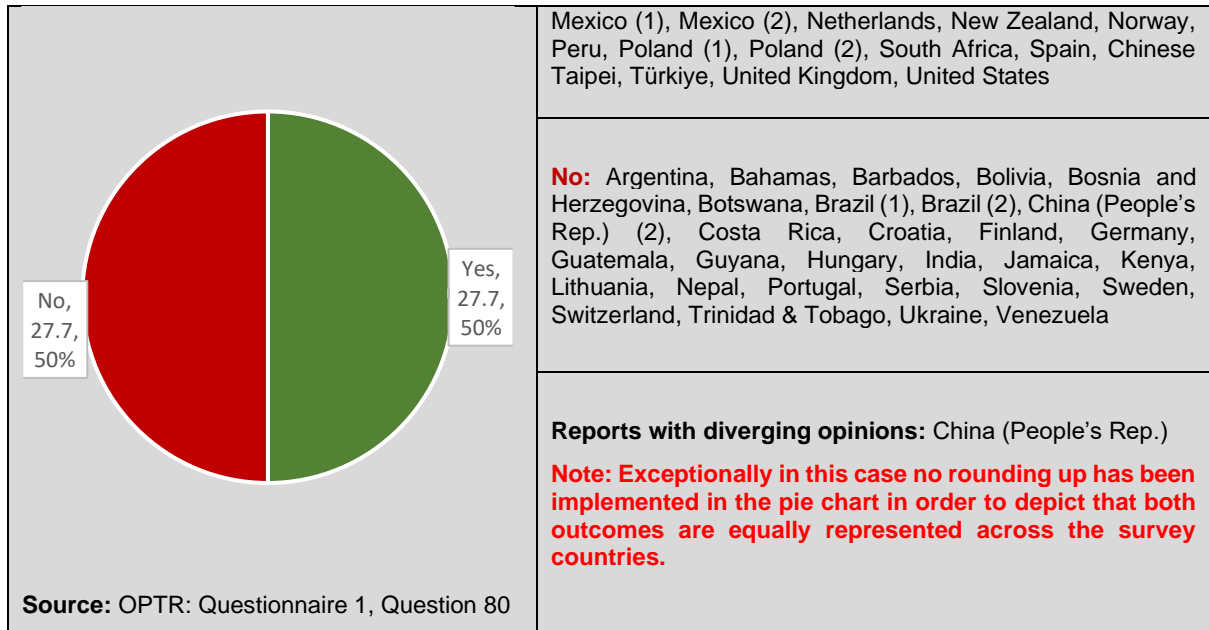
One way for the state to further fulfil its obligations to protect taxpayers’ rights is through a specialized body, preferably independent from the tax authorities. The idea is to have an institution with the power to ensure the conditions for the highest protection of taxpayers. This idea is also the rationale behind a taxpayer advocate or tax ombudsman.

As illustrated by Chart 80, 50% of the surveyed jurisdictions have such an institution. As depicted by Chart 81, 33% of these are empowered to intervene in ongoing disputes between tax authorities and taxpayers. Moreover, as illustrated by Chart 82, 36% of the ombudspersons are independent.

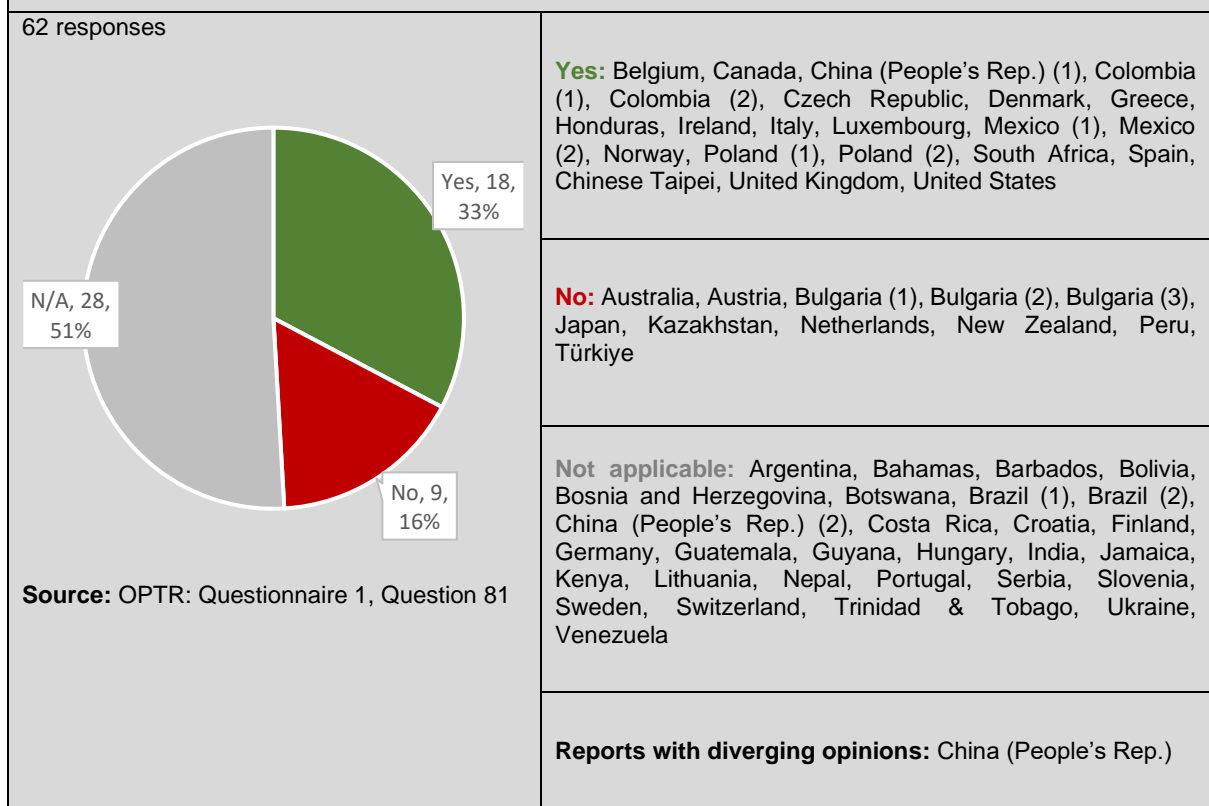
Chart 80. Is there a (tax) ombudsman/taxpayers’ advocate/equivalent position in your country?	
62 responses	<p><b>Yes:</b> Australia, Austria, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), Canada, China (People’s Rep.) (1), Colombia (1), Colombia (2), Czech Republic, Denmark, Greece, Honduras, Ireland, Italy, Japan, Kazakhstan, Luxembourg,</p>

<sup>592</sup> See <https://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5166617/content.html> (accessed 20 Feb. 2024). See also: CN: OPTR Report (Academia), Questionnaire 2, Question 84.

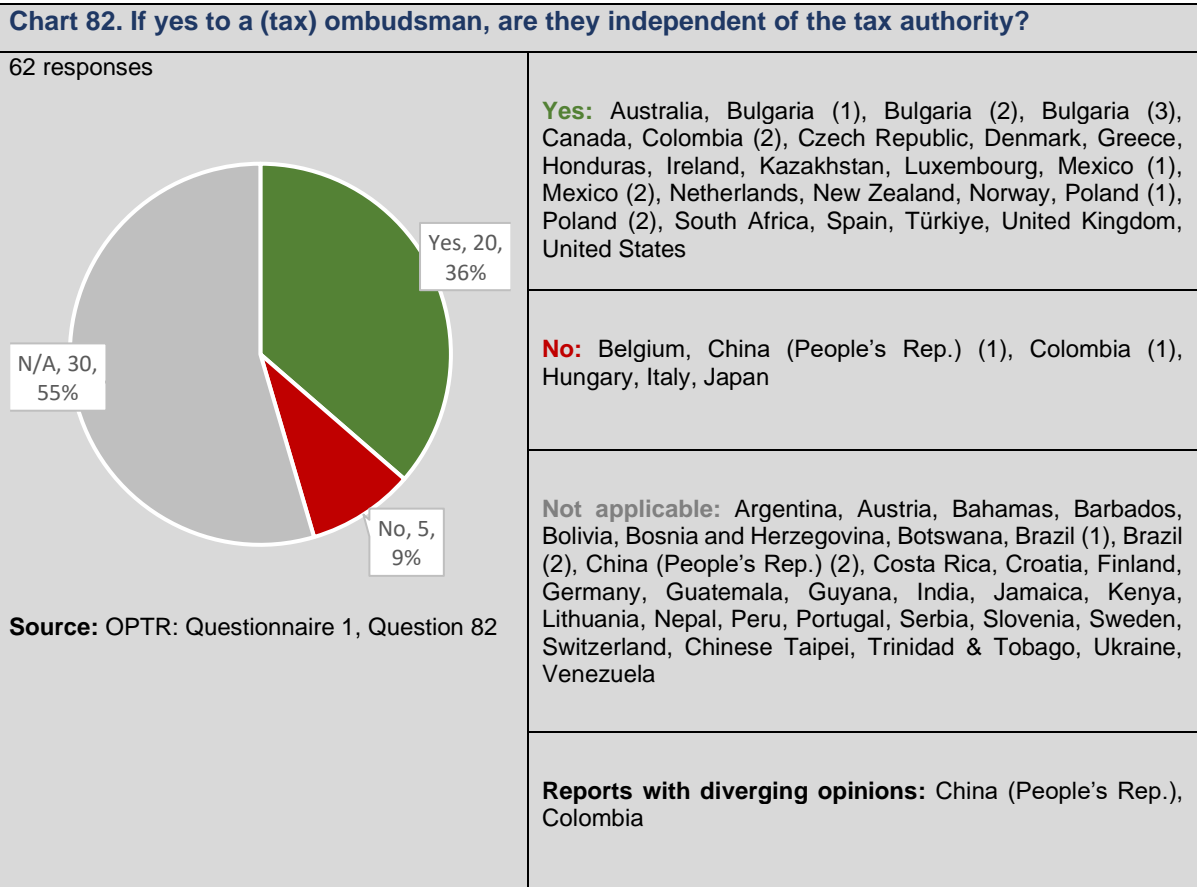
<sup>593</sup> See TW: OPTR Report (Tax Administration), Questionnaire 2, Question 84.



**Chart 81. If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?**







In **Spain**, the Tax Ombudsman has published multiple reports throughout 2023 with the aim of enhancing the protection of taxpayers’ rights. Some of these proposals, including improvements to the appointment system, are currently under consideration by the tax administration.<sup>594</sup>

At the same time, in the **United States**, the Taxpayer Bill of Rights (TBOR) is established in statute, mandating the IRS Commissioner to ensure that IRS employees are knowledgeable about and adhere to taxpayers’ rights as stipulated by other provisions of tax laws (IRC § 7803(a)(3)). Because of that, courts have determined that the TBOR outlined in IRC 7803(a)(3) does not introduce new rights beyond those already existing in the law. However, the rights delineated in the TBOR are encompassed within other statutory and administrative provisions. The IRS Taxpayer Advocate Service references certain provisions in its explanation of each taxpayers’ right.<sup>595</sup>

<sup>594</sup> See Consejo para la Defensa del Contribuyente, available at <https://www.hacienda.gob.es/es-ES/Areas%20Tematicas/Impuestos/Consejo%20Defensa%20Contribuyente/paginas/consejo%20para%20la%20defensa%20del%20contribuyente.aspx> (accessed 20 Feb. 2024). ES: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 85.

<sup>595</sup> See T. Keith Fogg, *Court of Federal Claims Rejects Taxpayer Bill of Rights Argument*, Procedurally Taxing, 4 Dec. 2020. See Taxpayer Bill of Rights, available at <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/> (accessed 20 Feb. 2024). See also US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 85.

More recently, in **Italy**, the parliament has delegated to the Government, through Law 111 of 9 August 2023, the task of undertaking a structural reform of the tax system, which also includes revisions to the Taxpayers' Bill of Rights. Specifically regarding this aspect of the reform, the Council of Ministers has thus far released a draft legislative decree aimed at simplifying the process of filing annual tax returns and enhancing communication between tax authorities and taxpayers throughout various procedural stages. It is important to highlight that a draft legislative decree is currently in the final stages of parliamentary deliberation. Once approved, the rules will come into force in 2024.<sup>596</sup>

Unfortunately, concerning **Hungary**, the European Parliament resolution of 15 September 2022 and the Council Implementing Decision (EU) 2022/2506 of 15 December 2022 signal a continued constriction of the Hungarian government. By the close of 2023, the government's macroeconomic objectives were significantly not met, rendering the Hungarian economy vulnerable. Furthermore, the continuous decline in the Hungarian rule of law situation worsens these challenges. In light of these circumstances, safeguarding taxpayers' rights is becoming increasingly uncertain.<sup>597</sup>

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<sup>596</sup> See Government Act no. 97 transmitted to the Chamber of Deputies on 22 November 2023: <https://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0097.pdf&leg=XIX#pagemode=none> (accessed 20 Feb. 2024), for which on 30 November 2023 the Parliamentary Research Service published a specific Dossier, available at <https://www.senato.it/service/PDF/PDFServer/BGT/01398550.pdf> (accessed 20 Feb. 2024). See also: IT: OPTR Report (Academia), Questionnaire 2, Question 86.

<sup>597</sup> See HU: OPTR Report (Academia), Questionnaire 2, Question 85.

## Appendix A: 2022 topical highlights

The following is a summary of the contents explained in detail in the main text of the 2022 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
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>		
Identification of taxpayers	<ul style="list-style-type: none"> <li>• <b>Australia:</b> The newly established Australian Business Registry Service is operational. The Modernising Business Registers (MBR) programme will be subject to an independent review.</li> <li>• <b>Bolivia:</b> As from 2023, the tax identification numbers and commercial registration number are identical. A physical verification has been implemented.</li> <li>• <b>Costa Rica:</b> Going forward, any petition made to the tax administration should in principle be made using digital signatures. Only in exceptional cases will physical signatures be accepted.</li> <li>• <b>Honduras:</b> The Institutional Strategic Plan (ISP) of the Honduran tax authorities for 2023 includes considerations relating to spiritual belief.</li> </ul> <p><b>United States:</b> The tax authorities have introduced an administrative exemption to e-file mandates for filers for whom using technology conflicts with their religious beliefs.</p>	
Information supplied by third parties and withholding obligations	<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> A provision regarding data protection has been inserted in the Bulgarian Tax and Social Security Procedure Code.</li> <li>• <b>Italy:</b> A provision strengthening the confidentiality of taxpayers' data has been adopted.</li> </ul>	
The right to access (and correct) information held by tax authorities	<ul style="list-style-type: none"> <li>• <b>Australia:</b> Data analytics were used to prompt taxpayers to check prior year returns where the pre-filing differs from other taxpayers in similar circumstances.</li> <li>• <b>Botswana:</b> A system of self-assessment was implemented, which included guidelines for taxpayers.</li> </ul>	

Taxpayers' right	Shift towards	Shift away from
	<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> Measures have been introduced to ensure the correctness of information on sellers operating through platforms.</li> <li>• <b>Colombia:</b> A total of 5.2 million pre-filled income tax returns were made available to taxpayers through electronic services. Additionally, 1.2 million VAT returns and 51,979 national excise tax returns were prepared. Going forward, taxpayers can consult data reported regarding them in the BO Register.</li> <li>• <b>Costa Rica:</b> Administrative guidance was published providing for the possibility to amend information when using the electronic platform of the tax authorities is not possible due to personal conditions.</li> <li>• <b>Guatemala:</b> A tool was provided to review and correct taxpayer information.</li> <li>• <b>Italy:</b> The Taxpayers' Bill of Rights was amended. Changes include a reference to the right to access tax administrative documents.</li> <li>• <b>Netherlands:</b> A law has been enacted allowing taxpayers to appeal a refusal to get access to their personal tax file.</li> <li>• <b>Spain:</b> In order to improve communication, the tax administration has announced a simplification of the language in its most common documents.</li> <li>• <b>United States:</b> The tax administration has made additional taxpayer information available through online tools. These developments were publicized through news releases and social media.</li> </ul>	
Communication with taxpayers	<ul style="list-style-type: none"> <li>• <b>Australia:</b> The ongoing work to safeguard the tax authorities' systems against cyberthreats has continued.</li> <li>• <b>Greece:</b> All taxpayers were required to update their email addresses and designate a second contact person.</li> <li>• <b>United Kingdom:</b> Guidance was published on cybersecurity.</li> <li>• <b>United States:</b> A new taxpayer authentication platform has been implemented.</li> </ul>	
Cooperative compliance	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> A pilot project on cooperative compliance was launched.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Germany:</b> A system of cooperative compliance was</li> </ul>

Taxpayers' right	Shift towards	Shift away from
	<ul style="list-style-type: none"> <li>• <b>China (People's Rep. ):</b> Tax compliance agreements were concluded with large enterprises.</li> <li>• <b>Italy:</b> The scope of the cooperative compliance procedure was further enhanced and strengthened.</li> </ul>	<p>established, but tax authorities decide at their own discretion whether taxpayers may participate.</p> <ul style="list-style-type: none"> <li>• <b>Honduras:</b> The cooperative compliance pilot project was discontinued.</li> </ul>
Assistance with compliance obligations	<ul style="list-style-type: none"> <li>• <b>Botswana:</b> Physical in-person support was made available in remote areas.</li> <li>• <b>Costa Rica:</b> Administrative guidance was published providing for the possibility to amend information when using the electronic platform of the tax authorities is not possible due to personal conditions. The tax administration provides contact details of universities that offer services aiding taxpayers with their tax compliance obligations.</li> <li>• <b>Greece:</b> Continued implementation of the plan to make online or remote services available.</li> <li>• <b>Honduras:</b> Additional tax offices were opened.</li> <li>• <b>Mexico:</b> Remote assistance to taxpayers was increased.</li> <li>• <b>Spain:</b> The Spanish Supreme Court has declared the invalidity of several tax provisions that obliged all taxpayers to file their personal income tax return by electronic means.</li> <li>• <b>United States:</b> Increased funding has resulted in an increase of support for taxpayers with their tax compliance obligations.</li> </ul>	
<b>2. The issuance of a tax assessment</b>		
Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on the equality of	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> The Supreme Court, in its Judgment of 2 March 2023 (F.21.0156.F), underscored the importance of fostering a positive interaction between taxpayers and tax authorities through the "right to be heard" enshrined in article 346 of the Belgian Income Tax Code of 1992 ("BITC92"), which mandates tax authorities to issue a prior notification, commonly known as a "notice of change", outlining reasons for proposed modifications when altering</li> </ul>	

Taxpayers' right	Shift towards	Shift away from
arms	<p>income or other details provided by taxpayers in their tax returns.</p> <ul style="list-style-type: none"> <li> <b>Brazil:</b> Following the Provisional Measure n. 1152 of 22 December 2022, Law 14.596 of 14 June 2023 harmonized Brazilian transfer pricing rules with international standards, and introduced mechanisms – such as Advance Pricing Agreements and a penalty protection regime – to promote compliance and prevent disputes between taxpayers and tax authorities.         </li> <li> <b>Costa Rica:</b> The tax administration established a forum involving prominent national taxpayers, aiming to facilitate a constructive dialogue between the two parties.         </li> <li> <b>Guatemala:</b> The tax administration is persistently enabling taxpayers facing potential conflicts to engage in meetings for conflict resolution before a formal tax adjustment is issued. This approach has fostered a positive dialogue between the tax administration and taxpayers.         </li> <li> <b>Honduras:</b> During 2023, the passing of the Tax Justice Bill was surrounded by various avenues for public discourse, involving academia, civil associations and various political and non-political entities. Notably, multiple discussion sessions led by the Committee of the National Congress of Honduras generated over 102 suggestions for modifications to the draft.         </li> <li> <b>Italy:</b> A substantial amendment to Law 212 of 27 July 2000, known as the “Taxpayers’ Bill of Rights”, was introduced through Legislative Decree no. 219 of 30 December 2023. This amendment incorporated the “right to be heard” under article 6-bis of the Taxpayers’ Bill of Rights.         </li> <li> <b>Spain:</b> Spain reported two significant improvements: (i) Law 13/2023 modified article 120.3 of the General Tax Law, empowering taxpayers to submit a corrective self-assessment when the initial assessment harms their interests. This modification eliminates the need for a specific rectification procedure, providing flexibility and responsiveness to taxpayers facing unintended consequences of their initial filings; (ii) the High Court of Galicia, in a         </li> </ul>	

Taxpayers' right	Shift towards	Shift away from
	<p>judgment of 28 November 2023, aligned with proposal n. 3/2022 from the Tax Ombudsman and recognized the right of taxpayers to make non-malicious or non-repeated mistakes in tax matters without incurring penalties. This progressive stance acknowledges that inadvertent errors during tax return submissions should not lead to punitive measures, fostering a more lenient and understanding approach to unintentional non-compliance with tax legislation.</p> <ul style="list-style-type: none"> <li>• <b>United Kingdom:</b> HMRC updated its Code of Governance for Resolving Tax Disputes by providing greater clarity and transparency in its processes.</li> </ul>	
<p>Use e-filing to speed up assessments and the correction of errors</p>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Royal Decree of 15 March 2023 introduced a regulation that enables taxpayers to choose to receive "proposed simplified returns" exclusively through electronic channels.</li> <li>• <b>Botswana:</b> Botswana reported the enhancement of features to improve the self-assessment system.</li> <li>• <b>Japan:</b> In January 2016, Japan introduced the My-Number-Card, a credit card-sized individual identification card with diverse applications, including online tax filing. According to the Ministry of Internal Affairs and Communications, by December 2023, the number of cardholders had reached 91,542,953, constituting 73% of the total Japanese population, a significant increase from the 15,624,405 cardholders in 2018, representing about 12.2% of the population. This growth in My-Number-Card holders correlated with a notable increase in e-filing percentages for both individual and corporate income tax returns. Indeed, according to the National Tax Agency, in fiscal year 2022 (April 2022-March 2023), the percentage of tax returns using Internet (e-Tax) significantly increased : e-filing of individual income tax returns rose from 44.0% of 2018 to 65.7% of 2023; e-filing of corporate income tax returns rose from 82.1% of 2018 to 91.1% of 2023.</li> <li>• <b>Serbia:</b> As of 1 January 2023, based</li> </ul>	<p>None</p>



Taxpayers' right	Shift towards	Shift away from
	<p>on the Serbian Law on Tax Procedure and Tax Administration, tax returns for the complementary global personal income tax must be submitted exclusively through electronic means.</p> <ul style="list-style-type: none"> <li>• <b>Türkiye:</b> General Communiqué No. 552, published in the Official Gazette on 7 October 2023, launched the “Digital Tax Office” application. This application, developed by the Turkish Revenue Administration, aims to consolidate electronic services under a unified platform.</li> <li>• <b>United Kingdom:</b> In 2023, the Income Tax (Pay As You Earn) (Amendment) Regulations 2023 and The Social Security (Contributions) (Amendment No. 2) Regulations 2023 were enacted. These amendments mandate employers to deliver returns electronically.</li> <li>• <b>United States:</b> In a new Strategic Operating Plan, the IRS has set goals to expand electronic filing and processing of documents, and it intends to leverage electronic filing and communication to identify and resolve issues faster. In 2023, the agency made some progress: (i) it launched an online portal allowing businesses to file Forms 1099 for free; (ii) taxpayers filing amended returns electronically can now choose direct deposit; and (iii) the IRS also began using scanning technology to digitally process specific paper returns.</li> </ul>	
<b>3. Confidentiality</b>		
Guarantees of privacy in the law	<ul style="list-style-type: none"> <li>• <b>Costa Rica:</b> Additional investments were reported in cybersecurity.</li> <li>• <b>Lithuania:</b> The Tax Administration Law was supplemented with additional safeguards for taxpayers' data.</li> </ul>	
Encryption – Control of access	<ul style="list-style-type: none"> <li>• <b>Botswana:</b> An increase in security processes and restricted access was reported.</li> <li>• <b>China (People's Rep.):</b> The tax authorities have strengthened their data security management.</li> </ul>	
Administrative measures to ensure	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> Virtual training has been provided to tax officers on information confidentiality.</li> </ul>	

Taxpayers' right	Shift towards	Shift away from
confidentiality	<ul style="list-style-type: none"> <li>• <b>Greece:</b> Following an information leak, the tax authorities took action in order to mitigate and prevent further damage.</li> <li>• <b>Hungary:</b> A new regulation has been introduced on protection of personal data.</li> </ul>	
Exceptions to confidentiality	<ul style="list-style-type: none"> <li>• <b>Costa Rica:</b> The tax administration has in some cases declined access by the general public to taxpayer information.</li> <li>• <b>Lithuania:</b> The Law on Tax Administration has been amended taking into account GDPR requirements.</li> <li>• <b>Spain:</b> The Supreme Court ruled that safeguards should be present in case of naming and shaming.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> A non-compliant taxpayer was named on a social network.</li> <li>• <b>Costa Rica:</b> The tax authorities have submitted information to a congressman about taxpayers who reported losses or paid no tax.</li> <li>• <b>Honduras:</b> Taxpayer information was leaked for political reasons.</li> <li>• <b>United Kingdom:</b> A Court held that information could be disclosed to another taxpayer, even in the absence of judicial permission in this respect.</li> </ul>
The interplay between taxpayer confidentiality and freedom-of-information legislation	<ul style="list-style-type: none"> <li>• <b>Netherlands:</b> A law has been enacted allowing taxpayers to appeal a refusal to get access to their personal tax file.</li> <li>• <b>Italy:</b> The scope of the cooperative compliance procedure was further enhanced and strengthened.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>South Africa:</b> The Constitutional Court granted access to tax records to a person other than the taxpayer himself.</li> </ul>
Anonymized judgments and rulings		
Legal professional privilege	<ul style="list-style-type: none"> <li>• <b>Argentina:</b> A new (more limited) reporting scheme has been implemented.</li> <li>• <b>Spain:</b> The Supreme Court has suspended specific provisions that aim to transpose DAC6, following ECJ case law.</li> </ul>	
4. Normal audits		
Audits follow all the four principles	<ul style="list-style-type: none"> <li>• <b>Spain:</b> The four main principles have been generally improved in tax audits.</li> <li>• <b>Italy:</b> A recent legal development has implemented the concept of proportionality in tax proceedings. This principle applies to all stages of the process, including fact-finding, tax assessment, imposition of penalties, and forced collection. The law also specifies that tax authorities should not exceed what is strictly necessary to</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Botswana:</b> A special legal provision requires disclosure/access to incriminating documentation</li> </ul>

Taxpayers' right	Shift towards	Shift away from
	<p>ensure accurate tax payment and should not compress taxpayers' rights beyond what is strictly necessary.</p>	
<i>Ne bis in idem</i>	<ul style="list-style-type: none"> <li> <p><b>Spain:</b> Two judgments from the Supreme Court represent a shift towards the minimum standard:  Firstly, the Supreme Court ruled that the preclusive effects of a resolution that ends a limited verification procedure extend not only to those tax elements on which the tax administration has expressly ruled, but also to any other tax element, verified in the context of the procedure.  In a second judgment it has pronounced that without an express statement for the expiration of a tax audit (management procedure) initiated by means of a tax return, it is not possible to initiate a subsequent tax audit (inspection procedure). Documents and evidence obtained in the expired procedure cannot be incorporated into this new procedure without such a statement of expiration.</p> </li> <li> <p><b>Italy:</b> A recent provision allows taxpayers to have the tax authorities conduct the assessment action related to each tax only once per tax period, unless specific rules state otherwise. While this rule specifically applies to the receipt of notices of assessment and not tax audits, it is worth mentioning this development and hoping for an expansion of the prohibition on <i>bis in idem</i> to include tax audits in the future.</p> </li> </ul>	
Principle of proportionality	<ul style="list-style-type: none"> <li> <p><b>Belgium:</b> During tax audits, the tax authorities regularly ask for a complete copy of the taxpayer's digital data, including the mailboxes of directors and employees. After a taxpayer refused to comply with the tax authorities' request for a complete copy of all digital data, a case was brought before the competent domestic court which ruled that the tax authorities' claim does not respect the fair balance between social interests and individual interests. A complete copy of all digital data would always result in obtaining information that is irrelevant for tax purposes and (probably) also private or confidential data from third parties. Copying confidential information also leads to irreparable damage. By demanding a</p> </li> </ul>	

Taxpayers' right	Shift towards	Shift away from
	<p>copy of all digital data from the taxpayer, the tax authorities violated the purpose of the tax audit and they conducted a covert "fishing expedition".</p> <ul style="list-style-type: none"> <li>• <b>Guatemala:</b> The tax administration started showing greater flexibility regarding the amount of time a taxpayer has at its disposal to provide information requested by the tax administration. Although the law stipulates that information requests must be satisfied within only 3 days, the tax administration has agreed to longer time frames.</li> </ul>	
<i>Audi alteram partem</i> (right to be heard)	<ul style="list-style-type: none"> <li>• <b>Guatemala:</b> The tax administration permits the taxpayers to attend meetings with their legal advisers.</li> <li>• <b>Spain:</b> According to a recent court judgment, a tax assessment is null and void when the taxpayer's right to be heard has not been granted. In such circumstances, it is assumed that the right of defence has been breached with the tax administration bearing the burden of proving the opposite.</li> <li>• <b>Italy:</b> A new provision has been implemented that requires the principle of <i>audi alteram partem</i> to be followed. This means that all acts issued by the tax authorities, except for "automatic" notices of assessment based solely on mistakes and miscalculations found in the annual tax return, will be served only after a preliminary discussion with the taxpayer. During this initial phase, the tax authorities will provide the taxpayer with a draft of the notice of assessment, and the taxpayer will have 60 days to provide feedback and comments. If the tax authorities decide to issue the notice of assessment despite the taxpayer's observations, they must provide a reason for not accepting them. Failure to follow this preliminary phase will result in the notice of assessment being declared void by the tax court.</li> </ul>	
<i>Nemo tenetur se detegere</i> (right to remain silent)		
The structure and content of tax audits	<ul style="list-style-type: none"> <li>• <b>Hungary:</b> Published guidelines are issued every year, demonstrating continuity and a good overview of the tax authorities' policy, including with respect to their regional plans. This conglomerate of relevant information ensures a continuous development in transparency.</li> <li>• <b>Spain:</b> The annual general guidance of the 2023 Annual Audit Plan for Taxes and Customs has been</li> </ul>	

Taxpayers' right	Shift towards	Shift away from
	<p>approved.</p> <ul style="list-style-type: none"> <li><b>Germany:</b> In 2023, the provisions for audits have been revised by creating a possibility for regular meetings between taxpayers and the tax authorities. Also, a general framework for the audit procedure has been established.</li> </ul>	
Time limits for tax audits	<p><b>Germany:</b> A maximum period of 5 years has been established for the suspension of statute of limitations with regard to tax assessments applicable in the event of audits.</p>	
Tax audit report		<p><b>Luxembourg:</b> In certain cases, the final audit report is not systematically notified to the taxpayer who in such instances could only access the report at a later stage of the procedure.</p>

5. More intensive audits		
The implication of the <i>nemo tenetur</i> principle		<p><b>Botswana:</b> The domestic tax law stipulates nothing regarding the <i>nemo tenetur</i> principle.</p>
Court authorization or notification	<p><b>Belgium:</b> In Belgium, the tax authorities are allowed to enter the premises of the taxpayer (other than residences) without prior authorization of the judiciary. Once the tax authorities have entered the premises, they are allowed to examine all books and documents located in the premises without prior consent of the taxpayer. However, the Court of Cassation has clarified that when the taxpayer opposes to the investigation, the consultation of the books and documents cannot take place.</p> <p>When it comes to homes or occupied premises, an inspection can be carried out only with prior authorization of a police judge. The Court of Cassation clarified that the authorization of the police judge only gives tax officials permission to inspect a certain home or occupied premises. However, that does not mean that those officials may enter those premises without the "consent" of the taxpayer. The consent of the taxpayer is thus essential for a legally valid inspection. Moreover, the Court of Cassation ruled that the consent must remain present for the entire duration of the inspection and can thus also be withdrawn by the taxpayer, which shall prevent the inspection from continuing.</p>	<p><b>Botswana:</b> The domestic Income Tax Act prescribes unfettered power to the Revenue Authority to enter any premises and to request specific documentation regarding taxpayers.</p>

<b>6. Reviews and appeals</b>		
<p>The remedies and their function</p>	<p><b>Costa Rica (BP):</b> Requests for internal review and appeals have been fully digitalized.</p> <p><b>Greece (BP):</b> As of 1 January 2023, all appeals and relative requests for the suspension of tax payments submitted to the Dispute Resolution Directorate of the Greek Tax Administration are filed electronically.</p> <p><b>Italy (BP):</b> Appeals have been fully digitalized also in Italy , through the amendment to Article 16-bis of the Italian Tax Procedural Code (Decree 546/1992) by Decree 220/2023, which virtually eliminates any possibility of deviating from electronic methods for filing and depositing judicial appeals.</p> <p><b>Italy (MS):</b> Up until 2023, mandated in accordance with article 17-bis, Decree 546/1992, that the right to appeal hinged on prior exhaustion of administrative reviews for cases valued below EUR 50,000. However, with the enactment of Decree 220/2023 (applicable to appeals filed after 4 January 2024), this requirement was repealed. As a result, appeals no longer necessitate the exhaustion of administrative reviews, marking Italy's full compliance with the minimum standard.</p> <p><b>Spain (MS):</b> According to the case law of the Spanish Supreme Court, the right to appeal should not be contingent upon the prior exhaustion of administrative reviews in two cases: (i) when accessing the special process for the protection of fundamental rights; and (ii) when the taxpayer submits a request that the tax administration cannot fulfil (e.g. declaration of the unconstitutionality of a law).</p> <p><b>United States (BP):</b> The IRS has committed to facilitating seamless digital communication for taxpayers, aiming to simplify the process and ensure convenient interaction regarding their cases. This includes the introduction of a document upload tool, allowing taxpayers to respond to all IRS notices electronically. Moreover, efforts have been made to broaden the capacity for appeals to be transmitted electronically from various IRS functions to the Office of Appeals. Additionally, there has been an extension of authorization for taxpayers to engage in encrypted communications, particularly with the</p>	<p><b>Belgium (MS):</b> The Court of Appeal of Mons deemed a request for administrative review as invalid because it merely expressed disagreement with the taxation and did not furnish factual and legal arguments in support of the claim. Consequently, the appeal before the Court was considered inadmissible, as adherence to the obligation of submitting a valid administrative appeal was deemed a prerequisite for accessing the judiciary.</p> <p><b>Chinese Taipei (MS):</b> According to the Taiwan Tax Collection Act, the right to access the judiciary still depends upon prior exhaustion of administrative reviews.</p>

	<p>Appeals division. This encompasses the use of digital signatures, as well as the secure receipt and transmission of documents via email, among other methods.</p>	
Length of the procedure	<p><b>China (People's Rep.):</b> Both in regard to administrative reviews and judicial proceedings, it has been reported that the legislative framework ensures strict timelines for the completion of the proceedings. In particular, as to the former, the newly revised Administrative Reconsideration Law of People's Republic of China (effective on 1 January 2024) states that (i) applications for administrative reviews must be submitted within 60 days upon the date of knowledge of a specific administrative act (article 9); and that (ii) the administrative review organ shall, as a general rule, make a decision within 60 days from the date of accepting the application (article 31). Additionally, as to judicial proceedings, article 88 of the Administrative Procedure Law of People's Republic of China states that a People's Court hearing an appeal shall, as a rule, render a final judgment within 3 months from the date of receipt of the appeal.</p> <p><b>Italy:</b> In June 2023, the Italian Ministry of Finance released a report on tax litigation, revealing that the average duration of tax disputes in 2022 was 973 days before second-tier tax courts, marking a 9.9% decrease from 2021 when the average was 1,080 days. Similarly, disputes before first-tier tax courts averaged 571 days, reflecting a 12.4% reduction from the 652 days reported in 2021.</p>	
<i>Audi alteram partem</i> and the right to a fair trial	<p><b>China (People's Rep.):</b> According to the newly revised Administrative Reconsideration Law of the People's Republic of China (effective on January 1, 2024), the <i>audi alteram partem</i> principle now applies also to administrative review proceedings.</p>	
<i>Solve et repete</i>	<p><b>Honduras (BP):</b> On January 2023, article 206 of the Tax Code – which required taxpayers to render a sufficient guarantee before a judge as part of the admission of a claim before the Administrative Court – was declared unconstitutional by the Supreme Court.</p>	<p><b>Botswana (BP):</b> Despite the absence of specific legislation in this regard, reports indicate that the Botswana Unified Revenue Service (BURS) might insist on tax payment before entertaining any form of appeal.</p>
Cost of proceedings	<p><b>Mexico (BP2):</b> Mexico has continued its positive development towards this best practice. The PRODECON (Tax Ombudsmen) continues granting free advice to taxpayers who cannot afford it</p>	<p><b>Botswana (BP1):</b> Costs follow the event of judgment (e.g. the losing party in legal proceedings must pay the legal costs of the successful party).</p>



	<p>and counselling in different fields, including legal representation in contentious matters. Additionally, during November 2023, the PRODECON signed an agreement with the PROFEDET (<i>Procuraduría Federal de la Defensa del Trabajo – Federal Labour Ombudsman</i>) to promote the defence of employees in tax matters.</p> <p><b>United States (BP2):</b> Congress provided increased funding for low-income taxpayer representation in calendar year 2023.</p>	<p><b>Botswana (BP2):</b> Botswana does not offer pro bono services or legal assistance for tax disputes.</p>
Public hearing		<p><b>Botswana (BP2):</b> Although no legal provision prescribes that tax matters should be held “in-camera”, the public is not allowed to hear Tribunal (BOA) cases.</p>
Publication of judgments and privacy	<p><b>Bulgaria:</b> In 2023, a new electronic system of the courts was introduced, which allows for easier access to judgments including on tax cases. The personal data in the judgments is anonymized and can only be accessed by the parties of the specific case.</p> <p><b>Costa Rica:</b> The Costa Rican Tax Administration experienced a security breach, resulting in the deletion of information from the judgments archives. Following a decision from the Constitutional Court, it was established that the affected information has been restored online this year and that taxpayers are now able to request any missing information from the Costa Rican Tax Administration.</p>	<p><b>China (People’s Rep.):</b> Despite the requirement, since 1 October 2016, to publish judicial decisions on the Chinese Judicial Decision Website (excluding those involving commercial secrets or cases deemed unsuitable for publication), there has been a significant decrease in the number of published decisions from 2022 to 2023. To address this, China (People’s Rep.) announced in December 2023 the initiation of constructing the National Court Judicial Decision Database, set to become operational in January 2024 and accessible to the public. However, concerns have been raised by national reporters from academia regarding the potentially limited scope of judicial decisions to be published through this system</p>
<b>7. Criminal and administrative sanctions</b>		
The general framework	<p><b>Brazil:</b> The relevance of the principle of proportionality was recognized in legislative enactments and in several judgments by Brazilian courts.</p> <p><b>Spain:</b> New decisions of the Spanish courts have reinforced the principle of proportionality in tax punitive matters.</p> <p><b>United States:</b> The framework is somehow blurred. On the one side, the US Supreme Court has applied the principle of proportionality to mitigate the penalty applicable in connection to minor tax violations. On the other side, a trend is reported that shows a more aggressive approach by the IRS at asserting that certain violations were not carried out by</p>	<p><b>Costa Rica:</b> Court decisions have downplayed the relevance of the principle of proportionality and have affirmed that severe penalties can be imposed also in cases in which the taxpayer has merely delayed the payment of taxes for a short period of time.</p>

	the taxpayer in good faith, but with wilful conduct.	
Voluntary disclosure	<b>United States:</b> new voluntary disclosure regimes have been put into place with a view to foster tax compliance.	<b>Lithuania:</b> Introduced a measure that amends the Law on Tax Administration. It provides that sanctions cannot be lower than 20% of the unpaid taxes in cases of voluntary disclosure by the taxpayer.
<b>8. Enforcement of taxes</b>		
Collection of taxes should never deprive taxpayers of their minimum necessary for living.	<b>Lithuania:</b> New rules increase the amount of tax-free income. This amendment reduces the tax burden on taxpayers with a monthly income of up to one average wage.	
Authorization by the judiciary should be required before seizing assets or bank accounts	<b>South Africa:</b> Courts have increased the level of protection for taxpayers in connection with seizure measures by the South African Revenue Service for assets held abroad.	<b>Botswana:</b> Legislation was enacted that provides that decisions made by tax administrations to seize assets or bank account deposits are not subject to authorization by judicial authorities.
Taxpayers should have the right to request delayed payment of arrears		
Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.	<b>Botswana:</b> plans are put into place in order to allow taxpayers to defer payment and prevent bankruptcy.	
Temporary suspension of tax enforcement should follow natural disasters	<b>Guatemala:</b> Due to a political crisis, the tax administration has made it possible for taxpayers to delay the presentation of tax declarations. <b>Ukraine:</b> Legislation has been enacted that stops tax enforcement activities from 1 August 2023 in the territory of Ukraine. In addition, statutory rules have forbidden undertaking measures to collect tax debt incurred before 24 February 2022 to taxpayers whose tax address/place of residence is the territory of Ukraine temporarily occupied by the Russian Federation or the territory where active hostilities are taking place or areas of possible hostilities.	

	<p><b>Norway:</b> A specific legal framework has been introduced with the goal to ensure a more simplified and flexible scheme for deferred payment in connection with the outbreak of COVID-19. However, the provisions that have been adopted are detailed in a general manner, so that the Ministry of Finance of Norway could also issue regulations on deferral of payment for tax and duty claims or reduction of interest in any subsequent procedure.</p>	
<p><b>9. Cross-border procedures</b></p>		
<p>Additional safeguards in connection with EoIR</p>	<p><b>Botswana:</b> The Data Protection Act 32/2018 brings up guarantees such as sending personal data to a third country only if the third country to which the data is transferred ensures an adequate level of protection.</p> <p><b>China (People's Rep.) (2):</b> Order No. 52 of the State Taxation Administration on 12 July 2021 allows taxpayers to request access to information held exclusively by the tax authorities. The tax authorities will evaluate if they grant the access the sought information by the taxpayer.</p> <p><b>Slovenia:</b> The amendment of the Tax Procedure Act 163/2022, intends to grant more protection to taxpayers' data when processing personal data within a cross-border exchange of information procedure.</p>	<p><b>Botswana:</b> The Botswanan Income Tax Act (Cap 52:01) omits the right to inform the taxpayer whenever an exchange of information occurs, interpreted as not requiring the tax administration to inform the taxpayer. Similar omissions occur when granting assistance to taxpayers during the EOI procedures. Also, similar omissions are highlighted within the Data Protection Act 32/2018, which does not consider that taxpayers should be notified with enough time to exercise their data protection rights whenever an automatic exchange of financial information occurs.</p> <p><b>Honduras:</b> In September 2023, the OECD sent an official notification requiring the government to clarify how domestic law is written since the current state of the legislation does not make it clear whether taxpayers have the right to be notified in cases of EOI procedures.</p> <p><b>Lithuania:</b> A modification of article 39 of the Law on Tax Administration of the Republic of Lithuania IX-2112 established that information received within the framework of an EOI procedure could be used for non-tax purposes as long as these further treatments for other purposes are foreseen in the EU norms and the signed international treaties. However, this modification does not mention informing taxpayers about the future treatment of their information.</p> <p><b>Netherlands:</b> An open letter from the Ministry of Finance indicated that irrespective of the developments in ECJ case law (i.e. ECJ, 6 October 2020, C-245/19 and C-246/19, ECLI: EU:C:2020:795), the Dutch Tax and Customs Administration does not consider that there are sufficient compelling reasons to change the</p>

		<p>legislation to grant further taxpayers rights, since taxpayers have plenty of mechanisms and broad guarantees to claim for an effective remedy and challenge the lawfulness of the exchange of information order if considered unlawful.</p> <p><b>Slovenia:</b> The reform of the Tax Procedure Act obliges platform operators to report data on the business activities of each vendor they operate with digital platforms to the tax authorities, which will automatically transmit the data. However, if the platform operator deals with financial information, nothing is foreseen about informing the affected taxpayers to exercise their data protection rights before the proposed automatic exchange occurs.</p> <p><b>Ukraine:</b> The amendment of clause 69 of subsection 10 of chapter XX of the Law of Ukraine of 30 June 2023 3219-IX, temporarily withdraws the application of the minimum standard to notify the taxpayer of cross-border requests for information to those taxpayers whose tax address/place of residence is located in the territory of Ukraine temporarily occupied by the Russian Federation or in the territory where active hostilities are taking place or areas of possible hostilities. The controlling authorities temporarily stopped applying measures to collect the tax debt incurred by those taxpayers before 24 February 2022.</p>
Mutual agreement procedure	N/A	N/A
<b>10. Legislation</b>		
Constitutional limits to tax legislation: retrospective laws	<p><b>Türkiye:</b> The Constitutional Court upheld the constitutional validity of retrospectively applying additional motor vehicle tax imposed in 2023 after the earthquakes on 6 February 2023. The court stated that natural disasters, causing adverse economic effects, may justify retrospective tax legislation if proportional.</p>	<p><b>Argentina:</b> The Federal Administration of Public Resources (<i>Administración Federal de Ingresos Públicos</i>, AFIP) issued General Resolutions 5391, 5424 and 5453, introducing “additional” advances beyond the usual ones for 2023. These resolutions departed from the established basis for income tax calculation, effectively instituting a tax without proper legal authorization.</p> <p><b>Brazil:</b> Law No. 14,754/23 amended the tax regime governing investment funds to introduce retrospective taxation on non-distributed profits evaluated before the legislation’s implementation. Taxpayers who consented to early payments benefited from a nearly 50% reduction in the tax rate, leading to</p>

		<p>expectations of this provision surviving legal challenges.</p> <p><b>Bulgaria:</b> Promulgated regulations implementing ATAD 2 in State Gazette No. 14 dated 18 February 2023, with retrospective effect from 1 January 2023.</p> <p><b>Lithuania:</b> Implemented a new tax targeting the banking sector by Law XIV-1936 on 9 May 2023. This law, known as the Law of the Republic of Lithuania on Temporary Solidarity Contribution, took effect on May 16, 2023, and remains valid until 17 June 2025. It requires contributions from banks operating within Lithuania under the Banking Law, as well as from branches of banks and foreign banks licensed in EU Member States and EEA countries, and financial groups of central credit unions under the Law on Central Credit Unions. Contributions for 2023 are determined based on the period from 16 May 2023 to 31 December 2023.</p>
<p>Public consultation and involvement in the making of tax policy and law</p>	<p><b>Costa Rica:</b> Several tax reforms proposed in Parliament throughout 2023, with public consultations.</p> <p><b>Honduras:</b> Positive developments in public engagement regarding tax reform. The Tax Justice Law underwent extensive consultations, with representatives from 23 organizations participating actively and forwarding 102 recommendations to the National Congress.</p> <p><b>Lithuania:</b> Implemented a requirement in 2023 for the State Tax Inspectorate to seek public input before issuing generalized interpretations of tax laws. Specific regulations were established to outline procedures for drafting these interpretations, coordinating with other institutions, soliciting public feedback and publishing approved interpretations.</p> <p><b>United States:</b> There is no specific public consultation procedure for tax legislation. However, bills go through the legislative process, allowing public input through representatives. Taxpayers have contested IRS guidance for non-compliance with the APA's public notice and consultation process. Cases like <i>Southern California Emergency Medicine Inc. v. Werfel</i> (2023), have led to proposed regulations with public consultation periods, such as IR-2023-74 addressing micro-captive transactions.</p>	<p><b>Hungary:</b> The practical implementation of public consultation laws is ineffective. The European Union has criticized the Hungarian government for insufficient consultation in the context of the so-called conditionality procedure, as evidenced by Council Implementing Decision (EU) 2022/2506 of 15 December 2022. Civil organizations have characterized the government's public consultation efforts as superficial and lacking genuine engagement.</p> <p><b>New Zealand:</b> Minimal use of public consultation, even setting aside the usual tax policy process.</p>

## 11. Revenue practice and guidance

Access all relevant legal material

**Colombia (1):** The search engine of the electronic consultation service that was implemented in October 2022 has been improved. The particular improvement allows a more precise search of regulations and tax and judicial rulings.

**Costa Rica:** Resolution 25136/2023 of the Constitutional Court of 6 October 2023, stated that taxpayers can access tax information without any impediment. The resolution stated that the Tax Digest is fully updating and operational, and users can contact the civil servants to require documents that have not yet been published. Moreover, Costa Rica brought several examples of best practices to prove how the tax Administration anonymizes binding rulings when the requesting party is a private entity. Finally, whenever there is a change in the criterion followed by the Costa Rican Tax Administration, the new guidelines are never retroactive.

**Netherlands:** Since 30 March 2023, the Dutch Tax and Customs Administration has been publishing the opinions of the 26 knowledge groups. The publication of such opinions intends to make clear what the tax authorities think about the tax issues that have been submitted to the knowledge groups. The taxpayer can consult the opinions via a specific website designed for this purpose.

**Spain:** Sentence 953/2023 of 11 July 2023 of the Spanish Supreme Court declared the nullity of the articles 4, 9.1 15.1, as well as the first final provision, section one of Order HAC/277/2019 of 4 March 2019 that obliged citizens to interact electronically with the tax administration for the declaration of the personal income tax return. The tax administration is currently waiting for a report from the Tax Ombudsperson Council providing recommendations and actions to take in the next income tax return campaign. Furthermore, the tax administration announced to enhance the assistance to those taxpayers over 65 years old, excluding from the mandatory appointment system and giving them priority to be attended physically and by phone.

**Botswana:** There have been reported several loopholes on the Botswanan legislation regarding online access to legal materials, requiring anonymization of the binding rulings and guaranteeing that the new guidelines are not retroactively applied.

## 12. Institutional framework for protecting taxpayers' rights

<p>Statement of taxpayers' rights: Charters, service charters and taxpayers' bills of rights</p>		<p><b>Australia:</b> The Australian Taxation Office (ATO) introduced an updated version of the Taxpayers' Charter, now called "Our Charter", substantially reducing its length from over 60 pages to just 3 pages. This revision followed a review by the Inspector-General of Taxation and Taxation Ombudsman, which assessed the ATO's communication of taxpayers' rights to complain, review and appeal.</p>
<p>Organizational structures for protecting taxpayers' rights</p>	<p><b>Spain:</b> The Tax Ombudsman has published numerous reports in 2023 to bolster the protection of taxpayers' rights. Certain proposals, such as enhancements to the appointment system, are presently being reviewed by the tax administration.</p>	<p><b>Hungary:</b> The European Parliament resolution of 15 September 2022, and Council Implementing Decision (EU) 2022/2506 of 15 December 2022, indicate ongoing constraints on the Hungarian government. By the end of 2023, the government's macroeconomic goals remained largely unmet, leaving the Hungarian economy vulnerable. Moreover, the persistent deterioration of the rule of law in Hungary exacerbates these challenges, raising concerns about the protection of taxpayers' rights.</p>



## Appendix B: The Protection of Taxpayers' Rights per Country (2023)

The following are the answers provided in all national reports to the questions regarding the effective implementation in 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 text above.

### B.1. Argentina-China (People's Rep.) (1)

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>																	
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	N/A	N/A	Yes	Yes	N/A	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
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	In your country, is there a system of "cooperative compliance"/"enhanced relationship" which applies to some taxpayers only?	No	Yes	Yes	No	No	Yes	No	No	No	Yes	Yes	No	No	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
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?	N/A	Yes	Yes	N/A	N/A	No	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A	No	Yes
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?	No	Yes	Yes	No	No	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes
<b>2. The issue of a tax assessment</b>																	
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	No	No	Yes	Yes	Yes	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes
9	If yes, can the taxpayer request a meeting with the tax officer?	N/A	N/A	Yes	Yes	Yes	Yes	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	Yes	Yes
10	If a systematic error in the	No	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	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?																
<b>3. Confidentiality</b>																	
11	Is information held by your tax authority automatically encrypted?	Yes	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No	No	No	Yes	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 affairs?	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
13	If yes, must the tax official identify themselves before accessing information held about a specific taxpayer?	Yes	N/A	Yes	N/A	N/A	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
14	Is access to information held about a taxpayer audited internally to	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	check if there has been any unauthorized access to that information?																
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	No	No	No	No	Yes
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	Yes	No	No	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
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	No	No	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes
19	Is there a system of protection of legally privileged communication	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	Is there a distinction between the taxpayer and its advisers?																
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	No	Yes	No	Yes	No	No	No	No	No	No	No
<b>4. Normal audits</b>																	
21	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	Yes	No	Yes	No	No	No	Yes	No	No	No	No	Yes	Yes	Yes	No	Yes
22	If yes, does this mean only one audit per tax year?	Yes	N/A	Yes	N/A	No	N/A	Yes	N/A	N/A	No	N/A	No	No	No	No	Yes
23	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	No	Yes	No	Yes	No	No	Yes	Yes	No	No	No	No	No	Yes	Yes
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	taxation for a particular year)?																
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)?	No	No	No	No	No	No	Yes	No	Yes	No	No	Yes	Yes	Yes	No	Yes
26	If yes, what is the normal limit in months?	No limit	No limit	No limit	No limit	No limit	No limit	10 - 12	No limit	> 24	No limit	No limit	4-6	4-6	4-6	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
28	May the opinion of independent experts be used in the audit process?	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	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	No	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	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	Yes	No	No	No	No	No	No	No	Yes
<b>5. More intensive audits</b>																	

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
31	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	No	No	No	No	No	No	Yes	No	No	Yes	Yes	No	No	No	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	No	N/A	N/A	No	N/A	N/A	No	No	N/A	N/A	N/A	Yes	N/A
33	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	N/A	No	N/A	N/A	Yes	N/A	N/A	No	No	N/A	N/A	No	Yes	N/A
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?	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	Yes	Yes
35	If yes, is there a requirement to give the taxpayer a	N/A	N/A	Yes	N/A	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Yes	No



#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	warning that the taxpayer can rely on the right of non-self-incrimination?																
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	No	No	Yes	Yes	No	Yes	No	No	Yes	Yes	No	No	No	No	No
37	May the tax authority enter and search the dwelling places of individuals?	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	Yes	No
38	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
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	No	No	Yes	No	No	No	No	No	No	No	No	No
<b>6. Reviews and appeals</b>																	
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	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)	
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	
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	No	No	Yes	No	No	No	No	No	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	No	Yes	No	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes	
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	> 24	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	> 24	4-6
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	No	No	Yes	No	No	No	Yes	Yes	No	No	No	No	Yes	
47	Is there a system for the simplified	No	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	resolution of tax disputes (e.g. by a determination on the file, or by e-filing)?																
48	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
49	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	Yes	No	Yes	No	No	No	Yes	Yes	No	No	No	No	Yes	No	No	Yes
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	N/A	Yes	N/A	N/A	N/A	Yes	No	N/A	N/A	N/A	N/A	Yes	N/A	Yes	Yes
51	Does the loser have to pay the costs of a tax appeal?	Yes	Yes	No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
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)?	Yes	Yes	N/A	N/A	N/A	Yes	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
53	If there is usually a public hearing, can the taxpayer request a	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?																
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	Yes	Yes	N/A	No	No	N/A	N/A	No	No	Yes	Yes	Yes	No	No
<b>7. Criminal and administrative sanctions</b>																	
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?	b, c	c	b	c	b	b, c	b	c	b	b	b	b, c	b	b, c	b	b, 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)?	Yes	No	No	Yes	No	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes
58	If the taxpayer makes a voluntary disclosure of a tax liability, can	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	this result in a reduced or a zero penalty?																
<b>8. Enforcement of taxes</b>																	
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>9. Cross-border situations</b>																	
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	No	No	No	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes
63	If no to either of the previous two questions, did your country	N/A	N/A	N/A	N/A	N/A	N/A	N/A	No	N/A	No	No	No	No	No	No	N/A

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	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?																
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to them with another country?	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 exchange of information relating to them with another country?	Yes	No	No	No	No	Yes	No	No	Yes	Yes	Yes	No	No	No	Yes	No
66	Does the taxpayer have the right to see any information received from another country that relates to them?	Yes	No	No	No	No	Yes	Yes	No	No	No	No	No	Yes	No	Yes	No
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	No	Yes	Yes	No	No	No	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	No

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
68	Does the taxpayer have the right to see the communications exchanged in the context of the mutual agreement procedure?	No	No	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No
<b>10. Legislation</b>																	
69	Is there a prohibition on retrospective tax legislation in your country?	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	Yes	No	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	No	Yes
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	No	Yes	Yes	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
<b>11. Revenue practice and guidance</b>																	
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes



#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	applies your tax law?																
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	No	No	No	Yes	No
75	If yes, is it legally binding?	No/A	Yes	Yes	No	No	Yes	No/A	No/A	No/A	No/A	No/A	No/A	No/A	No/A	No	No/A
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	Yes	No	No	No	No	No
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)?	No/A	Yes	Yes	No/A	No	No	No/A	No	Yes	Yes	Yes	No/A	No/A	No/A	Yes	Yes
<b>12. Institutional framework for protecting taxpayers' rights</b>																	
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	Yes	Yes	No	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
79	If yes, are its provisions legally effective?	No/A	No	No	No/A	No/A	Yes	Yes	No/A	No/A	Yes	Yes	No	No	No	No	Yes
80	Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?	No	Yes	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
81	If yes, can the ombudsman intervene in an ongoing	No/A	No	No	No/A	No/A	Yes	No/A	No/A	No/A	No/A	No/A	No	No	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Bahamas	Barbados	Belgium	Bolivia	Bosnia and Herzegovina	Botswana	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Canada	China (People's Rep.) (1)
	dispute between the taxpayer and the tax authority (before it goes to court)?																
82	If yes to a (tax) ombudsman, are they independent from the tax authority?	N/A	Yes	N/A	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	No

## B.2. China (People's Rep.) (2)-Ireland

#	Question	China (People's Rep.) (2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland	
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>																		
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	No	Yes	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	N/A	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	
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
5	In your country, is there a system of "cooperative compliance"/"enhanced relationship" which applies to some taxpayers only?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	
6	If yes, are there rules or procedures in place to ensure this system is available to all	Yes	Yes	Yes	Yes	Yes	N/A	No	No	No	N/A	N/A	N/A	N/A	N/A	N/A	Yes	

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland	
	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, other special cases) to receive assistance in complying with their tax obligations?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	
<b>2. The issue of a tax assessment</b>																		
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	
9	If yes, can the taxpayer request a meeting with the tax officer?	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No	No	Yes	Yes	Yes	No	N/A	N/A	Yes	
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	Yes	No	No	No	Yes	No	Yes	No	Yes	Yes	No	No	No	Yes	No	Yes	

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	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?																
<b>3. Confidentiality</b>																	
11	Is information held by your tax authority automatically encrypted?	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	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 affairs?	Yes	No	No	No	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	Yes
13	If yes, must the tax official identify themselves before accessing information held about a specific taxpayer?	Yes	N/A	N/A	N/A	Yes	Yes	N/A	N/A	Yes	Yes	N/A	N/A	Yes	N/A	Yes	Yes
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	No	No	No	No	No	No	No	No	Yes	Yes	No	No	Yes	Yes	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	No	Yes	No	Yes	No
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	Yes	No	No	Yes	Yes	No	No	No	No	Yes	No	No	No	Yes	No	Yes
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	Yes	Yes	No	No	Yes	Yes	No	No	No	No	Yes	No	Yes	Yes
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisers?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No
20	If yes, does this extend to	Yes	Yes	Yes	Yes	No	N/A	No	No	Yes	No	N/A	No	No	No	N/A	No

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	advisers other than those who are legally qualified (e.g. accountants or tax advisers)?																
<b>4. Normal audits</b>																	
21	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	Yes	Yes	Yes	Yes	No	Yes	No	No	No	Yes	No	No	Yes	Yes	No	Yes
22	If yes, does this mean only one audit per tax per year?	Yes	Yes	Yes	Yes	N/A	No	N/A	N/A	N/A	No	N/A	N/A	No	No	N/A	Yes
23	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	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 get finality of taxation for a particular year)?	No	No	No	Yes	No	No	No	Yes	No	No	Yes	No	Yes	No	Yes	No
25	Are there time limits	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No



#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	applicable to the conduct 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?	1-3	> 24	> 24	No limit	No limit	> 24	No limit	No limit	> 24	16 - 18	No limit	No limit	7-9	1-3	19 - 21	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	No	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	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	No	No	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 to different periods or different taxes)?	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
<b>5. More intensive audits</b>																	
31	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the	No	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	Yes

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	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	N/A	N/A	Yes	No	Yes	Yes	N/A	No	No	No	N/A	N/A	N/A	N/A	Yes
33	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	N/A	N/A	Yes	No	No	N/A	Yes	No	Yes	N/A	N/A	N/A	N/A	No
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?	No	No	No	No	No	No	Yes	No	Yes	No	No	No	No	Yes	No	No
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the	N/A	N/A	N/A	N/A	N/A	N/A	Yes	N/A	Yes	N/A	N/A	N/A	N/A	No	N/A	N/A

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	right of non-self-incrimination?																
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	No	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	No	No	No	Yes
37	May the tax authority enter and search the dwelling places of individuals?	No	No	No	No	Yes	No	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes
38	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	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	Yes	Yes	No	No	No	No	No	No	Yes	No	Yes
<b>6. Reviews and appeals</b>																	
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	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
41	Does the taxpayer need permission to	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	appeal to the first instance tribunal?																
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes
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?	No	No	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	Yes	No	No	No	No	Yes	No	No	No	No	No	No	Yes	No	No	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	1-3	No limit	No limit	No limit	No limit	>24	No limit	No limit	No limit	No limit	No limit	No limit	22-24	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?	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	Yes	No	Yes
47	Is there a system for the simplified resolution of tax disputes	Yes	No	No	No	No	No	Yes	No	Yes	Yes	Yes	No	Yes	No	No	Yes

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	(e.g. by a determination on the file, or by e-filing)?																
48	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
49	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	No	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes	No
51	Does the loser have to pay the costs of a tax appeal?	Yes	No	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	Yes
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)?	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes
53	If there is usually a public hearing, can the taxpayer request a hearing in	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes	No	No	Yes

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	camera (i.e. not in public) to preserve secrecy/confidentiality?																
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	No	No	Yes	Yes	N/A	Yes	Yes	N/A	Yes	Yes	No	N/A	N/A	Yes	No	Yes
<b>7. Criminal and administrative sanctions</b>																	
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?	b	c	b	b, c	b	b	no	c	no	c	a, b, c	b, c	a, b	a, b	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	Yes	No	No	N/A	Yes	N/A	Yes	Yes	No	Yes	Yes	N/A	Yes
58	If the taxpayer makes a voluntary disclosure of a tax liability, can	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	this result in a reduced or a zero penalty?																
<b>8. Enforcement of taxes</b>																	
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	Yes	No	No	No	No	No	No	Yes	Yes	No	No	No	Yes
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>9. Cross-border situations</b>																	
61	Does the taxpayer have the right to be informed before information relating to them is exchanged in response to a specific request?	Yes	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	Yes	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes



#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
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	No	N/A	N/A	No	N/A	N/A	N/A	No	N/A	N/A	N/A	Yes	N/A	N/A
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to them with another country?	Yes	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to them with another country?	Yes	No	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No	No	Yes
66	Does the taxpayer have the right to see any information received from another country that relates to them?	Yes	No	No	Yes	No	Yes	Yes	No	Yes	No	No	No	No	Yes	Yes	Yes
67	Does the taxpayer have the right in all cases to	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	No	No	No	No	Yes	No

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	require a mutual agreement procedure is initiated?																
68	Does the taxpayer have the right to see the communications exchanged in the context of the mutual agreement procedure?	No	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes	No	Yes
<b>10. Legislation</b>																	
69	Is there a prohibition on retrospective tax legislation in your country?	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No	Yes	Yes	No	Yes
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	Yes	N/A	N/A	N/A	N/A	N/A	Yes	N/A	Yes	Yes	N/A	Yes	N/A	N/A	No	N/A
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>11. Revenue practice and guidance</b>																	
73	Does the tax authority in your country	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?																
74	Does your country have a generalized system of advance rulings available to taxpayers?	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes
75	If yes, is it legally binding?	N/A	No	N/A	Yes	N/A	Yes	Yes	Yes	Yes	N/A	Yes	N/A	N/A	Yes	Yes	No
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	No	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. protection of legitimate expectations)?	N/A	Yes	Yes	Yes	No	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes	No	Yes	Yes
<b>12. Institutional framework for protecting taxpayers' rights</b>																	
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	No	Yes	No	Yes	No
79	If yes, are its provisions legally effective?	Yes	Yes	No	Yes	No	N/A	N/A	N/A	N/A	N/A	Yes	N/A	Yes	N/A	No	N/A
80	Is there a (tax) ombudsman/ta	No	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No	No	Yes	No	No	Yes

#	Question	China (People's Rep. 1/2)	Colombia (1)	Colombia (2)	Costa Rica	Croatia	Czech Republic	Denmark	Finland	Germany	Greece	Guatemala	Guyana	Honduras	Hungary	India	Ireland
	taxpayers' advocate/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	Yes	N/A	N/A	Yes	Yes	N/A	N/A	Yes	N/A	N/A	Yes	N/A	N/A	Yes
82	If yes to a (tax) ombudsman, are they independent from the tax authority?	N/A	No	Yes	N/A	N/A	Yes	Yes	N/A	N/A	Yes	N/A	N/A	Yes	No	N/A	Yes

## B.3. Italy-Poland (2)

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>																	
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	N/A	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	No	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	No	Yes	Yes	Yes	Yes	Yes	Yes
5	In your country, is there a system of "cooperative compliance"/"enhanced relationship" which applies to some taxpayers only?	Yes	No	Yes	Yes	No	Yes	No	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes
6	If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a	Yes	N/A	Yes	Yes	N/A	Yes	N/A	N/A	No	N/A	No	No	Yes	N/A	Yes	Yes

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	non-preferential/non-discriminatory/non-arbitrary basis?																
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?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes
<b>2. The issue of a tax assessment</b>																	
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
9	If yes, can the taxpayer request a meeting with the tax officer?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	N/A	N/A	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 tax has been	Yes	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No	No

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?																
<b>3. Confidentiality</b>																	
11	Is information held by your tax authority automatically encrypted?	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	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 affairs?	No	Yes	Yes	No	No	No	No	Yes	Yes	No	No	Yes	No	Yes	No	No
13	If yes, must the tax official identify themselves before accessing information held about a specific taxpayer?	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
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	No	Yes	Yes	No	No	No	Yes	No	Yes	No	No	Yes	Yes	Yes	No	No
15	Are there examples of tax officials	No	No	No	No	No	No	Yes	No	No	No	Yes	Yes	No	No	No	No



#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?																
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	No	No	Yes	No	No	No	Yes	No	No	No	No	Yes	Yes	No	No
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	No	No	Yes	No	No	No	Yes	Yes	No	No	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)?	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No	No
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisers?	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
20	If yes, does this extend to advisers other than those who are legally	No	No	N/A	No	No	N/A	No	N/A	No	N/A	Yes	No	No	No	No	No

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	qualified (e.g. accountants or tax advisers)?																
<b>4. Normal audits</b>																	
21	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No	No
22	If yes, does this mean only one audit per tax per year?	N/A	N/A	No	N/A	No	Yes	No	Yes	Yes	No	N/A	N/A	N/A	No	N/A	N/A
23	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	No	Yes	Yes	Yes	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 get finality of taxation for a particular year)?	Yes	No	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No	No
25	Are there time limits applicable to the conduct of a normal audit	No	No	No	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	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	10 - 12	No limit	No limit	No limit	10 - 12	13 - 15	> 24	No limit	No limit	> 24	10 - 12	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
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	No	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	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	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	Yes	Yes	No	No	No	No	No	No	No	No	No
<b>5. More intensive audits</b>																	
31	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	No	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No	Yes	No	Yes	Yes

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
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	No	Yes	Yes	N/A	N/A	N/A	N/A	N/A	Yes	N/A	No	N/A	Yes	No
33	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	N/A	Yes	No	N/A	N/A	N/A	N/A	N/A	No	N/A	Yes	N/A	No	No
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?	No	No	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	Yes	Yes
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-	N/A	N/A	N/A	No	N/A	N/A	No	N/A	N/A	N/A	Yes	No	Yes	N/A	Yes	Yes

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	incrimination?																
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	Yes	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?	Yes	Yes	Yes	No	Yes	No	No	No	Yes	Yes	No	Yes	No	No	Yes	Yes
38	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	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?	Yes	Yes	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	Yes	Yes
<b>6. Reviews and appeals</b>																	
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	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first instance	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	tribunal?																
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No
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?	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	Yes	No	No	No	No	No	Yes	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	10 - 12	No limit	No limit	No limit	No limit	No limit	1-3	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?	Yes	No	No	No	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes
47	Is there a system for the simplified resolution of tax disputes (e.g. by a determination	Yes	No	No	No	No	Yes	No	No	No	No	No	No	No	No	Yes	Yes

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	on the file, or by e-filing)?																
48	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	Yes	No	No	No	No	No	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A	No	Yes	N/A	Yes	N/A	Yes	Yes
51	Does the loser have to pay the costs of a tax appeal?	Yes	No	No	Yes	No	Yes	Yes	No	No	No	Yes	No	Yes	No	Yes	Yes
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)?	Yes	N/A	N/A	No	N/A	Yes	Yes	N/A	N/A	N/A	No	N/A	Yes	N/A	Yes	Yes
53	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to	Yes	Yes	Yes	Yes	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	Yes

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	preserve 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
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>7. Criminal and administrative sanctions</b>																	
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?	b	b, c	no	b, c	a, c	b	b, c	b	b	b, c	b, c	c	b, c	b	b, c	b, 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)?	No	Yes	N/A	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	No	No
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes



#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	reduced or a zero penalty?																
<b>8. Enforcement of taxes</b>																	
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	Yes	No	No	No	No	Yes	No	No	No	No	No	Yes	No	No	No
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>9. Cross-border situations</b>																	
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	No	No	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 exchange of information?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
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	N/A	No	No	N/A	No	Yes	N/A	N/A	N/A	Yes	N/A	No	No	N/A	N/A
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to them with another country?	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 exchange of information relating to them with another country?	No	Yes	No	Yes	No	Yes	No	No	Yes	No	No	Yes	No	No	No	No
66	Does the taxpayer have the right to see any information received from another country that relates to them?	No	No	No	No	No	Yes	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes
67	Does the taxpayer have	Yes	No	No	Yes	No	Yes	Yes	No	Yes	No	No	No	No	No	Yes	Yes

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	the right in all cases to require a mutual agreement procedure is initiated?																
68	Does the taxpayer have the right to see the communications exchanged in the context of the mutual agreement procedure?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
<b>10. Legislation</b>																	
69	Is there a prohibition on retrospective tax legislation in your country?	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	Yes	N/A	No	No	N/A	N/A	N/A	N/A	No	Yes	Yes	N/A	N/A	N/A	N/A
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	Yes	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	Yes	Yes
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
<b>11. Revenue practice and guidance</b>																	

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	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?	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
75	If yes, is it legally binding?	No	No	Yes	N/A	Yes	No	Yes	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	No	No	No	No	Yes	Yes	No	No	Yes	Yes	No	No	No	No	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. protection of legitimate expectations)?	N/A	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes	Yes	Yes	N/A	Yes	No	Yes	Yes
<b>12. Institutional framework for protecting taxpayers' rights</b>																	
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	Yes	No	No	No	Yes	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No
79	If yes, are its provisions	Yes	N/A	N/A	N/A	No	N/A	N/A	Yes	Yes	N/A	N/A	No	Yes	Yes	N/A	N/A

#	Question	Italy	Jamaica	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mexico (1)	Mexico (2)	Nepal	Netherlands	New Zealand	Norway	Peru	Poland (1)	Poland (2)
	legally effective?																
80	Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	Yes	N/A	No	No	N/A	N/A	Yes	Yes	Yes	N/A	No	No	Yes	No	Yes	Yes
82	If yes to a (tax) ombudsman, are they independent from the tax authority?	No	N/A	No	Yes	N/A	N/A	Yes	Yes	Yes	N/A	Yes	Yes	Yes	N/A	Yes	Yes

## B.4. Portugal-Venezuela

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>															
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	No	Yes	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	No	No	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
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	No	Yes	Yes	Yes
5	In your country, is there a system of "cooperative compliance"/"enhanced relationship" which applies to some taxpayers only?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No
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?	Yes	N/A	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A	N/A	Yes	Yes	N/A
7	Are there special arrangements for individuals who face particular	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	No

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?														
<b>2. The issue of a tax assessment</b>															
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9	If yes, can the taxpayer request a meeting with the tax officer?	No	N/A	No	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
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?	No	Yes	Yes	No	No	No	Yes	Yes	No	No	No	Yes	No	No
<b>3. Confidentiality</b>															
11	Is information held by your tax authority automatically encrypted?	No	Yes	Yes	No	Yes	Yes	No	No	No	Yes	No	Yes	Yes	No
12	Is access to information held by the tax authority about a	No	Yes	No	No	Yes	No	No	Yes	No	Yes	No	Yes	Yes	Yes

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?														
13	If yes, must the tax official identify themselves before accessing information held about a specific taxpayer?	N/A	Yes	N/A	N/A	Yes	N/A	No	Yes	N/A	Yes	N/A	No	Yes	No
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	Yes	Yes	No	No	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes	No
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	No	No	No	No	No	Yes	No	Yes	No	No	No	No	Yes	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	Yes	Yes	No	No	Yes	No	Yes	No	Yes	Yes	No	Yes	No
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	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	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	Yes



#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	information)?														
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisers?	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	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	Yes	No	No	No	No	N/A	N/A	No	No	N/A	No	Yes	Yes
<b>4. Normal audits</b>															
21	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes
22	If yes, does this mean only one audit per tax per year?	Yes	Yes	No	N/A	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	Yes	No
23	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	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 get finality of taxation for a particular year)?	Yes	Yes	No	No	No	No	No	No	No	No	Yes	No	No	No

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
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)?	Yes	No	Yes	No	Yes	No	No	No	No	Yes	Yes	No	Yes	Yes
26	If yes, what is the normal limit in months?	4-6	No limit	4-6	No limit	16-18	No limit	No limit	No limit	No limit	10-12	1-3	No limit	> 24	4-6
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
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	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	No	No	Yes	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	Yes	No	No	No
<b>5. More intensive audits</b>															
31	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	Yes	No	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty	Yes	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	No	Yes	No	N/A

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	procedure/criminal procedure?														
33	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	No	N/A	No	No	N/A	N/A	N/A	N/A	N/A	N/A	No	No	No	N/A
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?	No	Yes	Yes	Yes	No	Yes	Yes	No	No	No	Yes	Yes	Yes	No
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?	N/A	Yes	Yes	No	N/A	Yes	Yes	N/A	N/A	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	Yes	No	No	Yes	No	Yes	No	Yes	No	Yes	No	No
37	May the tax authority enter and search the dwelling places of individuals?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No
38	Is a court order required before the tax authority can use interception of communications (e.g. telephone	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	tapping or access to electronic communications)?														
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No	Yes	No
<b>6. Reviews and appeals</b>															
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	Yes	Yes	Yes	No	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
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	Yes	No	Yes	No	No	No	Yes	No	No
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?	No	No	Yes	No	Yes	No	Yes	Yes	No	Yes	No	No	No	No
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	No	No	No	Yes	No	No	Yes	No	No	No
45	If yes, what is the normal time it takes for a tax case to be	No limit	13 - 15	No limit	No limit	No limit	No limit	No limit	7-9	No limit	No limit	1-3	No limit	No limit	No limit

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	concluded on appeal?														
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	Yes	No	No	No	Yes	No	No	No	Yes	Yes	Yes
47	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file or by e-filing)?	No	No	No	No	No	No	No	No	No	Yes	Yes	No	Yes	No
48	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No	No	Yes	No	No
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	Yes	No	Yes	Yes	N/A	N/A	Yes	N/A	N/A	Yes	Yes	N/A	N/A
51	Does the loser have to pay the costs of a tax appeal?	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes	Yes	No	No	Yes
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	Yes	Yes	No	N/A	Yes	N/A	N/A	Yes	N/A	No	Yes	N/A	N/A	N/A

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	other party)?														
53	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	Yes	Yes	No	No	No	Yes	No	No	Yes	No	Yes	Yes	Yes	No
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	N/A	Yes	Yes	No	No
<b>7. Criminal and administrative sanctions</b>															
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?	b	b, c	c	no	b, c	c	b	c	b, c	no	a, b	b	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)?	No	No	No	N/A	Yes	Yes	No	Yes	No	N/A	No	No	N/A	No
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
<b>8. Enforcement of taxes</b>															
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	Yes	No	No	No	No	No
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>9. Cross-border situations</b>															
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	Yes	No	No	No	Yes	No	No	No	No	No	No	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	Yes
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	No	N/A	N/A	N/A	N/A	No	No	N/A	N/A	N/A	N/A	No	No	N/A

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	Information?														
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to them with another country?	No	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to them with another country?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes	No	Yes
66	Does the taxpayer have the right to see any information received from another country that relates to them?	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	No	Yes	Yes	Yes	No	Yes	No	No	No	Yes	No	No	No	No
68	Does the taxpayer have the right to see the communications exchanged in the context of the mutual agreement procedure?	No	No	Yes	No	No	Yes	No	No	No	No	No	No	No	Yes
<b>10. Legislation</b>															
69	Is there a prohibition on retrospective tax legislation in your country?	No	Yes	Yes	No	No	Yes	Yes	No	No	No	Yes	No	No	Yes
70	If no, are there restrictions on the adoption of	Yes	N/A	N/A	No	Yes	N/A	N/A	No	Yes	No	N/A	Yes	No	N/A



#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
	retrospective tax legislation in your country?														
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No	Yes
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>11. Revenue practice and guidance</b>															
73	Does the tax authority in your country publish guidance (e.g. 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
74	Does your country have a generalized system of advance rulings available to taxpayers?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No
75	If yes, is it legally binding?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	N/A	No	No	N/A	Yes	N/A
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	Yes	No	Yes	No	No	No	No	No	No	No	Yes	Yes	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	N/A	Yes	N/A	Yes	No	No	Yes	N/A	N/A	Yes	Yes	No	Yes

#	Question	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Trinidad & Tobago	Türkiye	Ukraine	United Kingdom	United States	Venezuela
<b>12. Institutional framework for protecting taxpayers' rights</b>															
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	Yes	No	Yes	Yes	No	No	Yes	No	Yes	No	Yes	Yes	Yes
79	If yes, are its provisions legally effective?	N/A	No	N/A	No	Yes	N/A	No	Yes	N/A	No	N/A	No	Yes	Yes
80	Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?	No	No	No	Yes	Yes	No	No	Yes	No	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	N/A	N/A	Yes	Yes	N/A	N/A	Yes	N/A	No	N/A	Yes	Yes	N/A
82	If yes to a (tax) ombudsman, are they independent from the tax authority?	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A	Yes	N/A	Yes	Yes	N/A

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