Observatory on the Protection of Taxpayers’ Rights

Below you will find a questionnaire filled in by Arjo van Eijsden, Partner at Ernst & Young Belastingadviseurs LLP and OPTR National Reporter of The Netherlands.

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><img src="image1.png" alt="Image" /></td>
<td><img src="image2.png" alt="Image" /></td>
</tr>
<tr>
<td>2</td>
<td>If yes, can they request the correction of errors in the information?</td>
<td><img src="image3.png" alt="Image" /></td>
<td><img src="image4.png" alt="Image" /></td>
</tr>
<tr>
<td>3</td>
<td>In your country, is there a system of “cooperative compliance”/“enhanced relations” which applies to some taxpayers only?</td>
<td><img src="image5.png" alt="Image" /></td>
<td><img src="image6.png" alt="Image" /></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-discriminatory basis?</td>
<td><img src="image7.png" alt="Image" /></td>
<td><img src="image8.png" alt="Image" /></td>
</tr>
<tr>
<td>5</td>
<td>Is it possible in your country for taxpayers to communicate electronically with the tax authority?</td>
<td><img src="image9.png" alt="Image" /></td>
<td><img src="image10.png" alt="Image" /></td>
</tr>
<tr>
<td>6</td>
<td>If yes, are there systems in place to prevent unauthorised access to the communication?</td>
<td><img src="image11.png" alt="Image" /></td>
<td><img src="image12.png" alt="Image" /></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><img src="image13.png" alt="Image" /></td>
<td><img src="image14.png" alt="Image" /></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><img src="image15.png" alt="Image" /></td>
<td><img src="image16.png" alt="Image" /></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><img src="image17.png" alt="Image" /></td>
<td><img src="image18.png" alt="Image" /></td>
</tr>
<tr>
<td>10</td>
<td>If yes, can the taxpayer request a meeting with the tax officer?</td>
<td><img src="image19.png" alt="Image" /></td>
<td><img src="image20.png" alt="Image" /></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 your tax authority automatically encrypted?</td>
<td><img src="image21.png" alt="Image" /></td>
<td><img src="image22.png" alt="Image" /></td>
</tr>
<tr>
<td>12</td>
<td>Is 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><img src="image23.png" alt="Image" /></td>
<td><img src="image24.png" alt="Image" /></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><img src="image25.png" alt="Image" /></td>
<td><img src="image26.png" alt="Image" /></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><img src="image27.png" alt="Image" /></td>
<td><img src="image28.png" alt="Image" /></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><img src="image29.png" alt="Image" /></td>
<td><img src="image30.png" alt="Image" /></td>
</tr>
<tr>
<td>16</td>
<td>Is information about the tax liability of specific taxpayers publicly available in your country?</td>
<td><img src="image31.png" alt="Image" /></td>
<td><img src="image32.png" alt="Image" /></td>
</tr>
<tr>
<td>17</td>
<td>Is “naming and shaming” of non-compliant taxpayers practised in your country?</td>
<td><img src="image33.png" alt="Image" /></td>
<td><img src="image34.png" alt="Image" /></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. freedom of information)?</td>
<td><img src="image35.png" alt="Image" /></td>
<td><img src="image36.png" alt="Image" /></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><img src="image37.png" alt="Image" /></td>
<td><img src="image38.png" alt="Image" /></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><img src="image39.png" alt="Image" /></td>
<td><img src="image40.png" alt="Image" /></td>
</tr>
</tbody>
</table>

### 7. Criminal and administrative sanctions

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>56</td>
<td>Does the principle of equal treatment 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><img src="image41.png" alt="Image" /></td>
<td><img src="image42.png" alt="Image" /></td>
</tr>
<tr>
<td>57</td>
<td>If no to any of the above questions, does this prevent two parallel sets of court proceedings arising from the same factual circumstances?</td>
<td><img src="image43.png" alt="Image" /></td>
<td><img src="image44.png" alt="Image" /></td>
</tr>
<tr>
<td>58</td>
<td>If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?</td>
<td><img src="image45.png" alt="Image" /></td>
<td><img src="image46.png" alt="Image" /></td>
</tr>
</tbody>
</table>

### 8. Enforcement of taxes

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>59</td>
<td>Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?</td>
<td><img src="image47.png" alt="Image" /></td>
<td><img src="image48.png" alt="Image" /></td>
</tr>
<tr>
<td>60</td>
<td>Is a court order always necessary before the tax authorities can access a taxpayer’s bank account or other assets?</td>
<td><img src="image49.png" alt="Image" /></td>
<td><img src="image50.png" alt="Image" /></td>
</tr>
</tbody>
</table>

### 9. Cross-border procedures

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>61</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><img src="image51.png" alt="Image" /></td>
<td><img src="image52.png" alt="Image" /></td>
</tr>
<tr>
<td>62</td>
<td>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?</td>
<td><img src="image53.png" alt="Image" /></td>
<td><img src="image54.png" alt="Image" /></td>
</tr>
<tr>
<td>63</td>
<td>If no to either of the previous two questions, did your country previously recognise the right of taxpayers to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?</td>
<td><img src="image55.png" alt="Image" /></td>
<td><img src="image56.png" alt="Image" /></td>
</tr>
<tr>
<td>64</td>
<td>Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country?</td>
<td><img src="image57.png" alt="Image" /></td>
<td><img src="image58.png" alt="Image" /></td>
</tr>
<tr>
<td>65</td>
<td>Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?</td>
<td><img src="image59.png" alt="Image" /></td>
<td><img src="image60.png" alt="Image" /></td>
</tr>
<tr>
<td>66</td>
<td>Does the taxpayer have the right to see any information received from another country that relates to him?</td>
<td><img src="image61.png" alt="Image" /></td>
<td><img src="image62.png" alt="Image" /></td>
</tr>
<tr>
<td>67</td>
<td>Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?</td>
<td><img src="image63.png" alt="Image" /></td>
<td><img src="image64.png" alt="Image" /></td>
</tr>
<tr>
<td>68</td>
<td>Does the taxpayer have the right to see the communications exchanged in the context of a mutual agreement procedure?</td>
<td><img src="image65.png" alt="Image" /></td>
<td><img src="image66.png" alt="Image" /></td>
</tr>
</tbody>
</table>

### 10. Legislation

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>69</td>
<td>Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?</td>
<td><img src="image67.png" alt="Image" /></td>
<td><img src="image68.png" alt="Image" /></td>
</tr>
<tr>
<td>70</td>
<td>Is tax legislation subject to constitutional review which can strike down unconstitutional laws?</td>
<td><img src="image69.png" alt="Image" /></td>
<td><img src="image70.png" alt="Image" /></td>
</tr>
<tr>
<td>71</td>
<td>Is there a prohibition on retrospective tax legislation in your country?</td>
<td><img src="image71.png" alt="Image" /></td>
<td><img src="image72.png" alt="Image" /></td>
</tr>
<tr>
<td>72</td>
<td>If no, are there restrictions on the adoption of retrospective tax legislation in your country?</td>
<td><img src="image73.png" alt="Image" /></td>
<td><img src="image74.png" alt="Image" /></td>
</tr>
</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>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 taxation 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 to 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, 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>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. solve et repete)?</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>
</tr>
</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 taxpayers’ 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>Question</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the taxpayer need permission to appeal to the first instance tribunal?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the taxpayer need permission to appeal to the second or higher instance tribunals?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<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>
<td></td>
</tr>
<tr>
<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>
<td></td>
</tr>
<tr>
<td>Does the loser have to pay the costs in a tax appeal?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<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>
<td></td>
</tr>
<tr>
<td>Are judgments of tax tribunals published?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, can the taxpayer preserve its anonymity in the judgment?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<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>
<td></td>
</tr>
<tr>
<td>#</td>
<td>Minimum standard</td>
<td>Best practice</td>
<td>Shift Away</td>
</tr>
<tr>
<td>----</td>
<td>---------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>1</td>
<td>Implement safeguards to prevent impersonation when issuing unique identification number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>The system of taxpayer identification should take account of religious sensitivities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes</td>
<td>Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax</td>
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<tr>
<td>4</td>
<td>Where pre/populated returns are used, these should be sent to taxpayers to correct errors</td>
<td></td>
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<td>5</td>
<td>Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies</td>
<td>Publish guidance on taxpayers' rights to access information and correct inaccuracies</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception</td>
<td>Publish guidance on taxpayers' rights to access information and correct inaccuracies</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms</td>
<td>Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms</td>
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<tr>
<td>8</td>
<td>Use e-filing to speed up assessments and correction of errors, particularly systematic errors</td>
<td>Use e-filing to speed up assessments and correction of errors, particularly systematic errors</td>
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<tr>
<td>9</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>
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</table>
13 Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes.

14 Audit data access periodically to identify cases of unauthorised access.

15 Introduce administrative measures emphasizing confidentiality to tax officials.

16 Where pre/populated returns are used, these should be sent to taxpayers to correct errors.

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

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

19 Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted.

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

21 No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes.

22 If published, tax rulings should be anonymised and details that might identify the taxpayer removed.

23 Legal professional privilege should apply to tax advice.

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

25 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.

26 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.
27. In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers.

28. 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.

29. 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.

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

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).

34. Where tax authorities have resolved to start an audit, they should inform the taxpayer where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.

35. Taxpayers should be informed of information gathering from third parties.

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

37. Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer.

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.

39. Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.

### 5. More intensive audits

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<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>
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<td>41</td>
<td>If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure.</td>
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<td>42</td>
<td>Entering premises or interception of communications should be authorised by the judiciary.</td>
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</table>
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for ex post ratification.

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.

Access to bank information should require judicial authorisation.

Authorisation by the judiciary should be necessary for interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions.

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.

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.

Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers.

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

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.

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

Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.

Tax judgments should be published.

6. Review and appeals

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<tr>
<td>50</td>
<td>E-filing of requests for internal review to ensure the effective and speedy handling of the review process.</td>
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<td>51</td>
<td>The right to appeal should not depend upon prior exhaustion of administrative reviews.</td>
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<tr>
<td>52</td>
<td>Reviews and appeals should not exceed two years.</td>
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<tr>
<td>53</td>
<td>Audi alteram partem should apply in administrative reviews and judicial appeals.</td>
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<tr>
<td>54</td>
<td>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.</td>
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<tr>
<td>55</td>
<td>An appeal should not require prior payment of tax in all cases.</td>
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<tr>
<td>56</td>
<td>The state should bear some or all of the costs of an appeal, whatever the outcome.</td>
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7. Criminal and administrative sanctions

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<td>57</td>
<td>Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing.</td>
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<tr>
<td>58</td>
<td>Tax judgments should be published.</td>
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</table>
Proportionality and *ne bis in idem* should apply to tax penalties. Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied. Voluntary disclosure should lead to reduction of penalties. Since January 1, 2018 the voluntary disclosure scheme has been abolished in relation to savings/portfolio investments held outside the Netherlands by individual tax payers. The voluntary disclosure scheme relating other assets and/or taxes remains the same. Therefore, no shift away and no shift towards. Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.

### 8. Enforcement of taxes

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<tr>
<td>63</td>
<td>Collection of taxes should never deprive taxpayers of their minimum necessary for living.</td>
<td>Authorisation by the judiciary should be required before seizing assets or bank accounts.</td>
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<td>64</td>
<td>Taxpayers should have the right to request delayed payment of arrears.</td>
<td>Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.</td>
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<td>65</td>
<td>Temporary suspension of tax enforcement should follow natural disasters.</td>
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### 9. Cross-border procedures

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<tr>
<td>68</td>
<td>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.</td>
<td>The taxpayer should be informed that a cross-border request for information is to be made.</td>
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<td>69</td>
<td>Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.</td>
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<td>70</td>
<td>Provisions should be included in tax treaties setting specific conditions for exchange of information.</td>
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<td>71</td>
<td>If information is sought from third parties, judicial authorisation should be necessary.</td>
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<td>72</td>
<td>The taxpayer should be given access to information received by the requesting state.</td>
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<td>73</td>
<td>Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.</td>
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<td>74</td>
<td>A requesting state should provide confirmation of confidentiality to the requested state.</td>
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<tr>
<td>75</td>
<td>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.</td>
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<td>76</td>
<td>For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.</td>
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<td>77</td>
<td>Taxpayers should have a right to request initiation of mutual agreement procedure.</td>
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<tr>
<td>78</td>
<td>Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure.</td>
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### 10. Legislation

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<tr>
<td>79</td>
<td>Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail.</td>
<td>Retroactive tax legislation should ideally be banned completely.</td>
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<tr>
<td>80</td>
<td>Public consultation should precede the making of tax policy and tax law.</td>
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<td>The government uses the public consultation more and more.</td>
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### 11. Revenue practice and guidance

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<tbody>
<tr>
<td>81</td>
<td>Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.</td>
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<td>82</td>
<td>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.</td>
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<tr>
<td>83</td>
<td>Binding rulings should only be published in an anonymised form.</td>
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<td>84</td>
<td>Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively.</td>
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### 12. Institutional framework for protecting taxpayer’s rights

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<tr>
<td>85</td>
<td>Adoption of a charter or statement of taxpayers’ rights should be a minimum standard.</td>
<td>A separate statement of taxpayers’ rights under audit should be provided to taxpayers who are audited.</td>
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<td></td>
<td>In 2018 the State Secretary of Finance reacted on a news item regarding a taxpayers’ charter that he does not see the relevance of this. In his view the taxpayers’ rights are sufficient recorded in various tax laws.</td>
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<tr>
<td>86</td>
<td>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.</td>
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<tr>
<td>87</td>
<td>The organisational structure for the protection of taxpayers’ rights should operate at local level as well as nationally.</td>
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