Observatory on the Protection of Taxpayers’ Rights

Below you will find a questionnaire filled in by Zhengwen Shi, Director of the Center for Fiscal and Tax Law Studies at the China University of Political Science and Law, and OPTR National Reporter of China.

This set of questionnaires comprise the National Reporter’s assessment on the country practice during 2018 in the protection of taxpayers’ rights (Questionnaire # 1), and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers’ rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on “The Practical Protection of Taxpayers’ Fundamental Rights” (Questionnaire # 2). These questionnaires were filled in considering the following parameters:

1. For Questionnaire # 1, an assertive assessment (yes/no) was required on the effective implementation in domestic law of 82 legal safeguards, guarantees and procedures relevant in 12 specific areas for the practical protection of taxpayers’ rights, as identified by Baker & Pistone in 2015. This line of questioning aims to get an overview of the state of protection of taxpayers’ rights in the country in 2018.

2. For Questionnaire # 2, an impartial, non-judgmental evaluation was required on the developments, either of improvement or of decline, in the level of realisation of 57 minimum standards and 44 best practices, distributed into 87 benchmarks for the practical protection of taxpayers’ rights. In this regard, a summary of events occurred in 2018 (legislation enacted, administrative rulings, circulars, case law, tax administration practices), that serve as grounds for each particular assessment, was also required.

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## 1. Identifying taxpayers and issuing tax returns

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Do taxpayers have the right to see the information held about them by the tax authority?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>If yes, can they request the correction of errors in the information?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>In your country, is there a system of “cooperative compliance”?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>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?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Is it possible in your country for taxpayers to communicate electronically with the tax authority?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Is there a system in place to prevent unauthorised access to the channel of communication?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>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?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 2. The issue of tax assessments

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>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?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>If yes, can the taxpayer request a meeting with the tax officer?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 3. Confidentiality

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Is information held by the tax authority automatically encrypted?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>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?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers’ data?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Is information about the tax liability of specific taxpayers publicly available in your country?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Is &quot;naming and sharing&quot; of non-compliant taxpayers practiced in your country?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Is there a system in your country by which the courts may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Is there a system of protection of legally privileged communications between the taxpayer and its advisors?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>If yes, does this extend to advisors other than those who are legally-qualified (e.g. accountants, tax advisors)?</td>
<td></td>
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</tr>
</tbody>
</table>

## 4. Criminal and administrative sanctions

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Does the principle ne bis in idem apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>If no to either of the previous two questions, did your country previously recognise the right of the taxpayer to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?</td>
<td></td>
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</tbody>
</table>

## 5. Enforcement of taxes

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>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?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>If yes, can the taxpayer request a meeting with the tax officer?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Is there a system of protection of legally privileged communications between the taxpayer and its advisors?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>If yes, does this extend to advisors other than those who are legally-qualified (e.g. accountants, tax advisors)?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 6. Cross-border procedures

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>If yes, can the taxpayer request the correction of errors in the information?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Is there a system in your country by which the courts may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Is there a system of protection of legally privileged communications between the taxpayer and its advisors?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>If yes, does this extend to advisors other than those who are legally-qualified (e.g. accountants, tax advisors)?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 7. Legislation

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>32</td>
<td>Is the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>If yes, can the taxpayer request the correction of errors in the information?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Is there a system in your country by which the courts may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Is there a system of protection of legally privileged communications between the taxpayer and its advisors?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>If yes, does this extend to advisors other than those who are legally-qualified (e.g. accountants, tax advisors)?</td>
<td></td>
<td></td>
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</tbody>
</table>
### 4. Normal audits

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>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 finalised)?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>22</td>
<td>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)?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>23</td>
<td>If yes, what is the normal limit in months?</td>
<td>24 months</td>
<td>✓</td>
</tr>
<tr>
<td>24</td>
<td>Does the taxpayer have the right to be represented by a person of its choice in the audit process?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>25</td>
<td>May the opinion of independent experts be used in the audit process?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>26</td>
<td>Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>27</td>
<td>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)?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>28</td>
<td>If yes, does this mean only one audit per tax per year?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>29</td>
<td>Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>30</td>
<td>Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of resolution for a particular year)?</td>
<td>☐</td>
<td>⚫</td>
</tr>
</tbody>
</table>

### 5. More intensive audits

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>Is authorisation by a court always needed before the tax authority may enter and search premises?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>32</td>
<td>May the tax authority enter and search the dwelling places of individuals?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>33</td>
<td>Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>34</td>
<td>Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>35</td>
<td>Is the principle nemo tenetur applied in tax investigations (i.e. the principle against self-incrimination)?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>36</td>
<td>If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>37</td>
<td>If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>38</td>
<td>Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer’s right not to self-incriminate is recognised?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>39</td>
<td>If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?</td>
<td>☐</td>
<td>⚫</td>
</tr>
</tbody>
</table>

### 6. Review and appeals

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>41</td>
<td>Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>42</td>
<td>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?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>43</td>
<td>Are there time limits applicable for a tax case to complete the judicial appeal process?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>44</td>
<td>If yes, what is the normal time it takes for a tax case to be concluded on appeal?</td>
<td>16 months</td>
<td>✓</td>
</tr>
<tr>
<td>45</td>
<td>Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solv et repetit)?</td>
<td>☐</td>
<td>⚫</td>
</tr>
</tbody>
</table>

### 11. Revenue practice and guidance

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>73</td>
<td>Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?</td>
<td>⚫</td>
<td>☐</td>
</tr>
<tr>
<td>74</td>
<td>If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>75</td>
<td>Does your country have a generalised system of advanced rulings available to taxpayers?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>76</td>
<td>If yes, is it legally binding?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>77</td>
<td>If a binding rule is refused, does the taxpayer have a right to appeal?</td>
<td>☐</td>
<td>⚫</td>
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</tbody>
</table>

### 12. Institutional framework for protecting taxpayers' rights

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>78</td>
<td>Is there a taxpayer's charter or taxpayers' bill of rights in your country?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>79</td>
<td>If yes, are its provisions legally effective?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>80</td>
<td>Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>81</td>
<td>If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td>82</td>
<td>If yes to a (tax) ombudsman, is he/she independent from the tax authority?</td>
<td>☐</td>
<td>⚫</td>
</tr>
<tr>
<td></td>
<td>Question</td>
<td>Yes</td>
<td>No</td>
</tr>
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</tr>
<tr>
<td>46</td>
<td>If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing?</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Does the taxpayer need permission to appeal to the first instance tribunal?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Does the taxpayer need permission to appeal to the second or higher instance tribunals?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e-filing)?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Does the loser have to pay the costs in a tax appeal?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Are judgments of tax tribunals published?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>If yes, can the taxpayer preserve its anonymity in the judgment?</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?</td>
<td>☒</td>
<td></td>
</tr>
</tbody>
</table>
### Country: China  
**National Reporter:** Professor Zhengwen Shi  
**Affiliation:**  

<table>
<thead>
<tr>
<th>#</th>
<th>Minimum standard</th>
<th>Best practice</th>
<th>Shift Away</th>
<th>Shift Towards</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Implement safeguards to prevent impersonation when issuing unique identification number</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>The system of taxpayer identification should take account of religious sensitivities</td>
<td></td>
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</tbody>
</table>

**Summary of relevant facts in 2018**

China's tax authorities have taken protective measures on taxpayers' identification numbers to prevent impersonation when issuing unique identification numbers. China meets the requirements of the minimum standards. There's no changes during the report period.

**Veterinary:**

- **Country:** China  
- **National Reporter:** Professor Zhengwen Shi  
- **Affiliation:**  

- **Recommended protective measures on taxpayers' identification numbers to prevent impersonation when issuing unique identification numbers.**

China meets the requirements of the minimum standards. There's no changes during the report period.

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- **Affiliation:**  

- **Recommended protective measures on taxpayers' identification numbers to prevent impersonation when issuing unique identification numbers.**

China meets the requirements of the minimum standards. There's no changes during the report period.
Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes

Chinese tax law has set confidentiality obligation of financial institutions on tax-related financial information of non-residence, and the confidentiality obligation of intrusted tax collection institutions, while no clear confidentiality requirement for other situations. At present, when China’s State Administration of Taxation collects information from third parties, cooperative agreements such as tax memorandums will be concluded, which contain articles state that both parties shall not release the information to the public or third parties nor use it for commercial purposes. The laws regulating third parties (e.g., banking law) also impose obligations of confidentiality on the third parties with respect to information of their clients, and tax related information of the clients fall within the obligations.

China meets the requirements of the minimum standard. There’s no change during the report period.

References:
1. "China’s tax law has no specific provision on it, however, based on legal analysis and tax practice, should the withholding agent fails to pay the tax, the withholding agent shall be exempted from corresponding liability for it’s tax obligation is eliminated by withholding action."

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

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

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China meets the requirements of the best practice. There’s no change during the report period.

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1. "Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax"

Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax
Where pre/populated returns are used, these should be sent to taxpayers to correct errors.

No pre-populated system adopted on national level. Chongqing, one of the experimental cities of the real estate tax, requires that the tax authorities shall notify the taxpayers of the tax amount payable and the deadline of tax return in advance, and then taxpayers shall file the tax returns before deadline. After that, the tax authorities will compared the amounts again. But the provisions of Chongqing do not indicate explicitly that taxpayers can correct the errors in the notification.

China meets the requirements of the minimum standard. There is no change during report period.

According to materials:

《重庆市个人住房房产税征收管理实施细则》

第22条
税务机关于每年8月31日前将应税住房的坐落地址、计税依据、应纳税额、申报期限等通过直接送达、邮寄、公告等方式通知纳税人。

第23条
纳税人应在规定的申报期限内主动向应税住房所在地税务机关,报送纳税申报表,提供减免税要件和其他纳税资料,如实办理纳税申报。

纳税人可以直接到税务机关办理纳税申报,也可以按税务局规定的其他方式办理纳税申报和报送事项。

第24条
税务机关将纳税人申报情况与征收档案信息比对,核实纳税人实际应纳税额,进行税款征收,并向纳税人开具完税凭证。

Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies

Chinese law clearly stipulates that taxpayers have the right to inquire their own tax-related information and apply for verification when they have any objections. China have promulgated specific normative document as guidance.

China meets the requirements of the minimum standard and the best practice. There’s no change during the report period.

According to materials:

《国家税务总局关于发布<涉税信息查询管理办法>的公告》(国家税务总局公告2016年第41号)

第7条
纳税人可以通过网站、客户端软件、自助办税终端等渠道,经过有效身份认证和识别,自行查询税费缴纳情况、纳税信用评价结果、涉税事项办理进度等自身涉税信息。

第8条
纳税人按照本办法第7条无法自行获取所需自身涉税信息,可以向税务机关提出书面申请,税务机关应当在本单位职责权限内予以受理。书面申请查询,应当提交以下资料: (一) 涉税信息查询申请表(式样见附件1); (二) 纳税人本人(法定代表人或主要负责人)有效身份证件原件及复印件。

第10条
纳税人书面申请查询,要求税务机关出具书面查询结果的,税务机关应当出具《涉税信息查询结果告知书》。涉税信息查询结果不作为涉税证明使用。

第11条
纳税人对查询结果有异议,可以向税务机关申请核实,并提交以下资料: (一) 涉税信息查询结果核实申请表(式样见附件3); (二) 原涉税信息查询结果; (三) 相关证明材料。

税务机关应当对纳税人提供的异议信息进行核实,并将核实结果告知纳税人。税务机关确认涉税信息存在错误,应当及时进行信息更正。
| 7 | Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception |

- China has stipulated a system to prevent impersonation or interception of tax-related electronic data, and limits the access to the tax-related information, so as to reduce the risk of leakage of tax-related information during electronic transmission.
  - China meets the requirements of the minimum standards. There's improvement during the report period.
  - **Source:** [Circular of the State Administration of Taxation on the Implementation of the Trial Method for Management of Taxpayer's Tax Information](http://www.chinatax.gov.cn/zh-hans/)

| 8 | Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis |

- In order to standardize the tax service and the management of large enterprises, China's State Administration of Taxation has piloted the tax compliance agreement system since 2011, and promulgated relevant regulations, stipulating that the establishment of a tax compliance agreement shall be based on voluntariness, equality, openness, mutual trust of both parties.
  - China meets the requirements of the minimum standard. There's no change during the report period.
  - **Source:** [Circular of the State Administration of Taxation on the Administration of Taxation Services and Management of Large Enterprises](http://www.chinatax.gov.cn/zh-hans/)
Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication.

China's tax law requires the tax authorities to provide convenient tax services for taxpayers. The State Administration of Taxation also required tax authorities to improve efficiency and to standardize procedures. It has been taking steps to enhance the transparency of the tax agencies and the interpretation work of tax policy. However, tax law does not yet provide any special provisions for the assistance of special populations such as the disabled.

China meets the requirements of the minimum standard. There's improvement during the report period.

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<table>
<thead>
<tr>
<th>Minimum standard</th>
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<th>Shift Towards</th>
<th>Summary of relevant facts in 2018</th>
</tr>
</thead>
<tbody>
<tr>
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</table>
Use e-filing to speed up assessments and correction of errors, particularly systematic errors.

China has introduced the taxpayer's electronic filing system to speed up the tax assessment.

China meets the requirements of the best practice. There's no change during the report period.

### 3. Confidentiality

<table>
<thead>
<tr>
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<th>Best practice</th>
<th>Shift Away</th>
<th>Shift Towards</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced).</td>
<td>Encrypt information held by a tax authority about taxpayers to the highest level attainable.</td>
<td>○</td>
<td>○</td>
</tr>
</tbody>
</table>

**Summary of relevant facts in 2018**

- China has introduced the taxpayer's electronic filing system to speed up the tax assessment.
- China meets the requirements of the best practice. There's no change during the report period.

**Legal material:**

1. **《中华人民共和国税收征收管理法实施细》 (2016)**

- 30条 税务机关在纳税人的纳税义务履行过程中，对其无效的纳税义务实施一次采集：（一）税务登记、主要包括税务机关的税务登记、注销登记。（二）外出经营报告、主要包括税务机关的税务登记、注销登记。（三）财务会计制度和会计核算软件的使用，主要包括税务机关的税务登记、注销登记。（四）税务检查，主要包括税务机关的税务登记、注销登记。（五）税务管理，主要包括税务机关的税务登记、注销登记。

2. **《国家税务局地方税务局涉税信息采集共用管理办法》 (税总发[2016]96号)**

- 第6条 推行纳税人涉税信息一次采集清单制，规范和统一实施纳税人一次采集的涉税信息，具体包括涉税事项、表单名称、信息项内容、受理税务机关、报送方式等。

- 第10条 对纳税人通过网上办税服务厅、自助办税终端等途径以电子形式报送的涉税资料，由信息系统即时完成信息采集。对纳税人报送的需手工录入的涉税资料，受理机关原则上应在1个工作日内完成信息采集工作。

- 第13条 按照“谁采集，谁负责”的原则，采集机关应加强涉税信息的数据采集质量管理，加强数据校对、审核，并确保数据安全。

**3. Confidentiality**

- **Confidentiality**

  - 中国法律规范了行政机关及其工作人员对纳税人涉税保密信息的保密义务，对于政府职员非法泄露保密信息的，规定有相应的行政处分和刑事制裁。
  - 中国对纳税人涉税保密信息进行了高度加密。
  - 中国情况符合最低标准，并且符合最佳实践。报告期内没有变化。
  - Chinese law imposed the confidentiality obligations on the administrations and officials regard to the tax related confidential information of taxpayers, and provides corresponding administrative sanctions and criminal sanctions for the illegal disclosure of confidential information by officials.
  - China has made taxpayer information highly encrypted.
  - China meets the requirements of the minimum standard and the best practice. There's no change during the report period.

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Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes.

Ensure an effective firewall to prevent unauthorised access to data held by revenue authorities.

Audit data access periodically to identify cases of unauthorised access.

Introduce administrative measures emphasizing confidentiality to tax officials.

Where pre/populated returns are used, these should be sent to taxpayers to correct errors.
If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g., judges).

Illegal disclosure of taxpayer's tax related confidential information constitutes administrative or criminal violations, and there are special administrative and criminal proceedings in China to regulate it. There was a new special supervisory system created during 2018 which applies to tax administration too.

Introduce an offence for tax officials covering up unauthorised disclosure of confidential information.

China has provided the confidentiality obligations for tax authorities and tax officials on confidential information of taxpayers. If they violate the obligations, they will be subject to administrative penalties. when the violation involves state secrets, they will also be subject to criminal penalties. China meets the requirements of the minimum standard. There's no change during the report period.
Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.

If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).

In China, the "naming and shaming" is employed when: Tax inspection bureau has made written decisions of tax disposal or tax administrative penalty, and the taxpayers neither applied for administrative review nor filed administrative litigation during the statutory period, or ,when there is remedial procedure followed, the final decisions have gotten. The disclosure of confidential information by revenue authorities needs no judicial authorization.

China meets the requirements of the minimum standard. There's improvement during the report period.
No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes.

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

There is no law about the disclosure of confidential taxpayer information to politicians in China. As stated above, China limits the conditions for disclosure, which are strictly confined to the lawful request from courts, procuratorates, public security organization and the audit department. Chinese tax authorities have a vertical system of leadership, and they are not directly responsible for National People's Congress.

China meets the requirements of the minimum standard, but fails to meet the best practice. There's no change during the report period.

Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard.

In China, taxpayers have the right to get their own tax information. Judicial system has no jurisdiction on the access to taxpayer's information by third parties, however, unless the law set otherwise, written agreement by taxpayer is required before disclosure.

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<tr>
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<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>If published, tax rulings should be anonymised and details that might identify the taxpayer removed. Anonymise all tax judgments and remove details that might identify the taxpayer.</td>
</tr>
<tr>
<td>24</td>
<td>Legal professional privilege should apply to tax advice. Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure.</td>
</tr>
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</table>

**Anonymise all tax judgments and remove details that might identify the taxpayer**

In China, there is no formal tax rulings system yet, some tax authorities have started trying in practice, no rulings published. Judgments involved state secrets, business secrets or privacy are not published. For those tax judgments made by courts should be published, are published without anonymising or wholly removing identity details. There’s no changes during the report period.

**依据材料：**

1. **《中华人民共和国行政诉讼法》**
   第65条 人民法院应当公开发生法律效力的判决书、裁定书，供公众查阅，但涉及国家秘密、商业秘密和个人隐私的内容除外。

2. **《中华人民共和国律师法》**（2017）
   第38条 律师应当保守在执业活动中知悉的国家秘密、商业秘密，不得泄露当事人的隐私。律师对在执业活动中知悉的委托人和其他人不愿泄露的有关情况和信息，应当予以保密。但是，委托人或者其他人准备或者正在实施危害国家安全、公共安全以及严重危害他人人身安全的犯罪事实和信息除外。

3. **《中华人民共和国注册会计师法》**（2014）
   第38条 注册会计师对其在执业活动中知悉的商业秘密，负有保密义务。

4. **《注册税务师管理暂行办法》**（国家税务总局令第14号）
   第18条 注册税务师对执业中知悉的委托人商业秘密，负有保密义务。
Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege.

China has stipulated the procedures of tax audits. If tax authorities violate the procedures, taxpayers are entitled to refuse to be inspected. Taxpayers are obligated to assist the inspection positively. At present, there is no requirement of the presence of a lawyer delegated by taxpayer for tax authorities to enter premises.

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

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<tr>
<td>26</td>
<td>Audits should respect the following principles: (i) Proportionality. (2) Ne bis in idem (prohibition of double jeopardy). (3) Audi alteram partem (right to be heard before any decision is taken). (4) Nemo tenetur se detegere (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void.</td>
<td></td>
<td></td>
<td></td>
<td>(1) The principle of proportionality has been established in China’s administrative procedure, which means the authorities’ discretion should comply with the aim of relevant law. Tax audit is also constrained by the requirement of proportionality since it’s a kind of administrative behavior. China meets the requirements of the minimum standard. There’s no change during the report period.</td>
</tr>
</tbody>
</table>
In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers.

According to China’s Tax Administration Law, the principle that tax authorities must follow in tax audit procedures is proportionality and rationality. On the one hand, the unrelated information can’t be examined since tax audits shouldn’t cause unnecessary burden to taxpayers, on the other hand, the measures that tax authorities take should be in proportion with the aim, and the harm might caused by the measures shall not exceed the value to achieve.

China meets the requirements of the minimum standard. There’s no change during the report period.

According to China’s Tax Administration Law, the principle that tax authorities must follow in tax audit procedures is proportionality and rationality. On the one hand, the unrelated information can’t be examined since tax audits shouldn’t cause unnecessary burden to taxpayers, on the other hand, the measures that tax authorities take should be in proportion with the aim, and the harm might caused by the measures shall not exceed the value to achieve.

China meets the requirements of the minimum standard. There’s no change during the report period.

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

The principle that tax authorities must follow in tax audit procedures is proportionality and rationality. On the one hand, the unrelated information can’t be examined since tax audits shouldn’t cause unnecessary burden to taxpayers, on the other hand, the measures that tax authorities take should be in proportion with the aim, and the harm might caused by the measures shall not exceed the value to achieve.

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China meets the requirements of the best practice. There’s no change during the report period.
In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final.

When tax authorities are going to make a decision of tax audits, they should notify the taxpayers the facts, reasons and grounds on which the decision is made, as well as the rights that the taxpayers enjoy according to the law. Taxpayers have the right to make a statement and to defend themselves. When taxpayers might subject to tax punishments, they also have the right to request a public hearing.

China meets the requirements of the minimum standard. There’s no change during the report period.

依据材料:
1. 《中华人民共和国行政处罚法》(2017)
第31条 行政机关在作出行政处罚决定之前,应当告知当事人作出行政处罚决定的事实、理由及依据,并告知当事人依法享有的权利。
第32条 当事人有权进行陈述和申辩。行政机关应当充分听取当事人的意见,对当事人提出的事实、理由和证据,应当进行复核;当事人提出的事实、理由或者证据成立的,行政机关应当采纳。行政机关不得因当事人申辩而加重处罚。

2. 《税务稽查工作规程》（国税发[2009]157号）
第28条 当事人、证人可以采取书面或者口头方式陈述或者提供证言。当事人、证人口头陈述或者提供证言的,检查人员可以笔录、录音、录像。笔录应当使用能够长期保持字迹的书写工具书写,也可使用计算机记录并打印。陈述或者证人应当由陈述人或者证人逐页签章。陈述或者证人口头提出陈述或者证言的,检查人员应当将全部的陈述或者证言记录并形成书面笔录,由陈述人或者证人逐页签章。陈述人、证人不能提供书面陈述或者证言的,由调查人员制作陈述或者证言笔录。

第41条 检查结束后,检查人员可以将发现的税收违法行为和证据告知被查对象;必要时,可以向被查对象发出《税务事项通知书》,要求其在限期内书面说明,并提供有关资料;被查对象口头说明的,检查人员应当制作笔录。
31 Tax audits should follow a pattern that is set out in published guidelines.

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

33 Taxpayers should be entitled to request the start of a tax audit (to obtain finality).
Where tax authorities have resolved to start an audit, they should inform the taxpayer of the time, the information to be prepared, etc. Unless the advance notice will hinder the audits. In practice, tax authorities would issue a special form of tax notification to notify the audit timescale, date. Initial meeting may be arranged, no requirement by law.

China meets the requirements of the minimum standard, while generally speaking, fails to meet the best practice. There’s no change during the report period.

- **Material:**
     - Article 22, Paragraph 4: The period of tax audit shall not exceed 60 days.
     - Article 59: Tax authority inspectors must show their identification and notification when conducting tax inspections, and have the duty to keep the secrets of the inspected; if they fail to show their identification and notification, the inspected person has the right to refuse the inspection.

```
Reasonable time limits should be fixed for the conduct of audits.
```

- **Material:**
     - Article 43: The period of tax audit shall not exceed 60 days.

```
China meets the requirements of the best practice. There’s no change during the report period.
```

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Reasonable time limits should be fixed for the conduct of audits.
```

<table>
<thead>
<tr>
<th>37</th>
<th>Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.</th>
</tr>
</thead>
</table>

| 38 | The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer. The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view. |

After the completion of a tax audit, the tax authorities are obligated to send the taxpayer the "notice of tax administrative punishment". Meanwhile, taxpayers are given the right to request a hearing, and to appoint experts and other agents. However, in other periods of tax audit, such as investigation, no technical protection for taxpayers exists in China's tax law. China fails to meet the minimum standard. There's no change during the report period.

<table>
<thead>
<tr>
<th>1</th>
<th>《税务稽查工作规程》 (国税发[2009]157号)</th>
</tr>
</thead>
<tbody>
<tr>
<td>51条</td>
<td>《税务稽查工作规程》第51条：检查中发现被查对象或者其他涉税当事人有税收违法行为的，应当制作《税务稽查工作底稿》及有关资料，制作《税务稽查报告》，由检查部门负责人审核。经检查发现有税收违法事实的，《税务稽查报告》应当包括以下主要内容：（一）案件来源；（二）被查对象基本情况；（三）检查时间和检查所属期间；（四）检查方式、方法以及检查过程中采取的措施；（五）查明的税收违法事实及性质、手段；（六）被查对象对调查事实的意见；（七）税务处理、处罚建议及依据；（八）其他应当说明的事项；（九）检查人员签名和报告时间。经检查没有发现税收违法事实的，应当在《税务稽查报告》中说明检查内容、过程、事实情况。</td>
</tr>
<tr>
<td>55条</td>
<td>审理部门区分下列情形分别作出处理：（一）认为有税收违法行为，应当进行税务处理的，拟制《税务处理决定书》；（二）认为有税收违法行为，应当进行税务行政处罚的，拟制《税务行政处罚决定书》；（三）认为税收违法行为轻微，依法可以不予税务行政处罚的，拟制《不予税务行政处罚决定书》；（四）认为没有税收违法行为的，拟制《税务稽查结论》。</td>
</tr>
<tr>
<td>43条</td>
<td>检查结束后，应根据《税务稽查工作底稿》及有关资料，制作《税务稽查报告》，由检查部门负责人审核。经检查发现有税收违法事实的，应当制作《税务稽查报告》及有关资料，制作《税务稽查报告》，由检查部门负责人审核。经检查没有发现税收违法事实的，应当在《税务稽查报告》中说明检查内容、过程、事实情况。</td>
</tr>
</tbody>
</table>

The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer.
### More intensive audits

<table>
<thead>
<tr>
<th>#</th>
<th>Minimum standard</th>
<th>Best practice</th>
<th>Shift</th>
<th>Shift Towards</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In China, intensive audit mainly include tax audit on tax violations and criminal investigation on tax crimes. Chinese tax law has set procedure for choosing audit objects, and the source of audit cases include the violations discovered during normal tax audit and reports from public. Criminal investigation authority usually based on the cases handed over by tax agencies or other governmental institutions, booking standards shall be met. China meets the requirements of the best practice. There's no change during the report period.

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### Summary of relevant facts in 2018

- Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.
- After the tax audit, the tax authorities should make a "tax audit report" to report the situation. Even the absence of illegal facts should also be described in the report.
- China meets the requirements of the best practice. There's improvement during the report period.

### Best practices

   - 第42条 检查结束后，应当根据《税务稽查工作底稿》及有关资料，制作《税务稽查报告》，由检查部门负责人审
   - 查。经检查发现有税收违法行为的，《税务稽查报告》应当包括以下主要内容：（一）案件来源；（二）检查对象基本
   - 情况；（三）检查时间及检查所属期间；（四）检查方式、方法以及检查过程中采取的措施；（五）查明的税收违法
   - 事实及性质、手段；（六）检查对象是否有拒绝、阻挠检查的情形；（七）检查对象对调查事实的意见；（八）税务处
   - 理、处罚建议及依据；（九）其他应当说明的事项；（十）检查人员签名和报告时间。经检查没有发现税收违法事实的，
   - 应当在《税务稽查报告》中说明检查内容、过程、事实情况。

2. **《中华人民共和国刑事诉讼法》(2018)**
   - 第109条 公安机关或者人民检察院发现犯罪事实或者犯罪嫌疑人，应当按照管辖范围，立案侦查。
   - 第110条 任何单位和个人发现有犯罪事实或者犯罪嫌疑人，有权利也有义务向公安机关、人民检察院或者人民法
   - 院报案或举报。
   - 被害人对侵犯其人身、财产权利的犯罪事实或者犯罪嫌疑人，有权向公安机关、人民检察院或者人民法院报案或者
   - 举报。公安机关、人民检察院或者人民法院对于报案、控告、举报，都应当接受。对于不属于自己管辖的，应当先采取
   - 主管机关处理，并且通知报案人、控告人、举报人；对于不属于自己管辖而又有证据证明有犯罪事实的，应当先采取

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**In China, intensive audit mainly include tax audit on tax violations and criminal investigation on tax crimes. Chinese tax law has set procedure for choosing audit objects, and the source of audit cases include the violations discovered during normal tax audit and reports from public. Criminal investigation authority usually based on the cases handed over by tax agencies or other governmental institutions, booking standards shall be met. China meets the requirements of the best practice. There's no change during the report period.**
If there is a point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure.

Entering premises or interception of communications should be authorised by the judiciary.

Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for ex post ratification.

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Inspection of the taxpayer’s home should require authorisation by the judiciary and only be given in exceptional cases.

Where tax authorities intend to search the taxpayer’s premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.

(1) As to tax administrative illegal activities, laws and regulations have only authorized tax authority to inspect the business premises of taxpayer, but not the residence of taxpayer. Tax authority shall inform the taxpayer of the inspection time and required documents in advance, unless the advance notice is of any impediment to inspection. As mentioned above, no judiciary authorization nor appearance is required/granted.

(2) As to tax criminal activities, investigation authority may inspect taxpayer’s residence and business premises. As the same, no requirement of judiciary authorization.

Based on the analysis above, China fails to meet the minimum standard nor the best practice. There’s no change during the report period.

Inspection of bank accounts should require judicial authorisation.

Access to bank information should require judicial authorisation.

Neither the inspections for tax administrative illegal activities by tax authority nor the investigations for tax criminal activities by investigation authority are required to get authorization by the judiciary to get access to bank information of taxpayers. But internal approvals are required.

Based on the analysis above, China fails to meet the minimum standard nor the best practice. There’s no change during the report period.

**Remarks:**


   - Article 54: Upon approval of the county tax bureau or its branch, the tax authority may query the bank accounts of taxable persons who have been approved. If the accounts are frozen, the tax authority may only check the frozen accounts.


   - Article 144: The police, procuratorate, and courts may only query the accounts of taxable persons who are under investigation, if the accounts are frozen.
Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time.

(1) As to tax administrative illegal activities, the tax authorities have no power to intercept telephone communications of taxpayers or monitor internet access of taxpayers. Thus, China meets the best practice in this aspect.

(2) As to tax criminal activities, the investigating authority has the power to detain the documents related to the case. The duration of seizure is also subject to the investigation deadline. In addition, if it is ascertained that the documents are unrelated to the case, they shall be returned within three days.

China's practice meets the minimum standard. There's no change during the report period.

**Instruments:**


   第54条规定：税务机关在调账的过程中需要调取账簿的，应当严格按照相关的法律的规定，经过主管税务机关局长的批准后才可以调取。由于设置了调账需经批准的要求，由此在一定程度上限制了税务检查人员对调账措施的滥用。另外根据《税收征管法实施细则》及《税务稽查工作规程》的相关规定，对税务机关调取账簿的时间也进行了严格的限制。

2. **Tax Sheriff Work Regulation (2009) [157]**

   第25条：

   (1) As to tax administrative illegal activities, only after being approved by the general director of the competent tax bureau, can tax authority take back taxpayer’s accounting books for inspection. There is time limit for the tax authority to keep the books. The restricted speculations could avoid abuse of documents seizure to some extent.

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2. **Tax Sheriff Work Regulation (2009) [157]**

   第25条：
If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer’s advisors and the original left with the taxpayer.

Whether in the inspection of tax administrative illegal activities or in the investigation of tax criminal activities, data collection from taxpayer’s information system does not require the presence of taxpayer’s tax consultants or lawyers. However, during the inspection of tax administrative illegal activities, tax authority shall only backup the electronic data and the originals shall be retained by taxpayer.

China fails to meet the best practice standard in general. There’s no change during the report period.

E-filing of requests for internal review to ensure the effective and speedy handling of the review process.

Current law and practice allow E-filing of review application. If technical condition satisfied, review departments usually accept on-line filing. At present, Beijing, Zhejiang, Jiangxi and other local governments opened on-line administrative review service platforms on their official websites.

China meets the requirements of the best practice. There’s improvement during the report period.
The right to appeal should not depend upon prior exhaustion of administrative reviews.

Reviews and appeals should not exceed two years.
Audi alteram partem should apply in administrative reviews and judicial appeals.

Where tax must be paid in whole or in part before and appeal, there must be an effective mechanism for providing interim suspension of payment.

An appeal should not require prior payment of tax in all cases.
The state should bear some or all of the costs of an appeal, whatever the outcome.

Applicants pay no fee for the administrative review. The fee for the administrative litigation is 50 RMB, which will be born by the losing party. Government does not pay or bear any attorneys fee for the applicant.

China fails to meet the best practice. There's no change during the report period.

Legal assistance should be provided for those taxpayers who cannot afford it.

China meets the requirements of the minimum standard. There's improvement during the report period.
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.

行政复议只有经程序公开举行，但是涉及国家秘密、商业秘密或者个人隐私的，不公开举行。行政诉讼以公开审理为原则，涉及国家秘密、商业秘密或者个人隐私的，不公开举行。涉及商业秘密的案件，当事人可以申请不公开审理的规定。

中国情况符合最低标准。报告期内没有变化。

依据材料：
1. 《税务行政复议规则》(国家税务总局令第21号)
   第67条 举行听证应当公开举行，但是涉及国家秘密、商业秘密或者个人隐私的除外。
2. 《中华人民共和国行政诉讼法》(2017)
   第54条 人民法院公开审理行政案件，但是涉及国家秘密、个人隐私和其他应当不公开审理的除外。

Tax judgments should be published.

从2016年10月1日开始，全国法院的裁判文书，包括涉税案件的裁判文书，均在中国裁判文书网统一公布，涉及国家秘密、法院认为不宜在互联网公开等情形的除外。

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

行政处罚中明确规定了一事不二罚的原则，对违法行为的处罚中虽然包含有比例罚款的内容，但是起点是百分之五十，而且大部分的采用了倍数的形式进行罚款，最高倍数是五倍，对税收违法行为的处罚与制裁相对比比较重。

中国情况符合最低标准。报告期内没有变化。

依据材料：
1. 《中华人民共和国税收征收管理法》(2015)
   第63条 纳税人伪造、变造、隐匿、擅自销毁帐簿、记帐凭证，或者在帐簿上多列支出或者不列、少列收入，或者经税务机关通知申报而拒不申报或者进行虚假的纳税申报，不缴或者少缴应纳税款的，是偷税。对纳税人偷税的，由税务机关追缴其不缴或者少缴的税款、滞纳金，并处不缴或者少缴的税款百分之五十以上五倍以下的罚款；构成犯罪的，依法追究刑事责任。扣缴义务人采取前款所列手段，不缴或者少缴已扣、已收税款，由税务机关追缴其不缴或者少缴的税款、滞纳金，并处不缴或者少缴的税款百分之五十以上五倍以下的罚款；构成犯罪的，依法追究刑事责任。
2. 《税务行政处罚裁量权行使规则》(国家税务总局公告2016年第78号)
   第3条 本规则所称税务行政处罚裁量权，是指税务机关根据法律、法规和规章的规定，综合考虑税收违法行为的事实、性质、情节及社会危害程度，选择处罚种类和幅度并作出处罚决定的权力。
   第5条 行使税务行政处罚裁量权，应当遵循以下原则：(一)合法原则。在法律、法规、规章规定的种类和幅度内，依照法定权限，遵守法定程序，保障当事人合法权益；(二)合理性原则。符合立法目的，考虑相关因素和法律原则，作出的行政处罚决定与违法行为的事实、性质、情节，社会危害程度相当，与本地的经济社会发展水平相适应。
<table>
<thead>
<tr>
<th>Page</th>
<th>Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.</th>
<th>Voluntary disclosure should lead to reduction of penalties.</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

**Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.**

- Administrative fines can commute criminal fines:
  - **Criminal law and administrative penalty law** provide that administrative fines can commute criminal fines, and if the administrative penalty has been imposed, the criminal liability shall not be imposed.
  - **China meets the requirements of the best practice. There’s no change during the report period.**

**Criminal law and administrative penalty law**

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Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.

According to the 30th normative document of State Administration of Taxation in 2017, tax authorities are required to classify cases according to different situations, focus on major tax violations, practically accomplish tempering justice with mercy, punishing illegal action according to its illegality and with strong evidence. The function of tax inspection should be made full use, and guarantee the organic unity of legal effect and social effect.

China meets the requirements of the minimum standard. There's no change during the report period.

<table>
<thead>
<tr>
<th>Minimum standard</th>
<th>Best practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collection of taxes should never deprive taxpayers of their minimum necessary for living.</td>
<td></td>
</tr>
</tbody>
</table>

8. Enforcement of taxes

<table>
<thead>
<tr>
<th>#</th>
<th>Minimum standard</th>
<th>Best practice</th>
<th>Shift</th>
<th>Shift</th>
<th>Summary of relevant facts in 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The residence and supplies necessary for the subsistence of taxpayers and their dependents are not subject to tax enforcement measures or tax protection measures by the tax authorities, that is, the collection of taxes shall exclude the property necessary for the minimum subsistence of the taxpayer for living. Some local tax authority specify the rules and set details for enforcement.

China meets the requirements of the minimum standard. There's no change during the report period.

According to the 30th normative document of State Administration of Taxation in 2017, tax authorities are required to classify cases according to different situations, focus on major tax violations, practically accomplish tempering justice with mercy, punishing illegal action according to its illegality and with strong evidence. The function of tax inspection should be made full use, and guarantee the organic unity of legal effect and social effect.

China meets the requirements of the minimum standard. There's no change during the report period.
Authorisation by the judiciary should be required before seizing assets or bank accounts

1. **The Chinese tax authorities** have the power to take tax protection measures or tax enforcement measures against taxpayers in accordance with the law, including asking banks or other financial institutions to freeze or withhold deposits equal to the amount of tax payable; The above measures need to be carried out after the corresponding approval from the county Tax Bureau (branch) director. There is no requirement of judicial authorization or approval procedures.

2. **China fails to meet the best practice.** There’s no change during the report period.

**Materials:**
   - Chapter 4: Taxpayers should have the right to request delayed payment of arrears.

   **Article 31** taxpayers have the right to apply for delaying tax payment under certain conditions. According to the law, if taxpayers have special difficulties and apply for delaying tax payment, they should apply before the expiry of the tax period set by law or the decision of tax authority, the provincial level Tax Bureaus have the authority to decide whether to allow.

   China meets the requirements of the minimum standard. There’s no change during the report period.

   **Materials:**
Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.

Temporary suspension of tax enforcement should follow natural disasters.

"Tax that the debtor owes" is a kind of creditor's rights stipulated in the Chinese bankruptcy law, according to the relevant provisions of the bankruptcy law, the debtor or the creditor may apply to the Court to reorganize the debt in accordance with the law, and the reorganization is a system which usually avoids the debtor's bankruptcy by waiving debts.

China meets the requirements of the best practice. There's no change during the report period.

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China meets the requirements of the best practice. There's no change during the report period.
The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation.

Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.
Provisions should be included in tax treaties setting specific conditions for exchange of information.

China has listed different situations where State Administration of Taxation can reject the requests from the requesting state, as well as prescribed that State Administration of Taxation can not reject with certain reasons. Thus, China has restricted the range of information exchange in both sides.

China meets the requirements of the best practice. There's no change during the report period.

1. **《多边税收征管互助公约》(2017)**
   第五条 专项情报交换
   一、应请求国请求，被请求国应向请求国提供符合第四条规定的、涉及任何具体人员或交易的情报。二、如被请求国现有税收情况提供的情报不充分，从而不能满足情报交换要求，该国应采取一切必要措施，提供请求国要求提供的情报。

2. **《中华人民共和国政府和开曼群岛政府关于税收情报交换的协定》(2013)**
   第五条 专项情报交换
   ......六、请求方主管当局根据本协定提出情报请求时，应向被请求方主管当局提供以下信息，以证明情报与请求之间的可预见相关性：(一) 被检查或被调查人的身份；(二) 所请求情报的期间；(三) 所请求情报的性质和类型，包括对所需情报和(或)所求具体证据的描述，以及请求方希望收到情报的形式。(四) 请求情报的税收目的；(五) 认为所请求的情报存在于被请求方领土内或由被请求方管辖范围内的人所掌握或控制的理由；(六) 尽可能地列出认为掌握或控制所请求情报的任何人的名称和地址。(七) 声明情报请求符合本协定以及请求方国内法和行政惯例，且如果所请求情报存在于请求方管辖范围内，那么请求方主管当局可以根据请求方法律或正常行政程序获取该情报。(八) 声明请求方向已尽力在其境内可能导致不适当的困难的获取情报的一般方法。

3. **《国际税收情报交换工作规程》(国税发[2006]70号)**
   第9条
   列下情况之一的，总局可以拒绝缔约国主管当局的情报请求：(一) 情报请求与税收目的无关；(二) 情报请求缺乏针对性；(三) 情报请求未经缔约国主管当局或者其授权代表签字；(四) 请求的税收情报超出了税收协定规定的人、税种、地域等范围；(五) 缔约国一方为执行其国内法有关规定请求提供情报，但该国内法规定与税收协定相悖。

4. **《国际税收情报交换工作规程》(国税发[2006]70号)**
   第27条
   税务机关可以将收集情报的目的、情报的来源和内容告知相关纳税人、扣缴义务人或其他当事人，并同时告知其保密义务。

5. **《中华人民共和国政府和开曼群岛政府关于税收情报交换的协定》(2013)**
   第5条 专项情报交换
   ....六、请求方主管当局提出情报请求时，应向被请求方主管当局提供以下信息，以证明情报与请求之间的可预见相关性：(一) 被检查或被调查人的身份；(二) 所请求情报的期间；(三) 所请求情报的性质和类型，包括对所需情报和(或)所求具体证据的描述，以及请求方希望收到情报的形式。(四) 请求情报的税收目的；(五) 认为所请求的情报存在于被请求方领土内或由被请求方管辖范围内的人所掌握或控制的理由；(六) 尽可能地列出认为掌握或控制所请求情报的任何人的名称和地址。(七) 声明情报请求符合本协定以及请求方国内法和行政惯例，且如果所请求情报存在于请求方管辖范围内，那么请求方主管当局可以根据请求方法律或正常行政程序获取该情报。(八) 声明请求方向已尽力在其境内可能导致不适当的困难的获取情报的一般方法。

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Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.

A requesting state should provide confirmation of confidentiality to the requested state.

A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection.
77. Taxpayers should have a right to request initiation of mutual agreement procedure.

78. Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.

77. 除了几种明显不属于相互协商程序解决的事项外，纳税人有权向省税务机关提出申请，请求启动相互协商程序，一般情况下会予以立案而启动程序。

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China meets the requirements of the best practice. There’s no change during the report period.

1.《特别纳税调查调整及相互协商程序管理办法》（国家税务总局公告2017年第6号）

第47条

根据我国对外签署的税收协定的有关规定，国家税务总局可以依据企业申请或者税收协定缔约对方税务主管当局请求启动相互协商程序，与税收协定缔约对方税务主管当局开展协商谈判，避免或者消除因特别纳税调整事项引起的国际重复征税。

相互协商内容包括：(一) 双边或者多边预约定价安排的谈签；(二) 税收协定缔约一方实施特别纳税调查调整引起另一方相应调整的协商谈判；(三) 税收协定缔约方税务主管当局请求启动相互协商程序，国家税务总局同意的。

第48条

企业申请启动相互协商程序的，应当在税收协定有效期内，向国家税务总局书面提交《特别纳税调查调整相互协商程序申请表》和特别纳税调查调整事项的有关说明。企业自申请之日的次月起90日内未收到税务机关的书面回复的，可以向国家税务总局申请复核，国家税务总局收到复核申请之日起30日内作出回复。

第52条

有下列情形之一的，国家税务总局可以拒绝企业申请或者税收协定缔约对方税务主管当局启动相互协商程序的请求：(一) 企业或者其关联方不属于税收协定任一缔约方的税收居民；(二) 企业申请或者请求不属于特别纳税调查调整事项；(三) 企业申请或者请求缺乏事实或者法律依据；(四) 企业申请或者请求不符合税收协定有关规定的。

1.《税收协定相互协商程序实施办法》（国家税务总局公告2013年第56号）

第15条

受理申请的省税务机关应当在十五个工作日内，将申请上报税务总局，并将情况告知申请人，同时通知省以下主管税务机关。

第16条

因申请人提交的信息不全等原因导致申请不具备启动相互协商程序条件的，省税务机关可以要求申请人补充材料。申请人补充材料后仍不具备启动相互协商程序条件的，省税务机关可以拒绝受理，并以书面形式告知申请人。

第17条

税务局收到省级税务局上报的申请后，应当在二十个工作日内给予相应处理：(一) 企业提交的信息或者资料不全或者错误，应当要求企业补充或者更正；(二) 企业提交的信息或者资料齐全，但不符合相互协商程序的，应当拒绝审查申请，并以书面形式告知申请人。

中国明确规定了企业或税收协定缔约对方税务主管当局申请启动相互协商程序的过程中，应当对企业的合理退还及时通知，企业享有充分的参与权。

China has prescribed that no matter when the enterprises or the other contracting state applies for the initiation of mutual agreement procedure, tax authorities should notifies the enterprise timely. The enterprise has unreserved right of participation.

China meets the requirements of the minimum standard. There’s no change during the report period.

10. Legislation

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<th>Best practice</th>
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Summary of relevant facts in 2018
79 Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail.

Retrospective tax legislation should ideally be banned completely.

First of all, in terms of retroactive effect, China's legal system follows the principle of "old and light". Article 93 of the China's "Legislative Law" provides that laws, administrative regulations, local laws and regulations, autonomous regulations and separate regulations, department regulations shall not trace back to the past, except for the special provisions on the better protection of the rights and interests of all citizens, legal entities and other organizations. The principle of "old and light" also provides reference for the departmental normative document. Article 13 of "the Measures for the Administration of Taxation Normative Documents" stipulates that the tax normative documents shall not be traced back to the past, except for the special provisions made in order to better protect the rights and interests of the tax administration counterparts. Second, based on the "old and light" principle, the "Measures for the Administration of Taxation Normative Documents" provides the effect of normative documents. Article 14 stipulates that the tax normative documents shall be implemented 30 days after the date of promulgation, however it shall be implemented immediately on the condition that the delay of implement will cause troubles. At the same time, "Measures for the Administration of Taxation Normative Documents" provides that a tax normative document, even if it does not fulfill the condition of "better protection", can be implemented immediately.

China meets the requirements of the best practice. There's shift towards.

中国法律明确的在立法程序中规定应通过座谈会、论证会、听证会等多种程序听取各方意见。在《行政法规制定程序条例》中进一步明确"涉及社会公众普遍关注的热点难点问题和经济社会发展遇到的突出矛盾,减损公民、法人和 其他组织权利或者增加其义务,对社会公众有重要影响等重大利益调整事项的,应当进行论证咨询。"中国情况符合最新实践标准,报告期内有改进。

Chinese law has explicitly regulated that, the drafting procedure should conduct demonstration and consultation. Comments may be requested by holding forums, demonstration meetings and hearings and in other various forms. Furthermore, in Ordinance concerning the Procedures for the Formulation of Administrative Regulations, it regulates that: "Where the focal or difficult issue that attracts wide public attention or any prominent conflict encountered in economic and social development is involved, the rights of citizens, legal persons and other organizations are impaired, or their obligations are increased, significant impact is caused on the public, and other major interest adjustment matters are involved, demonstration and consultation shall be conducted."

China meets the requirements of the best practice. There's shift towards.

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### Summary of relevant facts in 2018

#### 11. Revenue practice and guidance

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Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.

Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet.
Binding rulings should only be published in an anonymised form

Now China has not established a system of advance rulings for taxpayers, there are only a few official approvals for the application of the tax law or policy, and in the existing public approvals, some are anonymous, but some of them disclose the names of taxpayers. However, since the system of rulings has not been established, it is difficult to discuss the impact of the matter on the protection of taxpayer rights.

China fails to meet the minimum standard. There’s no change during the report period.

Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively.

The relevant provisions of the current Chinese administrative law require the administrative authorities to be honest and trustworthy only to the administrative decisions made by the competent organs, that is to require the executive authorities not to revoke or to change the administrative decisions that have been in force in respect of statutory matters. But this principle does not apply to the retroactivity of guidelines. The regulations on the formulation and administration of the tax normative documents stipulate that the enacting organs should clean up the tax normative documents in time, find out the problems of the tax normative documents, and declare the invalidation, repeal or revise the regulations according to the provisions, but the above mentioned regulations do not mention the retroactivity of the documents. According to the Article 52 of China’s Tax Administration Law, where a taxpayer or withholding agent fails to pay taxes or underpay taxes due to the fault of the tax authority, the tax authority may, within three years, require the taxpayer or withholding agent to pay the taxes in arrears, but they shall not impose any late fee. It can be seen that if the unpaid tax payment is caused by the error of the taxation documents, the taxpayer or withholding agent may still bear the corresponding consequences, it does not consider the taxpayer’s trust interests.

China fails to meet the minimum standard. There’s no change during the report period.
Adoption of a charter or statement of taxpayers' rights should be a minimum standard. A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited.

A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority.

85

税收实践中，依据下述法律及规范性文件的指示，多地税务机关要求税务稽查人员在实施检查过程中，发放查前告知书，明确告知纳税人各项权利。

中国情况符合最低标准和最佳实践标准。报告期内无变化。

At present, the normative documents promulgated by the State Administration of Taxation elaborate on the various rights enjoyed by taxpayers. In the practice of taxation, in accordance with the following laws and normative documents, various tax authorities require tax inspectors to issue pre-inspection notices during the inspection process and explicitly inform the taxpayers of their respective rights.

China meets the requirements of the minimum standard and the best practice. There's no change during the report period.

依据材料:

1. 《国家税务总局关于纳税人权利与义务的公告》（国家税务总局公告2009年第1号）

一、知情权。您有权向我们了解国家税收法律、行政法规的规定以及与纳税程序有关的情况，包括：现行税收法律、行政法规和税收政策规定；办理税收事项的时间、方式、步骤以及需要提交的资料；应纳税额的核定及其他税务处理决定的法律依据、事实依据和计算方法；与我们发生的争议或纠纷时，您依法享受的救济途径及需要满足的条件。

2. 《中华人民共和国税收征收管理法》（2015）

第7条 税务机关应当广泛宣传税收法律、行政法规，普及纳税知识，无偿地为纳税人提供纳税咨询服务。

第51条 拟对被查对象或者其他涉税当事人作出税务行政处罚的，向其送达《税务行政处罚事项告知书》，告知其依法享有陈述、申辩及要求听证的权利。《税务行政处罚事项告知书》应当包括以下内容：（一）拟作出的税务行政处罚；（二）事实、证据，以及适用的法律依据；（三）陈述、申辩、听证的途径和期限；（四）纳税人的姓名或者名称；（五）税务机关名称、制作日期、文号。

3. 《税务稽查工作规程》（国税发[2009]157号）

第35条 稽查局采取税收保全措施时，应当向纳税人送达《税收保全措施决定书》，告知其采取税收保全措施的内容、理由及依据，并依法告知其申请行政复议和提起行政诉讼的权利。

目前，中国各级税务机关在其内部设置专门机构或配备专门人员，专门负责处理纳税人投诉，保护纳税人权益，其运行机制相对独立。

At present, the tax authorities at all levels in China set up specialized agencies or specialized personnel in their internal departments to handle the complaints of taxpayers and protect the rights and interests of taxpayers. Their operating mechanism is relatively independent.

86

A separate statement of taxpayers’ rights under audit should be provided to taxpayers who are audited.

A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority.

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The organisational structure for the protection of taxpayers’ rights should operate at local level as well as nationally.

At present, the State Administration of Taxation and the Local Taxation Bureau jointly establish an organization for protecting the rights and interests of taxpayers. They provide legal advice and assistance to taxpayers, mediate and deal with tax administrative disputes, accept and handle taxpayers’ rights protection applications and publicize tax knowledge, provide a full range of services to protect the legitimate rights and interests of taxpayers.

China meets the requirements of the best practice. There’s no change during the report period.

1. **《纳税服务投诉管理办法（试行）》（国家税务总局公告 2015 年第 49 号）**
   - 第 6 条：县级以上税务机关的纳税服务管理部门具体办理纳税服务投诉事项，负责受理、调查、处理纳税服务投诉。
   - 第 7 条：各税务局机关应当配备专门人员从事纳税服务投诉管理工作，保障纳税服务投诉工作的顺利开展。

2. **《厦门市地方税务局关于印发纳税人权益保护中心工作规程的通知》（厦地税发 [2014]81 号）**
   - 第 2 条：厦门市地方税务局纳税人权益保护中心（以下简称纳税人权益保护中心）是由厦门市地方税务局牵头组建的，行政事业单位、社会团体、法律援助机构等成员单位以及相关专业人员和服务志愿者等共同组成的纳税人权益保护机构。
   - 第 4 条：本规程所称纳税人权益保护是指纳税人合法权益遭受侵害时，向厦门市地方税务局或纳税人权益保护中心其他成员单位反映情况，提出意见、建议或者权益维护诉求，由地方税务局直接受理处理或由成员单位受理转地方税务局处理的活动。
   - 第 5 条：纳税人权益保护中心主要负责受理、转办、处理和反馈纳税人的投诉举报、涉税纠纷、投诉等，以及收集反馈纳税人和社会各界对地方税务局工作的合理需求和工作建议；对地方税务局纳税人权益保护中心进行培训、考核和指导，提供纳税服务工作的建议。不定期举办各类维权服务活动，指导基层单位开展纳税服务工作。