

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



***The IBFD Yearbook on Taxpayers' Rights  
2019***

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Part I  
Executive Summary

## 1. Editorial remarks

2019 has been a year of ups and downs in the practical protection of taxpayers' rights.

On the one hand, significant progress has been made throughout the year in identifying and communicating with taxpayers,<sup>1</sup> as well as in protecting the security and confidentiality of data

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<sup>1</sup> In the identification of taxpayers, Australia designed a global management system allowing citizens to be identified for tax purposes easily and safely, connect with the government's digital services and authorize third parties to act on their behalf, and allowing the cross-referencing of taxpayer information to prevent phoenix activity. Canada implemented an extensive privacy and security framework to manage and protect personal information from all Canadians, based on a personal identification number (PIN). New Zealand implemented a "face-to-face" interview with the taxpayer to issue a taxpayer number. The United States expanded its taxpayer data protection programme, existing since 2011, also implementing a PIN for victims of identity theft. Regarding the information supplied by third parties, China legally obliges financial institutions to maintain confidentiality of the information for tax purposes obtained from their clients, especially non-residents. In Japan, legislation establishes strict confidentiality both in tax and administrative procedures. Belgium has improved the protection of confidentiality under the General Data Protection Regulation (GDPR). New Zealand, through the establishment of the MyIR electronic retention system, has improved the accuracy in the administrative management of withholdings. The United States increased the penalties for improper use or disclosure of information by third parties. Regarding the communication with taxpayers, India, Peru and New Zealand have expanded the use of electronic communications, although in the case of the United States, such communications are limited. Canada encouraged taxpayers to register with an electronic account access service. China published its requirements on the Development of Online Tax Services. Colombia includes an alphanumeric code on its electronic communications to prevent counterfeit. India implemented a faceless e-assessment system, in which all communications are electronic and is an attempt to reduce the interface between the Revenue and Tax payer to also promote transparency and reduce possible corruption. Also in India all communications the Central Board of Direct Taxes (CBDT) CBDT directed quoting of a computer-generated Document Identification Number (DIN) in all communications issued by the Income-Tax authorities on or after the 1st of October, 2019 for ensuring accountability in official dealings, clarifies that, "Any communication which is not in conformity with the prescribed guidelines shall be treated as invalid and shall be deemed to have never been issued." ; To maintain proper audit trail of all communication, the CBDT lays down parameters specifying the manner in which any communication issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person will be dealt with; CBDT specifies exceptional circumstances where the communication may be issued manually, only with the prior written approval of the Chief Commissioner / Director General of Income-Tax concerned, also insists for the reason for issue of manual data communication without DIN. The United States reports the continuous updating of its authentication procedures for online interaction with taxpayers. Regarding the assistance with compliance obligations, Canada has developed a system for e-filing and simplifying the access to the so-called disability tax credit (DTC). Spain aims to create a specific centre (the so-called *Administraciones de Asistencia Digital Integral*, ADI) to assist taxpayers by telephone and through electronic media. New Zealand is shifting away from counter appointments for complex enquiries from taxpayers, to encourage telephone and online consultation. Regarding the e-filing of returns, Australia follows electronic processes to correct returns, and real-time messages and pre-filled data guide taxpayers in their self-assessment. Something similar happens in Bosnia and Herzegovina and China. New Zealand invested in expanding digital access, and Peru enacted regulations aiming for the same. In Russia, tax authorities are now entitled to notify assessments, arrears and fines by SMS, e-mail and other legal ways. Serbia introduced e-filing for property taxes. South Africa enhanced the capability for e-filing, and Spain has AVIVA, a virtual assistant that helps taxpayers in calculating the amount of output VAT. See Part II, secs. 1.2., 1.3., 1.5., 1.7. and 2.



held by tax administrations,<sup>2</sup> in reducing the time limits for audits,<sup>3</sup> in the reception and processing of reviews and appeals<sup>4</sup> and in the access of taxpayers to guides and other materials relevant to the fulfilment of their tax obligations,<sup>5</sup> hand in hand with the digitalization of tax administration.

Cooperative compliance is on the rise and has served as the basis for the construction of a productive dialogue between the tax administration and taxpayers.<sup>6</sup>

In the same vein, there were advances in 2019 regarding the taxpayers' right to access and correct information held by tax authorities (habeas data), as well as in the legal enshrinement of guarantees for the confidentiality of information held by the tax administration, including the information the latter obtained from third parties.<sup>7</sup> In this regard, several countries have endeavoured to increase encryption, access control and data audits to protect confidentiality.<sup>8</sup>

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<sup>2</sup> Regarding encryption, in Canada and China access to taxpayers' data has only been granted to the acting tax officials. China separated physically the networks dealing with taxpayer information, increasing data protection. Regarding the auditing of access, Canada investigated 264 privacy breaches by tax authority employees between 2015 and 2018, with most of the employees involved being disciplined or departing from the service. Peru conducts internal audits periodically. Slovenia registers all activities of employees within the tax information system by an audit trail, regularly supervised by the tax authority. Regarding the administrative measures to ensure confidentiality, Canada took extensive measures based on the Audit Safeguard of Sensitive Information Report, released in 2019. The Netherlands is carrying out an investigation to restrict access to the data of the Dutch tax authority. See Part II, secs. 3.3., 3.4. and 3.5.

<sup>3</sup> Colombia implemented SINTEGRA, an internal management system, to ensure reasonable time within the different stages of the audit. South Africa undertook the task of completing audits within 90 days. See Part II, sec. 4.3.

<sup>4</sup> Regarding the e-filing of reviews and appeals, Bulgaria, Peru and Russia implemented and expanded e-services. See Part II, sec. 6.1.

<sup>5</sup> Tax authorities are working towards improving the awareness of tax law and administrative and court rulings through e-mail communications, call centres and public consultation systems in Canada, Chile, China, Colombia and Cyprus. See Part II, sec. 11.2.

<sup>6</sup> According to the data gathered by the OPTR, 64% of surveyed jurisdictions (28 out of 44 countries) have a system of cooperative compliance in force. Austria and Brazil established further regulations on the system. The latter also established conditions for the settlement as an alternative dispute resolution mechanism. Spain also issued regulations for tax compliance management systems, to assist in the management of tax-related risks, aiming to increase compliance and transparency. A new Tax Administration Code of Conduct and an Ethics Advisory Committee are also planned, and the Best Tax Practice Code for Tax Professionals started to apply voluntarily. Further, according to the data gathered, in 63% of surveyed countries (27 of 43 countries), a dialogue takes place between the tax authority and the taxpayer before the issuance of an assessment in order to reach an agreed assessment. See Part II, secs. 1.6. and 2.

<sup>7</sup> Regarding the information supplied by third parties, China legally obliges financial institutions to maintain confidentiality of the information for tax purposes obtained from their clients, especially non-residents. In Japan, legislation establishes strict confidentiality both in tax and administrative procedures. Belgium has improved the protection of confidentiality under the GDPR. New Zealand, through the establishment of the MyIR electronic retention system, has improved the accuracy in the administrative management of withholdings. The United States increased the penalties for improper use or disclosure of information by third parties. Regarding habeas data, 85% of surveyed jurisdictions acknowledge the taxpayers' right to see the information held about them by the tax authority and 84% grant taxpayers the right to request the correction of errors in the information. In this vein, Bulgaria, Colombia, Mexico and South Africa incorporated some form of electronic declaration, granting taxpayers the right to access, correct or reject the information pre-loaded by the tax authorities. See Part II, secs. 1.3. and 1.4.

<sup>8</sup> Regarding encryption, in Canada and China, access to taxpayers' data has only been granted to the acting tax officials. China separated physically the networks dealing with taxpayer information, increasing data protection. Regarding the auditing of access, Canada investigated 264 privacy breaches by tax authority employees between 2015 and 2018, with most of the employees involved being disciplined or departing from the service.

As a counterbalance against the apparent expansion of *ius puniendi* in tax matters,<sup>9</sup> it is worth mentioning the general trend towards the implementation of voluntary disclosure regimes.<sup>10</sup>

Similarly, another positive trend leans towards greater taxpayer participation in the legislative process and tax policy,<sup>11</sup> and there have been positive developments with respect to the

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Peru conducts internal audits periodically. Slovenia registers all activities of employees within the tax information system by an audit trail, regularly supervised by the tax authority. Regarding the administrative measures to ensure confidentiality, Canada took extensive measures based on the Audit Safeguard of Sensitive Information Report, released in 2019. The Netherlands is carrying out an investigation to restrict access to the data of the Dutch tax authority. See Part II, sec. 3.3., 3.4. and 3.5.

<sup>9</sup> The majority of decisions of the European Court of Human Rights (ECtHR) in tax matters in 2019 reported to the OPTR involved the exercise of *ius puniendi* by tax authorities. See IS: ECtHR, 12 Feb. 2019, no. 52623/14 (Committee), *Ragnar Thorisson v. Iceland*; IS: ECtHR, 16 Apr. 2019, no. 72098/14 (Committee), *Bjarni Ármannsson v. Iceland*; HR: ECtHR, nos. 7834/12 and 3 others (Committee), *Lopac and Others v. Croatia*; LT: ECtHR, 26 Mar. 2019, no. 55092/16 (Committee), *Baltic Master Ltd. v. Lithuania*; RO: ECtHR, 3 Dec. 2019, no. 61022/10 (Committee), *S.C. Totalgaz Industrie S.R.L. v. Romania*; and BG: ECtHR, 12 Dec. 2019, no. 22536/11 (Committee), *Ilieva v. Bulgaria*. Also, most of the ECtHR's inadmissibility decisions in tax matters reported to the OPTR involved the exercise of *ius puniendi* by the tax authorities. See TR: ECtHR, 11 June 2019, no. 1964/07 (Committee), *Karalar v. Turkey*; and DE: ECtHR, 25 June 2019, no. 68475/10 (Committee), *Bley v. Germany*. That was also the case of the communicated cases to the ECtHR reported to the OPTR. See MK: ECtHR, 2 Sep. 2019, application no. 83901/17, *Holland Farming Makedonija Doo and Stefan Dimkovski v. North Macedonia*; MT: ECtHR, 26 Aug. 2019, application no. 48431/18, *Antonio aka Anthony aka Tony Busuttil v. Malta*; GR: ECtHR, 1 Apr. 2019, applications nos. 42552/13 and 48707/13, *Mamidoil-Jetoil Anonymos Elliniki Etairia Petrelaioidon v. Greece*; PT: ECtHR, 29 Apr. 2019, application no. 56564/15, *Carlos Paiva de Andrada Reis v. Portugal*; IS: ECtHR, 30 Aug. 2019, application no. 12951/18, *Bragi Guðmundur Kristjánsson v. Iceland*; and TR: ECtHR, 18 Dec. 2019, application no. 63398/10, *Ari-Tem Ltd. Şti. v. Turkey*. The decisions of the European Court of Justice (ECJ) in tax matters reported to the OPTR are also related to the exercise of *ius puniendi*. See BG: ECJ, 17 Jan. 2019, Case C-310/16, *Dzivev*, Case Law IBFD; BE: ECJ, 24 Oct. 2019, Joined Cases C-469/18 and C-470/18, *IN and JM*; HU: ECJ, 16 Oct. 2019, Case C-189/18, *Glencore*, Case Law IBFD. Attorney General (AG) J. Kokott also submitted her opinion in an important case regarding the proportionality of penalties. HU: Opinion of AG Kokott, 12 Sept. 2019, Case C-482/18, *Google Ireland Ltd*, Case Law IBFD. Also in 2019, regarding proportionality, Brazil qualified the recurrent lack of payment of indirect taxes as a criminal offence, even if the debt is fully acknowledged by the taxpayer. Mexico introduced new penalties for tax-related offences, increasing them and qualifying tax fraud as a form of organized crime, further diminishing the procedural guarantees of taxpayers in those situations. Regarding *ne bis in idem*, Colombia implemented the possibility of ending the criminal prosecution in the event of voluntary compliance with tax obligations arising from the lack of reporting or reporting of non-existent liabilities. Spain admitted several cassation appeals to determine the violation of *non bis in idem* for the possible infringements involving the alleged complicity of invoice issuers in the tax offence of the receiver. Belgium enacted new legislation to allow double prosecution and double sanctioning of tax infringements where both procedures are "sufficiently linked in substance and time", as stated in the ECtHR case of *A & B v. Norway*. See Part II, sec. 7.1.

<sup>10</sup> Even though the Netherlands partially abolished theirs. Colombia enacted a so-called standardization tax, encouraging taxpayers to voluntarily disclose the wilful misreporting of assets or non-existent liabilities, in lieu of criminal responsibility arising from such facts. Two new voluntary disclosure regimes were introduced in Mauritius. The Supreme Court of Russia ruled that taxpayers involved in attempted tax offences will not be prosecuted nor punished, in cases of attempted tax offences, when the taxpayer has abandoned voluntarily the perpetration of the offence. See Part II, sec. 7.2.

<sup>11</sup> According to the data gathered by the OPTR, 61% of surveyed jurisdictions (26 out of 43 countries) have a procedure in force for public consultation before the adopting of most tax legislation. Further, 86% of the surveyed countries (37 out of 43 countries) subject tax legislation to constitutional review, which can strike down unconstitutional laws. In 2019, China mandated public consultation of regulatory documents involving the "vital interest" of tax administrative counterparties, or which may have a significant impact on their rights and obligations. The United States is reported to be committed to public consultation when issuing interpretative tax rules. The Supreme Court of Spain quashed regulations on the immediate information system (*Servicio Inmediato de Información*, SII), due to the absence of the opinion of the State Council, as well as the lack of prior consultation and public information. See Part II, sec. 10.3.

ombudsperson in several of the jurisdictions surveyed.<sup>12</sup>

On the other hand, a growing – and worrying – trend towards the expansion of tax authorities' investigation and punitive powers also took place in 2019. According to the data collected, this apparent reduction in the scope of protection granted by taxpayers' rights has developed in several ways and several aspects.<sup>13</sup>

First, there is a trend of tax authorities moving away from the fundamental principles of proportionality, *audi alteram partem*, *nemo tenetur se ipsum accusare* and *ne bis in idem*, which affects both domestic<sup>14</sup> and cross-border procedures.<sup>15</sup>

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<sup>12</sup> Colombia strengthened legally the independence of the National Taxpayers' Advocate (NTA), enhanced its management staff and expanded the personnel of the NTA's office, aiming to better ensure the practical protection of taxpayers' rights. Representatives of the NTA should mandatorily be at the main local offices of the Colombian tax authority. A regional taxpayers' advocate office was created in Medellín, Colombia. Legislation in the United States made several changes affecting the NTA's office. More statistical support, coordination of research studies with the Treasury Inspector-General for Tax Administration and procedural protections for Taxpayer Advocate Directives were enacted. In Spain, the effectiveness of the tax ombudsperson's work has been linked to a decrease in complaints. See Part II, sec. 12.3.

<sup>13</sup> See *supra* n. 9. See also Part II, sec. 7.1.

<sup>14</sup> Regarding proportionality in tax audits, tax authorities in Slovenia are reported to mostly breach the rule according to which they may request only information that is strictly needed, a trend followed by Guatemala and Mexico. The Supreme Court of the latter issued a binding precedent requiring all private documents to have a known date of emission/signature (through public notary) to be admissible as evidence for tax purposes. About *ne bis in idem*, 54% of the surveyed jurisdictions (23 out of 43 countries) do not apply the principle, and only in nearly half the cases in which *ne bis in idem* is respected (11 out of 21 countries, 26% of the total surveyed jurisdictions), the principle means one audit per taxable period. The Supreme Court of Italy ruled that closely connected tax assessments and criminal proceedings do not violate the principle, "when the administrative penalty may be considered substantially criminal in nature", in a way similar to that of the ECtHR *A & B v. Norway* judgment. *Ne bis in idem* is reported to be avoided in Slovenia in practice by an ex officio reopening of tax proceedings. The Swiss judiciary has laid down a rather narrow interpretation of the principle. South Africa allows multiple audits for the same period, since double jeopardy only applies to criminal charges laid due to tax offences. In Uruguay, tax authorities are reported to be allowed to restart audits, based on procedural mistakes affecting their validity. Regarding *audi alteram partem*, Colombia established a simplified tax assessment that allows tax authorities to issue assessments without prior notification, to speed up procedures **without any guarantee of *res judicata***, a path also followed by Serbia. Slovenia reports deterioration of the principle in practice, due to a "lenient" approach to the principle by the judiciary. *Nemo tenetur* is reported as not respected in Mexico, a trend that seems to be followed by China. The problem is under judicial consideration in Slovenia, with the possibility of referring the issue to the constitutional courts. Uruguay states that the principle is generally acknowledged, even though certain specific implications stemming from it "still are not admitted". The United States only acknowledges *nemo tenetur* in criminal proceedings. *Miranda* warnings in tax procedures are only triggered in very specific circumstances. See Part II, sec. 4.1.

<sup>15</sup> According to the data gathered by the OPTR, 80% of surveyed jurisdictions (35 out of 43 countries) do not grant the taxpayers' right to be informed before information relating to them is exchanged on request, and 85% of said jurisdictions (37 out of 43 countries) do not grant said right when the request involves gathering information from third parties. The Netherlands, China and Luxembourg have removed the right to be informed of the exchange of information (Eol) due to international pressure. The right to be heard in the context of Eol is not granted by 87% (38 out of 43 countries) of the surveyed jurisdictions, according to the data provided to the OPTR. Based on this data, 61% of surveyed jurisdictions (26 out of 43 countries) do not grant the taxpayer the right to challenge before the judiciary the Eol relating to them with another country. Canada, Mexico and Slovenia do not require the tax authorities to be judicially authorized for obtaining information from third parties. Mexico added a new legal provision allowing tax authorities to use documents obtained illegally in procedures concerning tax fraud investigations. Uruguay reported that the tax authorities did not require independent and verifiable evidence that the requesting state observes high standards of data protection in the context of Eol on request. Mexico, Slovenia and Uruguay report that the taxpayer is not notified at all of the automatic exchange of financial information. See Part II, sec. 9.1.

Specifically, there has been a decrease in the effective protection of taxpayers' rights regarding the gathering of evidence of taxable events by tax authorities. On the one hand, the enactment of legislation forcing intermediaries (e.g. tax advisers) to report the tax optimization structures implemented by their clients that might be regarded as "aggressive", especially by operation of the DAC-6, creates conditions potentially harmful to (legal) professional privilege, and potentially undermines taxpayers' rights to privacy, professional assistance, legal representation and to a proper defence, particularly – regarding the latter – the associated rights (i) to be informed of the investigation; (ii) to be heard; and (iii) to control evidence.<sup>16</sup> On the other hand, indiscriminate requests for documents from taxpayers, without regard of their relevance to the investigation, disproportionately affects the rights of taxpayers to proportionality, along with further requirements for allowing evidence produced by taxpayers.<sup>17</sup>

Second, there seems to be a trend towards the relaxation of judicial permission for invasive investigations of tax authorities, to the extent that court authorizations have been considered as "unnecessary" in practice according to some reports. A lesser decline has been reported in the court authorization of telephone communications interventions, obtaining banking information, monitoring Internet access and seizure of documents.<sup>18</sup>

Thirdly, there seems to be a trend towards the hampering or suppression of procedural guarantees in the context of criminal and administrative sanctions, in a way similar to that reported by scholars in criminal law. On its procedural limb, the phenomenon manifests in the

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<sup>16</sup> Although 77% of the surveyed jurisdictions (33 out of 43 countries) have a system of protection of legally privileged communications between the taxpayer and its advisers, according to the data gathered by the OPTR, and in 2019 Brazil extended the privilege to advisers other than lawyers by means of interpretation, there were important setbacks in this regard. Cyprus reports that by the implementation of the 4th and 5th Anti-Money Laundering Directives, the communications of taxpayers with tax advisers are not privileged from disclosure and, instead, tax advisers are liable if they omit to report their clients' activities that, they suspect, might relate to money laundering. Mexico implemented a new Mandatory Disclosure Regime that obliges tax advisers to report, as of 1 January 2021, information on tax optimization schemes that might eventually be regarded as aggressive, even retroactively. Peru did something similar, regarding information about the ultimate beneficial owner. Tax advisors who act as shareholders, directors, trustees or similar must also inform the tax authorities of who the ultimate beneficial owner is. Regarding the protection of privileged material from searches and seizures by the tax authority, Mexico left unprotected cross-communication between taxpayers and tax advisers regarding tax planning. The United Kingdom issued a guidance note regarding the tax authorities' criminal investigation powers and safeguards. Regarding the court authorization for entering and searching premises, according to the data gathered by the OPTR, 71% of surveyed jurisdictions (31 out of 43 countries) do not require such authorization, a 5% increase from the 2018 OPTR statistics. Tax authorities are authorized to search the taxpayers' dwelling places in 72% of surveyed jurisdictions (31 out of 43 countries). Regarding access to financial information, Italy enacted legislation enabling the tax authorities and tax police to use banking information at the centre of risk assessment, based on the "particular public interest" in the fight against tax evasion. Slovenia, Peru and Serbia similarly require financial institutions to provide information about their clients to the tax authorities, in the context of AEOI. Limits are set for the use of phone tapping or access to electronic communications: according to the data provided to the OPTR, 70% of surveyed countries (30 out of 43 countries) require a court order before the interception of communications. See Part II, secs. 3.13. and 5.3.

<sup>17</sup> The latter is the case in Mexico. The Supreme Court issued a binding precedent requiring all private documents to have a known date of emission/signature (by public notary) to be admissible as evidence for tax purposes, further diminishing the possibilities of defence for taxpayers. See Part II, sec. 4.1.

<sup>18</sup> Legally privileged information is not protected from being taken in the course of a search by tax authorities in 45% of the surveyed jurisdictions (19 out of 43 countries), according to the data provided to the OPTR. Authorization by a court is not needed in 71% of the surveyed jurisdictions (31 out of 43 countries), according to the same data. Tax authorities are authorized to search the taxpayers' dwelling premises in 31 countries (72%). Belgium consistently grants the tax authorities free access to the digital data of taxpayers in the case of searches in professional premises. See Part II, sec. 5.4.

relaxation of *ne bis in idem* to allow, in one way or another, the concurrence of administrative and criminal proceedings over the same facts, through their “close connection in space and time”, and the presence of the so-called indirect sanctions (such as denial of deductions, and deeming exempt income to be taxable) which have a harmful impact on proportionality.<sup>19</sup>

## 2. Most significant developments of the year

### 2.1. Identification of taxpayers, issuing tax returns and communicating with taxpayers

The digitalization of tax administration has greatly impacted the identification of and communication with taxpayers. Throughout 2019, several digital systems were put to work to prevent identity theft and phoenix activity. However, there was no parallel movement in the protection of religious sensitivities. E-communications between taxpayers and tax authorities are becoming the rule.<sup>20</sup> There are significant efforts in many surveyed jurisdictions to prevent the impersonation or interception of communications, linked with protections implemented for the identification of taxpayers.<sup>21</sup>

Strongly connected with the issues dealt with in Section 3 of Part II of this yearbook, there is a general protection of confidentiality on a normative level. Particularly, the entry into force of the General Data Protection Regulation (GDPR)<sup>22</sup> in Europe bolstered the level of taxpayers’ data protection.<sup>23</sup> However, breach investigations are still scarce, and there is ambiguity in relation to the taxpayers’ release from the tax obligation after the withholding taxes has been collected by third parties.

Also, regarding the correctness of data, most surveyed jurisdictions recognize habeas data.<sup>24</sup> The use of pre-populated returns increased in 2019, as well as mechanisms for the correction of errors by taxpayers, in what can be regarded as a positive outcome.

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<sup>19</sup> See *supra* nn. 9 and 10. See also Part II, sec. 7.

<sup>20</sup> With the exception of Japan. See Chart 3, at sec. 1.5.

<sup>21</sup> See *supra* n. 1. See also Part II, sec. 1.1.

<sup>22</sup> EU: Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), Primary Sources IBFD (accessed 9 Mar. 2020).

<sup>23</sup> Regarding information supplied by third parties, China legally obliges financial institutions to maintain confidentiality of the information for tax purposes obtained from their clients, especially non-residents. In Japan, legislation establishes strict confidentiality both in tax and administrative procedures. Belgium has improved the protection of confidentiality under the General Data Protection Regulation (GDPR). New Zealand, through the establishment of the MyIR electronic retention system, has improved the accuracy in the administrative management of withholding tax. The United States increased the penalties for improper use or disclosure of information by third parties. Regarding habeas data, 85% of surveyed jurisdictions acknowledge the taxpayers’ right to see the information held about them by the tax authority, and 84% grant taxpayers the right to request the correction of errors in the information. In this vein, Bulgaria, Colombia, Mexico and South Africa incorporated some form of electronic declaration, granting taxpayers the right to access, correct or reject the information pre-loaded by the tax authorities. See Part II, secs. 1.3. and 1.4. See also Part II, sec. 3.

<sup>24</sup> According to the data provided to the OPTR, the right to see the information held by the tax authorities about them is recognized in 85% of the surveyed jurisdictions (37 out of 44 countries). The right to correct such information is acknowledged in 84% of the surveyed jurisdictions (37 out of 44 countries). See Charts 1 and 2, at Part II, sec. 1.4.

Following a trend already identified in previous years,<sup>25</sup> cooperative compliance is on the rise.<sup>26</sup> However, this system is not always available to all eligible taxpayers on a non-preferential, non-arbitrary basis. Against this background, 2019 has been filled with many developments in regulations towards the effective implementation of cooperative compliance procedures.<sup>27</sup>

Finally, 2019 produced a major movement in efforts to provide taxpayers with assistance with compliance obligations,<sup>28</sup> and in almost half of the surveyed jurisdictions there are mechanisms to assist those with difficulties.<sup>29</sup> **Canada** leads the pack again, with important developments in **Australia** and the **United States**.

## 2.2. The issue of tax assessment

Country practice shows signs towards the building of a constructive dialogue between taxpayers and revenue authorities before a tax audit takes place, mainly through cooperative compliance,<sup>30</sup> so that an agreed assessment is reached.<sup>31</sup> However, there is still work to do regarding the treatment of systematic errors in the assessment of tax.<sup>32</sup> Some of the

<sup>25</sup> See OPTR, *2015-2017 General Report on the Protection of Taxpayers' Rights*, sec. 4.1.5, and OPTR, *2018 General Report on the Protection of Taxpayers' Rights*, sec. 5.1.6.

<sup>26</sup> According to the data provided to the OPTR, a system of "cooperative compliance" or "enhanced relationship" applicable to some taxpayers only exists in 64% of the surveyed jurisdictions (28 out of 44 countries). Austria and Brazil established further regulations on the system. The latter also established conditions for the settlement as an alternative dispute resolution mechanism. Spain also issued regulations for tax compliance management systems, to assist in the management of tax-related risks, aiming to increase compliance and transparency. A new Tax Administration Code of Conduct and an Ethics Advisory Committee are also planned, and the Best Tax Practice Code for Tax Professionals started to apply voluntarily. See Chart 5, at Part II, sec. 1.6.

<sup>27</sup> According to the data provided to the OPTR, 65% of surveyed jurisdictions (29 out of 44 countries) specified that their jurisdictions either (i) did not have cooperative compliance systems (16 countries, 37%); or (ii) did not have rules or procedures to guarantee equality in the access to cooperative compliance (12 countries, 28%). See Chart 6, at Part II, sec. 1.6.

<sup>28</sup> Twelve of the surveyed jurisdictions (Australia, Bosnia and Herzegovina, Canada, Japan, New Zealand, Peru, Russia, Serbia, South Africa, Spain, Sweden and Switzerland) reported a shift towards the practical implementation of taxpayer assistance mechanisms. Australia implemented numerous measures to assist indigenous communities through the Reach Out Indigenous Support Business pilot programme. Canada expanded its assistance measures to taxpayers, implementing the Disability Advisory Committee's recommendations to simplify the access to the so-called disability tax credit (DTC). China implemented two separate programmes to enhance tax services to people with difficulties in complying with their tax obligations. Colombia opened 19 self-management points nationwide. Spain plans to create a specific centre to assist taxpayers by telephone and through electronic media. The United States offers in-person assistance to taxpayers at Taxpayer Assistance Centers (TACs). Also in the United States, the Taxpayer First Act codified the Volunteer Income Tax Assistance (VITA) programme, aiming to assist "underserved populations" and linked to Low-Income Taxpayer Clinics (LITCs). The IRS developed form 1040SR to assist seniors who may benefit from a larger print. See minimum standards, at Part II, sec. 1.7.

<sup>29</sup> According to the data provided to the OPTR, 50% of surveyed countries (23 out of 44 countries) specified that their jurisdictions did have systems to provide assistance to those facing difficulties in complying with their tax obligations. See Chart 7, at Part II, sec. 1.7.

<sup>30</sup> See *supra* n. 27. See also Part II, sec. 1.6.

<sup>31</sup> According to the data provided to the OPTR, 63% of surveyed jurisdictions (27 out of 43 jurisdictions) stated that a dialogue takes place between the parties before an audit takes place. See Chart 8, at Part II, sec. 2.

<sup>32</sup> According to the data provided to the OPTR, 63% of surveyed jurisdictions (27 out of 43 jurisdictions) stated that tax authorities do not act *ex officio* to notify and make repayments to affected taxpayers. See Chart 9, at Part II, sec. 2.

jurisdictions implemented centres for taxpayer attention and consultations with taxpayers to bolster the dialogue mentioned above, strongly influenced by the digitalization of the filing processes. **Australia** is a noteworthy example of good practice in this regard, in a trend followed by at least eight other jurisdictions.<sup>33</sup>

### 2.3. Confidentiality

Transparency continues to be a major trend in taxation, pushing the boundaries of confidentiality. This is one of the areas in which major developments took place in 2019. Such developments can be divided into two areas.

First, there are efforts towards increasing data protection through legislation and administrative measures.

Regarding legislation, a growing trend can be noticed of specific legal provisions in domestic law, with sanctions for officials making unauthorized disclosures. The **United States** stands out in 2019 in this regard, guided by the Taxpayer First Act.<sup>34</sup>

Further, several administrative measures to ensure confidentiality have been enacted. **Canada** led the efforts made by the surveyed jurisdictions in encryption and control of access in 2019. To date, approximately half of the jurisdictions have integrated systems of data protection combining, to a certain degree, encryption and the limitation of access to data only to those tax officials directly linked to an investigation.<sup>35</sup> The **Netherlands** has joined this endeavour by undertaking measures to restrict access to personal data by tax officials, in response to research done by a Dutch TV programme released in early 2017. In the same vein, most jurisdictions safeguard information through periodic access audits,<sup>36</sup> in a trend led again by **Canada**, followed by **Peru** and **Slovenia**. There is an ongoing investigation in the **Netherlands** to restrict access of the Dutch Tax Authority to personal data, and a data

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<sup>33</sup> Australia follows automatic processes to correct returns, and real-time messages and pre-filled data guide taxpayers in their self-assessment. Something similar is happening in Bosnia and Herzegovina. China introduced an electronic filing system to speed up tax assessments. India provides for faceless e-assessments to speed up pending assessments and correct errors. New Zealand has made a considerable investment in expanding digital access, as part of the IRD's business transformation programme. Peru enacted regulations aiming for the same. In Russia, tax authorities are now entitled to notify assessments, arrears and fines by SMS, e-mail and other legal ways, provided that taxpayers have given their consent in writing. Serbia introduced e-filing for property taxes, and allows taxpayers to submit returns for transfer tax and inheritance and gift taxes through a public notary. In South Africa, the capability of the e-filing forms to be submitted for assessment was enhanced, and Spain has AVIVA, a virtual assistant that helps taxpayers calculating the amount of output VAT. See Part II, at sec. 2.

<sup>34</sup> Under the Taxpayer First Act, disclosure of tax return information to tax authority contractors and agents is possible when effective safeguards to protect taxpayer information have been implemented. Also, the Act increased penalties for the improper use or disclosure of information by return preparers. However, the notice of federal tax lien (NFTL) gives a public snapshot of the taxpayer's liabilities, and court filings are publicly available. An NFTL may be filed at the IRS's discretion; currently, it is generally considered when the taxpayer's liability for all periods exceeds USD 10,000. See Part II, sec. 3.2.

<sup>35</sup> According to the data provided to the OPTR, 57% of surveyed jurisdictions (25 out of 43 countries) automatically encrypt information held by tax authorities. That information is accessible only to the tax official(s) dealing with specific taxpayers' affairs in 47% of surveyed jurisdictions (20 out of 43 countries). These tax official(s) should identify themselves before accessing information held about a specific taxpayer in 48% of surveyed countries (21 out of 43 countries). See Charts 11, 12 and 13, at Part II, sec. 3.3.

<sup>36</sup> According to the data provided to the OPTR, 63% of surveyed jurisdictions (27 out of 43 countries) conduct internal audits of access to taxpayer information in their countries. See Chart 14, at Part II, sec. 3.4.

protection officer was appointed in **Uruguay**.

In **India** the CBDT cautioned Revenue officers against sharing of information received under EoI process of tax treaties for non-tax purposes “*without the express consent of the Competent Authority of the sending jurisdiction*”; Stresses on maintaining ‘confidentiality’ of the information obtained from foreign jurisdiction under EoI.

Second, there is a general trend towards the expansion of the investigative powers of tax authorities, sometimes beyond the limits of proportionality, an inclination that also affects criminal and administrative sanctions.

Specifically, major issues have arisen from the reporting obligations imposed on third parties (e.g. tax advisers) in light of the EU Mutual Assistance Directive (2018/822), also known as DAC-6,<sup>37</sup> with no corresponding safeguards for taxpayers’ rights to privacy, (legal) representation and professional advice. In a word, (legal) professional privilege is under siege, influenced by the expansion of administrative powers mentioned above.

Although most jurisdictions still include it – particularly protecting lawyers – in their systems, there has been a major shift away from the minimum standards that protect the rights to privacy, (legal) representation and professional advice, due to the implementation of the DAC-6, enacting regulations establishing a reporting obligation for intermediaries (e.g. tax advisers) on tax optimization structures that might be regarded as “aggressive”. That is also the case in **Mexico**.<sup>38</sup> On the other hand, positive actions have been taken by **Belgium, Spain and New Zealand**, extending professional privilege protection to tax advisers other than lawyers.

Likewise, there has been a slight decrease in the existence of systems for court authorization of the public disclosure of information held by tax authorities about specific taxpayers. Whereas 48% of reports stated that there was such a system in their jurisdictions in 2018, 43% of countries did so in 2019.<sup>39</sup> This seems to confirm the trend mentioned above.

In the same vein, regarding exceptions to confidentiality, investigations of breaches are scarce, even though there have been important information leaks throughout the year. Fortunately, publicly available information about specific taxpayers in some countries continues to be limited to the ultimate tax liability of taxpayers, and, as a rule, no personal or

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<sup>37</sup> Council Directive (EU) [2018/822/EU](#) of 25 May 2018 on Mandatory Reporting of Cross-Border Arrangements, Primary Sources IBFD.

<sup>38</sup> Although 77% of the surveyed jurisdictions (33 out of 43 countries) have a system of protection of legally privileged communications between the taxpayer and its advisers, according to the data gathered by the OPTR, and, in 2019, Brazil extended the privilege to advisers other than lawyers by means of interpretation, there were important setbacks in this regard. Cyprus reports that by the implementation of the 4th and 5th Anti-Money Laundering Directives, the communications of taxpayers with tax advisers are not privileged from disclosure and, instead, tax advisers are liable in case they omit to report their clients’ activities that, they suspect, might relate to money laundering. Mexico implemented a new Mandatory Disclosure Regime, that obliges tax advisers to report, as of 1 January 2021, information on tax optimization schemes that might eventually be regarded as aggressive, even retroactively. Peru did something similar, regarding information about the ultimate beneficial owner. Tax advisers who act as shareholders, directors, trustees or similar must also inform the tax authorities of who the ultimate beneficial owner is. Regarding the protection of privileged material from searches and seizures by the tax authority, Mexico left unprotected cross-communication between taxpayers and tax advisers regarding tax planning. The United Kingdom issued a guidance note regarding the tax authorities’ criminal investigation powers and safeguards. See Part II, sec. 3.13.

<sup>39</sup> 19 out of 43 countries, according to the data provided to the OPTR. See Chart 18, at Part II, sec. 3.11.



financial information is disclosed. Notable practice in the **United States** and positive changes in **New Zealand** in this regard are worth reporting. Positive shifts in **Colombia** and the **Czech Republic** regarding disclosure to other government departments are also noteworthy.

The slight reduction in jurisdictions willing to practise naming and shaming is also good news. Whereas 45% of reports declared that naming and shaming was practised in their countries in 2018, 38% of countries did so in 2019.<sup>40</sup> However, the **Netherlands** introduced naming and shaming regarding specific penalties imposed on tax advisers, based on the DAC-6.<sup>41</sup> Positive shifts in **Belgium** and **Bulgaria** should be reported regarding the anonymization of judgments and rulings.<sup>42</sup>

## 2.4. Normal audits

Regretfully, a drift away from proportionality, *ne bis in idem*, *audi alteram partem* and *nemo tenetur se ipsum accusare* should be reported.

Regarding proportionality, there is a trend to request information from taxpayers without regard for its relevance to the object of the audit, with some exceptions in **Canada**, **China** and **Colombia**. Further requirements for admitting private documents as evidence of taxable events also enforced by the judiciary in **Mexico**, confirming the trend towards the expansion of the powers of tax authorities.<sup>43</sup>

Regarding *ne bis in idem*, the surveyed countries are divided.<sup>44</sup> Whereas some jurisdictions have established limits to multiple audits, many jurisdictions are avoiding applying the principle through judicial reinterpretations of their domestic law.<sup>45</sup> As a result, only one in every four of

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<sup>40</sup> 16 out of 43 countries, according to the data provided to the OPTR. See Chart 17, at Part II, sec. 3.9.

<sup>41</sup> The Netherlands has introduced “naming and shaming” regarding specific penalties imposed on tax advisers as of 1 January 2020. See Part II, sec. 3.9.

<sup>42</sup> See minimum standards, at Part II, sec. 3.12.

<sup>43</sup> Regarding proportionality in tax audits, tax authorities in Slovenia are reported as frequently breaching the rule according to which they may request only information that is strictly needed, a trend reported to be followed by Guatemala and Mexico. The Supreme Court of the latter issued a binding precedent requiring all private documents to have a known date of emission/signature (through public notary) to be admissible as evidence for tax purposes. See Part II, sec. 4.1.

<sup>44</sup> According to the data provided to the OPTR, 54% of the surveyed jurisdictions (23 out of 43 countries) do not apply the principle, and only in nearly half of the cases in which *ne bis in idem* is respected (11 out of 21 countries, 26% of the total surveyed jurisdictions), the principle means one audit per taxable period. The Supreme Court of Italy ruled that closely connected tax assessments and criminal proceedings do not violate the principle, “when the administrative penalty may be considered substantially criminal in nature”, in a way similar to that of the ECtHR *A & B v. Norway* judgment. *Ne bis in idem* is reported to be avoided in Slovenia in practice by an ex officio reopening of tax proceedings. The Swiss judiciary applied a rather narrow interpretation of the principle. South Africa allows multiple audits for the same period, since double jeopardy only applies to criminal charges laid due to tax offences. In Uruguay, tax authorities are reported to be allowed to restart audits, based on procedural mistakes affecting their validity. See Charts 21 and 22, at Part II, sec. 4.1.

<sup>45</sup> In Slovenia *ne bis in idem* can be avoided in practice by an ex officio reopening of tax proceedings, a possibility that is denied to the taxpayer, something that currently is under judicial review. In Switzerland, the Supreme Court applied a rather narrow interpretation of the principle, and in South Africa, audits for the same period can be conducted more than once, since double jeopardy only applies to criminal charges laid due to tax offences. See Part II, sec. 4.1.

the surveyed countries limits the frequency of audits of the same taxpayer.<sup>46</sup>

Concerning *audi alteram partem*, there are mostly setbacks, although most surveyed jurisdictions formally integrate the principle into their domestic assessment procedures.<sup>47</sup> Taxpayers' right to request an audit to obtain certainty is generally not acknowledged, although there are differences among surveyed countries about this matter.<sup>48</sup> For example, under some of the new mandatory disclosure regimes, information can be gathered from intermediaries without informing the taxpayer.<sup>49</sup> The attitude of the countries surveyed towards *nemo tenetur* is also hesitant.<sup>50</sup>

On their part, some jurisdictions have moved towards publishing guidelines and manuals of good practices for tax audits. **Canada** is the torchbearer in this regard.<sup>51</sup> In addition, the rights to technical representation and assistance, and the involvement of independent experts, are widely acknowledged.

Finally, jurisdictions are divided over establishing time limits for normal audits. Among those jurisdictions that set a limit for tax audits, there have been significant efforts to reduce the time of audits: the average time for a normal audit is well below two years, something that can be regarded as very positive.<sup>52</sup> There are some extreme cases: **Belgium** extended the assessment in cases of possible infringements involving foreign legal arrangements to ten years.

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<sup>46</sup> According to the data provided to the OPTR, 73% of surveyed jurisdictions (32 out of 43 countries) do not establish limits to the frequency of audits to the same taxpayer, e.g. in respect of different periods or different taxes. See Chart 30, at Part II, sec. 4.5.

<sup>47</sup> According to the data provided to the OPTR, 80% of surveyed jurisdictions (35 out of 43 countries) stated that *audi alteram partem* is in force in their countries. Colombia established a simplified tax assessment that allows tax authorities to issue assessments without prior notification, to speed up procedures without any guarantee of *res judicata*, a path also followed by Serbia. Slovenia reports deterioration of the principle in practice, due to a "lenient" approach to the principle by the judiciary. See Part II, sec. 4.1.

<sup>48</sup> According to the data provided to the OPTR, 73% of surveyed countries (32 out of 43 countries) do not grant taxpayers the right to request the start of an audit. See Chart 24, at Part II, sec. 4.2.

<sup>49</sup> The new mandatory disclosure regime in Mexico implies the obtaining of taxpayer information without a specific notification to the taxpayer, something regarded by that country's reporters as a setback. See Part II, sec. 4.2.

<sup>50</sup> *Nemo tenetur* is reported as not respected in Mexico, a trend that seems to be followed by China. The problem is under judicial consideration in Slovenia, with the possibility of referring the issue to the constitutional courts. Uruguay states that the principle is generally acknowledged, even though certain specific implications stemming from it "still are not admitted". The United States only acknowledges *nemo tenetur* in criminal proceedings. Miranda warnings in tax procedures are only triggered in very specific circumstances. See Part II, sec. 4.1.

<sup>51</sup> Canada's tax authority follows a detailed pattern for risk-based audits of large businesses, based on algorithms to identify high-risk, large business taxpayers, complemented with documentation requirements on the taxpayer. Also, CRA conducts face-to-face meetings with senior management of the highest risk and least cooperative taxpayers to communicate unresolved compliance issues, lack of openness and transparency, and other issues found during the audit. New Zealand has developed best practice and operational statements for its tax authorities, and checks are made to ensure investigators are applying them. Russia publishes guiding letters regularly, and Spain published the general guidance of the audit plans for taxes and customs of the tax authority. See Part II, sec. 4.2.

<sup>52</sup> According to the data provided to the OPTR, 47% of surveyed jurisdictions (20 out of 43 countries) apply time limits to the conduct of a normal audit. Also, 40.69% of surveyed jurisdictions (17 out of 43 countries) take less than 24 months to conduct a normal audit. See Charts 25 and 26, at Part II, sec. 4.3.

## 2.5. More intensive audits

The ongoing expansion of the investigative powers of tax authorities further confirms the inclination away from the fundamental principles of every inquiry in tax matters, discussed in the previous section. Conversely, the trend shifts even further away from basic principles in more intensive audits.

In the context of more intensive audits, *nemo tenetur* has particular relevance. In this regard, the principle is acknowledged in 23 countries, with corresponding procedures to identify a point in time when it becomes likely that a penalty or a criminal charge might arise. In 17 of those countries, warnings to protect *nemo tenetur* are issued, and restrictions on the use of information supplied by the taxpayer in a subsequent penalty or criminal procedure are enforced in half of the countries applying *nemo tenetur* (11). Only a third of those countries (9) recognize the taxpayers' right to raise *nemo tenetur* as grounds to refuse to supply basic accounting information to the tax authority.<sup>53</sup>

The trend becomes extremely apparent when addressing the matter of court authorizations for more invasive investigations. Judicial authorization for entering premises has been deemed as “unnecessary” in practice. However, the trend shows that the entering and searching powers of tax authorities are judicially limited in the case of dwelling places.<sup>54</sup> Mostly setbacks are reported when dealing with the access to bank information, phone tapping, monitoring of Internet access and seizure of documents.<sup>55</sup> In the first case, the trend is possibly in line with the implementation of the automatic exchange of information (AEOI) as the standard for exchanging information.<sup>56</sup>

Moreover, along with the trend discussed in section 2.3. of this part, there are examples of jurisdictions granting the tax authorities free access to digital data of taxpayers in the case of

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<sup>53</sup> According to the data provided to the OPTR, 54% of surveyed jurisdictions (23 out of 43 countries) apply *nemo tenetur* to tax investigations. Based on the same data, 26% of surveyed jurisdictions (11 out of 43 countries) have restrictions on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure. In 19% of surveyed jurisdictions (8 out of 43 countries), the taxpayer can raise the principle to refuse to supply basic accounting information to the tax authority. In 53% of surveyed jurisdictions (23 out of 43 countries), a procedure is applied 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, so that from that moment on the taxpayer's right not to self-incriminate is acknowledged. Finally, in 40% of surveyed countries (17 out of 43 countries), there is a requirement to give the taxpayer a warning that the taxpayer can rely on the right not to self-incriminate. See Charts 31 to 35, at Part II, sec. 5.2.

<sup>54</sup> The possibility for the tax administration of entering premises or intercepting communications without authorization by the judiciary seems to be accepted by 71% of the surveyed jurisdictions. This marks a trend, considering that, in 2018, 66% of the reports stated that their jurisdictions allowed this situation. According to the data provided to the OPTR, 71% of surveyed jurisdictions (31 out of 43 countries) stated that their tax authorities do not need judicial authorization to enter and search business premises. On the other hand, 12 countries (29%) stated that entering and searching dwelling places of individuals required such authorization. Mexico deems unnecessary any judicial authorization of entering and searching by the tax authority. The Czech Republic, New Zealand, Spain and Slovenia allow warrantless searches of premises other than dwelling places. See Chart 36, at Part II, sec. 5.3.

<sup>55</sup> Five countries (Bosnia and Herzegovina, Canada, Guatemala, Italy and Peru) reported setbacks in the protection of minimum standards and best practices regarding bank information, interception of communications and seizure of documents. See Part II, sec. 5.3.

<sup>56</sup> Following the same trend reported in 2018, Mexico, Slovenia and Uruguay report that the taxpayer is not notified at all of the automatic exchange of financial information. In the latter country, even the application of data protection legislation is expressly excluded to that end. See Part II, sec. 9.1.4.

searches in the premises of intermediaries, although 55% of the countries surveyed (24 out of 43 jurisdictions) have procedures in place to ensure that legally privileged materials are not taken in the course of a search, according to the data provided to the OPTR.<sup>57</sup>

## 2.6. Reviews and appeals

The digitalization of reviews and appeals through e-filing, along with the trends discussed in section 2.1. of this part, seems to be the most important development of 2019 regarding this area.<sup>58</sup> The trend towards limiting access to justice by requiring the prior exhaustion of administrative review before bringing a case to court remains.<sup>59</sup> Once the reviews have been done, there is great freedom to exercise appeals before the judiciary, with the apparent exception of **China** and **Peru**.<sup>60</sup> Also, in parallel with the discussion in section 2.4. of this part and section 4.4. of Part II, most jurisdictions acknowledge *audi alteram partem* in their review and appeal procedures,<sup>61</sup> and developments in 2019 were in that direction.<sup>62</sup>

However, delay seems to be widely present in most surveyed countries, in a trend opposite to that of tax audits.<sup>63</sup> As a rule, no time limits are applicable to reviews and appeals.<sup>64</sup> Also, half of the surveyed jurisdictions (21 out of 43, 49%) apply *solve et repete*, although legislation provides for administrative or judicial precautionary suspensions in most of them (19 out of 21, 89%).<sup>65</sup> Moreover, in line with the trends discussed in section 2.3. of this part, 57% of the surveyed countries do not allow the taxpayer to request a private hearing.<sup>66</sup>

Despite the entry into force of the Multilateral Convention to Implement Tax Treaty Related

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<sup>57</sup> See Chart 39, at Part II, sec. 5.4.

<sup>58</sup> Among other developments, Bulgaria created new e-services to allow taxpayers to file reviews and appeals. Peru expanded its existing services to allow taxpayers to file reviews and appeals. In Russia, tools to follow up in real time the status of reviews proceedings were activated. See Part II, sec. 6.1.

<sup>59</sup> According to the data provided to the OPTR, 49% of surveyed jurisdictions (21 out of 43 jurisdictions) require previous exhaustion of administrative remedies before the taxpayer could have legal standing in court against a tax assessment. See Chart 43, at Part II, sec. 6.1.

<sup>60</sup> According to the data provided to the OPTR, one report from China and one report from Peru stated that the taxpayer requires permission to appeal to the first instance tribunal. See Chart 41, at Part II, sec. 6.1.

<sup>61</sup> According to the data provided to the OPTR, 95% of the surveyed countries (41 out of 43 countries) recognize *audi alteram partem* in this context. See Chart 48, at Part II, sec. 6.4.

<sup>62</sup> In 2019, Japan allowed taxpayers to make oral presentations before the administrative body in charge of reviewing tax assessments. The United States modified its legislation to improve taxpayers' awareness vis-à-vis the reasons for denial of an appeal hearing, and to allow taxpayers to access relevant information within reasonable time to prepare their defence. An appeals conference, however, can simply be an exchange of documents, and the IRS can deny taxpayers the opportunity for an appeals conference in certain limited circumstances. See Part II, sec. 6.3.

<sup>63</sup> According to the data provided to the OPTR, 47% of surveyed jurisdictions (20 out of 43 countries) apply time limits to the conduct of a normal audit. Also, 40.69% of surveyed jurisdictions (17 out of 43 countries) take less than 24 months to conduct a normal audit. See Charts 25 and 26, at Part II, sec. 4.3.

<sup>64</sup> According to the data provided to the OPTR, 83% of the surveyed jurisdictions (36 out of 43 jurisdictions) have no legal limits to reviews and appeals. In practice, 35 countries (80% of surveyed jurisdictions) stated that as the situation in practice. See Charts 44 and 45, at Part II, sec. 6.2.

<sup>65</sup> See Charts 49 and 50, at Part II, sec. 6.5.

<sup>66</sup> According to the data provided to the OPTR, 57% of the surveyed jurisdictions (25 out of 43 countries) allow the taxpayer to request a private hearing to preserve secrecy/confidentiality. See Chart 53, at Part II, sec. 6.7.

Measures to Prevent Base Erosion and Profit Shifting (MLI),<sup>67</sup> there were no major developments in alternative dispute resolution in 2019.

## 2.7. Criminal and administrative sanctions

As discussed in section 1. of this part, there seems to be a trend towards the hampering or suppression of taxpayers' rights in the context of criminal and administrative sanctions, in a way similar to that reported by scholars in criminal law. On its procedural limb, the phenomenon manifests in the relaxation of *ne bis in idem* to allow, in one way or another, the concurrence of administrative and criminal proceedings over the same facts, through their "close connection in space and time", and the presence of the so-called indirect penalties, directly harmful to proportionality in sanctioning matters.<sup>68</sup>

In this regard, based on the data provided by the surveyed jurisdictions, the trend manifests in the reduction of guarantees associated with *ne bis in idem*: even though there were few

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<sup>67</sup> [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#), (24 Nov. 2016), Treaties & Models IBFD.

<sup>68</sup> The majority of decisions of the ECtHR in tax matters in 2019 reported to the OPTR involved the exercise of *ius puniendi* by tax authorities. See IS: ECtHR, 12 Feb. 2019, no. 52623/14 (Committee), *Ragnar Thorisson v. Iceland*; IS: ECtHR, 16 Apr. 2019, no. 72098/14 (Committee), *Bjarni Ármannsson v. Iceland*; HR: ECtHR, nos. 7834/12 and 3 others (Committee), *Lopac and Others v. Croatia*; LT: ECtHR, 26 Mar. 2019, no. 55092/16 (Committee), *Baltic Master Ltd. v. Lithuania*; RO: ECtHR, 3 Dec. 2019, no. 61022/10 (Committee), *S.C. Totalgaz Industrie S.R.L. v. Romania*; and BG: *Ilieva v. Bulgaria*, ECtHR, 12 Dec. 2019, no. 22536/11 (Committee), *Ilieva v. Bulgaria*. Further, most of the ECtHR's inadmissibility decisions in tax matters reported to the OPTR involved the exercise of *ius puniendi* by tax authorities. See TR: ECtHR, 11 June 2019, no. 1964/07 (Committee), *Karalar v. Turkey*; and DE: ECtHR, 25 Jun. 2019, no. 68475/10 (Committee), *Bley v. Germany*. That was also the case of the communicated cases to the ECtHR reported to the OPTR. See MK: ECtHR, 2 Sept. 2019, application no. 83901/17, *Holland Farming Makedonija Doo and Stefan Dimkovski v. North Macedonia*; MT: ECtHR, 26 Aug. 2019, application no. 48431/18, *Antonio aka Anthony aka Tony Busuttill v. Malta*; GR: ECtHR, 1 Apr. 2019, applications nos. 42552/13 and 48707/13, *Mamidoil-Jetoil Anonymos Elliniki Etairia Petrelaioidon v. Greece*; PT: ECtHR, 29 Apr. 2019, application no 56564/15, *Carlos Paiva de Andrada Reis v. Portugal*; IS: ECtHR, 30 Aug. 2019, application no. 12951/18, *Bragi Guðmundur Kristjánsson v. Iceland*; and TR: *Ari-Tem Ltd. Şti. v. Turkey*, ECtHR, 18 Dec. 2019, application no. 63398/10, *Ari-Tem Ltd. Şti. v. Turkey*. The decisions of the ECJ in tax matters reported to the OPTR are also related to the exercise of *ius puniendi*. See BG: ECJ, 17 Jan. 2019, Case C-310/16, *Dzivev*, Case Law IBFD; BE: ECJ, 24 Oct. 2019, Joined Cases C-469/18 and C-470/18, *IN and JM*, Case Law IBFD; and HU: ECJ, 16 Oct. 2019, Case C-189/18, *Glencore*, Case Law IBFD. AG J. Kokott also submitted her opinion in an important case regarding the proportionality of penalties. HU: Opinion of AG Kokott, 12 Sept. 2019, Case C-482/18, *Google Ireland Ltd*, Case Law IBFD. Also in 2019, regarding proportionality, Brazil qualified the recurrent lack of payment of indirect taxes as a criminal offence, even if the debt is fully acknowledged by the taxpayer. Mexico introduced new penalties for tax-related offences, increasing them and qualifying tax fraud as a form of organized crime, further diminishing the procedural guarantees of taxpayers in those situations. Regarding *ne bis in idem*, Colombia implemented the possibility of ending the criminal prosecution in case of voluntary compliance of tax obligations arising from the lack of reporting or reporting of non-existent liabilities. Spain admitted several cassation appeals to determine the violation of *non bis in idem* for the possible infringements involving the alleged complicity of invoice issuers in the tax offence of the receiver. Belgium enacted new legislation to allow double prosecution and double sanctioning of tax infringements, in case both procedures are "sufficiently linked in substance and time", as stated in the ECtHR case of *A & B v. Norway*. See Part II, at sec. 7.1. See also C.E. Wefte H., [Taxpayers' Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting Project](#), 74 Bull. Intl. Taxn. 2, sec. 2.4.4 (2020), Journal Articles & Papers IBFD; and C.E. Wefte H., *Garantismo y Derecho Penal Tributario en Venezuela* p. 297 (Globe 2010). See also L. Del Federico, *Le sanzioni improprie nel sistema tributario*, 6 Rivista di Diritto Tributario, pp. 693-725 (2014), available at [www.academia.edu/12311024/LE\\_SANZIONI\\_IMPROPRIE\\_NEL\\_SISTEMA\\_TRIBUTARIO](http://www.academia.edu/12311024/LE_SANZIONI_IMPROPRIE_NEL_SISTEMA_TRIBUTARIO) (accessed 9 Mar. 2020).

differences from the situation presented in 2018,<sup>69</sup> the lack of full implementation of the principle affects proportionality. The trend does not seem to prevent, in practice, two parallel sets of proceedings arising from the same factual circumstances in 25 of the surveyed countries,<sup>70</sup> although some positive developments were reported in **Colombia** and **Spain**.<sup>71</sup>

Regarding voluntary disclosure, and contrary to the general trend,<sup>72</sup> it is worth mentioning that the **Netherlands** abolished its voluntary disclosure regime for saving/portfolio investments held in the country, and for income from a substantial interest.

## 2.8. Enforcement of taxes

Following the trend described in sections 4.1., 5.3. and 6.5. of Part II, few safeguards have been implemented to protect the *minimum vitalis* of taxpayers, and a court order is not necessary before the tax authorities can access a taxpayer's bank account or other assets.<sup>73</sup> If needed, such authorization has become a mere formality, due to judicial deference to the tax authorities.<sup>74</sup> On the other hand, there is a positive trend towards the adoption of deferred payment plans.

## 2.9. Cross-border situations

There continues to be a general weakening of the practical protection of taxpayers' rights in cross-border situations, as reported in previous years.<sup>75</sup>

Regarding the exchange of information, there is little variation over the trend already

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<sup>69</sup> OPTR, *supra* n. 25 (2018), at sec. 5.7.1.

<sup>70</sup> According to the data provided to the OPTR, in 58% of surveyed jurisdictions (25 out of 43 countries) the recognition of *ne bis in idem* does not prevent two parallel sets of court proceedings arising from the same factual circumstances. See Chart 57, at Part II, sec 7.1.

<sup>71</sup> Colombia introduced a possibility of ending the criminal prosecution in case of voluntary compliance of those tax obligations arising from the lack of reporting or reporting of non-existent liabilities. Spain's judiciary has admitted several cassation appeals to determine the violation of *non bis in idem* for the possible infringements involving the alleged complicity of invoice issuers in the tax offence of the receiver. Also, the Supreme Court of that country annulled regulations that allowed tax authorities to request a criminal investigation once a tax assessment has been issued or a tax penalty has been imposed, in a way in which the same behaviour was, before the judgment, subject to concurrent criminal and administrative proceedings. But Belgium enacted new legislation to allow double prosecution and double sanctioning of tax infringements, in case both procedures are "sufficiently linked in substance and time", as stated in the decision of the ECtHR in the case of *A & B v. Norway*. See Part II, sec. 7.1.

<sup>72</sup> According to the data provided to the OPTR, in 76% of surveyed countries (33 out of 43 countries) a voluntary disclosure led to reduced or zero penalties in their jurisdictions. In this regard, Colombia enacted a so-called standardization tax, encouraging taxpayers to voluntarily disclose the wilful misreporting of assets or non-existent liabilities, in lieu of the criminal responsibility arising from such facts. Two new voluntary disclosure regimes were introduced in Mauritius. The Supreme Court of Russia ruled that taxpayers involved in attempted tax offences will not be prosecuted nor punished, in cases of attempted tax offences, when the taxpayer has abandoned voluntarily the perpetration of the offence. See Part II, sec. 7.2.

<sup>73</sup> According to the data provided to the OPTR, in 75% of surveyed countries (32 out of 43 countries) no court authorization is needed before the tax authorities can access a taxpayer's bank account or other assets. See Chart 59, at Part II, sec. 8.

<sup>74</sup> The High Administrative Court of Uruguay stated that a shortage of money is not an excuse for not paying taxes, although the prohibition of confiscatory effects of taxation is widely acknowledged by the main scholars. See Part II, sec. 8.

<sup>75</sup> See OPTR, *supra* n. 25, at sec. 4.9 (2015-2017) and sec. 5.9 (2018)

established, confirming the expansion of the powers of tax authorities in the context of investigations, without proper counterbalances to protect taxpayers' rights.

Indeed, proportionality, *ne bis in idem*, *audi alteram partem* and *nemo tenetur* have no practical possibility of being implemented in the context of exchange of information, due to the lack of acknowledgment of the right to be informed.<sup>76</sup> Some countries leaned further towards that direction in 2019,<sup>77</sup> despite the entry into force of the MLI and the judicial statements towards acknowledging taxpayers' right to be informed and be heard in the exchange of information in one country.<sup>78</sup> Shifts away from these principles were reported with regard to judicial authorization prior to the request for information to third parties, and to taxpayers' access to information received by the requesting state.<sup>79</sup> As a major development, the trend towards allowing stolen or illegally obtained information to be exchanged continues, and there are no special safeguards concerning confidentiality and data protection by the requesting state.<sup>80</sup> However, some countries reported developments in the inclusion of provisions in tax treaties setting specific conditions for the exchange of information.<sup>81</sup>

Conversely, an even worse state of vulnerability of taxpayers should be reported regarding the automatic exchange of information. This is heightened when the information exchanged is incorrect or incomplete and the Taxpayer has the onus to refute the same.

For its part, the ratification of the MLI by a growing number of countries gives hope for a better protection of taxpayers' rights in mutual agreement procedures (MAP). Furthermore, the entry into force of Council Directive 2017/1852 on tax dispute resolution mechanisms in the European Union<sup>82</sup> brings similar expectations, and most developments in this area are based on it. However, there is still room for improvement with regard to the right of taxpayers to see the communications exchanged in the context of a MAP.<sup>83</sup>

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<sup>76</sup> According to the data provided to the OPTR, 80% of surveyed countries (35 out of 43 countries) indicated that no right to be informed is granted in EoIR. See Chart 61, at Part II, sec. 9.1.1. Following the general trend, China, the Netherlands and Luxembourg removed the right to be informed from its legislation under pressure from the OECD Global Forum on Exchange of Information. See Part II, sec. 9.1.2. According to the data provided to the OPTR, 87% of surveyed countries (38 out of 43 countries) do not grant the taxpayer the right to be heard by the tax authority before the exchange of information relating to him with another country takes place, and 61% of the surveyed countries (26 out of 43 countries) deny the taxpayer the right to challenge before the judiciary the exchange of information relating to him with another country. See Charts 64 and 65, at Part II, sec. 9.1.3.

<sup>77</sup> Bosnia and Herzegovina, Canada, Cyprus and Mexico. See Best Practices, at Part II, sec. 9.1.1.

<sup>78</sup> Preliminary rulings from the *Cour administrative* (Supreme Administrative Court) of Luxembourg specifically question the compatibility of the lack of court access by the concerned taxpayer in light of article 47 of the Charter of Fundamental Rights of the European Union, as the lack of legal standing affects indirectly the right to be informed and to initiate legal proceedings. See Part II, sec. 9.1.1.

<sup>79</sup> Bosnia and Herzegovina, Brazil, Canada, Mexico, Peru and Slovenia. See Minimum Standards and Best Practices, at Part II, sec. 9.1.3.

<sup>80</sup> There were shifts away from these minimum standards and best practices reported by Bosnia and Herzegovina, Brazil, Canada, Mexico and Slovenia. See Minimum Standards and Best Practices, at Part II, sec. 9.3.

<sup>81</sup> Croatia, Peru and Sweden. See Best Practices, at Part II, sec. 9.1.1.

<sup>82</sup> [Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union](#), OJ L 265/1 (2017), Primary Sources IBFD.

<sup>83</sup> According to the data provided to the OPTR, 77% of surveyed countries (33 out of 43 countries) indicated that there was no right to see the communications exchanged by the contracting states in the context of a mutual agreement procedure. See Chart 67, at Part II, sec. 9.2.

## 2.10. Legislation

There were not many developments to report in this area in 2019. Retroactive legislation is prohibited, one way or another, in the majority of surveyed countries,<sup>84</sup> and, generally speaking, the trend of the surveyed countries in 2019 leans towards taxpayers' participation in tax policy and the making of tax law. In the **Netherlands**, "the government uses the public consultation more and more",<sup>85</sup> a trend followed by some other countries.<sup>86</sup>

## 2.11. Revenue practice and guidance

In general, the trend of the surveyed countries leans towards the minimum standards and best practices in this area. In this regard, a clear movement towards taxpayers' access to relevant legal material can be noted throughout the surveyed jurisdictions in 2019, with a noteworthy exception.<sup>87</sup>

Moreover, most surveyed countries have general binding ruling systems to advise taxpayers and provide certainty, and in half of them ruling refusals can be appealed.<sup>88</sup> There have been positive developments in **Japan**, where all rulings are published, after anonymization, on the tax authorities' website.

Finally, it is worth mentioning that the Constitutional Court of **Colombia** upheld the legitimate expectations of taxpayers relying on published guidance during reviews and appeals.<sup>89</sup>

## 2.12. Institutional framework for protecting taxpayers' rights

On the one hand, there has been a very slight decrease in the enactment of taxpayers' bills of rights in the surveyed countries, compared to 2018.<sup>90</sup>

On the other hand, one jurisdiction explicitly informs taxpayers of their rights before an audit takes place, therefore matching the best practice.<sup>91</sup> Additionally, progress was made in 2019

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<sup>84</sup> According to the data provided to the OPTR, 47% of surveyed jurisdictions (20 out of 43 countries) stated that retroactivity is allowed in the domestic law of their countries. Out of those 20 countries, 16 jurisdictions (77.5%) inform of restrictions on the adoption of retroactive tax legislation. See Charts 69 and 70, at Part II, sec. 10.2.

<sup>85</sup> NL: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 80.

<sup>86</sup> China, Spain and the United States. See Best Practice in Part II, at sec. 10.3.

<sup>87</sup> The sole exception seems to be the Czech Republic, where "secret" guidelines are issued, although taxpayers can access them through legislation on freedom of information, as discussed in Part II, sec. 3.11 of this yearbook. See Part II, sec. 11.2.

<sup>88</sup> According to the data provided to the OPTR, 74% of surveyed jurisdictions (32 out of 43 countries) have general advance rulings systems in their countries. In 26 countries (61% of the surveyed jurisdictions) the rulings are binding, and in 21 countries (48% of the surveyed countries) taxpayers have the right to appeal the refusal of a ruling. See Charts 74 to 76, at Part II, sec. 11.3.

<sup>89</sup> See Part II, sec. 11.4.

<sup>90</sup> According to the data provided to the OPTR, 59% of surveyed jurisdictions (25 out of 43 countries) have taxpayers' bills of rights in their countries (60% in 2018). In the majority of them (16 out of 25 countries, 63% of the countries with bills of rights, 37% of the surveyed jurisdictions) the bills of rights are not legally binding. See Charts 78 and 79, at Part II, sec. 12.2; and OPTR, *supra* n. 25 (2018), at sec. 5.12.2.

<sup>91</sup> China taxpayers are explicitly informed of their rights through pre-inspection notices during the audit. The Czech Republic and Guatemala rely on the awareness of the law as the standard of taxpayers' knowledge about their rights, based on the enactment of said bills of rights either as part of the tax code or as an independent piece of legislation. See Part II, sec. 12.2.

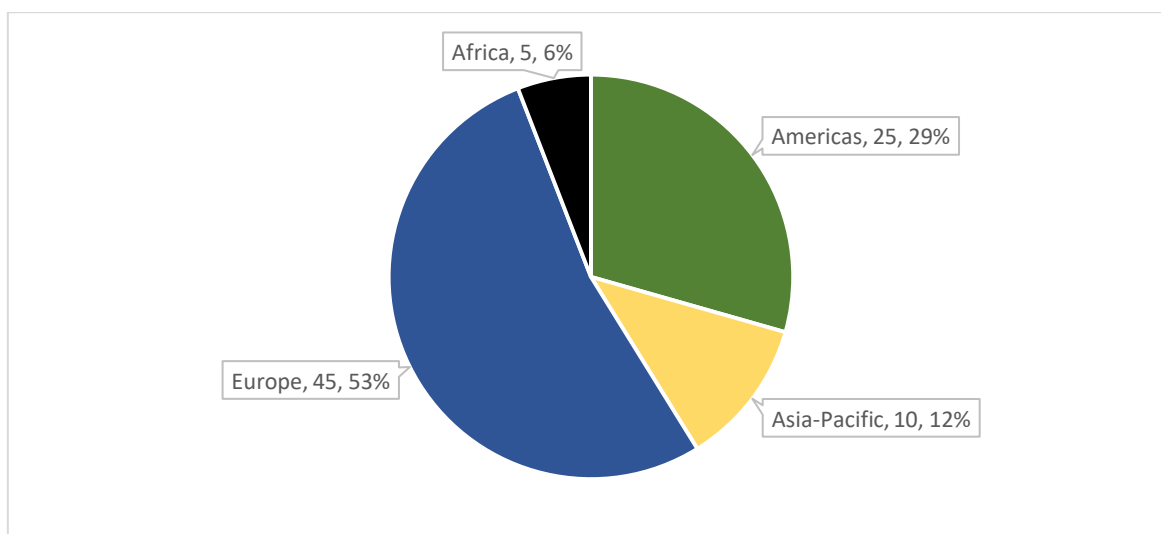


in some countries regarding the strengthening of the ombudsperson’s powers, structure and independence from tax authorities, and a decrease in complaints to the tax authorities has been linked to the effectiveness of the work of the ombudsperson.<sup>92</sup>

### 3. Methodological remarks

Following the OPTR’s working standard and procedure,<sup>93</sup> this yearbook has been prepared based on the information provided through 56 reports by 85 national reporters from 44 countries worldwide,<sup>94</sup> distributed regionally as presented in Chart A.

**Chart A. National Reporters per Region**



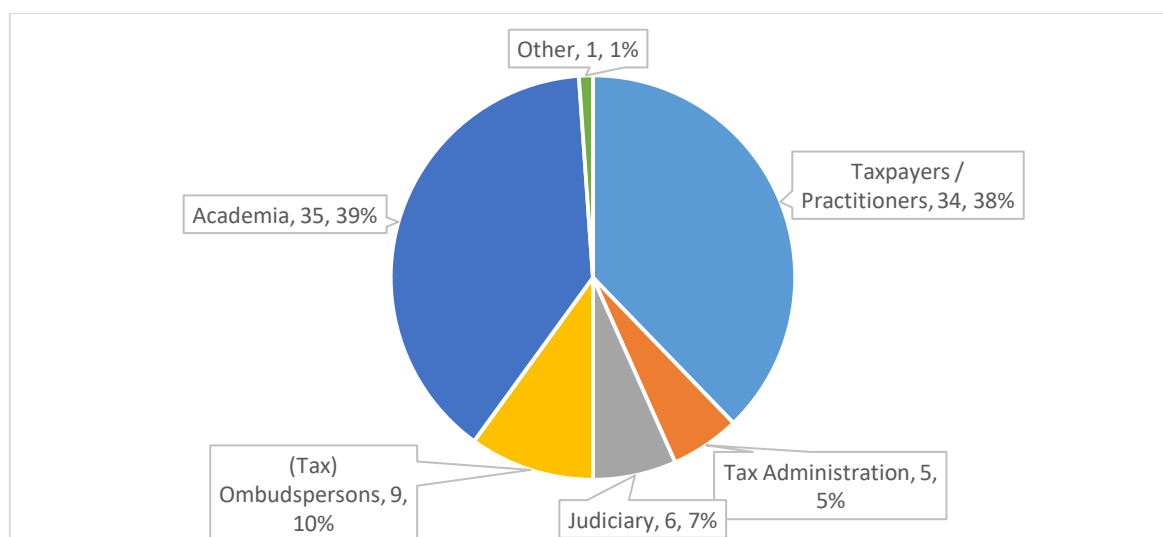
Reporters are grouped by country. These groups of experts are formed, to the fullest extent possible, by practitioners/taxpayers, tax authorities, academics, tax ombudspersons and the judiciary of each surveyed country, in order to obtain a neutral, balanced report on the situation of taxpayers’ rights in each jurisdiction. Individual reporters can have more than one affiliation simultaneously (e.g. tax administration and academia). Reporters are distributed by their affiliation as shown in Chart B. The judiciary, academic and tax ombudsmen members of each country group of experts are considered neutral, whereas the taxpayers, tax practitioners and tax administration members are taken as not neutral.

<sup>92</sup> Colombia strengthened legally the independence of the National Taxpayers’ Advocate (NTA), and enhanced its management staff, expanded the personnel of the NTA’s office aiming to better ensure the practical protection of taxpayers’ rights. Representatives of the NTA should mandatorily be at the main local offices of the Colombian tax authority. A regional taxpayers’ advocate office was created in Medellín, Colombia. Legislation in the United States made several changes affecting the NTA’s office. More statistical support, coordination of research studies with the Treasury Inspector-General for Tax Administration and procedural protections for Taxpayer Advocate Directives were enacted. In Spain, the effectiveness of the tax ombudsperson’s work has been linked to a decrease in complaints. See Part II, sec. 12.3.

<sup>93</sup> See OPTR, *supra* n. 25 (2018), at sec. 2.5.

<sup>94</sup> Taiwan only answered to the first seven questions. Therefore, for these seven questions the universe for the survey effort is 44 countries, whereas for the remaining 162 questions it is 43 countries.

**Chart B. National Reporters by Affiliation**



Reporters were asked to provide relevant information in three different ways.

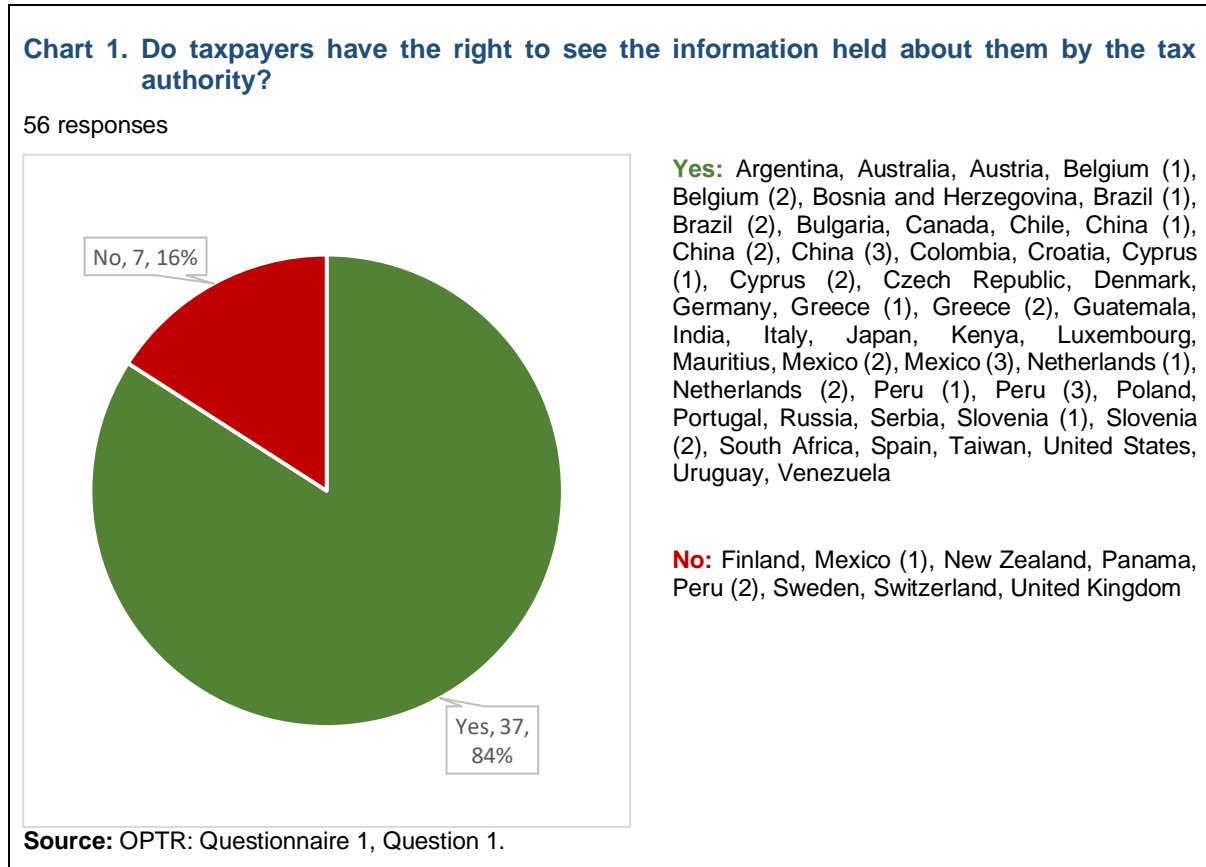
First, reporters should assess assertively (yes/no) the level of practical implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights in 82 situations, through Questionnaire 1. The answers are presented throughout this yearbook in pie charts that compile the answers per country, as shown in Chart C.

In cases where there is more than one report per country,<sup>95</sup> it may be reported that the same country has experienced progress and setbacks in the adoption of a given standard or practice, depending on the different assessments made by the reporters concerned. In those cases, different reports from the same country are taken as fractions of the jurisdiction's report, to keep parity among jurisdictions, so all countries are represented equally. For example, each one of the two reports of the **Netherlands** will have a value of 0.5, for Questionnaire 1's statistical purposes as presented in pie charts like that of Chart C, so that the **Netherlands** is represented with an equal value vis-à-vis other countries.

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

<sup>95</sup> Namely, Belgium (2 reports), Brazil (2 reports), China (3 reports), Cyprus (2 reports), Greece (2 reports), Mexico (3 reports), Netherlands (2 reports), Peru (3 reports) and Slovenia (2 reports).

**Chart C. Sample of reporters' assessment on the level of implementation of minimum standards and best practices, as reported in Questionnaire 1**



Second, reporters should assess assertively (shift towards/shift away) the level of compliance with 57 minimum standards and 44 best practices for the protection of taxpayers' rights, grouped in 87 benchmarks, through Questionnaire 2. The answers are presented throughout this yearbook, in boxes that state the minimum standard or best practice discussed in each specific section, as shown in Chart D. In cases where there is more than one report per country,<sup>96</sup> it may be reported that the same country has experienced progress and setbacks in the practical adoption of the minimum standard or best practice, depending on the different assessment made by the reporters concerned. In those cases, different reports from the same country have been identified by a number, as numbered in Appendix B of this yearbook.

Third, reporters should provide an impartial, non-judgemental summary of events occurring in 2019 (legislation enacted, administrative rulings, circulars, case law and tax administration practices) that grounds each report's assessment on the level of compliance with the 87 benchmarks for the practical protection of taxpayers' rights mentioned above. The information is presented, editorially selected, throughout this yearbook. Reporters do not always substantiate their evaluations, which makes it methodologically impossible to report the reasons for diverging assessments in the cases of multiple reports for a single country, as

<sup>96</sup> Namely, Belgium (2 reports), Brazil (2 reports), China (3 reports), Cyprus (2 reports), Greece (2 reports), Mexico (3 reports), Netherlands (2 reports), Peru (3 reports) and Slovenia (2 reports).

reported in Charts C and D.

### Chart D. Sample of reporters' assessment on the level of implementation of minimum standards and best practices, as reported in Questionnaire 2

<p><b>Minimum standard:</b> 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.</p>	
<p><b>Shifted towards/improved the minimum standard:</b> Denmark, Peru (3)</p>	<p><b>Shifted away from the minimum standard:</b> Canada, Mexico (1), Peru (2)</p>
<p><b>Best practice:</b> Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.</p>	
<p><b>Shifted towards/matched the best practice:</b> Peru (2)</p>	<p><b>Shifted away from the best practice:</b> Peru (3)</p>

Also, there are two regional units that keep track of the developments of the jurisprudence of international courts dealing with taxpayers' rights, namely: (i) for Europe, comprising the case law of the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ); and (ii) for the Americas, covering the judgments of the Inter-American Court of Human Rights (ACtHR). Their findings are presented throughout this yearbook, as portrayed in Chart E. No decisions on tax matters were reported by the ACtHR in 2019.

### Chart E. Sample of jurisprudential information

2019 Relevant Case Law – European Court of Human Rights		
<b>Case</b>	<i>Lopac and Others v. Croatia</i> , nos. 7834/12 and three others (Committee)	
<b>Date</b>	10 October 2019	
<b>ECtHR Articles</b>	Article 7 Article 1 of Protocol no. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
All applicants had permanent residence in countries other than Croatia. Customs administration, having found that their registered domicile was in Croatia, initiated administrative proceedings against them and ordered the applicants to pay import duties for having imported a vessel or a car into Croatia. The third applicant was also found guilty and fined for having committed an administrative offence (importing a car into Croatia without paying	<b>Article 1 of Protocol no. 1</b> (first, second and fourth applicants complained that they had been living abroad and thus, in accordance with Annex C to the Istanbul Convention, had not been bound to pay import taxes). <b>Non-exhaustion plea by Government: rejected.</b> The first and the fourth applicants did not claim the breach of their constitutional right to property in their complaints to the Constitutional Court. However,	<b>Main issue – quality of law in fiscal matters</b> (foreseeability). See on this issue <i>Shchokin v. Ukraine</i> (no. 23759/03 and 37945/06, § 56, 14 October 2010) and <i>Serkov v. Ukraine</i> (no. 39766/05, § 42, 7 July 2011).  This case is a follow-up to <i>Zaja v. Croatia</i> (no. 37462/09, 04 October 2016). The case concerns the <b>interpretation of the term “resident of a Contracting</b>

<p>relevant taxes). All applicants complained to the Constitutional Court about the breach of their rights but to no avail.</p>	<p>they argued that the administrative authorities' decisions ordering them to pay import taxes had been founded on an erroneous interpretation of the term "person resident" in article 5 of Annex C to the Istanbul Convention. This was sufficient for the Court to conclude that the applicants had raised in substance the issue at the domestic level.</p> <p><b>Violation of article 1 of Protocol no. 1:</b> interference with the applicants' rights was based on law, which did not meet the qualitative requirement of foreseeability. In the <i>Zaja</i> case, the Court has already found that the practice of application of article 5 of Annex C to the Istanbul Convention in Croatia at the relevant time had been inconsistent. It had given rise to uncertainty and ambiguity as to who may benefit from the exemption from import duties (in particular, whether the decisive element was <i>domicile</i> or <i>residence</i>).</p> <p><b>Article 7</b> (fourth applicant complained that his actions did not amount to an administrative offence and that the domestic authorities had wrongly interpreted article 5 of Annex C to the Istanbul Convention): <b>violation</b> for the same reasons as above (unforeseeability of law).</p>	<p><b>State"</b> (Article 4 of the OECD Model Convention) and term <b>"person resident"</b> (Article 5 of Annex C to the Istanbul Convention on Temporary Admission), and therefore the qualification of the taxpayers as subject to penalties for the alleged regulatory offences.</p>
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### 2019 Relevant Inadmissibility Decisions – European Court of Human Rights

<b>Case</b>	<i>Formela v. Poland</i> , no. 31651/08 (Chamber).	
<b>Date</b>	5 February 2019	
<b>ECtHR Articles</b>	Article 1 of Protocol no. 1 Article 6	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The applicant, an active taxpayer at the time, purchased goods from supplier K. and services from supplier S. These transactions appeared to constitute a taxable supply under the VAT Act. Both suppliers issued invoices to the applicant, which he paid in full. He also recorded all transactions in his accounting records and retained the originals of the invoices. Later the applicant filed</p>	<p><b>Article 1 of Protocol no. 1</b>          The applicant complained that, in spite of having fully complied with his statutory VAT reporting obligations, the domestic authorities had deprived him of the right to offset the input VAT because the two suppliers had either not complied, or had been late in complying, with their own VAT reporting and payment obligations.</p>	<p><b>Main issues – legitimate expectation of the taxpayer to have the input VAT paid to the supplier deducted and the proportionality of interference with the applicant's rights by the refusal of the VAT deduction.</b></p> <p>This case is a follow-up to <i>Bulves AD v. Bulgaria</i> (no. 3991/03, 22 January 2009) and <i>Atev v.</i></p>

<p>his VAT returns with the tax office. The applicant's output VAT in the said tax returns was reduced by his input VAT in the amount shown on the relevant invoices of suppliers K. and S. Later, supplier K. informed tax authorities that the invoices in question had been stolen; the company was later investigated for issuing fraudulent invoices. Supplier S. filed its VAT forms with the tax office after the statutory deadline and paid the VAT amounts arising from the respective transactions with the applicant.</p> <p>In 2004, the tax authorities decided to conduct a VAT audit of the applicant's business. They issued tax assessments for the applicant, refusing him to offset the input VAT paid to K. because the supplier had not kept copies of the invoices and had paid a lower amount of input VAT for four months. While the authorities clearly established that supplier K. had breached the VAT regulations, they considered that the applicant was liable to pay VAT on the received supply. They ordered the applicant to pay VAT arrears into the state budget, together with interest (about EUR 14,679), pointing out that a purchaser was liable for any illegal actions on the part of its supplier. The administrative courts upheld this decision.</p> <p>As regards the applicant's transactions with supplier S., the authorities also refused him the right to offset the input VAT that he had paid to S. The reason was that at the time of the transactions, S. had not been a registered VAT payer, had not filed its VAT declaration and had not paid the output VAT. The tax authorities ordered the applicant to pay the VAT arrears into the state budget, together with interest (about EUR 731). The administrative courts upheld this decision, pointing out that a buyer could seek compensation from a dishonest business partner by means of a civil law action.</p>	<p><b>Government's preliminary objection as to <i>ratione materiae</i>:</b> since the applicant has not complied with the statutory conditions for the VAT deduction, he did not have "possessions" (even within the meaning of a "legitimate expectation").</p> <p>As regards <b>the applicant's transactions with supplier S.</b>, the Court noted that (i) domestic courts established that S. had not had a valid VAT registration; (ii) unlike in <i>Bulves AD</i> the domestic authorities undertook a thorough review of the relevant circumstances; and (iii) the state provided legal and practical means for taxpayers to check the VAT status of their business partners. The applicant failed to use the relatively straightforward verification mechanism, which was put in place by the state. He therefore did not have a "legitimate expectation" to be allowed to deduct VAT as regards his transactions with supplier S.: this complaint was rejected as <b>incompatible <i>ratione materiae</i></b>.</p> <p>As regards the applicant's transactions with supplier K., the Court did not examine the Government's objection <i>ratione materiae</i>. It considered that this complaint was <b>manifestly ill-founded</b> on the following grounds. The Court examined the complaint against the <i>Bulves AD</i> criteria (para. 71) and found that the applicant did comply with his own statutory VAT obligations. The issue in the present case was, however, whether the application of clearly established rules of Polish VAT law on the applicant imposed an excessive burden on him. The supplier's non-compliance with the statutory requirements resulted in the refusal for the applicant to deduct the input VAT. However, this situation was balanced by the existence of a remedy within the framework of civil proceedings for damages, allowing the applicant to seek and obtain compensation from his supplier (see <i>Atev</i>, para. 36).</p> <p><b>Article 6</b> The applicant's complaint about the unfairness of the proceedings regarding the tax assessment was</p>	<p><i>Bulgaria</i> (no. 39689/05, 18 March 2014).</p> <p>In the present case, the Court supports a more rigid approach of the domestic authorities towards diligent traders with the aim of securing the collection of taxes (and protecting fiscal stability of the state). In particular, a purchaser is liable for any illegal actions on the part of its supplier within the VAT reporting system.</p>
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	<p><b>rejected as incompatible <i>ratione materiae</i></b>, with reference to <i>Ferrazzini v. Italy</i> (paras. 29-31).</p>	
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### 2019 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<i>E-iletişim Hizmetleri Tic. Ve San. A. Ş.</i> against Turkey, Application no. <a href="#">44521/11</a>
<b>Date Communicated</b>	8 March 2019
<b>ECtHR Articles</b>	Article 1 of Protocol no. 1
<b>Issues</b>	<p>The application concerns the applicant company's request for the reimbursement of a certain amount of tax paid to the Istanbul Metropolitan Municipality. The applicant company's request was partially granted by the Istanbul Tax Court for the years 2005 and 2006.</p> <p>The applicant company complains of a violation of its rights under article 1 of Protocol no. 1 to the Convention on account of the lack of any interest applied to the amount reimbursed.</p>

### 2019 Relevant Case Law – European Court of Justice

<b>Case</b>	<i>Dzivev</i> , C-310/16	
<b>Date</b>	17 January 2019	
<b>EU Charter Articles</b>	Article 7 – Respect for private and family life Article 47 – Right to an effective remedy and to a fair trial	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The taxpayer was charged with having committed tax offences via a trading company; he had sought to profit from not paying the tax due under VAT legislation. Authorization to initiate the interception of the telecommunications was granted by the Sofia District Court. After the criminal proceedings commenced, the prosecutor, in March 2012, sought and obtained a number of authorizations from the Specialized Criminal Court to intercept more of the defendants' telecommunications. These authorizations were granted by a court lacking jurisdiction.</p>	<p>A national court is not precluded from applying a national provision excluding, from a prosecution, evidence such as the interception of telecommunications requiring prior judicial authorization, where that authorization was given by a court that lacked jurisdiction.</p>	<p>Para. 40 (...) The requirement that any limitation on the exercise of the right conferred by <b>article 7 of the Charter</b> must be in accordance with the law means that the legal basis authorizing that limitation should be sufficiently clear and precise (see <i>WebMindLicenses</i>, C-419/14, para. 81). It is also of no relevance that, in the case of one of the four defendants in the main proceedings, only the interception of telecommunications initiated on the basis of authorisations granted by a court lacking jurisdiction could prove his guilt and justify a conviction.</p>

### 2019 Relevant AG Opinions – European Court of Justice

<b>Case</b>	<i>Google Ireland Ltd</i> , C-482/18,
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Date	12 September 2019	
ECtHR Articles	Article 41 – Right to good administration Article 47 – Right to an effective remedy and to a fair trial	
Facts	AG Opinion	Comments
<p>Hungary enacted a turnover-based tax on advertisement and a registration obligation that affected mainly non-resident companies. Google was subject to extremely high penalties for failure to comply with the registration requirements. In addition, there are certain procedural obstacles in connection with this penalization that make it difficult for the taxpayer to evade the fine, by contesting it in court proceedings for example. Both aspects affect in particular taxpayers who are resident abroad and have not yet generated any revenue taxable in Hungary.</p> <p>The referring Court asks whether articles 41 and 47 of the Charter have an impact on the imposition of the penalties as described above.</p>	<p>AG Kokott submits that the limitations of the possibilities for legal redress with regard to the very high coercive penalty payments in connection with the Hungarian tax on advertisements constitute an unjustified restriction of the freedom to provide services.</p>	<p>The case is discussed under the freedom to provide services and not in the light of the Charter.</p>



Part II  
2019 Developments

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

### 1.1. General issues

The starting point of any legal relationship is the mutual identification and the establishment of regular and effective channels of communication between the parties. This is naturally the case for the tax relationship.<sup>97</sup>

Given the public nature of that relationship, the creditor is identifiable with relative ease: the state, its political subdivisions or the functionally decentralized entity to which the power for collecting taxes has been endowed.

The same cannot be said of the debtor. Its identification is generally more difficult since it will acquire the status of either taxpayer or otherwise be eligible to pay tax when performing the conduct described in the law as a taxable event.

Also, the trend of most legal systems to establish self-assessment as the default mechanism for tax compliance adds further complexity.<sup>98</sup> Such a rule demands from taxpayers, as their

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<sup>97</sup> P. Baker & P. Pistone, [General Report](#), in *The Practical Protection of Taxpayers' Fundamental Rights*, sec. 1.1., p. 23 (IFA Cahiers vol. 100B, 2015), Books IBFD.

<sup>98</sup> Most of the surveyed countries' tax systems are based on self-assessment. See E.O. Meloni, [Argentina - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); T. Toryanik & M-J. Soo, [Australia - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); Y. Schuchter, A. Kras & A. Perdelwitz, [Austria - Corporate Taxation](#) sec. 2., Country Tax Guides IBFD (accessed 26 Feb. 2020); D. Antić, [Bosnia and Herzegovina - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); V. Arruda Ferreira, [Brazil - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); S. Pandelieva & D. Shishkova, [Bulgaria - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); B.P. Dwyer & J. Rogers-Glabush, [Canada - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); A. Bustos B., [Chile - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); S. (Shiqi) Ma, [China \(People's Rep.\) - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); M. Bocachica & V. Arruda Ferreira, [Colombia - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); P. Suchar, B. Đukić & P. Šimunović, [Croatia - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); A. Taliotis, [Cyprus - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); T. Mkrtchyan, [Czech Republic - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); A. Riis, [Denmark - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); K. Hiltunen, [Finland - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); J.C. Foncea Ferraté, [Guatemala - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); S. Shah & K. (Karen) Lim, [India - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); C. (Cesare) Silvani & G. Gallo, [Italy - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); M. Kawamura et al., [Japan - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); C. Mutava, [Kenya - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); C. Bardini & M. Lambion, [Luxembourg - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); R. Ramloll, [Mauritius - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); A. Calderón Aguilera & M. Ortega Cárdenas, [Mexico - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); H-J. van Duijn & K. Sinnige, [Netherlands - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); K.J. Holmes, [New Zealand - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); A.Y. Rodriguez, [Panama - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); A. Rey, [Peru - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); M. Olejnicka, [Poland - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); G.J. Oliveira Everaert, [Portugal - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); T. Kogut, [Russia - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); D. Popović & G. Ilić-Popov, [Serbia - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); A. Maher & P. Lešnik, [Slovenia - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); P.J. Hattingh & E. Muyaa, [South Africa - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); Á. de la Cueva González-Cotera & D. Jiménez Real, [Spain - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); Y. (Yishian) Lin, [Taiwan - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020).

first duty, to fulfil their obligations in good faith.<sup>99</sup>

In this regard, information technologies offer undoubted technical advantages for identifying and communicating with taxpayers, in a way that allows aligning those taxpayers' rights relevant in this context<sup>100</sup> with the fundamental right to a good administration,<sup>101</sup> namely, the right of taxpayers to be treated with equal concern and respect by the tax authorities.<sup>102</sup> However, as Baker and Pistone already warned in 2015, the use of information carries obvious risks to taxpayers' rights.<sup>103</sup>

## 1.2. Identification of taxpayers

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

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

Australia, Canada, United States

**Shifted away from the minimum standard:**

None

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

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

None

**Shifted away from the minimum standard:**

United States

In 2019, tax administrations maintained the trend towards the digitalization of communications between them and taxpayers observed since at least 2015.<sup>104</sup> There is a sustained need for taxpayer identification systems to maintain adequate safeguards against the growing risk of identity theft.<sup>105</sup> The sensitivity of those who prefer alternative methods should be protected,

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Feb. 2020); J. Bennett, [United Kingdom - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); J.G. Rienstra, [United States - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020); and L. Nouel & D. Calderón Manrique, [Venezuela - Corporate Taxation](#) sec. 1., Country Tax Guides IBFD (accessed 26 Feb. 2020).

<sup>99</sup> See M. Simonek, [The Principle of Good Faith in Swiss Domestic and International Tax Law](#), in *Principles of Law: Function, Status and Impact in EU Tax Law* (C. Brokelind ed., IBFD 2014), Books IBFD.

<sup>100</sup> Among those rights pointed out by Baker and Pistone, which underpin the Observatory's work, the right to privacy, including the protection of confidential information, and the right to respect for legality are particularly relevant. Baker & Pistone, *supra* n. 97, at Introduction, p. 22.

<sup>101</sup> See EU: European Charter of Fundamental Rights, art. 41, available at <https://fra.europa.eu/en/eu-charter/article/41-right-good-administration> (accessed 24 Feb. 2020).

<sup>102</sup> Art. 41(1) European Charter of Fundamental Rights, *supra* n. 100. Also R. Dworkin, *Taking Rights Seriously* pp. 218-219 (Bloomsbury 1997). Also J. Bevacqua, *From Moral Duty to Legal Rule: A Blueprint for Reform of Taxpayer Rights to Fair Treatment in the UK and Australia*, in *Contemporary Issues in Tax Research* vol. 2, pp. 37-65 (D. Salter & L. Oats eds., Fiscal Publications 2016).

<sup>103</sup> Baker & Pistone, *supra* n. 97, at sec. 1.1., p. 24.

<sup>104</sup> Id. Also OPTR, *supra* n. 25 (2018), at sec. 5.1.1.

<sup>105</sup> OPTR Minimum standard 1. See M. Sapirie, [What Does the IRS Do With Practitioner Data?](#), Tax Analysts (17 Jan. 2020), Journal Articles & Papers. Also J. Starkman, [Reforming the IRS: Is the Taxpayer Really First?](#), Tax Analysts (16 Nov. 2018), Journal Articles & Papers. Also M. Hammer, [Tax-Related Identity Theft](#), sec. 2 (2018), Journal Articles & Papers IBFD.

also where the objection is based on religious reasons.<sup>106</sup>

Regarding the security of taxpayer identification platforms, **Australia** stands out among the countries surveyed in 2019. The country is designing a global management system that allows citizens to be identified for tax purposes easily and safely, connect with the government's digital services and authorize third parties to act on their behalf, and also allow the cross-referencing of data of directors, managers and company managers to prevent phoenix activity.<sup>107</sup>

The same happens in **Canada**, where the tax authority maintains “an extensive privacy and security framework ... to manage and protect personal information for all Canadians”. In this regard, the Canadian tax authority has introduced a personal unique identification number (PIN), which must be used before any communication to a call centre to access the taxpayer's account. Canada has also encouraged taxpayers to take additional steps to protect their identity for tax purposes from any attempted theft, such as registering with an electronic information access service, receiving notifications and alerts by e-mail, a system of identification of officials of the tax administration to prevent impersonations, etc.<sup>108</sup>

**India** has mandated the linkage between its Biometric Aadhaar number and the PAN number used by the dept. to prevent duplication and impersonation.

Similarly, in **New Zealand**, the tax authority has implemented a measure according to which there must always be a personal, “face-to-face” interview with the taxpayer for the issuance of a taxpayer number.<sup>109</sup>

The **United States** has also expanded its taxpayer data protection programme, existing since 2011. The Internal Revenue Service (IRS) has implemented a unique identification number, the Identity Protection Personal Identification Number (IP PIN), for victims of identity theft and has expanded the voluntary participation of taxpayers in seven additional states for the 2019 declaration season, and will add ten more states for the 2020 season.<sup>110</sup>

Nonetheless, taxpayer identification systems seem to disregard religious sensitivities in general. In the **United States**, the entry into force of the Tax Cuts and Jobs Act has meant that the IRS has not continued to allow the child tax credit where parents have a religious objection to obtaining a social security number for the child, a setback in the protection of this minimum standard.<sup>111</sup>

In **China**, the two systems in place for the identification of taxpayers do not contain religious

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<sup>106</sup> OPTR Minimum standard 2. See P. Baker, [Some Recent Tax Decisions of the European Court of Human Rights](#), 51 Eur. Taxn. 6 (2011), Journal Articles & Papers IBFD. Also M. Sapirie, [SCOTUS Preview: A Term of \(Probably\) Tangential Tax Cases](#), Tax Analysts (27 Sep. 2019), Journal Articles & Papers. Also N. Serim, [Taxpayers' Rights: The Turkish Model](#), 48 Eur. Taxn. 4 (2008), Journal Articles & Papers IBFD.

<sup>107</sup> AU: OPTR Report ((Tax) Ombudsperson; Academia), Questionnaire 2, Question 1.

<sup>108</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 1.

<sup>109</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 1.

<sup>110</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 1.

<sup>111</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 2.

factors – which is positive – but is not sensitive to religious particularities.<sup>112</sup> That is also the case in **New Zealand**.<sup>113</sup>

### 1.3. Information supplied by third parties and withholding obligations

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

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

Belgium (1), United States

**Shifted away from the minimum standard:**

Portugal

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

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

Peru (2)

**Shifted away from the best practice:**

None

The volume and complexity of tax management tasks justify the collaboration of third parties with the tax administration in the collection of taxes, under a variant form of “decentralisation by collaboration”.<sup>114</sup> Thus, for these third parties, a type of responsibility is established by law,<sup>115</sup> based on the linkage of the third party with the economic flow that constitutes, or may constitute, the taxable event. This particular position of the third party concerning the transaction subject to the tax allows it to act as a personal guarantor of the taxpayer’s tax liability. Also, third parties may replace the taxpayer in its duties partially or totally, and assist the tax authorities in obtaining relevant information for tax purposes.<sup>116</sup>

In this regard it is, of course, desirable that, from a formal standpoint, third parties are required to keep confidentiality about the information for tax purposes obtained by them.<sup>117</sup>

Generally, the legal systems of the countries surveyed protect the confidentiality of the information obtained by third parties in the context of tax compliance. In **China**, for example, financial institutions are legally obliged to maintain the confidentiality of information for tax

<sup>112</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 2.

<sup>113</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 2.

<sup>114</sup> Under “decentralization by collaboration”, individuals – i.e. taxpayers – may perform administrative functions under the conditions set forth by the law. By performing said tasks, such individuals do not become a part of the administration, but remain subject to their ordinary private law as regards the organization and development of activities attached to their specific purpose. Only when exercising specific administrative functions, this category of individuals enjoys some of the prerogatives of public authority. See CO: Constitutional Court, Case C-909/07, available at <https://bibliotecadigital.ccb.org.co/bitstream/handle/11520/13947/Sentencia%20C-909%20de%202007.pdf?sequence=1> (accessed 26 Feb. 2020).

<sup>115</sup> In the form of responsibility as “liability”, that is, the link between the action whose consequence is legally regulated and the person who is required to suffer, for that reason, a change in his legal status. In this case, third parties replace partially the tax administration in its functions, to collaborate with the latter in controlling tax compliance. See H.L.A. Hart, *Punishment and Responsibility. Essays in the Philosophy of Law* pp. 214-215 (Oxford University Press 2008). Also C.E. Weffe H., *La Responsabilidad Tributaria*, 145 Rev. Dcho. Tributario, p. 45 (2015), available at [www.academia.edu/8571277/La\\_Responsabilidad\\_Tributaria](http://www.academia.edu/8571277/La_Responsabilidad_Tributaria) (accessed 24 Feb. 2020).

<sup>116</sup> Weffe H., *supra* n. 114, at p. 78.

<sup>117</sup> OPTR minimum standard 3.

purposes obtained from their clients, especially non-residents, although the requirement for confidentiality is not clear in other cases. Likewise, the cooperation agreements signed by the tax authorities with third parties expressly provide for the confidentiality of the information obtained.<sup>118</sup>

Similarly, in **Japan**, the confidentiality of third parties is expressly established in strict terms, both in tax proceedings and in administrative procedures in general.<sup>119</sup>

In this regard, the implementation of the GDPR in **Belgium** has led to an improvement in the protection of the confidentiality of tax data held by third parties.<sup>120</sup>

In **New Zealand**, the establishment of the “MyIR” electronic retention system has improved the accuracy in the administrative management of withholdings, although there have been some implementation problems.<sup>121</sup>

In the same vein, in the **United States**, the law has increased the penalties applicable for improper use or disclosure of information by third parties.<sup>122</sup>

From a material point of view, it is equally desirable that the taxpayer’s compliance with the obligation be released once the tax has been withheld, regardless of whether or not the third party (withholding agent) has complied with the payment of the tax liability.<sup>123</sup> Several jurisdictions recognize this.<sup>124</sup> However, that is not always the case.<sup>125</sup>

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

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

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

Bulgaria, Colombia, Mexico (2)

**Shifted away from the minimum standard:**

Finland

<sup>118</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Questions 3-4.

<sup>119</sup> JP: OPTR Report (Academia), Questionnaire 2, Questions 3-4.

<sup>120</sup> BE: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 3.

<sup>121</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 3.

<sup>122</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 3.

<sup>123</sup> OPTR Best practice 1. See B. Andrade Rodríguez, *La Carga de la prueba para el nacimiento de la responsabilidad solidaria del agente de retención conforme al Código Orgánico Tributario venezolano*, 101 Rev. Dcho. Tributario, sec. III (2003), available at <http://avdt.msinfo.info/bases/biblo/texto/REVISTA%20DE%20DERECHO%20TRIBUTARIO%20No%20101%20OCTUBRE%20NOVIEMBRE%20DICIEMBRE%202003.pdf> (accessed 24 Feb. 2020).

<sup>124</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 4; and CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 4; SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 4.

<sup>125</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 4; and ZA: OPTR Report (Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 4.

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

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

Colombia, South Africa

**Shifted away from the minimum standard:**

None

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

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

Belgium (2)

**Shifted away from the best practice:**

None

A natural consequence of the collection of data relevant for tax purposes is the right of taxpayers to access and correct the information held by the tax authorities: namely, the right to habeas data.<sup>126</sup> In the context of the tax assessment, the right to habeas data encompasses the taxpayer's right (i) to access the data about him stored by the tax administration; (ii) to request the correction or deletion of whatever wrong data it may contain; and (iii) control the rational and legitimate use of the information by the tax administration.<sup>127</sup>

The right to habeas data is recognized in most surveyed jurisdictions, and most of the jurisdictions surveyed also recognize the right to the correction of information held by the tax authorities, as shown in Charts 1 and 2.

As a natural consequence of the discussion in section 1.3., it is possible to state that "the widespread use of withholding of tax by third parties, and the supply of information by third parties to the revenue authorities, is at the heart of the systems of pre-populated tax returns. It is an obvious safeguard that the pre-populated return is sent to the taxpayer concerned so that he/she has the opportunity to correct errors".<sup>128</sup>

There are several practices of the surveyed jurisdictions in this regard, which have mostly incorporated some form of electronic declaration. Such a procedure has been a trend in 2019, particularly in the case of **Bulgaria**,<sup>129</sup> **Colombia**,<sup>130</sup> **Mexico**<sup>131</sup> and **South Africa**.<sup>132</sup> In all

<sup>126</sup> See EU: European Charter of Fundamental Rights, *supra* n. 100, at art. 42; J. Kokott, *Taxpayers' Rights*, 60 Eur. Taxn. 1, sec. 4 (2020), Journal Articles & Papers IBFD; P. Pistone, *General Report*, sec. 5.5., European Association of Tax Law Professors, Madrid 2019; C.E. Weffe H., *The Right to Be Informed: The Parallel between Criminal Law and Tax Law, with Special Emphasis on Cross-Border Situations*, 9 World Tax J. 3, sec. 4.3.2.1 (2017), Journal Articles & Papers IBFD; R. Avi-Yonah & G. Mazzoni, *Taxation and Human Rights: a Delicate Balance* pp. 3-4 (The University of Michigan 2016), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2834883](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2834883) (accessed 25 Feb. 2020); A. Rust, *Data Protection as a Fundamental Right*, in *Exchange of Information and Bank Secrecy* pp. 189-195 (A. Rust & E. Fort eds., Kluwer 2012); and X. Oberson, *International Exchange of Information in Tax Matters. Towards Global Transparency* p. 225 (Edward Elgar Publishing 2015).

<sup>127</sup> Weffe H., *supra* n. 125, at footnote 151.

<sup>128</sup> Baker & Pistone, *supra* n. 97, at sec. 1.3., p. 25.

<sup>129</sup> BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 5.

<sup>130</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 5.

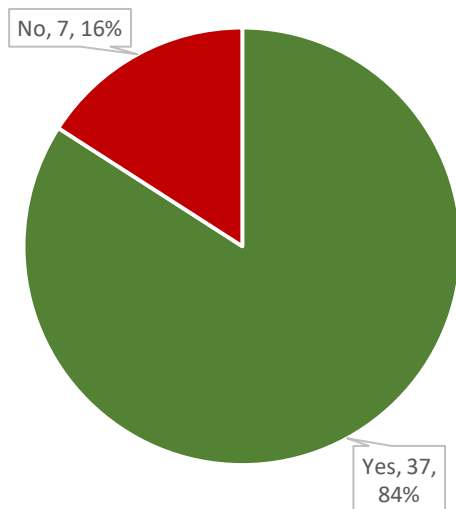
<sup>131</sup> MX: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 5.

<sup>132</sup> ZA: OPTR Report (Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 6.

these cases, taxpayers are guaranteed the possibility to access, correct or reject the information pre-loaded by the tax administration.

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

56 responses



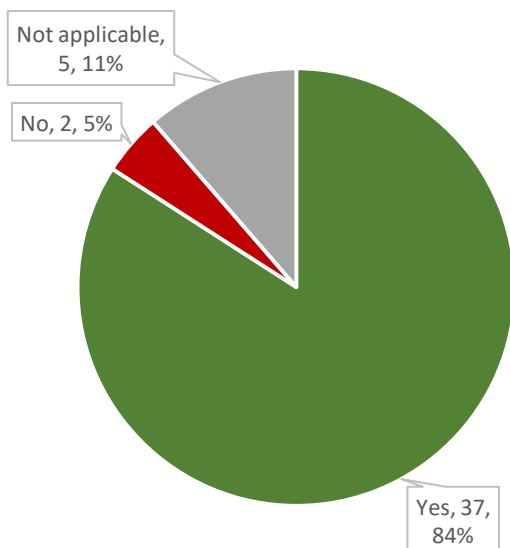
**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (2), China (3), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (2), Mexico (3), Netherlands (1), Netherlands (2), Peru (1), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Taiwan, United States, Uruguay, Venezuela

**No:** Finland, Mexico (1), New Zealand, Panama, Peru (2), Sweden, Switzerland, United Kingdom

Source: OPTR: Questionnaire 1, Question 1.

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

56 responses



**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (3), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (2), Mexico (3), Netherlands (1), Netherlands (2), Panama, Peru (1), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Taiwan, United States, Uruguay, Venezuela

**No:** Finland, Guatemala

**Not applicable:** China (2), Mexico (1), New Zealand, Peru (2), Sweden, Switzerland, United Kingdom

Source: OPTR: Questionnaire 1, Question 2.

For its part, the right of access to personal information maintained by the tax administration has generally been acknowledged in several of the jurisdictions surveyed for quite some



time,<sup>133</sup> a trend maintained in 2019.<sup>134</sup>

## 1.5. Communication with taxpayers

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

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

Canada, Colombia, India, Netherlands (2), New Zealand, Peru (3), United States

None

At the beginning of section 1.,<sup>135</sup> it was noted that a critical element in the practical realization of any legal relationship is the establishment of regular and effective channels of communication between the parties.

Indeed, (good) communication between the tax administration and taxpayers is essential to the establishment of a constructive dialogue, which allows for optimizing the functioning of the tax system, adequately balanced with the rights and interests of the taxpayers who, while funding state operation, should be the primary beneficiaries of public activity.

In such a context, and closely linked to the first of the Observatory's minimum standards,<sup>136</sup> it is essential that communication between the tax administration and taxpayers is provided with mechanisms that prevent both impersonation and interception of communications, especially in the case of the use of information technology as a communication channel between the parties.<sup>137</sup>

Indeed, the use of electronic means of communication between the tax administration and taxpayers is an upward trend, as evidenced by Chart 3.

In the vast majority of cases, electronic systems of communication with taxpayers have mechanisms that prevent the impersonation or interception of communications, as shown in Chart 4.

This expansive trend in electronic communications can be seen in several of the countries surveyed, such as **India**,<sup>138</sup> **Peru**<sup>139</sup> and **New Zealand**,<sup>140</sup> although in some cases, such as

<sup>133</sup> See CN: OPTR Report (Academia (3)), Questionnaire 2, Question 6; JP: OPTR Report (Academia), Questionnaire 2, Question 6; NZ: OPTR Report (Academia), Questionnaire 2, Question 6; SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 6; US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 6; and UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 6.

<sup>134</sup> See BE: OPTR Report (Academia), Questionnaire 2, Question 6; CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 5; and ZA: OPTR Report (Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 6.

<sup>135</sup> See sec. 1.1.

<sup>136</sup> Implement safeguards to prevent impersonation when issuing unique identification numbers.

<sup>137</sup> OPTR minimum standard 6.

<sup>138</sup> IN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 7.

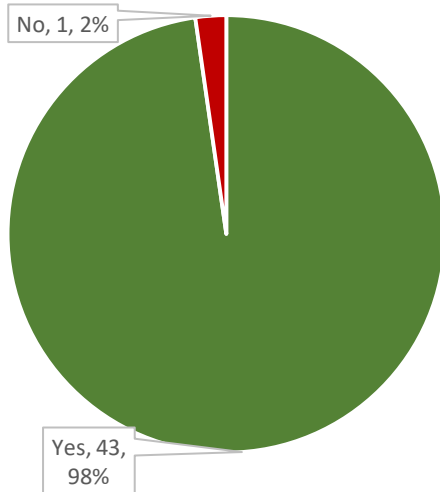
<sup>139</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 7.

<sup>140</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 2.

that of the **United States**, these communications are limited.<sup>141</sup>

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

56 responses



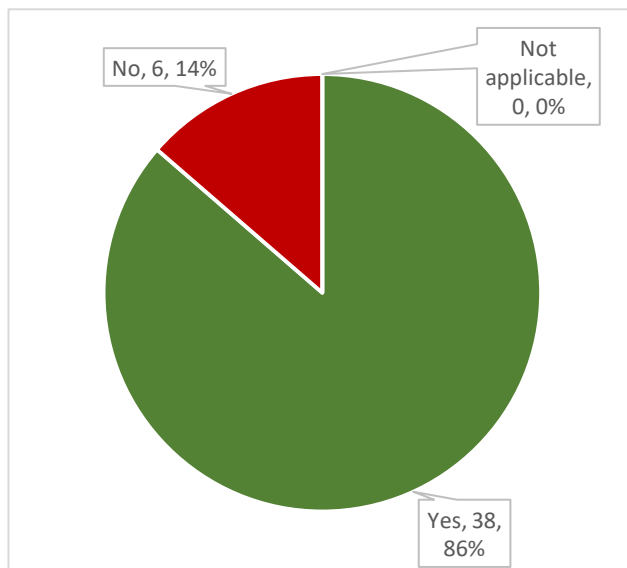
**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (2), China (3), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (1), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, Taiwan, United Kingdom, United States, Uruguay, Venezuela

**No:** Japan

Source: OPTR: Questionnaire 1, Question 5.

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

56 responses



**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (2), China (3), Colombia, Croatia, Cyprus (1), Denmark, Finland, Germany, Greece (1), Greece (2), India, Italy, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (1), Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Taiwan, United States, Uruguay, Venezuela

**No:** Cyprus (2), Czech Republic, Guatemala, Japan, Peru (1), Switzerland, United Kingdom

**Not applicable:** None

Source: OPTR: Questionnaire 1, Question 6.

**Canada** has been very active in 2019 to protect communications from unauthorized access.

<sup>141</sup> US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 7.

The Canadian Revenue Agency (CRA) has encouraged taxpayers to register with an electronic account access service, to choose to receive e-mail notifications/alerts regarding key activities, for direct communication with CRA, to confirm the identity of tax officials engaged in an assessment, and for confirmation of the identity of CRA employees to avoid scams, etc.<sup>142</sup>

In **China**, the State Administration of Taxation published their Requirements on the Development of Online Tax Services.<sup>143</sup> On its side, the tax authority of **Colombia** includes an alphanumeric code in all its electronic communications to prevent counterfeiting.<sup>144</sup> Likewise, **India** has implemented a faceless e-assessment system, in which all communications with taxpayers will be electronic only. The system has inbuilt checks and balances to prevent impersonation or interception.<sup>145</sup>

Also, the **United States** reports the continuous updating of its authentication procedures for online interactions with taxpayers, including the implementation of alternative methods to knowledge-based verification for its Get Transcript function, and it is working on further security improvements.<sup>146</sup>

### 1.6. Cooperative compliance

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

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

Austria, Belgium (2), Brazil (1), Spain, United States.

**Shifted away from the minimum standard:**

None.

The enhancement of the relationship between the tax administration and taxpayers is, of course, one of the main objectives of any tax policy. Transparency, in the context of cooperative compliance, is perceived as the path to certainty.<sup>147</sup>

Cooperative compliance programmes involve tax enforcement strategies, focusing on influencing taxpayer behaviour and improving tax compliance rates and tax certainty through good faith and the building of a trustworthy relationship between the parties, through the voluntary participation of the taxpayer.<sup>148</sup>

Indeed, “shifting from a traditional control approach to a cooperative compliance approach is the result of the development of a tax risk management strategy or tax control framework. A good corporate governance system that supports transparency and disclosure is intrinsic to

<sup>142</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 7.

<sup>143</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 7.

<sup>144</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 7.

<sup>145</sup> IN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 7.

<sup>146</sup> US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 7.

<sup>147</sup> See E.M.E. van der Enden & K. Bronżewska, *The Concept of Cooperative Compliance*, 68 Bull. Intl. Taxn. 10 (2014), Journal Articles & Papers IBFD.

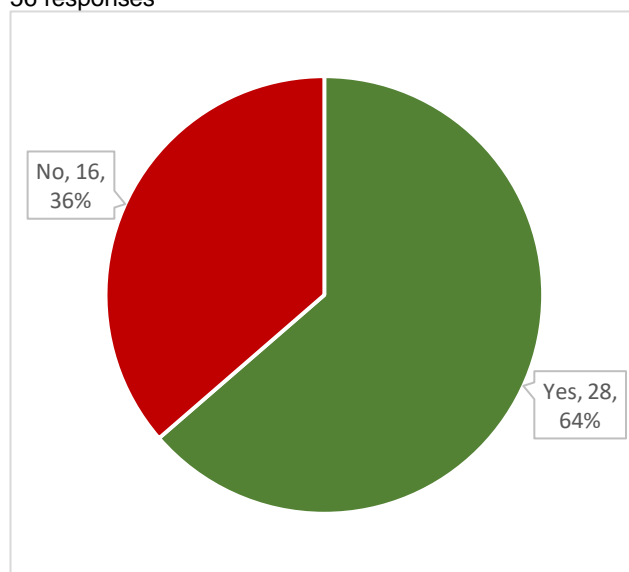
<sup>148</sup> IMF/OECD, Report for the G20 Finance Ministers, *Tax Certainty*, p. 21 (Mar. 2017) available at <https://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf> (accessed 25 Feb. 2020).

the cooperative compliance concept”.<sup>149</sup> Hence, cooperative compliance represents a way to improve the relationship between the tax administration and taxpayers based on mutual trust, the better understanding of the business models of taxpayers and the reduction of administrative burdens.<sup>150</sup>

Against this background, it can be safely affirmed that cooperative compliance is on the rise.<sup>151</sup> That seems to be the case among the surveyed jurisdictions, as shown in Chart 5.

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

56 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Brazil (1), Brazil (2), Canada, China (1), China (2), China (3), Colombia, Croatia, Denmark, Finland, Guatemala, Italy, Japan, Kenya, Mauritius, Mexico (1), Netherlands (1), New Zealand, Panama, Peru (1), Portugal, Russia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Taiwan, United Kingdom, United States, Venezuela

**No:** Argentina, Bosnia and Herzegovina, Bulgaria, Chile, Cyprus (1), Cyprus (2), Czech Republic, Germany, Greece (1), Greece (2), India, Luxembourg, Mexico (2), Mexico (3), Netherlands (2), Peru (2), Peru (3), Poland, Serbia, Switzerland, Uruguay

**Source:** OPTR: Questionnaire 1, Question 3.

However, the adoption of cooperative compliance as standard procedure for tax authorities seems to be gradual. The task of regulating the procedures necessary to ensure the equal treatment of taxpayers, to ensure that their application is not discriminatory, is pending, as shown in Chart 6.

There have been many developments in cooperative compliance in 2019, basically in regulations about the procedure. That is the case of **Austria**<sup>152</sup> and **Brazil**. Special conditions for settlement by way of alternative dispute resolution, generally reducing fines and interest, were regulated in the latter country.<sup>153</sup>

In **Spain**, standard regulations were issued for tax compliance management systems to assist

<sup>149</sup> D. Amici, *In-Depth Analysis of the Concept of Options Realistically Available in Transfer Pricing*, 27 Intl. Transfer Pricing J. 2 (2020), Journal Articles & Papers IBFD.

<sup>150</sup> OECD/G20, *Transfer Pricing Documentation and Country by Country Reporting – Action 13: 2015 Final Report* (OECD 2015), Primary Sources IBFD.

<sup>151</sup> K. Bronżewska & A. Majdańska, *The New Wave of Cooperative Compliance Programmes and the Impact of New Technology*, 59 Eur. Taxn. 2/3 (2019), Journal Articles & Papers IBFD.

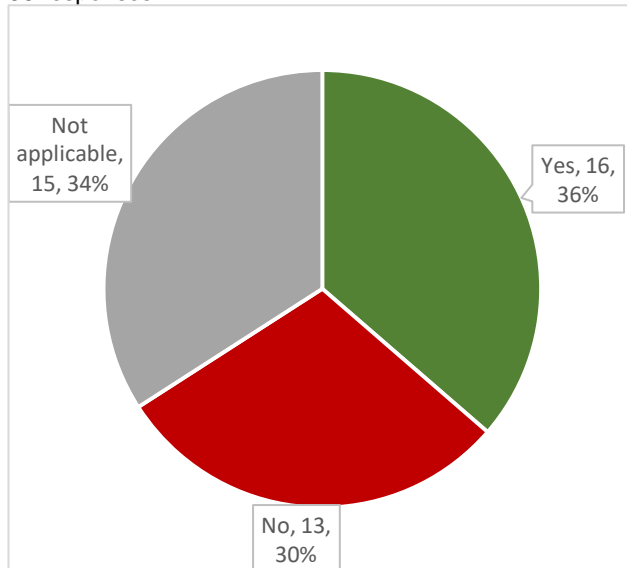
<sup>152</sup> AT: OPTR Report (Taxpayers/Tax Practitioners; Tax Administration; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 8.

<sup>153</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 8.

in the design of the management of tax-related risks, and aiming to increase compliance and transparency. A new Tax Administration Code of Conduct and an Ethics Advisory Committee are also planned, and the Best Tax Practice Code for Tax Professionals started to apply voluntarily.<sup>154</sup>

**Chart 6. If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?**

56 responses



**Yes:** Austria, Brazil (1), China (1), China (2), China (3), Colombia, Croatia, Italy, Kenya, Mexico (1), Netherlands (1), Netherlands (2), Panama, Peru (1), Portugal, Slovenia (1), Slovenia (2), South Africa, Spain, Taiwan, United States, Venezuela

**No:** Australia, Belgium (1), Belgium (2), Brazil (2), Canada, Denmark, Finland, Guatemala, Japan, Mauritius, New Zealand, Russia, Sweden, United Kingdom

**Not applicable:** Argentina, Bosnia and Herzegovina, Bulgaria, Chile, Cyprus (1), Cyprus (2), Czech Republic, Germany, Greece (1), Greece (2), India, Luxembourg, Mexico (2), Mexico (3), Peru (2), Peru (3), Poland, Serbia, Switzerland, Uruguay

Source: OPTR: Questionnaire 1, Question 4.

In the **United States**, the IRS expanded its Large Business and International Division’s Compliance Assurance Process and published the eligibility criteria.<sup>155</sup>

Further, **New Zealand** entered into formal cooperative compliance agreements with three large taxpayers in the context of a pilot cooperative compliance programme, now closed to new entrants. Other active compliance regimes apply to certain other large taxpayers. However, the Inland Revenue Department (IRD) determines the criteria for applying these regimes, so they are not available to taxpayers voluntarily.<sup>156</sup>

### 1.7. Assistance with compliance obligations

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

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

Australia, Bosnia and Herzegovina, Canada, Japan, New Zealand, Peru (3), Russia, Serbia, South Africa,

**Shifted away from the minimum standard:**

Belgium (2), Finland

<sup>154</sup> ES: OPTR Report (Taxpayers/Tax Practitioners; Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 8.

<sup>155</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 8.

<sup>156</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 2.

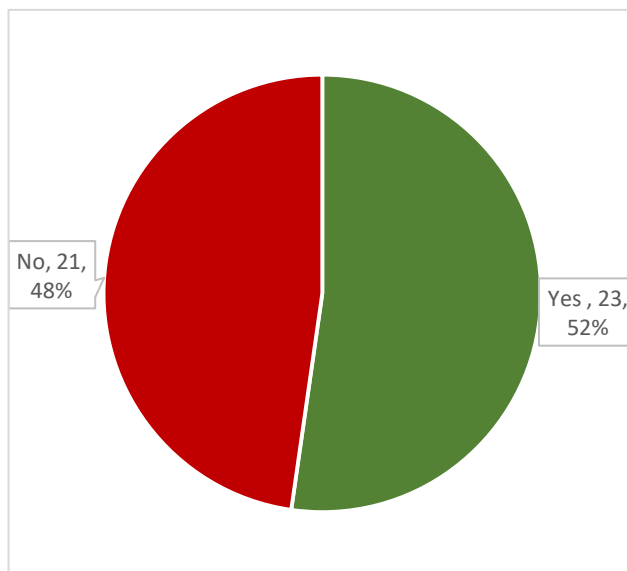
Spain, Sweden, Switzerland

It seems unnecessary to say that one of the ways in which the right of taxpayers to be treated with equal concern and respect<sup>157</sup> by (tax) authorities manifests is in assisting taxpayers facing particular difficulties in the proper compliance with their tax obligations. This is a direct and clear form of expression of the rights to equality, non-discrimination and good administration.<sup>158</sup>

In this regard, 20 out of 41 jurisdictions confirmed, in 2015, that they had special arrangements for taxpayers facing particular difficulties to receive assistance in complying with their tax obligations,<sup>159</sup> a trend that seems to remain the same today, as evidenced by Chart 7:

**Chart 7. Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?**

56 responses



**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bulgaria, Canada, China (1), China (2), China (3), Denmark, Germany, India, Italy, Japan, Kenya, Mauritius, Mexico (1), Mexico (3), New Zealand, Panama, Serbia, South Africa, Sweden, Taiwan, United Kingdom, United States

**No:** Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Finland, Greece (1), Greece (2), Guatemala, Luxembourg, Mexico (2), Netherlands (1), Netherlands (2), Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Slovenia (1), Slovenia (2), Spain, Switzerland, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 7.

In this regard, **Australia** has implemented numerous measures to assist indigenous communities, keeping pace with its efforts in past years.<sup>160</sup> The Reach Out Indigenous Support Business pilot programme is the basis for a coordinated effort by the Australian Tax Office (ATO) to improve attention to taxpayers. Similarly, through a series of community events, awareness-raising regarding the fulfilment of tax obligations is carried out in indigenous communities. Also, the Tax Help programme facilitates the lodgement for taxpayers who are

<sup>157</sup> Dworkin, *supra* n. 101, at pp. 218-219.

<sup>158</sup> Baker & Pistone, *supra* n. 97, at sec. 1.7., p. 26.

<sup>159</sup> *Id.*, at sec. 1.7., footnote 27, p. 26.

<sup>160</sup> See OPTR, *supra* n. 25 (2018), at sec. 5.1.7.

unable to do so electronically and assists those taxpayers who face disabilities.<sup>161</sup>

**Canada** has for several years been setting the tone in this regard. The Canadian tax administration has developed a project of assistance to taxpayers located in remote areas, particularly those in the Yukon Territories, at least since the Observatory has started recording its activity.<sup>162</sup> This trend continued in 2019. The Canada Revenue Agency (CRA) continued to expand its assistance measures to taxpayers, implementing the Disability Advisory Committee's recommendations to simplify the access to the so-called disability tax credit (DTC). These measures include: (i) enhanced telephone service to assist with complex questions; (ii) a system for e-filing; and (iii) the expansion of programmes aimed at raising awareness about the DTC.

Similarly, the CRA opened three new centres to improve access to tax administration services in the north of the country.<sup>163</sup>

In this regard, **China** implemented two separate programmes, "Spring Action" and "Green Channel", to enhance tax services to people who face difficulties in meeting compliance obligations.<sup>164</sup>

Also, **Colombia** opened 19 self-management points nationwide with the same goal.<sup>165</sup>

The Tax Administration Strategic Plan 2019-2022 of **Spain** aims to create a specific centre (the so-called *Administraciones de Asistencia Digital Integral*, ADI) to assist taxpayers by telephone and through electronic media.<sup>166</sup>

For its part, the IRS of the **United States** continued activities to assist taxpayers with compliance obligations.<sup>167</sup>

First, the IRS offers in-person assistance to taxpayers at Taxpayer Assistance Centers (TACs), although some of them do not have staff, open seasonally or open less than 35 hours per week. There were some issues with the procedure followed by the IRS to close these TACs, particularly the notice that the tax authorities should provide in this regard.

Also in the **United States**, the Taxpayer First Act codified the Volunteer Income Tax Assistance (VITA) programme, which allows funding "for the development, expansion, or continuation of qualified return preparation programs assisting applicable taxpayers and members of underserved populations". Also, VITA programmes are now permitted to refer taxpayers to Low-Income Taxpayer Clinics (LITCs), although both programmes are limited in fulfilling the needs of all taxpayers facing difficulties.

Regarding the simplification of tax returns, following instructions from the US Congress, the

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<sup>161</sup> AU: OPTR Report ((Tax) Ombudsperson; Academia), Questionnaire 2, Question 9.

<sup>162</sup> See OPTR, *supra* n. 25 (2018), at sec. 5.1.7.

<sup>163</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 9.

<sup>164</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 9.

<sup>165</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 9.

<sup>166</sup> ES: OPTR Report (Taxpayers/Tax Practitioners; Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 9.

<sup>167</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 9.

IRS developed Form 1040SR to assist seniors who may benefit from a larger print, more straightforward tax form.

On the other hand, **New Zealand** is shifting away from counter appointments for complex enquiries from taxpayers, to encourage telephone and online consultation.<sup>168</sup>

## 2. The issue of tax assessment

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

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

Bulgaria, Canada, Colombia

**Shifted away from the best practice:**

Italy

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

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

Australia, Bosnia and Herzegovina, Canada, Japan, New Zealand, Peru (3), Russia, Serbia, South Africa, Spain, Sweden, Switzerland

**Shifted away from the best practice:**

Finland

Good faith plays a significant role in establishing a constructive dialogue between taxpayers and revenue authorities.<sup>169</sup> Indeed, good faith and fair dealing constitute “the basis of protection of the legal position of a taxable person and constitute the basis for the principle of protection of legitimate expectations”.<sup>170</sup>

According to national reports, country practice shows a definite trend towards building this positive dialogue. Most jurisdictions reported the existence of a dialogue before a tax audit takes place to reach an agreed assessment, as shown in Chart 8.

A further example of how this constructive dialogue can be encouraged on the grounds of good faith and a level playing field for both parties of the tax relationship is that in which tax authorities notify taxpayers ex officio of systematic errors in the assessment of taxes and arrange repayment for the affected taxpayers. This might be the case of judgments making clear that the tax authorities have been collecting taxes on an inappropriate basis.

However, in practice, most reports showed that no measures of this kind had been implemented in the surveyed countries, as shown in Chart 9, in a trend already present in

<sup>168</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 9.

<sup>169</sup> See OECD Centre for Tax Policy and Administration, *Principles of Good Tax Administration – Practice Note*, paras. 10-15, Paris, 2001, available at <https://www.oecd.org/tax/administration/1907918.pdf> (accessed 27 Feb. 2020); and M.W. Hesselink, *The concept of good faith*, in *Towards a European civil code* pp. 619-649 (A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. Mak, & C. E. du Perron eds., Kluwer Law International 2011), available at [https://pure.uva.nl/ws/files/1019849/94441\\_The\\_concept\\_of\\_good\\_faith\\_in\\_Towards\\_a\\_European\\_Civil\\_Cod\\_e.pdf](https://pure.uva.nl/ws/files/1019849/94441_The_concept_of_good_faith_in_Towards_a_European_Civil_Cod_e.pdf) (accessed 27 Feb. 2020); and Bevacqua, *supra* n. 101, at pp. 37-39.

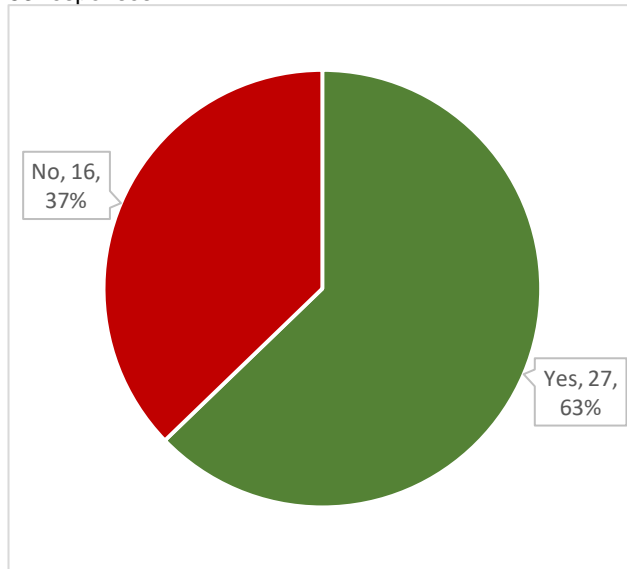
<sup>170</sup> Association of European Administrative Judges (AEAJ) Working Group on Taxation, *Principles of Good Faith and Fair Dealing and Legitimate Expectations in Tax Proceedings*, Ljubljana (2011)



2018.<sup>171</sup>

**Chart 8. Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment?**

53 responses



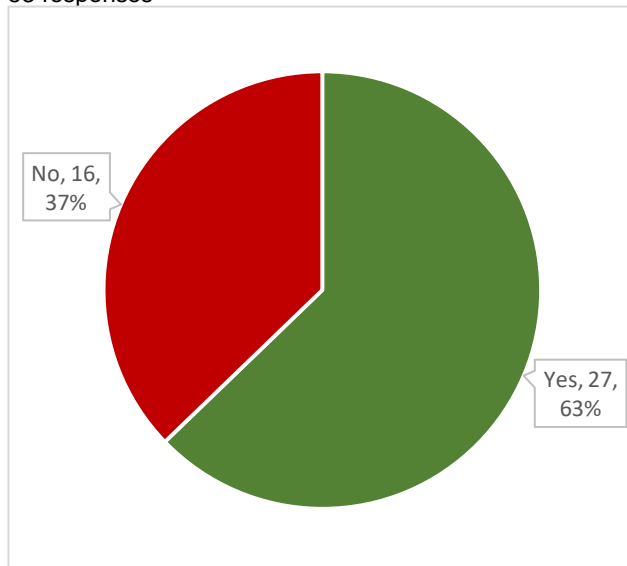
**Yes:** Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Canada, Chile, China (1), China (3), Colombia, Croatia, Cyprus (1), Denmark, Guatemala, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Portugal, Slovenia (1), Slovenia (2), Spain, Switzerland, United Kingdom, United States, Uruguay

**No:** Argentina, Australia, Brazil (1), Brazil (2), Bulgaria, Cyprus (2), Czech Republic, Finland, Germany, Greece (1), Greece (2), India, Mexico (2), Peru (1), Poland, Russia, Serbia, South Africa, Sweden, Venezuela

Source: OPTR: Questionnaire 1, Question 9.

**Chart 9. 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 wrongful basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?**

53 responses



**Yes:** Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Canada, Chile, China (1), China (3), Colombia, Croatia, Cyprus (1), Denmark, Guatemala, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Portugal, Slovenia (1), Slovenia (2), Spain, Switzerland, United Kingdom, United States, Uruguay

**No:** Argentina, Australia, Brazil (1), Brazil (2), Bulgaria, Cyprus (2), Czech Republic, Finland, Germany, Greece (1), Greece (2), India, Mexico (2), Peru (1), Poland, Russia, Serbia, South Africa, Sweden, Venezuela

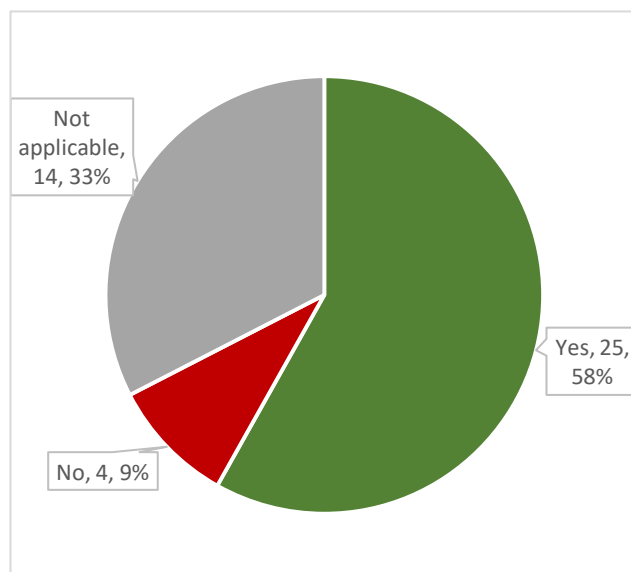
Source: OPTR: Questionnaire 1, Question 8.

<sup>171</sup> OPTR, *supra* n. 25 (2018), at sec. 5.2.

In such a case, the majority of countries stated that the taxpayer is entitled to request a meeting with the tax officer but slightly fewer than in 2018,<sup>172</sup> as shown in Chart 10.

**Chart 10. If yes, can the taxpayer request a meeting with the tax officer?**

53 responses



**Yes:** Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Canada, Chile, China (3), Colombia, Cyprus (1), Denmark, Greece (2), Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Portugal, Slovenia (1), Slovenia (2), Switzerland, United Kingdom, United States, Uruguay

**No:** Croatia, Guatemala, Spain, Venezuela

**Not applicable:** Argentina, Australia, Brazil (2), Bulgaria, China (2), Cyprus (2), Czech Republic, Finland, Germany, Greece (1), India, Peru (1), Poland, Russia, Serbia, South Africa, Sweden

Source: OPTR: Questionnaire 1, Question 10.

The constructive dialogue mentioned above had various expressions in 2019. In **Bulgaria**, the taxpayer is allowed to review the results from ongoing and past tax audits and inspections.<sup>173</sup> The tax authorities of **Canada** held consultations to allow taxpayers to provide feedback on their interaction with the revenue,<sup>174</sup> an approach also followed by **Colombia** based on its Integrated Planning and Administration Model.<sup>175</sup> In **Russia**, new legislation established multifunctional centres for interaction between tax authorities and taxpayers regarding state and municipal taxes, also electronically.<sup>176</sup>

However, the Supreme Court of **Italy** ruled that the notice of assessment is valid even if it does not mention the taxpayer's remarks, something that represents a setback in the construction of a productive dialogue among the parties.<sup>177</sup>

Also, the digitalization of tax administration is behind a considerable number of the developments in this field in 2019. There is a general trend towards the use of e-filing to speed

<sup>172</sup> In 2018, 66% of the reports stated that the possibility of a meeting with tax officials was available for taxpayers. OPTR, *supra* n. 25 (2018), at sec. 5.2.

<sup>173</sup> BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

<sup>174</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

<sup>175</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 10.

<sup>176</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 11.

<sup>177</sup> IT: Italian Supreme Court, Tax Chamber, 23 Jan. 2019, no. 1778. Also IT: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 10.

up assessment and correct (systematic) errors, as shown – for example – by **Australia**. Automatic processes are being followed to correct returns, and real-time messages and pre-filled data guide taxpayers in their self-assessment.<sup>178</sup> Something similar is happening in **Bosnia and Herzegovina**.<sup>179</sup> **China** introduced an electronic filing system to speed up tax assessments.<sup>180</sup> **India** makes faceless e-assessments to speed up pending assessments and correct errors.<sup>181</sup> **New Zealand** has made a considerable investment in expanding digital access, as part of the IRD's business transformation programme,<sup>182</sup> and **Peru** enacted regulations aiming for the same.<sup>183</sup> In **Russia**, tax authorities are now entitled to notify assessments, arrears and fines by SMS, e-mail and other legal ways, provided that taxpayers have given their consent in writing.<sup>184</sup> **Serbia** introduced e-filing for property taxes and allows taxpayers to submit returns for transfer tax and inheritance and gift taxes through a public notary.<sup>185</sup> In **South Africa**, the capability of the e-filing forms to be submitted for assessment was enhanced,<sup>186</sup> and **Spain** has AVIVA, a virtual assistant that helps taxpayers calculating the amount of output VAT.<sup>187</sup>

### 3. Confidentiality

#### 3.1. General issues

Since 2008, transparency has become a significant issue in taxation.<sup>188</sup> The public outcry in the aftermath of the global economic crisis of that year, due – among other reasons – to the revelations exposed by scandals such as the Panama Papers, brought “a major shift in policymaking power”<sup>189</sup> concerning taxation, increasing the need for tax transparency.<sup>190</sup>

These concerns are fully justified: on the one hand, by increasing the information powers of the tax authorities, it is arguably easier to reach a level playing field in taxation. It has been rightfully claimed that “there is a clear link between transparency and substance. Transparency reveals whether there is substance. If there is substance, you are entitled to

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<sup>178</sup> AU: OPTR Report ((Tax) Ombudsperson; Academia), Questionnaire 2, Question 10.

<sup>179</sup> BA: OPTR Report (Academia), Questionnaire 2, Question 10.

<sup>180</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 11.

<sup>181</sup> IN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 11.

<sup>182</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 11.

<sup>183</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 11.

<sup>184</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 11.

<sup>185</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 11.

<sup>186</sup> ZA: OPTR Report (Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 11.

<sup>187</sup> ES: OPTR Report (Taxpayers/Tax Practitioners; Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 11.

<sup>188</sup> In this yearbook, the meaning of “transparency” is limited to the availability and treatment of data by tax authorities, in the context of tax assessment and audits. It does not entail the treatment of transparent entities. For a well-documented discussion on the latter, see J.C. Wheeler, *Some Thoughts about Transparency, Attribution and CFC Regimes and Their Interaction with Tax Treaties*, in *The Aftermath of BEPS* (J.C. Wheeler ed., IBFD 2020), Books IBFD.

<sup>189</sup> A. Christians, *Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20*, 5 Nw. J. L. & Soc. Policy. 19 (2010), available at <http://scholarlycommons.law.northwestern.edu/njisp/vol5/iss1/2> (accessed 27 Feb. 2019).

<sup>190</sup> Weffe H., *supra* n. 68, at sec. 2.2.

blessings, and you might even experience miracles, just like the widow from the book of Kings”.<sup>191</sup>

On the other hand, transparency in public administration is internationally recognized as the foundation for a properly functioning democracy.<sup>192</sup>

Against this background, there is need for a balance between the legitimate interest of tax authorities in obtaining as much information as possible about taxpayers’ transactions that might become taxable events and the right of taxpayers to privacy.<sup>193</sup> This section covers minimum standards and best practices that serve as “optimization requirements”,<sup>194</sup> i.e. rights for the protection, both factual and legal, of taxpayers while enhancing the efficiency of tax administrations.

### 3.2. Guarantees of privacy in the law

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

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

Brazil (1), Netherlands (2), United States

**Shifted away from the minimum standard:**

Mexico (3)

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

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

None

**Shifted away from the minimum standard:**

None

Following a trend already set in 2015,<sup>195</sup> a vast majority of reports state that there are specific guarantees for confidentiality in domestic law, with sanctions for officials making unauthorized disclosures, as it is, for example, in **China**<sup>196</sup> and **New Zealand**.<sup>197</sup> However, in the latter the offence of a confidentiality breach is not clearly covered.<sup>198</sup>

In this regard, the **United States** provided further legal guarantees for the confidentiality of taxpayer information. Under the Taxpayer First Act, the disclosure of tax return information to tax authority contractors and agents is possible when effective safeguards to protect taxpayer information have been implemented. Also, the act increased penalties for improper use or disclosure of information by return preparers. However, the notice of federal tax lien (NFTL)

<sup>191</sup> F. van Horzen, *Go Tell It on the Mountain: Enhanced Transparency: Impact on Relations between Tax Authorities and Taxpayers?* in *EU Law and the Building of Global Supranational Tax Law: EU BEPS and State Aid* (D. (Dennis) Weber ed., IBFD 2017), Books IBFD.

<sup>192</sup> A-M. Hambre, *Tax Confidentiality: A Legislative Proposal at National Level*, 9 World Tax J. 2 (2017), Journal Articles & Journals IBFD.

<sup>193</sup> R. Alexy, *A Theory of Constitutional Rights* pp. 102-109 (Oxford U. Press 2010).

<sup>194</sup> Id., at pp. 47-48.

<sup>195</sup> Baker & Pistone, *supra* n. 97, at sec. 3.2., p. 28.

<sup>196</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 12.

<sup>197</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 12.

<sup>198</sup> Id.

gives a public snapshot of the taxpayer’s liabilities, and court filings are publicly available. An NFTL may be filed at the IRS’s discretion; currently, it is generally considered when the taxpayer’s liability for all periods exceeds USD 10,000.<sup>199</sup>

### 3.3. Encryption – Control of access

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

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

Canada

**Shifted away from the best practice:**

Bulgaria

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

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

None

**Shifted away from the minimum standard:**

None

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

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

Bosnia and Herzegovina, Canada, South Africa

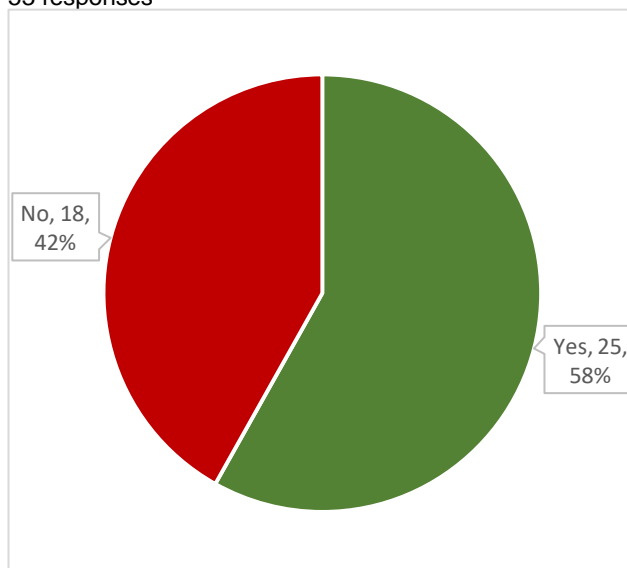
**Shifted away from the best practice:**

Bulgaria

A slight majority of reports state that the taxpayer information held by the tax authorities is automatically encrypted, as shown in Chart 11:

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

53 responses



**Yes:** Austria, Bosnia and Herzegovina, Brazil (1), Canada, Chile, China (3), Croatia, Czech Republic, Denmark, Germany, India, Italy, Japan, Kenya, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (3), Poland, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, United States, Venezuela

**No:** Argentina, Australia, Belgium (1), Belgium (2), Brazil (2), Bulgaria, China (1), Colombia, Cyprus (1), Cyprus (2), Finland, Greece (1), Greece (2), Guatemala, Luxembourg, Mexico (3), Netherlands (2), Panama, Peru (1), Peru (2), Portugal, Slovenia (1), Switzerland, United Kingdom, Uruguay.

**Source:** OPTR: Questionnaire 1, Question 11.

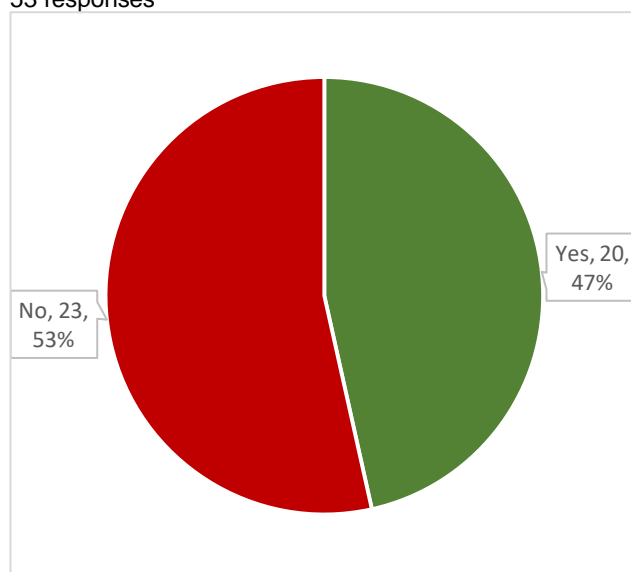
On its own, it is obvious that encryption can only adequately protect the confidentiality of

<sup>199</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 12.

taxpayer information if access is granted only to those tax officials directly linked to the taxpayers' liabilities assessments, through both encryption codes and firewalls that prevent unauthorized access to the data. Under the idea of transparency, to grant this protection to taxpayers' data is of paramount importance, particularly in light of the AEoI as a new standard of cooperation between tax authorities.<sup>200</sup> That is still not the case in slightly more than half the jurisdictions, according to the national reports, as portrayed in Chart 12.

**Chart 12. Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?**

53 responses



**Yes:** Argentina, Austria, Belgium (2), Brazil (1), Bulgaria, Chile, China (1), China (3), Cyprus (2), Germany, Greece (1), India, Japan, Kenya, Mauritius, Mexico (2), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Serbia, Spain, United States, Venezuela.

**No:** Australia, Belgium (1), Bosnia and Herzegovina, Brazil (2), Canada, Colombia, Croatia, Cyprus (1), Czech Republic, Denmark, Finland, Greece (2), Guatemala, Italy, Luxembourg, Mexico (1), Mexico (3), Poland, Portugal, Russia, Slovenia (1), Slovenia (2), South Africa, Sweden, Switzerland, United Kingdom, Uruguay.

Source: OPTR: Questionnaire 1, Question 12.

Naturally, a minimum safeguard in this context is that the acting tax officers should identify themselves as such to get access to the taxpayer's information. All 26 jurisdictions that grant access only to the tax official(s) dealing with the taxpayer's affairs, with the addition of **Slovenia**,<sup>201</sup> require some form of identification to allow said officials to retrieve the data, as Chart 13 shows. There were some developments around encryption and access control in 2019. The performance of **Canada** is noteworthy: the awareness of tax officials regarding their responsibility to maintain a strong ethical culture about safeguarding sensitive information was qualified as "positive" by a special audit report. However, there is no protocol for leaks of sensitive information.<sup>202</sup> **China** has matched the best practice, held in 2015 by **Japan**,<sup>203</sup> of physically separating the networks dealing with taxpayer information. The intranet, allowing

<sup>200</sup> See A.W. Oguttu, *Curtailing BEPS through Enforcing Corporate Transparency: The Challenges of Implementing Country-by-Country Reporting in Developing Countries and the Case for Making Public Country-by-Country Reporting Mandatory*, 12 World Tax J. 1 (2020), Journal Articles & Papers IBFD; C. Turley, D.G. Chamberlain & M. Petriccione, *A New Dawn for the International Tax System: Evolution from past to future and what role will China play?* (IBFD 2017), Books IBFD; and B. Krähenbühl, *Personal Data Protection Rights within the Framework of International Automatic Exchange of Financial Account Information*, 58 Eur. Taxn. 8 (2018), Journal Articles & Papers IBFD.

<sup>201</sup> SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 13.

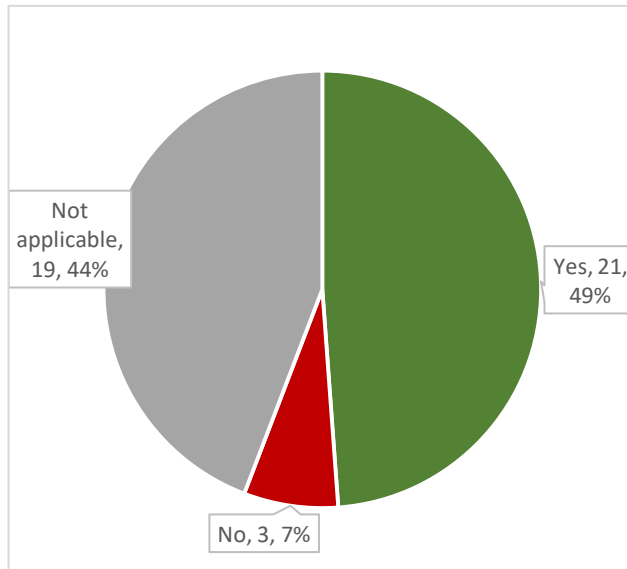
<sup>202</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Questions 12-13.

<sup>203</sup> Baker & Pistone, *supra* n. 97, at sec. 3.4., pp. 29-30.

access to taxpayer data, is only accessible to the tax authorities.<sup>204</sup>

**Chart 13. If yes, must tax officials identify themselves before accessing information held about a specific taxpayer?**

53 responses



**Yes:** Argentina, Austria, Belgium (2), Brazil (1), Bulgaria, Chile, China (3), Cyprus (2), Germany, Greece (1), Greece (2), India, Japan, Kenya, Mauritius, Mexico (2), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Serbia, Slovenia (2), Spain, United States, Venezuela

**No:** Finland, Luxembourg, Portugal

**Not applicable:** Australia, Belgium (1), Bosnia and Herzegovina, Brazil (2), Canada, China (1), Colombia, Croatia, Cyprus (1), Czech Republic, Denmark, Guatemala, Italy, Mexico (1), Mexico (3), Poland, Russia, Slovenia (1), South Africa, Sweden, Switzerland, United Kingdom, Uruguay

Source: OPTR: Questionnaire 1, Question 13.

In the **Netherlands**, the tax authority has undertaken measures to restrict access to personal data by their employees, in response to research done by a Dutch TV programme released in early 2017.<sup>205</sup>

On the other hand, there was a massive leak of the personal data of approximately 4 million taxpayers in **Bulgaria**. During the investigation of the breach, it was revealed that the level of encryption and online security of the agency was at a meagre standard.<sup>206</sup>

**3.4. Auditing of access**

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

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

Canada, Netherlands (2), Peru (3)

**Shifted away from the minimum standard:**

None

Periodic auditing of the access to data is a logical, minimum safeguard to protect the taxpayers' information from any leaks and mismanagement.<sup>207</sup> According to national reports, the majority of surveyed jurisdictions provided such a minimum protection to taxpayers, as Chart 14 shows:

<sup>204</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 13.

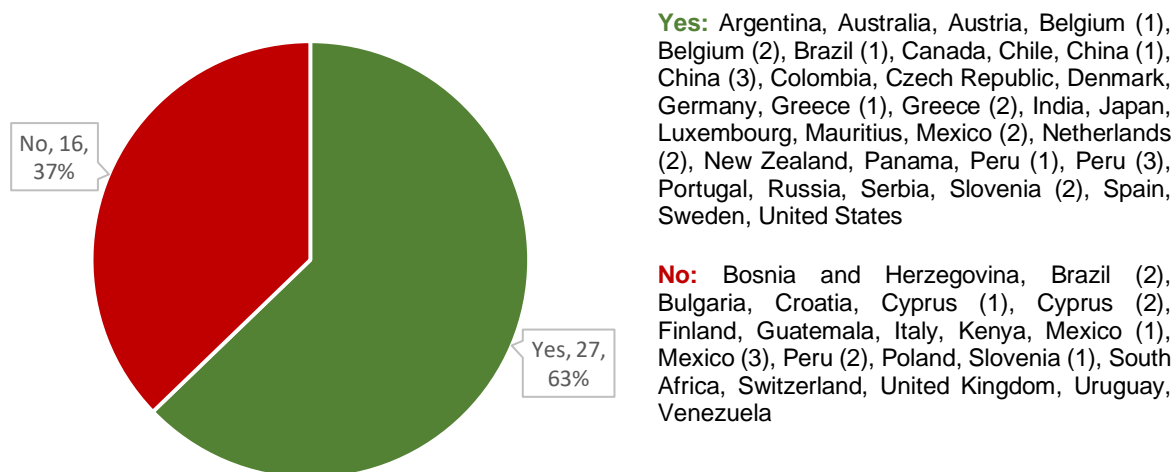
<sup>205</sup> NL: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 12.

<sup>206</sup> BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 12.

<sup>207</sup> See N. Čičin-Šain, T. Ehrke-Rabel & J. Englisch, *Joint Audits: Applicable Law and Taxpayer Rights*, 10 World Tax J. 4, sec. 5 (2018), Journal Articles & Papers IBFD.

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

53 responses



**Source:** OPTR: Questionnaire 1, Question 14.

It was reported in 2019 that, as a result of the audits carried out, 264 privacy breaches by tax authority employees were reported in **Canada** between November 2015 and November 2018. Most of those employees have been disciplined or have departed the CRA. Also, the Audit Safeguarding of Sensitive Information Report, released in 2019, identified some issues that need to be addressed in order to better ensure confidentiality, such as the creation of a documented protocol outlining the steps to be followed in case of an information leak.<sup>208</sup>

The tax administration in **Peru** conducts internal audits periodically. Officials who cannot sustain their grounds for accessing the information are subject to disciplinary measures.<sup>209</sup> In **Slovenia**, all activities of employees within the tax information system are logged by an audit trail, which is supervised regularly by the tax authority.<sup>210</sup>

### 3.5. Administrative measures to ensure confidentiality

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

<p><b>Shifted towards/improved the minimum standard:</b> Canada, Netherlands (2)</p>	<p><b>Shifted away from the minimum standard:</b> None</p>
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Most of the developments in this area have already been reported. **Canada** is leading the pack in administrative measures taken to ensure confidentiality, as the Audit Safeguarding of Sensitive Information Report and detailed reports of breaches and measures taken to

<sup>208</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 14.

<sup>209</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 14.

<sup>210</sup> SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 14.



discipline or dismiss CRA employees involved in privacy breaches show.<sup>211</sup> There is an ongoing investigation in the **Netherlands** to restrict access to personal data to the Dutch Tax Authority.<sup>212</sup> **Peru** conducts internal audits periodically.<sup>213</sup> In **Slovenia**, all activities of employees within the tax information system are logged by an audit trail, which is supervised regularly by the tax authority.<sup>214</sup>

### 3.6. Official responsibility for data confidentiality

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

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

Bulgaria, Canada, Netherlands (2), Uruguay

**Shifted away from the best practice:**

None

The movement towards the appointment of data protection officers at senior level and local tax offices as responsible for ensuring confidentiality took a step forward in **Uruguay**, where a data protection officer was appointed.<sup>215</sup>

### 3.7. Breaches of confidentiality – Investigations

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

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

Canada

**Shifted away from the minimum standard:**

None

Only 18 reports, 34% of the total, state that there were examples of tax officials prosecuted in the last decade for unauthorized access to taxpayers' data, as shown in Chart 15.

### 3.8. Exceptions to confidentiality – The general principle

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

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

Spain, United States

**Shifted away from the minimum standard:**

None

Exceptionally, the right to privacy needs to yield to other values constitutionally protected in a democratic society through the balancing of values.<sup>216</sup> Provided that the fundamental nature of the right to privacy, as part of a bundle of “constitutional rights positions”<sup>217</sup> is granted to taxpayers because of their human dignity,<sup>218</sup> it seems obvious that situations in which the right

<sup>211</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Questions 12, 14 15 and 17.

<sup>212</sup> NL: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 14.

<sup>213</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 14.

<sup>214</sup> SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 14.

<sup>215</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

<sup>216</sup> Alexy, *supra* n. 192, at pp. 102-109.

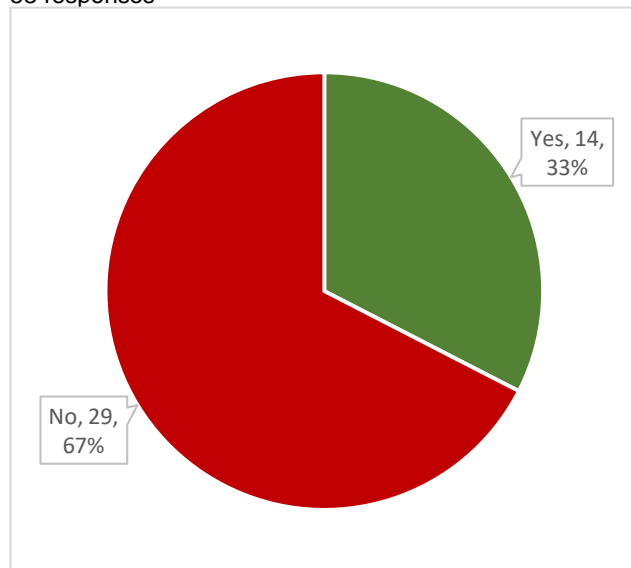
<sup>217</sup> *Id.*, at p. 159.

<sup>218</sup> See Baker & Pistone, *supra* n. 97, at Introduction, p. 22.

to privacy is overridden by other public considerations should be exceptional, explicitly stated in the law, and narrowly interpreted.

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

53 responses



**Yes:** Argentina, Australia, Austria, Brazil (1), Canada, Chile, China (1), China (3), Finland, Greece (1), Greece (2), Luxembourg, Mexico (2), New Zealand, Peru (2), Sweden, United Kingdom, United States

**No:** Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (2), Bulgaria, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Guatemala, India, Italy, Japan, Kenya, Mauritius, Mexico (1), Mexico (3), Netherlands (2), Panama, Peru (1), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Switzerland, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 15.

Following this trend, the majority of surveyed jurisdictions do not make information about the tax liability of specific taxpayers publicly available, as shown in Chart 16.

However, in those countries where there is a tradition of making some taxpayer information publicly available, the personal financial information supplied by the taxpayer to the revenue authorities is subject to fiscal secrecy in exactly the same way as in countries that have no such tradition of transparency. The trend, already noted in 2015, shows that the information that is made public is limited to the ultimate tax liability of taxpayers, but not personal or financial information.<sup>219</sup>

Following the trend of the general principle mentioned above, in the **United States**, both the legislative and judiciary branches ensured there was “reasonable notice in advance” to taxpayers of third-party contracts with the tax authorities that might represent a risk for taxpayer data. As a response, the IRS issued an implementing memorandum, outlining new procedures for notifying taxpayers of potential third-party contacts.<sup>220</sup>

On the other hand, there have been changes progressively implemented in **New Zealand** that are gradually increasing the sharing of taxpayer information with other governmental agencies.<sup>221</sup>

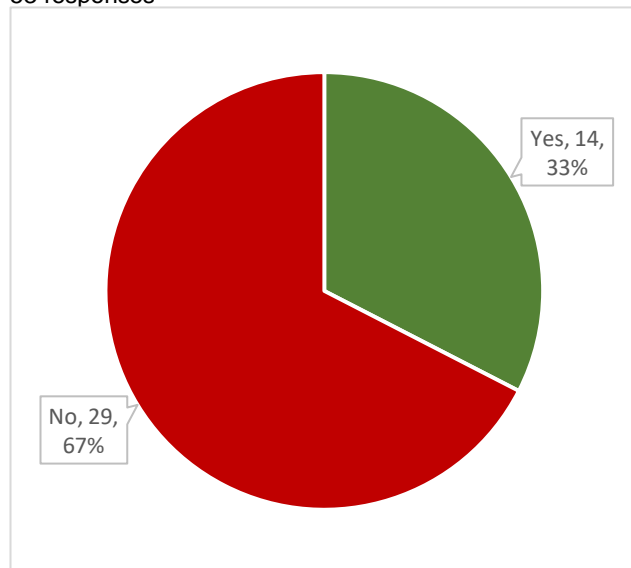
<sup>219</sup> Id., at sec. 3.10., p. 31.

<sup>220</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 19.

<sup>221</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 19.

**Chart 16. Is information about the tax liability of specific taxpayers publicly available in your country?**

53 responses



**Yes:** Australia, Bosnia and Herzegovina, Brazil (1), Bulgaria, China (1), China (3), Denmark, Greece (1), Greece (2), Italy, Mexico (2), Poland, Russia, Serbia, Slovenia (1), Sweden, United States, Venezuela

**No:** Argentina, Austria, Belgium (1), Belgium (2), Brazil (2), Canada, Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Finland, Germany, Guatemala, India, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Portugal, Slovenia (2), South Africa, Spain, Switzerland, United Kingdom, Uruguay

Source: OPTR: Questionnaire 1, Question 16.

### 3.9. Exceptions to taxpayer confidentiality – Disclosure in the public interest: naming and shaming

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

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

China (3), Czech Republic

**Shifted away from the minimum standard:**

None

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

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

None

**Shifted away from the best practice:**

None

The public clamour towards transparency might have implied, among other important things,<sup>222</sup> a more open approach to exceptional measures, such as naming and shaming.<sup>223</sup> However, as the compared data shows, there has been a slight reduction in jurisdictions willing to practise naming and shaming compared to 2018,<sup>224</sup> as Chart 17 shows.

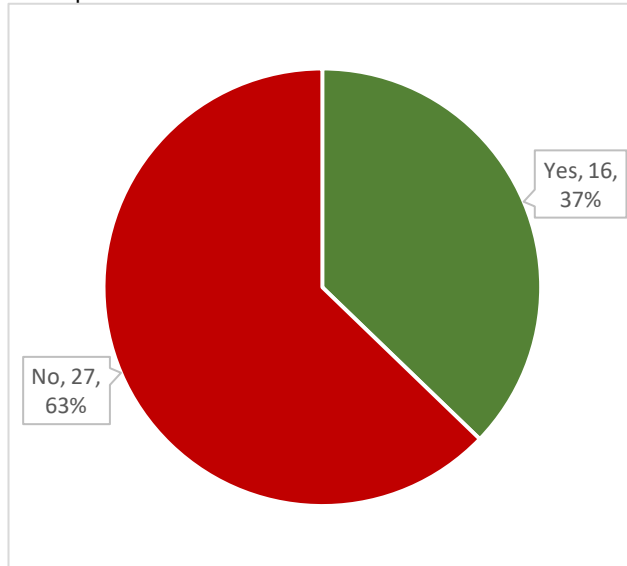
<sup>222</sup> See sec. 3.1.

<sup>223</sup> As part of the general trend of today’s punitive tax law towards the use of the so-called “indirect sanctions”. See Weffe H., *supra* n. 68 (2020), at sec. 2.3.; Weffe H., *supra* n. 68 (2010), at p. 297; and Del Federico, *supra* n. 68, at pp. 693-725.

<sup>224</sup> OPTR, *supra* n. 25 (2018), at sec. 5.3.12.

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

53 responses



**Yes:** Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, China (1), China (3), Croatia, Greece (1), Greece (2), Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), Peru (1), Poland, Portugal, Serbia, Slovenia (1), Slovenia (2), Spain, United Kingdom

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Chile, Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Guatemala, India, Italy, Japan, Luxembourg, Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Russia, South Africa, Sweden, Switzerland, United States, Uruguay, Venezuela

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

On the one hand, among these countries, **China** limits the use of “naming and shaming” to those cases when tax assessments become final (*res judicata*), but, regrettably, the disclosure of confidential information by revenue authorities in such a context needs no judicial authorization.<sup>225</sup>

On the other hand, in a significant development in light of the mandatory disclosure rules for potentially aggressive cross-border tax planning arrangements provided for in the EU Mutual Assistance Directive (2018/822) (DAC-6), the **Netherlands** has introduced “naming and shaming” regarding specific penalties imposed on tax advisers as of 1 January 2020,<sup>226</sup> and in the **United States**, “naming and shaming” is used in some states for state tax liabilities.<sup>227</sup>

**3.10. Exceptions – Disclosure in the public interest: supply to other government departments**

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

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

None

**Shifted away from the minimum standard:**

Mexico (1)

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

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

**Shifted away from the best practice:**

<sup>225</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 20.

<sup>226</sup> NL: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 20.

<sup>227</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 20.

Colombia

None

In a democratic society, the ample access granted to tax authorities to personal and financial information of taxpayers is only justified for the prevailing public interest in tax collection. Any other use of this information is, in principle, forbidden, unless there is a prevailing interest not attainable through other means or a risk of imminent harm not avoidable by other less intrusive means. Hence, exceptions to confidentiality in this context should be aligned with the general principle: specific legislation and judicial authorization for disclosure should be regarded as a minimum standard, along with the prohibition of disclosure for political purposes.<sup>228</sup> This still appears to be the practice in the surveyed countries.

There were some developments in this regard in 2019. **Colombia** leads the pack: taxpayer information is reserved, and therefore neither published nor shared for political purposes. However, as a means of control of political activity, high-level public authorities of the Executive Branch are obliged by law to publish their tax returns.<sup>229</sup>

In the same vein, in the **Czech Republic**, tax officials are prevented from disclosing to politicians any information of tax proceedings, even though there have been situations in which politicians appear to possess this information.<sup>230</sup>

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

**Minimum standard:** Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: 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

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

None

**Shifted away from the minimum standard:**

Brazil (1), Colombia

One of the different ways the balancing mentioned in section 3.1. is required in this matter is that arising from the need for governmental control through access under the freedom of information. As stated previously by Baker and Pistone, the freedom of information legislation reflects a desire to apply transparency, so that all aspects of government are subject to public scrutiny, whereas, on the other hand, taxpayers are fully entitled to privacy, as discussed previously.<sup>231</sup>

In this regard, there has been a slight decrease in the existence of systems of court authorization for the public disclosure of information held by tax authorities about specific taxpayers, compared to 2018. Whereas 48% of reports stated there was such a system in their countries in that year, 45% of reports (24 out of 53) point out the same in 2019, as shown in Chart 18.

<sup>228</sup> Baker & Pistone, *supra* n. 97, at sec. 3.14., p. 33.

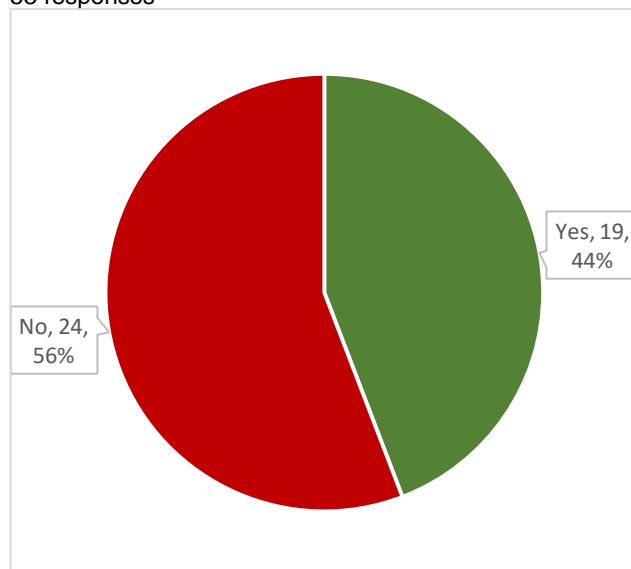
<sup>229</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 21.

<sup>230</sup> CZ: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 21.

<sup>231</sup> Baker & Pistone, *supra* n. 97, at sec. 3.15., p. 33.

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

53 responses



**Yes:** Australia, Bosnia and Herzegovina, Brazil (1), Bulgaria, China (1), China (3), Colombia, Denmark, Guatemala, India, Italy, Kenya, Mexico (1), Mexico (2), Mexico (3), New Zealand, Peru (2), Peru (3), Russia, Serbia, Slovenia (1), South Africa, United Kingdom, United States

**No:** Argentina, Austria, Belgium (1), Belgium (2), Brazil (2), Canada, Chile, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Finland, Germany, Greece (1), Greece (2), Japan, Luxembourg, Mauritius, Netherlands (2), Panama, Peru (1), Poland, Portugal, Slovenia (2), Spain, Sweden, Switzerland, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 18.

The developments in this regard in 2019 swing between the full confidentiality of taxpayer information in **China**, where taxpayer information in the power of the tax authorities can be disclosed to third parties only with previous authorization by the taxpayer,<sup>232</sup> along with that of **Colombia**, where the information administered by the DIAN’s risk management system is confidential even for the taxpayer,<sup>233</sup> to that of **Brazil**, where an agreement establishing exchange of information between different local tax authorities regarding the exchange of electronic accounting books on request, even beyond the standard of “foreseeable relevance”,<sup>234</sup> was signed.<sup>235</sup>

### 3.12. Anonymized judgments and rulings

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

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

None

<sup>232</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 22.

<sup>233</sup> This highly sensitive information can only be disclosed with judicial authorization. CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 22.

<sup>234</sup> See D.M. Ring, [Article 26: Exchange of Information - Global Tax Treaty Commentaries](#), Global Topics IBFD (accessed 2 Mar. 2020).

<sup>235</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 22.

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

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

Belgium (2), Bulgaria

**Shifted away from the best practice:**

None

Balancing the taxpayers' right to privacy against transparency in judicial proceedings is one of the biggest challenges for the practical protection of taxpayers' rights in a democratic society. Whereas taxpayers are entitled to privacy (and equally to the protection of industrial and/or commercial secrets as part of their competitive position in the relevant market), there is an obvious public interest in the proper functioning of the judiciary, and it is also important for taxpayers' awareness of the interpretative criteria of tax law by the courts. The best way to achieve a proportionate balance still seems to be the anonymization of rulings and judgments:<sup>236</sup> it protects the taxpayer's privacy while allowing the judiciary to be transparent and the taxpayers to know in advance the courts' criteria for relevant tax cases.

There were not many developments in this regard in 2019. Generally speaking, most jurisdictions seem to comply with the requirements of the minimum standard. That is the case of **Bulgaria**<sup>237</sup> and **New Zealand**.<sup>238</sup> On the other hand, there is no formal tax rulings system in **China**,<sup>239</sup> and most tax judgments are not published in **Uruguay**: those that are, are not anonymized.<sup>240</sup>

### 3.13. (Legal) professional privilege

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

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

None

**Shifted away from the minimum standard:**

Cyprus (2), Mexico (1), Mexico (3), Slovenia (2)

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

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

Belgium (2), Spain

**Shifted away from the best practice:**

Cyprus (2), Mexico (1), Mexico (2), Mexico (3), Slovenia (2)

<sup>236</sup> Baker & Pistone, *supra* n. 97, at sec. 3.16., p. 34. An interesting approach to the matter is that held by the United Kingdom's Upper Tribunal (Tax and Chancery Chamber) in UK: [Anson v. Commissioners of HM Revenue and Customs](#) FTC/39/2010, [2011] UKUT 318 (TCC), Case Law IBFD.

<sup>237</sup> BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 23.

<sup>238</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 23.

<sup>239</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 23.

<sup>240</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 23.

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

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

None

**Shifted away from the minimum standard:**

Mexico (2)

The search for transparency in the fight against tax evasion and tax avoidance, powered by the OECD Action Plan against Base Erosion and Profit Shifting (BEPS), has become a major challenge for taxpayer rights linked to professional assistance, namely the rights to defence, certainty and legitimate expectations. (Legal) professional privilege is under siege. The BEPS Action 12 Final Report on Mandatory Disclosure Rules<sup>241</sup> proposed major constraints to this fundamental right by binding intermediaries to provide information on tax optimization schemes that might eventually be regarded as aggressive, and the European Union has followed this path by enacting Council Directive 2018/822 of 25 May 2018.<sup>242</sup>

However, most jurisdictions keep (legal) professional privilege as one of the features of tax systems, and in similar proportions to those of 2018.<sup>243</sup> This guarantee of proper assistance when dealing with tax matters for taxpayers appears to be mostly limited to the legal profession, although there is a slightly positive difference between the situation in 2019 and that of 2018.<sup>244</sup> These trends are shown in Charts 19 and 20.

**Belgium** seems to lead the pack in this particular category in 2019. While implementing EU Directive 2018/822, its legislation makes no distinction among tax advisers, legal or other, when it comes to professional privilege, protecting both.<sup>245</sup> Likewise, the draft regulation to implement this directive in **Spain** provides that professional privilege will apply to all tax advisers, not only to lawyers, as long as they are considered as intermediaries in the context

<sup>241</sup> See OECD, *Mandatory Disclosure Rules – Action 12: 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project* (OECD Publishing 2015), available at [https://research.ibfd.org/collections/oeecd/pdf/oeecd\\_beps\\_action\\_12\\_final\\_report\\_2015.pdf#oeecd\\_beps\\_action\\_12\\_final\\_report\\_2015](https://research.ibfd.org/collections/oeecd/pdf/oeecd_beps_action_12_final_report_2015.pdf#oeecd_beps_action_12_final_report_2015) (accessed 2 Mar. 2020).

<sup>242</sup> See J.M. Calderón Carrero, *Corporate Tax Governance 2.0: The Role of Tax Control Frameworks Following the OECD/G20 Base Erosion and Profit Shifting Project*, 74 Bull. Intl. Taxn. 3 (2020), Journal Articles & Papers IBFD; M.F. de Wilde, *On the Future of Business Income Taxation in Europe*, 12 World Tax J. 1 (2020), Journal Articles & Papers IBFD; N. Čičin-Šain, *New Mandatory Disclosure Rules for Tax Intermediaries and Taxpayers in the European Union – Another “Bite” into the Rights of the Taxpayer?*, 11 World Tax J. 1 (2019), Journal Articles & Papers IBFD; T. Clappers & P. Mac-Lean, *Tax Avoidance in the Spotlight: The EU Mandatory Disclosure Rules and Their Impact on Asset Managers and Private Equity*, 21 Derivs. & Fin. Instrum. 3 (2019), Journal Articles & Papers IBFD; B. Larking, *No Pain, No Gain: Overkill in the EU’s Mandatory Disclosure Rules*, Tax Analysts (28 Sep. 2018); D.W. Blum & A. Langer, *At a Crossroads: Mandatory Disclosure under DAC-6 and EU Primary Law – Part 1*, 59 Eur. Taxn. 6 (2019), Journal Articles & Papers IBFD; and D.W. Blum & A. Langer, *At a Crossroads: Mandatory Disclosure under DAC-6 and EU Primary Law – Part 2*, 59 Eur. Taxn. 7 (2019), Journal Articles & Papers IBFD.

<sup>243</sup> OPTR, *supra* n. 25 (2018), at sec. 5.3.17.

<sup>244</sup> In 2018, 52% of the reports stated that the professional privilege did not extend to advisers others than legal. OPTR, *supra* n. 25 (2018), at sec. 5.3.17.

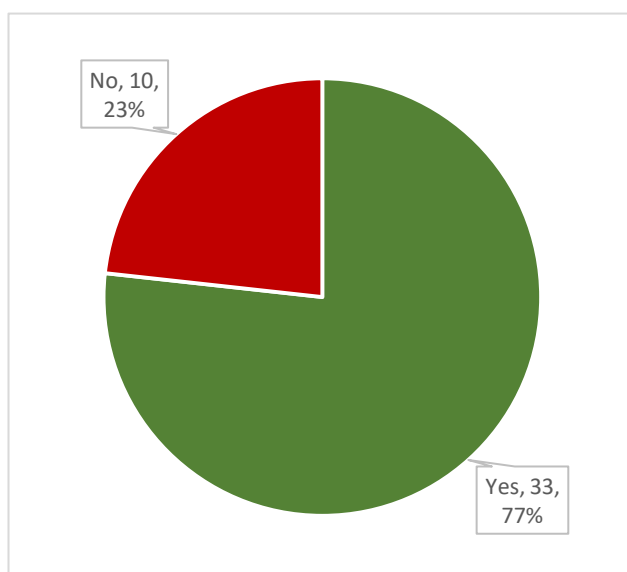
<sup>245</sup> BE: OPTR Report (Academia), Questionnaire 2, Question 24. However, when replying to those questions of Questionnaire 1 linked to this area, there seems to be disagreement between the two Belgian reports. See above, Charts 19 and 20.



of this regulation.<sup>246</sup> **New Zealand** appears to be compliant in both the minimum standard and the best practice, considering that professional privilege applies to both lawyers and tax advisers from one of the professions forming an “approved adviser group”, namely, chartered accountants’ associations and other accountancy institutes.<sup>247</sup>

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

53 responses



**Yes:** Australia, Austria, Belgium (2), Bosnia and Herzegovina, Brazil (1), Bulgaria, Canada, Chile, China (1), China (3), Colombia, Croatia, Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, Italy, Kenya, Luxembourg, Mauritius, Netherlands (2), New Zealand, Panama, Peru (1), Peru (3), Poland, Portugal, Serbia, Slovenia (2), South Africa, Spain, Sweden, United Kingdom, United States, Uruguay

**No:** Argentina, Belgium (1), Brazil (2), Cyprus (1), Cyprus (2), India, Japan, Mexico (1), Mexico (2), Mexico (3), Peru (2), Russia, Slovenia (1), Switzerland, Venezuela

Source: OPTR: Questionnaire 1, Question 19.

Among those countries legally limiting the scope of professional privilege to lawyers, **Brazil** stands out as a case in which the judiciary has extended its scope to other professionals, by means of interpretation.<sup>248</sup> It is also the case in the **United States**, where a limited privilege for accountants is in force. Also, the so-called Kovel agreements can extend the attorney-client privilege to accountants hired by attorneys.<sup>249</sup> In **Russia**, communication with persons not having the status of advocates is not protected, including with private practitioners and in-house counsel.<sup>250</sup> In **Uruguay**, senior tax officials have publicly stated that the privilege is only applicable to attorney-taxpayer communications linked to a specific tax procedure, even though this interpretation is not shared by courts nor by most scholars in that country.<sup>251</sup>

<sup>246</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 24.

<sup>247</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 24.

<sup>248</sup> BR: OPTR Report (Taxpayers/Tax Practitioners, Judiciary), Questionnaire 2, Question 24.

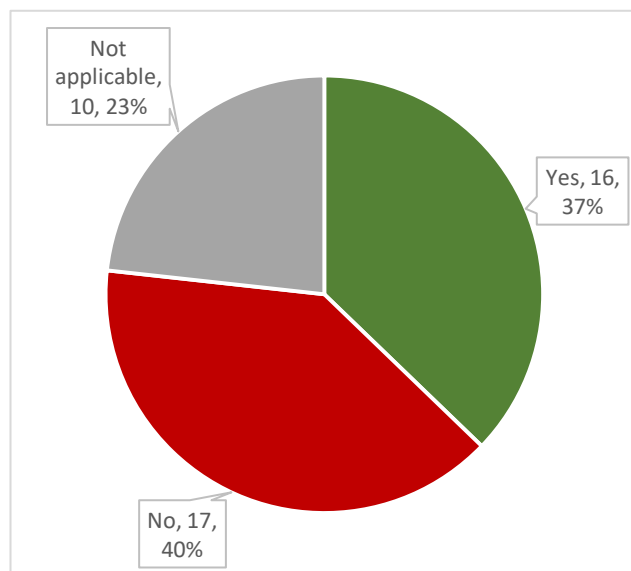
<sup>249</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 24.

<sup>250</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 24.

<sup>251</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 24.

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

53 responses



**Yes:** Belgium (1), Belgium (2), Bosnia and Herzegovina, Colombia, Croatia, Czech Republic, Finland, Germany, Greece (1), Greece (2), Guatemala, Italy, Netherlands (2), Panama, Peru (1), Serbia, Slovenia (2), United States, Uruguay

**No:** Australia, Austria, Brazil (1), Bulgaria, Canada, Chile, China (3), Denmark, Kenya, Luxembourg, Mauritius, New Zealand, Peru (3), Poland, Portugal, South Africa, Spain, Sweden, United Kingdom

**Not applicable:** Argentina, Brazil (2), China (1), Cyprus (1), Cyprus (2), India, Japan, Mexico (1), Mexico (2), Mexico (3), Peru (2), Russia, Slovenia (1), Switzerland, Venezuela

Source: OPTR: Questionnaire 1, Question 20.

In the antipodes of the first group of jurisdictions, **Cyprus** reports that, due to the implementation of the 4th and 5th Anti-Money Laundering Directives, communications between taxpayers and tax advisers are not privileged from disclosure and, instead, tax advisers are liable in case they omit to report their clients' activities that, they suspect, might relate to money laundering.<sup>252</sup>

Also, a new mandatory disclosure regime has been implemented in **Mexico** that obliges tax advisers to report, as of 1 January 2021, information on tax optimization schemes that might eventually be regarded as aggressive, even retroactively.<sup>253</sup> Likewise, since 2019, companies are obliged to identify their ultimate beneficial owner in **Peru**. Tax advisers who act as shareholders, directors, trustees or similar must also inform the tax authorities of who the ultimate beneficial owner is.<sup>254</sup>

Regarding the protection of privileged material when tax authorities enter taxpayer premises, the new mandatory disclosure rules of **Mexico** imply that cross-communication between taxpayers and tax advisers regarding tax planning is left unprotected.<sup>255</sup> Also, the **United Kingdom** issued a guidance note regarding the tax authorities' criminal investigation powers

<sup>252</sup> CY: OPTR Report (Academia), Questionnaire 2, Question 24.

<sup>253</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 24; MX: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 24; and MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 24.

<sup>254</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 24.

<sup>255</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 25; MX: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 25; and MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 25.

and safeguards in this regard.<sup>256</sup> On a positive note, in **New Zealand**, separate lawyers from the tax authorities take custody of potentially privileged material and evaluate the possible existence of this privilege in consultation with the taxpayer's lawyers, in addition to the presence of private counsel in the search.<sup>257</sup>

#### 4. Normal audits

##### 4.1. Tax audits and its foundation principles

#### 2019 Relevant Inadmissibility Decisions – European Court of Human Rights

Case	<i>Formela v. Poland</i> , no. 31651/08 (Chamber).	
Date	5 February 2019	
ECtHR Articles	Article 1 of Protocol no. 1 Article 6	
Facts	Decision	Comments
<p>The applicant, an active taxpayer at the time, purchased goods from supplier K. and services from supplier S. These transactions appeared to constitute a taxable supply under the VAT Act. Both suppliers issued invoices to the applicant, which he paid in full. He also recorded all transactions in his accounting records and retained the originals of the invoices. Later the applicant filed his VAT returns with the tax office. The applicant's output VAT in the said tax returns was reduced by his input VAT in the amount shown on the relevant invoices of suppliers K. and S. Later, supplier K. informed tax authorities that the invoices in question had been stolen; the company was later investigated for issuing fraudulent invoices. Supplier S. filed its VAT forms with the tax office after the statutory deadline and paid the VAT amounts arising from the respective transactions with the applicant.</p> <p>In 2004, the tax authorities decided to conduct a VAT audit of the applicant's business. They issued tax assessments for the applicant, refusing him to offset the input VAT paid to K. because the supplier had not kept copies of the invoices and had paid a lower amount of input VAT for four</p>	<p><b>Article 1 of Protocol no. 1</b> The applicant complained that, in spite of having fully complied with his statutory VAT reporting obligations, the domestic authorities had deprived him of the right to offset the input VAT because the two suppliers had either not complied, or had been late in complying, with their own VAT reporting and payment obligations.</p> <p><b>Government's preliminary objection as to <i>ratione materiae</i>:</b> since the applicant has not complied with the statutory conditions for the VAT deduction, he did not have "possessions" (even within the meaning of a "legitimate expectation").</p> <p>As regards <b>the applicant's transactions with supplier S.</b>, the Court noted that (i) domestic courts established that S. had not had a valid VAT registration; (ii) unlike in <i>Bulves AD</i> the domestic authorities undertook a thorough review of the relevant circumstances; and (iii) the state provided legal and practical means for taxpayers to check the VAT status of their business partners. The applicant failed to use the relatively straightforward verification mechanism, which was put in place by the state. He therefore did not have a</p>	<p><b>Main issues – legitimate expectation of the taxpayer to have the input VAT paid to the supplier deducted and the proportionality of interference with the applicant's rights by the refusal of the VAT deduction.</b></p> <p>This case is a follow-up to <i>Bulves AD v. Bulgaria</i> (no. 3991/03, 22 January 2009) and <i>Atev v. Bulgaria</i> (no. 39689/05, 18 March 2014).</p> <p>In the present case, the Court supports a more rigid approach of the domestic authorities towards diligent traders with the aim of securing the collection of taxes (and protecting fiscal stability of the state). In particular, a purchaser is liable for any illegal actions on the part of its supplier within the VAT reporting system.</p>

<sup>256</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 25.

<sup>257</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 25.

<p>months. While the authorities clearly established that supplier K. had breached the VAT regulations, they considered that the applicant was liable to pay VAT on the received supply. They ordered the applicant to pay VAT arrears into the state budget, together with interest (about EUR 14,679), pointing out that a purchaser was liable for any illegal actions on the part of its supplier. The administrative courts upheld this decision.</p> <p>As regards the applicant's transactions with supplier S., the authorities also refused him the right to offset the input VAT that he had paid to S. The reason was that at the time of the transactions, S. had not been a registered VAT payer, had not filed its VAT declaration and had not paid the output VAT. The tax authorities ordered the applicant to pay the VAT arrears into the state budget, together with interest (about EUR 731). The administrative courts upheld this decision, pointing out that a buyer could seek compensation from a dishonest business partner by means of a civil law action.</p>	<p>"legitimate expectation" to be allowed to deduct VAT as regards his transactions with supplier S.: this complaint was rejected as <b>incompatible <i>ratione materiae</i></b>.</p> <p>As regards the applicant's transactions with supplier K., the Court did not examine the Government's objection <i>ratione materiae</i>. It considered that this complaint was <b>manifestly ill-founded</b> on the following grounds. The Court examined the complaint against the <i>Bulves AD</i> criteria (para. 71) and found that the applicant did comply with his own statutory VAT obligations. The issue in the present case was however whether the application of clearly established rules of Polish VAT law on the applicant imposed an excessive burden on him. The supplier's non-compliance with the statutory requirements resulted in the refusal for the applicant to deduct the input VAT. However, this situation was balanced by the existence of a remedy within the framework of civil proceedings for damages, allowing the applicant to seek and obtain compensation from his supplier (see <i>Atev</i>, para. 36).</p> <p><b>Article 6</b></p> <p>The applicant's complaint about the unfairness of the proceedings regarding the tax assessment was <b>rejected as incompatible <i>ratione materiae</i></b>, with reference to <i>Ferrazzini v. Italy</i> (paras. 29-31).</p>	
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## 2019 Relevant Communicated Cases - European Court of Human Rights

<b>Case</b>	<i>Hi Tech Corporation Doo v. North Macedonia</i> , Application no. <a href="#">69776/17</a> .
<b>Date Communicated</b>	24 May 2019
<b>ECtHR Articles</b>	Article 1 of Protocol no. 1
<b>Issues</b>	In 2009, the applicant company was subject to a tax audit in which it was ordered to pay further income tax in the amount of 1.9 million denars (MKD) for 2007. In 2012, the authorities reopened the proceedings for that year on the basis of new evidence. A fresh tax audit was carried out for 2007, the resulting effect of which was a new decision of the tax authorities ordering the applicant company to pay

	<p>income tax amounting to MKD 20.6 million, plus interest.</p> <p>The applicant company unsuccessfully challenged this decision before the Ministry of Finance and the administrative courts, complaining, inter alia, that the evidence that had served as basis for reopening of the proceedings had been admitted in the 2009 tax audit already and assessed by the tax authorities</p>
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<b>Case</b>	<b>Gospodăria Tărănească “Alcaz G.A.” v. Moldova</b> , Application no. <a href="#">72968/14</a>
<b>Date Communicated</b>	13 June 2019
<b>ECtHR Articles</b>	Article 1 of Protocol no. 1
<b>Issues</b>	<p>The request concerns a decision by the tax authorities that the applicant company was obliged to pay VAT a second time.</p> <p>The applicant company alleges under article 1 of Protocol No. 1 to the Convention that, despite full compliance with its legal obligations with regard to VAT reporting, the national authorities deprived it of the right to deduct VAT that it had paid on a delivery of goods, because the supplier did not comply with its own obligations with regard to VAT declaration.</p>

**Minimum standard:** 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); and (4) *nemo tenetur se detegere* (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void

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

Canada

**Shifted away from the minimum standard:**

Colombia, Italy, Peru (2), Slovenia (2), Switzerland

Tax audits are at the core of the powers of tax authorities. In practice, tax law can only be enforced through an intense activity of investigation, fact-finding and legal qualification of relevant (taxable) facts, so that it is possible to legally declare whether there is a tax liability or not, and – if yes –, its amount. In a democratic society, the administrative activity linked to tax assessment requires that tax authorities should abide by the law, and taxpayers’ rights should be properly addressed and protected from a procedural perspective, especially considering the possibility of affecting the taxpayers’ personal affairs and their right to property, based on the assessment of an additional amount of tax.

Hence, stemming from general principles of procedural law,<sup>258</sup> tax audits should be developed around four foundation principles: (i) proportionality; (ii) *ne bis in idem*, or the prohibition of double jeopardy; (iii) *audi alteram partem*, or the right to be heard before any decision is taken; and (iv) *nemo tenetur se detegere*, or the principle against self-incrimination. It is apparent that tax assessments issued in contradiction to these fundamental rules should be considered

<sup>258</sup> And hence, extending the guarantee of fair trial to the entire tax assessment procedure. See Baker & Pistone, *supra* n. 97, at sec. 4.1., p. 35; Weffe H., *supra* n. 125, at sec. 2.2.2.; and K. Perrou, “[Access to an Effective Remedy](#)” and [International Tax Disputes – The Creation of Positive Obligations for the States in Taxpayer Participation](#), in *Tax Treaty Dispute Resolution* (IBFD 2014), Books IBFD.

null and void,<sup>259</sup> something acknowledged by the vast majority of surveyed countries, with the exception of the **Czech Republic**.<sup>260</sup>

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

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

Canada, Colombia

**Shifted away from the minimum standard:**

Bulgaria, Guatemala, Mexico (3), Peru (2)

Regarding proportionality,<sup>261</sup> **Canada** leads the pack. There has been a policy update on the obtaining of information for audit purposes, partially motivated by case law pointing in the direction of limiting the requests for information based on three criteria: audit scope, relevance and reasonableness, and transparency. In this regard, tax authorities have publicly acknowledged that there must be a valid business reason for seeking information from taxpayers and that the reason should be communicated to them.<sup>262</sup> This is the trend followed by **China**<sup>263</sup> and **Colombia**, where the necessity of a certificate of existence and representation of corporations to request tax information was repealed from the legislation.<sup>264</sup> In particular, the **United States** enforces restrictions on repeatedly auditing the same taxpayer on the same issue for more than two consecutive periods.<sup>265</sup>

When it comes to setbacks, **Slovenia** states that, in practice, tax authorities mostly breach the rule according to which they may request only information strictly needed,<sup>266</sup> a trend followed by **Guatemala**<sup>267</sup> and **Mexico**.<sup>268</sup> In the case of the latter, the Supreme Court issued a binding precedent requiring all private documents to have a known date of emission/signature for them to be admissible as evidence for tax purposes, further diminishing the possibilities of defence for taxpayers.<sup>269</sup>

**Best practice:** 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

<sup>259</sup> Baker & Pistone, *supra* n. 97, at sec. 4.1., p. 35.

<sup>260</sup> CZ: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 26.

<sup>261</sup> See A. Zalasinski, [The Principle of Proportionality and \(European\) Tax Law](#), in *Principles of Law: Function, Status and Impact in EU Tax Law* (C. Brokelind ed., IBFD 2014), Books IBFD; M.G.H. Schaper, [Proportionality](#), in *The Structure and Organization of EU Law in the Field of Direct Taxes* (IBFD 2013), Books IBFD; D. Freyer, [The Proportionality Principle under EU Tax Law: General and Practical Problems Caused by Its Extensive Application – Part 1](#), 57 Eur. Taxn. 9 (2017), Journal Articles & Papers IBFD; D. Freyer, [The Proportionality Principle under EU Tax Law: General and Practical Problems Caused by Its Extensive Application – Part 2](#), 57 Eur. Taxn. 10 (2017), Journal Articles & Papers IBFD; and E. Arık, [Protection of Taxpayer Rights during Tax Audits: Impartiality within the Scope of the Proportionality Principle](#), 57 Eur. Taxn. 9 (2017), Journal Articles & Papers IBFD.

<sup>262</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 27.

<sup>263</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 27.

<sup>264</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 27.

<sup>265</sup> US: OPTR Report (Taxpayers/Tax Practitioners; Academia), Questionnaire 2, Question 27.

<sup>266</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 27.

<sup>267</sup> GT: (Taxpayers/Tax Practitioners), Questionnaire 2, Question 27.

<sup>268</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 27.

<sup>269</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 27.

was completed

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

Spain

**Shifted away from the best practice:**

Colombia, Peru (2)

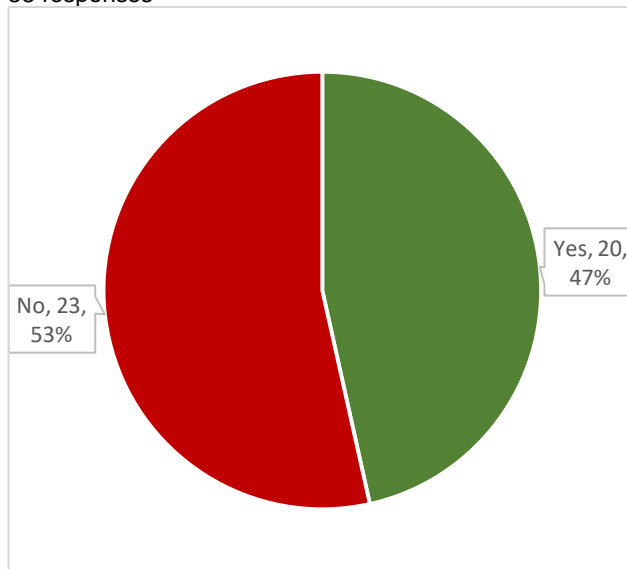
*Ne bis in idem* represents a further guarantee of proportionality, and an assurance of certainty for taxpayers. From the standpoint of proportionality, as stated above, it prevents the tax authority from unduly interfering with taxpayers’ businesses beyond reasonable limits in a democratic society under the rule of law.<sup>270</sup> From the point of view of certainty, *ne bis in idem* grants taxpayers the ability to achieve finality of taxation for a particular tax or period. That makes this rule a fundamental principle, not only of tax audits, but of every state’s intervention in the citizens’ individual sphere.<sup>271</sup>

In this regard, *ne bis in idem* in tax proceedings should mean that the taxpayer should only receive one audit per taxable period, comprehensively covering all possible issues that might arise from the investigation, with the sole exception of those facts that become known after the audit is completed. Regrettably, the majority of reports state that *ne bis in idem*, as described, is not applicable in their jurisdiction, as shown in Chart 21:

Only in nearly half of the cases in which *ne bis in idem* applies to tax audits, does it mean one audit per taxable period, according to the data of Chart 22.

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

53 responses



**Yes:** Argentina, Austria, Bosnia and Herzegovina, Brazil (2), Bulgaria, China (1), China (3), Colombia, Cyprus (1), Czech Republic, Japan, Kenya, Luxembourg, Mexico (2), Mexico (3), Panama, Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Uruguay, Venezuela

**No:** Australia, Belgium (1), Belgium (2), Brazil (1), Canada, Chile, Croatia, Cyprus (2), Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Mauritius, Mexico (1), Netherlands (2), New Zealand, Peru (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States

Source: OPTR: Questionnaire 1, Question 27.

In this regard, **Spain** is moving towards the implementation of the best practice. The judiciary ruled that new assessments can only be carried out as long as the facts analysed and the documentation required are different from those of the previous procedures, and the Supreme Court expanded the scope of taxpayers’ protection by qualifying as *res judicata* those facts

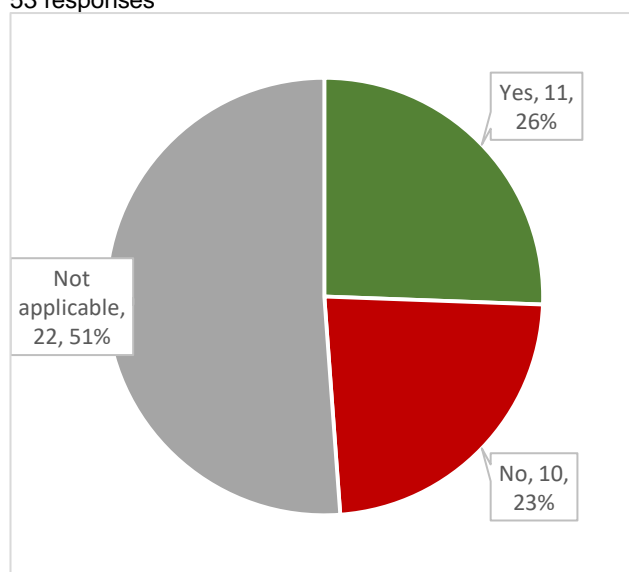
<sup>270</sup> See F.J.G.M. Vanistendael, [Single Taxation in a Single Market?](#) in *Single Taxation?* (J.C. Wheeler ed., IBFD 2018), Books IBFD.

<sup>271</sup> Weffe H., *supra* n. 68, at sec. 2.1.2.

previously assessed through the so-called provisional assessment, although it is possible that the verification is carried out by two different bodies (*Gestión-Inspección*), as long as new facts or circumstances are discovered.<sup>272</sup> There are also countries like **Bosnia and Herzegovina**,<sup>273</sup> **China**,<sup>274</sup> **Cyprus**<sup>275</sup> and **Colombia** reporting that the best practice is complied with in their jurisdictions. However, in the case of the last-mentioned, **Colombia** has established a simplified tax assessment that allows tax authorities to issue an assessment without any prior act, to speed up tax procedures even though that assessment might otherwise be regarded as *res judicata*, something that also affects *audi alteram partem*.<sup>276</sup>

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

53 responses



**Yes:** Argentina, Austria, Bosnia and Herzegovina, Brazil (2), China (1), China (3), Colombia, Cyprus (1), Mexico (3), Panama, Poland, Portugal, Serbia, Venezuela

**No:** Bulgaria, Czech Republic, Japan, Kenya, Luxembourg, Mexico (2), Peru (2), Peru (3), Russia, Slovenia (1), Switzerland, Uruguay

**Not applicable:** Australia, Belgium (1), Belgium (2), Brazil (1), Canada, Chile, Croatia, Cyprus (2), Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Mauritius, Mexico (1), Netherlands (2), New Zealand, Peru (1), Slovenia (2), South Africa, Spain, Sweden, United Kingdom, United States

**Source:** OPTR: Questionnaire 1, Question 28.

However, there are some shifts away from the best practice. The Supreme Court of **Italy** ruled that closely connected tax assessments and criminal proceedings do not violate the principle, “when the administrative penalty may be considered substantially criminal in nature”, using a criterion similar to that of the *A & B v. Norway* judgment of the ECtHR.<sup>277</sup> Also, in **Slovenia** *ne bis in idem* can be avoided in practice by an *ex officio* reopening of tax proceedings, a possibility that is denied to the taxpayer, something that is currently under judicial review.<sup>278</sup> In **Switzerland**,<sup>279</sup> the Supreme Court has adopted a rather narrow interpretation of the principle; in **South Africa**, audits for the same period can be conducted more than once, since

<sup>272</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 28.

<sup>273</sup> BA: OPTR Report (Academia), Questionnaire 2, Question 28.

<sup>274</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 28.

<sup>275</sup> CY: OPTR Report (Tax Administration), Questionnaire 2, Question 28.

<sup>276</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Questions 26 and 28.

<sup>277</sup> IT: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 28.

<sup>278</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 28.

<sup>279</sup> CH: OPTR Report (Academia), Questionnaire 2, Question 28.



double jeopardy only applies to criminal charges laid due to tax offences;<sup>280</sup> and in **Uruguay**, the tax authorities are allowed to restart audits, based on procedural mistakes affecting their validity.<sup>281</sup>

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

Shifted towards/improved the minimum standard:

None

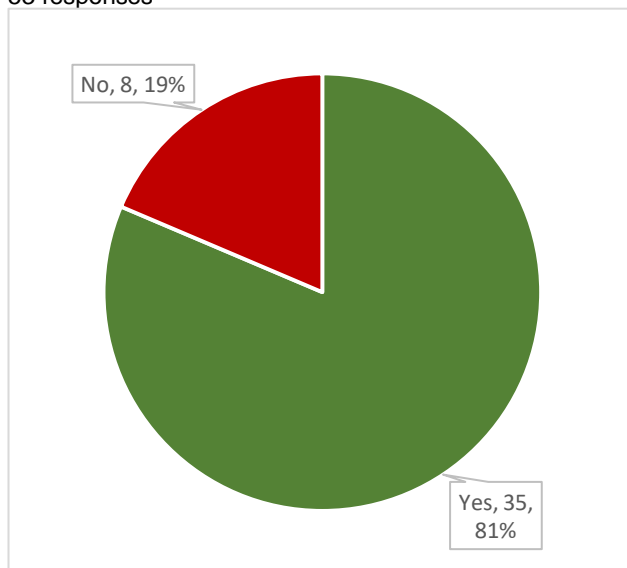
Shifted away from the minimum standard:

None

Regarding *audi alteram partem*, the majority of surveyed jurisdictions formally integrate it into their assessment procedures, as shown in Chart 23.<sup>282</sup>

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

53 responses



**Yes:** Argentina, Austria, Belgium (1), Bosnia and Herzegovina, Brazil (1), Chile, China (1), China (3), Colombia, Croatia, Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, United States, Uruguay, Venezuela

**No:** Australia, Belgium (2), Brazil (2), Bulgaria, Canada, Cyprus (1), Finland, Sweden, Switzerland, United Kingdom

Source: OPTR: Questionnaire 1, Question 21.

However, there have been mostly setbacks reported with regard to *audi alteram partem* in 2019. **Colombia** has established a simplified tax assessment that allows tax authorities to issue an assessment without any prior act to speed up tax procedures without any guarantee of *res judicata*, something that also affects *ne bis in idem*.<sup>283</sup> **Serbia** follows a similar path: new legislation allows the tax administration to issue an assessment based on official records if the taxpayer fails to submit their return, without providing an opportunity for the taxpayer to be

<sup>280</sup> ZA: OPTR Report (Judiciary; (Tax) Ombudsperson; Academia), Questionnaire 2, Question 28.

<sup>281</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 28.

<sup>282</sup> However, there is a slight decrease in the acceptance of *audi alteram partem* in tax procedures, compared to 2018. Then, 84% of the surveys responded affirmatively to Question 21. See OPTR, *supra* n. 25 (2018), at sec. 5.4.1.

<sup>283</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 26.

heard.<sup>284</sup> **Slovenia** reports deterioration of the principle in practice, due to a “lenient” approach to the principle by the judiciary, as reported.<sup>285</sup> In the **United States** most audits are conducted by correspondence, even though there is formally the possibility for the taxpayer to request a meeting with the tax auditor. Such a request must clear “several hoops” before it is granted.<sup>286</sup>

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

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

Portugal

**Shifted away from the minimum standard:**

None

With regard to *nemo tenetur se detegere*,<sup>287</sup> it has been clearly stated that this principle “is not respected” in **Mexico**,<sup>288</sup> a trend that seems to be followed in **China**. Taxpayers are not entitled to remain silent according to the Chinese law: they “have to report the truth”.<sup>289</sup> The matter is under discussion in the criminal courts of **Slovenia**, with the possibility of referring the issue to the constitutional courts,<sup>290</sup> while **Uruguay** states that the principle is generally acknowledged, even though certain specific implications stemming from it “still are not admitted”.<sup>291</sup>

In the **United States**, the right is acknowledged in criminal proceedings only. Taxpayers cannot refuse to file a tax return on that basis. A way of granting *nemo tenetur* in the context of tax audits is by demanding that the tax authorities in charge of criminal investigations show their badges and identify themselves, so the taxpayer knows – implicitly – that a criminal investigation is underway. The governmental duty to give a “Miranda” warning, alerting the taxpayer to their right to remain silent, is only triggered in very specific circumstances.<sup>292</sup>

On a positive note, the Constitutional Court of **Portugal** declared unconstitutional the interpretation of certain procedural rules, accepting as evidence in criminal proceedings against the taxpayer documents gathered during a tax inspection without authorization by a court or prior notification to the taxpayer.<sup>293</sup>

<sup>284</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 26.

<sup>285</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Questions 26 and 29.

<sup>286</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 29.

<sup>287</sup> See A.P. Dourado & A. Silva Dias, [Information Duties, Aggressive Tax Planning and nemo tenetur se ipsum accusare in the light of Art. 6\(1\) of ECHR](#), in *Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiaras Maduro & P. Pistone eds., IBFD 2011), Books IBFD; and Čičin-Šain, *supra* n. 241, at sec. 3.2.

<sup>288</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 26.

<sup>289</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 30.

<sup>290</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

<sup>291</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

<sup>292</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 30.

<sup>293</sup> PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 30.

## 4.2. The structure and content of tax audits

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

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

Canada, Spain

**Shifted away from the best practice:**

None

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

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

New Zealand

**Shifted away from the best practice:**

Peru (2)

As long as the fundamental principles set out in section 4.1. are respected, it is fair to say that states are free to set the requirements, content and structure of tax audits in their domestic law.<sup>294</sup> This rule does not contradict the idea of a manual of good practice in tax audits at a global level,<sup>295</sup> considering, on the one hand, the great similarities among tax audits and assessments systems based on the rule of law and, on the other hand, the right of taxpayers to awareness vis-à-vis any kind of restricting measure from the state so they can exercise properly their right to defence.<sup>296</sup>

Again, **Canada** leads the group of developments in 2019. The CRA follows a detailed pattern for risk-based audits of large businesses, based on algorithms to identify high-risk, large business taxpayers, complemented with documentation requirements for the taxpayer. In addition, the CRA conducts face-to-face meetings with senior management of the highest risk and least cooperative taxpayers to communicate unresolved compliance issues, lack of openness and transparency, and other issues found during the audit.<sup>297</sup> Further, **New Zealand** has developed best practice and operational statements for its tax authorities, and checks are made to ensure investigators are applying them.<sup>298</sup>

Following the general direction of the best practice, the Federal Tax Authority of **Russia** publishes guiding letters regularly,<sup>299</sup> and **Spain** has published the general guidance on audit plans for taxes and customs of the tax authority, an important development considering that the Supreme Court, in late 2018, deemed “unreasonable” the requirement imposed by the tax administration on tax advisors of disclosing information because it was not provided for in the audit plan.<sup>300</sup>

On the other side of the equation, tax audits seem not to follow any predetermined pattern in **Brazil**, where administrative and judicial authorities have a strong tendency not to nullify audits

<sup>294</sup> Baker & Pistone, *supra* n. 97, at sec. 4.2., p. 40.

<sup>295</sup> See M. Cadesky, I. Hayes & D. Russell, *Towards Greater Fairness in Taxation. A Model Taxpayer Charter* p. 199 (AOTCA, CFE, STEP, 2016).

<sup>296</sup> Weffe H., *supra* n. 130, at sec. 1.

<sup>297</sup> CA: OPTR Report (Academia), Questionnaire 2, Question 31.

<sup>298</sup> NZ: OPTR Report (Academia), Questionnaire 2, Question 31.

<sup>299</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 31.

<sup>300</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 31.

on grounds of procedural irregularities.<sup>301</sup> Also, the tax authorities of the **Czech Republic, Cyprus, Guatemala, Slovenia** and **Uruguay** do not publish any kind of guidance, according to their national reports.<sup>302</sup>

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

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

Peru (2)

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

Shifted towards/improved the minimum standard:

Spain

Shifted away from the minimum standard:

None

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

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

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

Shifted towards/improved the minimum standard:

United States

Shifted away from the minimum standard:

Mexico (3), Peru (2)

Taxpayers' right to request the start of an audit is not acknowledged as such in several jurisdictions, as Chart 24 depicts.

Taxpayers' request for the start of an audit is a practice acknowledged in **Mexico**, although it is not binding on the tax authorities.<sup>303</sup> Something similar happens in **Serbia**, where the right to request the start of an administrative procedure is legally enforced by the *lex generalis*, but no harmonization with tax legislation has happened.<sup>304</sup> Nothing prevents taxpayers from requesting the start of an audit in **South Africa**.<sup>305</sup> Case law explicitly denies that possibility in **Slovenia**, where the tax authorities seldom reply to such requests.<sup>306</sup> Similarly, in the United States, the IRS does not have to respond to a taxpayer's request for the start of an audit; only

<sup>301</sup> BR: OPTR Report (Taxpayers/Tax Practitioners, Judiciary), Questionnaire 2, Question 31.

<sup>302</sup> CZ: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 31; CY: OPTR Report (Tax Administration), Questionnaire 2, Question 31; GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 31; SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 31; and UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 31.

<sup>303</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 33.

<sup>304</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 33.

<sup>305</sup> ZA: OPTR Report (Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 33.

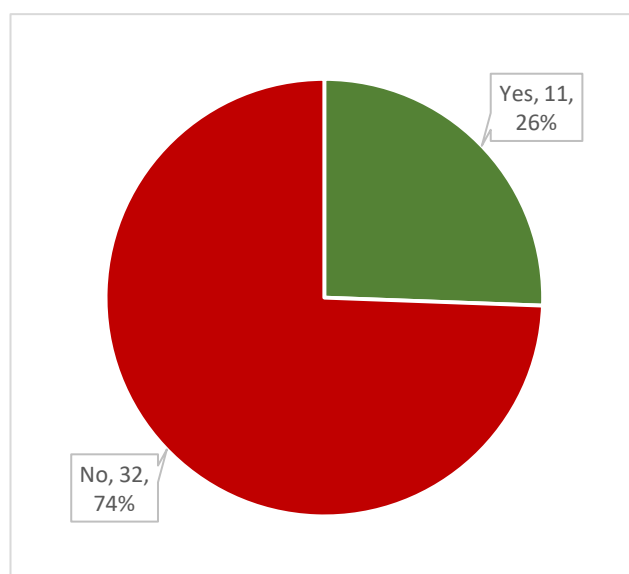
<sup>306</sup> SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 33.

in specific circumstances can taxpayers pay for certainty, via a private letter ruling.<sup>307</sup>

Regarding the taxpayer's right to be informed of the start of an audit by the tax authorities,<sup>308</sup> **Spain** reports a positive development: the Supreme Court established that requests for information addressed to taxpayers do not imply the beginning of an audit, even if the result of the information request is taken into account in the subsequent audit procedure.<sup>309</sup> Hence, there should be a formal start to the audit, duly notified to the taxpayer, for the tax administration to start requesting documentation. It is the only way the taxpayer can defend himself properly and the only way the requirement of relevance of the documentation requested by the tax auditors can possibly be controlled.

**Chart 24. Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?**

53 responses



**Yes:** Bosnia and Herzegovina, Brazil (2), China (1), Cyprus (1), Finland, India, New Zealand, Panama, Portugal, Serbia, South Africa, Uruguay, Venezuela

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Brazil (1), Bulgaria, Canada, Chile, China (3), Colombia, Croatia, Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), Peru (1), Peru (2), Peru (3), Poland, Russia, Slovenia (1), Slovenia (2), Spain, Sweden, Switzerland, United Kingdom, United States

**Source:** OPTR: Questionnaire 1, Question 30.

Should the tax authorities inform the taxpayer beforehand of any information gathering, in order to protect the taxpayer's right to privacy,<sup>310</sup> a fortiori the taxpayer should also be aware of any gathering of his data relevant for tax purposes from third parties: that seems obvious. That is the case in the **United States**, where the judiciary held that general guidance delivered to the taxpayer at the beginning of an audit is not "reasonable notice in advance"<sup>311</sup> of information requests to third parties.<sup>312</sup> On the other hand, the new mandatory disclosure regime in **Mexico** implies the obtaining of taxpayer information without a specific notification

<sup>307</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 33.

<sup>308</sup> See Weffe H., *supra* n. 130, at sec. 4.

<sup>309</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 34.

<sup>310</sup> See sec. 3.

<sup>311</sup> See Weffe H., *supra* n. 130, at sec. 4.3.1.1.

<sup>312</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 35.

to the taxpayer, something regarded by the national reporters as a setback.<sup>313</sup>

### 4.3. Time limits for normal audits

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

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

Canada, Colombia, Peru (3), South Africa, Spain

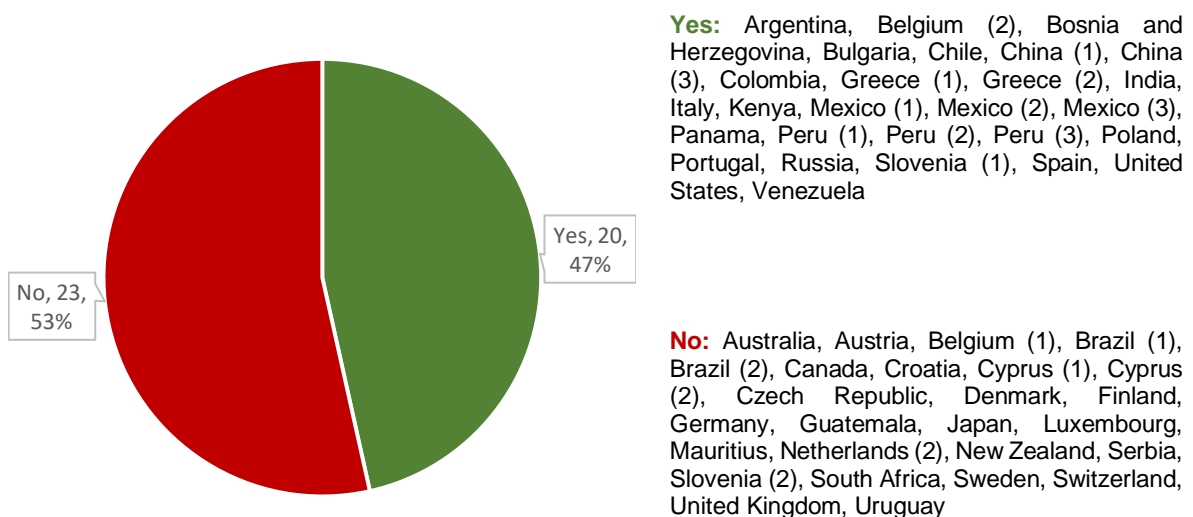
**Shifted away from the best practice:**

Belgium (2)

The intrusion into taxpayers' business and activities implied in the exercise of the investigative powers of the tax administration is only reasonable when it is limited in time. Indeed, a reasonable time limit for the conduct of audits stems from the idea of certainty as a fundamental right, which establishes this as a best practice for tax audits. That seems not to be the case in a slight majority of surveyed jurisdictions,<sup>314</sup> as Chart 25 shows:

**Chart 25. Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?**

53 responses



**Source:** OPTR: Questionnaire 1, Question 22.

Although no formal timeline for audits exists in most of the surveyed jurisdictions, there have been efforts to significantly reduce the average time that an audit takes. On average, the applicable time limits for tax audits in the surveyed jurisdictions are those displayed in Chart 26.

In this regard, in **Colombia** an internal management system, called SINTEGRA, was implemented to ensure reasonable time within the different stages of the audit.<sup>315</sup> In the same vein, the tax authorities of **South Africa** have undertaken the task of completing audits within 90 days, whereas the Service Charter provides for a duration of between four and six

<sup>313</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 35.

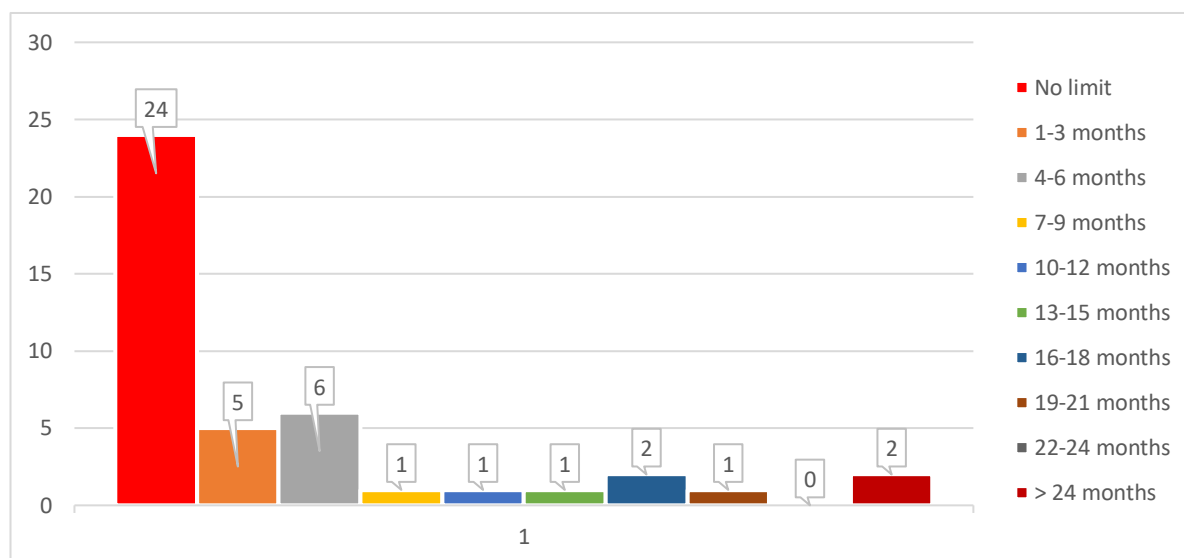
<sup>314</sup> OPTR, *supra* n. 26 (2018), at sec. 5.4.3.

<sup>315</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 36.

months.<sup>316</sup> In **Canada**, the time for an audit largely depends on the openness and transparency of the taxpayer,<sup>317</sup> a taxpayer's duty stemming from good faith that should be taken into account in this context.<sup>318</sup>

**Chart 26. 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)?**

53 responses



Source: OPTR: Questionnaire 1, Question 23.

**1-3 months:** Bosnia and Herzegovina, China (3), Italy, Poland, Russia, Venezuela

**4-6 months:** Bulgaria, China (1), Kenya, Panama, Portugal, Slovenia (1), South Africa

**7-9 months:** Chile

**10-12 months:** Mexico (1), Mexico (2), Mexico (3), Peru (2), Peru (3)

**13-15 months:** Peru (1)

**16-18 months:** Greece (1), Greece (2), Spain

**19-21 months:** India

**More than 24 months:** Belgium (2), Colombia, United States.

**No limit:** Argentina, Australia, Austria, Belgium (1), Brazil (1), Brazil (2), Canada, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Guatemala, India, Japan, Luxembourg, Netherlands (2), New Zealand, Serbia, Slovenia (2), Sweden, Switzerland, United Kingdom, Uruguay

There are some setbacks. In **Belgium**,<sup>319</sup> legislation extended the assessment and the investigation periods up to ten years in the case of tax infringements involving foreign legal arrangements.<sup>320</sup> Also, following complaints by the tax authorities, legislation in **Slovenia** went

<sup>316</sup> ZA: OPTR Report (Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 36.

<sup>317</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 36.

<sup>318</sup> See sec. 1.1.

<sup>319</sup> BE: OPTR Report (Academia), Questionnaire 2, Question 36.

<sup>320</sup> In what appears to follow the trend of expansion of the statute of limitations that forms part of the hampering of procedural rights, characteristic of the "punitive tax law of the 'enemy'". See Weffe H., *supra* n. 73, at sec. 2.4.4.

the extra mile and abolished time limits for tax audits, in a clear shift away from the best practice.<sup>321</sup>

#### 4.4. Technical assistance (representation) and the involvement of independent experts.

### 2019 Relevant Inadmissibility Decisions – European Court of Human Rights

- See **Bley v. Germany**, 68475/10 (Committee), at sec. 6.3.

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

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

None

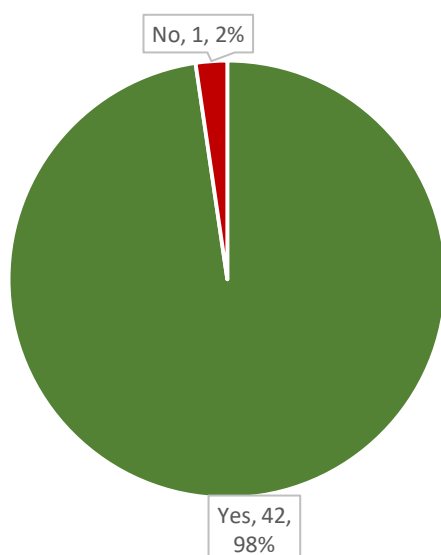
**Shifted away from the minimum standard:**

None

Stemming from the right to a proper defence, taxpayers are entitled to representation and assistance of tax professionals all along the way of a tax audit. In addition, considering the nature of the facts and circumstances relevant in the context of a tax audit (mostly, events within the scope of accounting, economics, etc.), it is important for both parties to be able to rely on the expert opinion of independent professionals, who can assist both the taxpayer and the tax authorities in establishing and assessing the relevance of a specific set of facts for tax purposes. In this regard, the taxpayer’s right to be represented by a person of his choice in the proceedings was widely acknowledged in 2019 within the surveyed jurisdictions, with the exception of **Argentina**, as Chart 27 shows:

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

53 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (3), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

**No:** Argentina

Source: OPTR: Questionnaire 1, Question 24.

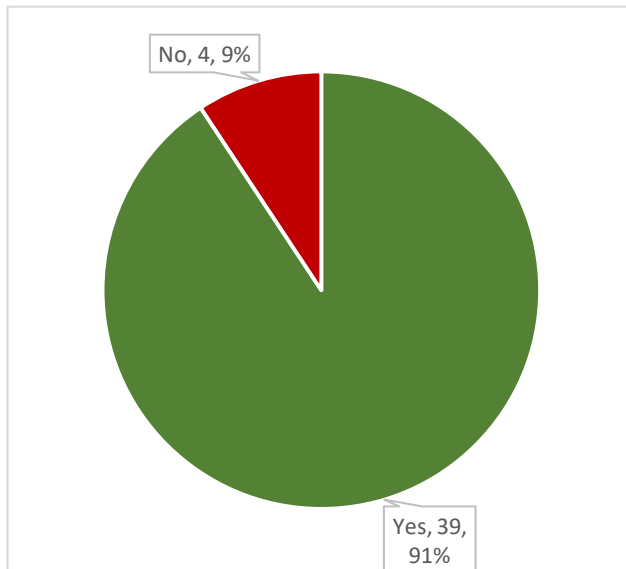
<sup>321</sup> SI: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 36.



In the same vein, taxpayers are allowed to rely on the independent opinion of experts in the vast majority of surveyed jurisdictions, although not as many as those that allow taxpayers' representation in the audit. This trend is depicted in Chart 28.

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

53 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (3), Colombia, Cyprus (1), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

**No:** Argentina, Croatia, Cyprus (2), Guatemala, Mexico (2), Slovenia (1).

Source: OPTR: Questionnaire 1, Question 25.

#### 4.5. The audit report

**Minimum standard:** The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer.

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

None

**Shifted away from the minimum standard:**

None

**Best practice:** The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view.

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

Peru (2)

**Shifted away from the best practice:**

Peru (3)

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

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

Peru (2)

**Shifted away from the best practice:**

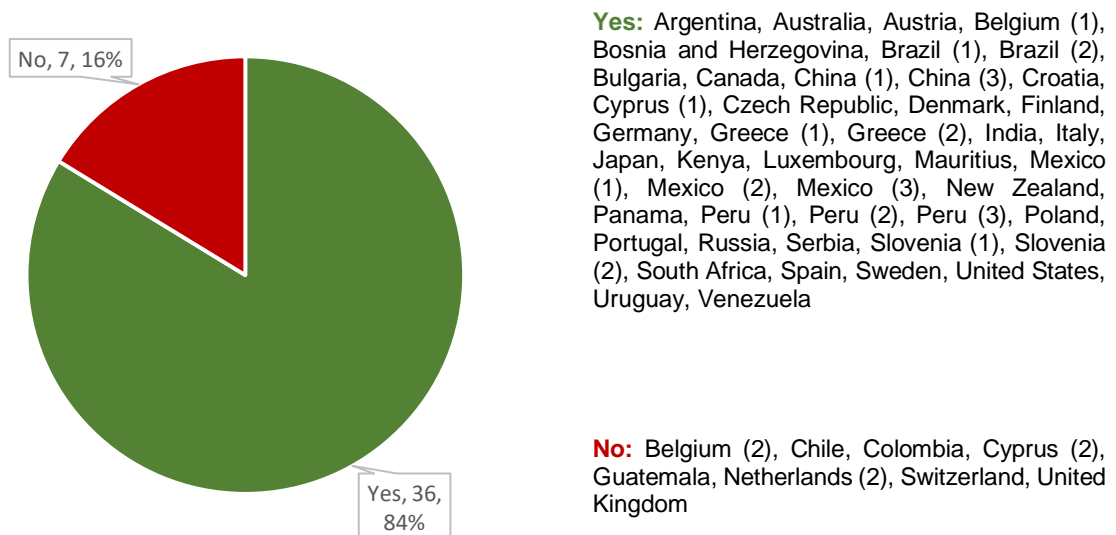
Peru (3)

All administrative procedures shall end with a formal expression of the findings of the administration, along with a declaration of the adherence or lack thereof to the law of those behaviours of the citizen that justify the exercise of public power. This expression of findings should be fully reasoned so that the citizen is able to understand why the administration has taken a given measure and has the possibility of both (i) controlling the administrative activity, determining whether it was performed pursuant to the law; and (ii) exercising his defence against the measures taken against him by the administration.

As a natural consequence, the taxpayer has the right to receive a full report on the conclusions of the audit at the end of the process. Most surveyed jurisdictions acknowledge this, as depicted in Chart 29.

**Chart 29. Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?**

53 responses



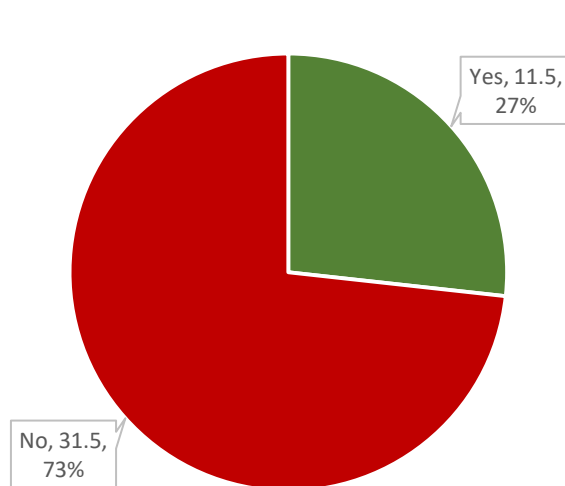
**Source:** OPTR: Questionnaire 1, Question 26.

Along with the treatment given to *ne bis in idem*,<sup>322</sup> since the issue of a final report should represent the additional safeguard of *res judicata* to taxpayers, only one in four of the surveyed countries limits the frequency of audits of the same taxpayer, as shown in Chart 30.

<sup>322</sup> See sec. 4.1.

**Chart 30. Are there limits to the frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes)?**

53 responses



**Yes:** Bosnia and Herzegovina, Brazil (2), China (1), Cyprus (1), Finland, India, New Zealand, Panama, Portugal, Serbia, South Africa, Uruguay, Venezuela

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Brazil (1), Bulgaria, Canada, Chile, China (3), Colombia, Croatia, Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), Peru (1), Peru (2), Peru (3), Poland, Russia, Slovenia (1), Slovenia (2), Spain, Sweden, Switzerland, United Kingdom, United States

Source: OPTR: Questionnaire 1, Question 30.

## 5. More Intensive Audits

### 5.1. The general framework

**Best practice:** More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance.

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

None

**Shifted away from the best practice:**

Peru (2)

As a rule, cases of high-risk taxpayers, or indicia pointing to possible non-compliance of taxpayers, particularly those that might result in criminal responsibility, entitle the tax administration to conduct more intensive audits.<sup>323</sup> Against this background, the fact-finding powers may be stronger, while also balanced with the human dignity of taxpayers, and will therefore be within the boundaries of a democratic society organized under the rule of law: in a word, proportionate.<sup>324</sup>

The assessment of such circumstances that may allow the tax administration to conduct more intensive audits might happen within an ongoing regular audit. In such cases, where it becomes foreseeable that the taxpayer might be liable for either a criminal or a regulatory offence, the taxpayer should be fully informed, and his right to *nemo tenetur* fully protected, so statements from the taxpayer given without such protections should not be used in the audit procedure or elsewhere.<sup>325</sup> This shall be regarded as a minimum standard, naturally.

<sup>323</sup> Baker & Pistone, *supra* n. 97, at sec. 5.1., p. 44.

<sup>324</sup> Weffe H., *supra* n. 130, at sec. 4.3.2.1.

<sup>325</sup> *Id.*, at secs. 4.1 and 4.3.1.

Regarding its practical implementation in 2019, there were some developments concerning the institutional and procedural safeguard of this minimum standard. **Colombia** created by law a specialized office within the judiciary for the investigation and prosecution of tax crimes.<sup>326</sup> In **Denmark**, the Parliamentary Ombudsman clarified best practices regarding the protection of taxpayers against self-incrimination in a case that involved documents from the Panama Papers and that is likely to have effects for the future.<sup>327</sup>

## 5.2. The implications of the *nemo tenetur* principle in connection with subsequent criminal proceedings.

**Minimum standard:** 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.

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

Denmark, Peru (3)

**Shifted away from the minimum standard:**

Canada, Mexico (1), Peru (2)

As previously discussed in section 4.1. of this yearbook, one of the fundamental principles of any tax audit is *nemo tenetur se ipsum accusare*. The natural environment for *nemo tenetur* to be exercised is, precisely, those cases described as the grounds for more intensive audits in section 5.1.: high-risk taxpayers or indicia pointing to possible non-compliance of taxpayers, particularly those that might result in criminal responsibility. In these scenarios, taxpayers are entitled to a warning not to self-incriminate and to the consequences of wilfully waiving this right as a minimum standard stemming from the right to a proper defence.<sup>328</sup>

*Nemo tenetur* is reported to be applicable in 54% of the surveyed jurisdictions. Out of that 54%, half of the jurisdictions (26% of the total surveyed countries) have restrictions on the use of information supplied by the taxpayer in a subsequent penalty or criminal procedure. In the same vein, out of those countries that do apply *nemo tenetur* to tax proceedings, only in 8 (19%) of them can the taxpayer raise this principle to remain silent and therefore refuse to supply basic accounting information to the tax authorities. The right to *nemo tenetur* has been reported as guaranteed through a procedure that helps identifying when it is likely that the taxpayer may be liable for a penalty or a criminal charge, and is therefore entitled not to self-incriminate from that point onwards, in 53% of surveyed jurisdictions. In that regard, 40% of surveyed countries require from tax authorities the issue of a warning so that the taxpayer is aware that his *nemo tenetur* rights are applicable in the tax procedure.

All of this situation is portrayed in Charts 31 to 35.

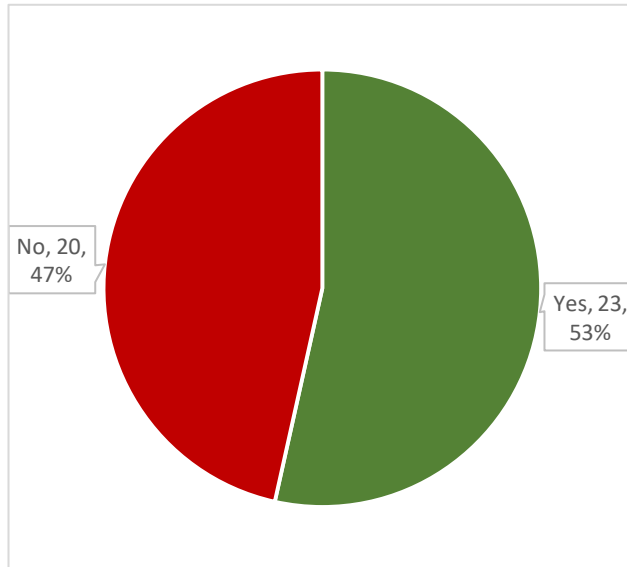
<sup>326</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 41.

<sup>327</sup> DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 41.

<sup>328</sup> See Weffe H., *supra* n. 130, at sec. 5.

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

53 responses



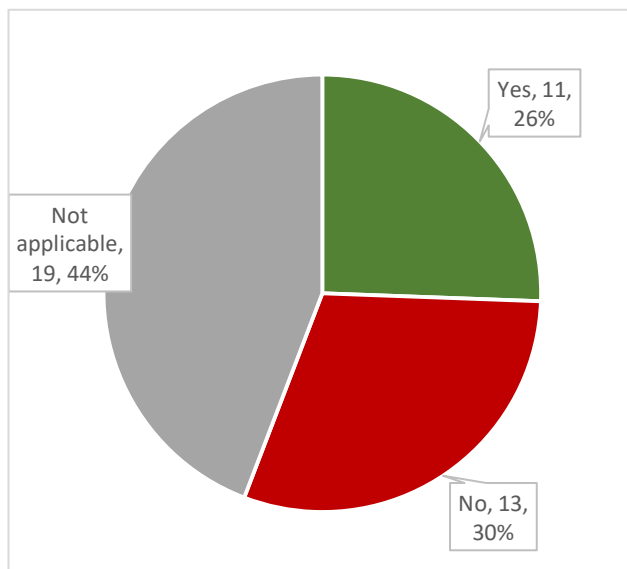
**Yes:** Argentina, Belgium (1), Brazil (1), Brazil (2), Bulgaria, Canada, China (1), China (3), Croatia, Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, Japan, Netherlands (2), Panama, Peru (3), Poland, Portugal, Russia, Slovenia (1), South Africa, Switzerland, United Kingdom, United States, Uruguay.

**No:** Australia, Austria, Belgium (2), Bosnia and Herzegovina, Chile, Colombia, Cyprus (1), Cyprus (2), Finland, India, Italy, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), New Zealand, Peru (1), Peru (2), Serbia, Slovenia (2), Spain, Sweden, Venezuela

Source: OPTR: Questionnaire 1, Question 35.

**Chart 32. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?**

53 responses



**Yes:** Canada, China (1), China (3), Czech Republic, Denmark, Germany, Luxembourg, Netherlands (2), Panama, Peru (3), Poland, Portugal, Switzerland

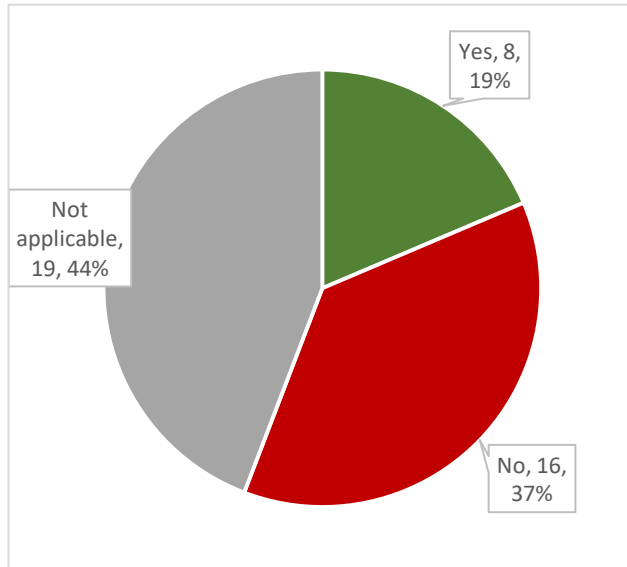
**No:** Argentina, Belgium (1), Brazil (2), Bulgaria, Croatia, Greece (1), Greece (2), Guatemala, Japan, Russia, Slovenia (1), Slovenia (2), South Africa, United Kingdom, United States, Uruguay

**Not applicable:** Australia, Austria, Belgium (2), Bosnia and Herzegovina, Brazil (1), Chile, Colombia, Cyprus (1), Cyprus (2), Finland, India, Italy, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), New Zealand, Peru (1), Peru (2), Serbia, Spain, Sweden, Venezuela

Source: OPTR: Questionnaire 1, Question 36.

**Chart 33. If yes to *nemo tenetur*, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?**

53 responses



**Yes:** Brazil (2), Canada, Croatia, Czech Republic, Germany, Panama, Slovenia (2), United Kingdom, Uruguay

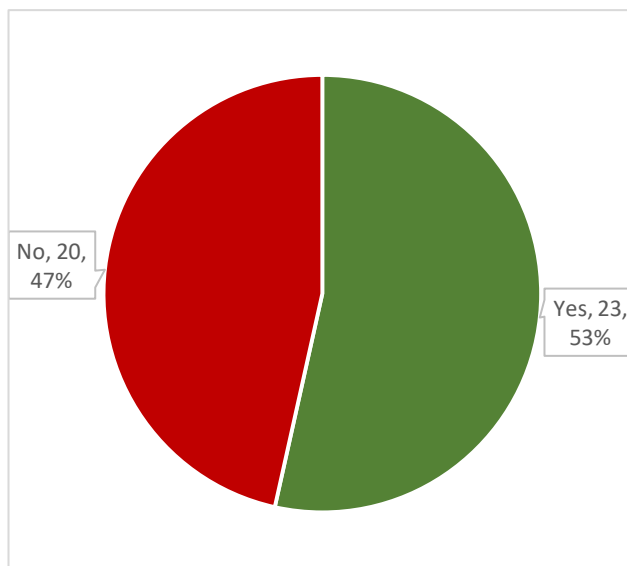
**No:** Argentina, Belgium (1), Bulgaria, China (3), Denmark, Greece (1), Greece (2), Guatemala, Japan, Luxembourg, Netherlands (2), Peru (3), Poland, Portugal, Russia, Slovenia (1), South Africa, Switzerland, United States

**Not applicable:** Australia, Austria, Belgium (2), Bosnia and Herzegovina, Brazil (1), Chile, China (1), Colombia, Cyprus (1), Cyprus (2), Finland, India, Italy, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), New Zealand, Peru (1), Peru (2), Serbia, Spain, Sweden, Venezuela

Source: OPTR: Questionnaire 1, Question 37.

**Chart 34. Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge and, from that time onwards, the taxpayer's right not to self-incriminate is recognized?**

53 responses



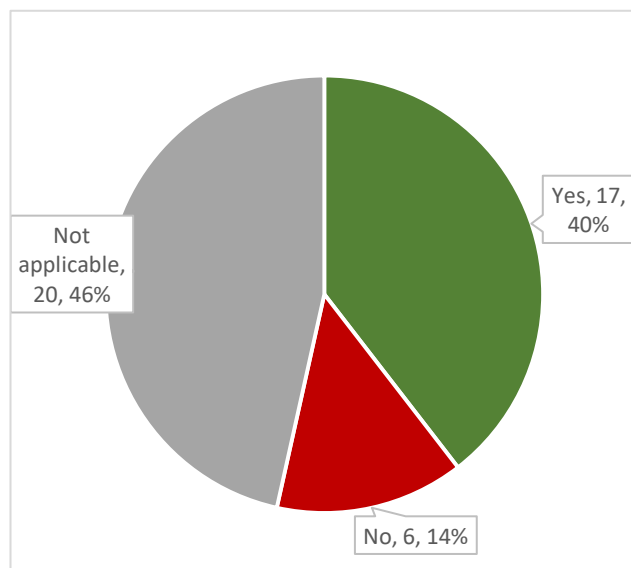
**Yes:** Austria, Bosnia and Herzegovina, Brazil (2), Canada, China (1), China (3), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), India, Japan, Luxembourg, Netherlands (2), New Zealand, Panama, Peru (3), Poland, Serbia, Slovenia (1), South Africa, Sweden, Switzerland, United Kingdom, United States

**No:** Argentina, Australia, Belgium (1), Belgium (2), Brazil (1), Bulgaria, Chile, Colombia, Croatia, Cyprus (1), Finland, Guatemala, Italy, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), Peru (1), Peru (2), Portugal, Russia, Slovenia (2), Spain, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 38.

**Chart 35. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?**

53 responses



**Yes:** Austria, Bosnia and Herzegovina, Brazil (2), Canada, Croatia, Denmark, Germany, Luxembourg, Netherlands (2), Panama, Peru (3), Poland, Slovenia (1), South Africa, Sweden, Switzerland, United Kingdom, United States, Uruguay

**No:** China (3), Cyprus (2), Czech Republic, Greece (1), Greece (2), Japan, New Zealand, Slovenia (2)

**Not applicable:** Argentina, Australia, Belgium (1), Belgium (2), Brazil (1), Bulgaria, Chile, China (1), Colombia, Cyprus (1), Finland, Guatemala, India, Italy, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), Peru (1), Peru (2), Portugal, Russia, Serbia, Spain, Venezuela

Source: OPTR: Questionnaire 1, Question 39.

Regretfully, there were some setbacks about this minimum standard. *Nemo tenetur* has been deemed as “not respected” in **Mexico**,<sup>329</sup> and the tax authority in **Canada** has been entitled to automatically access and review all international electronic funds transfers over CAD 10,000 without further consideration of the rights of taxpayers to be informed and of *nemo tenetur*. As an outcome of the Panama Papers scandal, the CRA has conducted an intensive review of this information, which was conducted to identify and risk-assess more than 300 taxpayers for potential investigation, using automatic exchange of information “at unprecedented levels”.<sup>330</sup>

### 5.3. Court authorization or notification

#### 2019 Relevant Case Law – European Court of Human Rights

Case	<i>Ilieva v. Bulgaria</i> , 22536/11 (Committee)	
Date	12 December 2019	
ECtHR Articles	Article 8 <b>Article 13</b>	
Facts	Decision	Comments
The applicant’s flat and the premises of the company managed by her and her partner was searched by police officers; they seized numerous items. This was done without presentation of a search warrant or explanation as to whether the applicant was being	The applicant complained that the search-and-seizure operation of 19 October 2010 had been unlawful, and that she had had no effective means to contest it. The Court found a <b>violation of article 8</b> in that case. The interference with the applicant’s	<b>Search of the applicant’s home and office without prior judicial warrant</b> (suspicion of tax evasion).  The case is a follow-up to <i>Gutsanovi v. Bulgaria</i> (34529/10, 15 October 2013).

<sup>329</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 41.

<sup>330</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 41.

<p>investigated for an offence. Subsequently, the applicant was informed that the records of search and seizure of 19 October 2010 had been approved by the judge on 20 October 2010. It became clear later that the applicant and her partner were being investigated by the prosecution authorities for tax evasion.</p>	<p>rights to home and private life was not “in accordance with the law”, because it was carried out without prior judicial warrant. It considered that, since the investigation against the applicant and her partner concerned alleged tax evasion, there could be doubts as to the urgency of the situation. The Court also found a violation of article 13, taken in conjunction with article 8, because the applicant had no effective remedy to complain of unlawful search and seizure.</p>	
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### 2019 Relevant Case Law – European Court of Justice

<b>Case</b>	Case C-310/16, <i>Dzivev</i>	
<b>Date</b>	17 January 2019	
<b>EU Charter Articles</b>	<b>Article 7</b> – Respect for private and family life <b>Article 47</b> – Right to an effective remedy and to a fair trial	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The taxpayer was charged with having committed tax offences via a trading company; he had sought to profit from not paying the tax due under VAT legislation. Authorization to initiate the interception of the telecommunications was granted by the Sofia District Court. After the criminal proceedings commenced, the prosecutor, in March 2012, sought and obtained a number of authorizations from the Specialized Criminal Court to intercept more of the defendant’s telecommunications. These authorizations were granted by a court lacking jurisdiction.</p>	<p>A national court is not precluded from applying a national provision excluding from a prosecution evidence, such as the interception of telecommunications requiring prior judicial authorization, where that authorization was given by a court that lacked jurisdiction.</p>	<p>§40 [...] The requirement that any limitation on the exercise of the right conferred by <b>article 7 of the Charter</b> must be in accordance with the law means that the legal basis authorising that limitation should be sufficiently clear and precise (see <i>WebMindLicenses</i>, Case C-419/14, para. 81). It is also of no relevance that, in the case of one of the four defendants in the main proceedings, only the interception of telecommunications initiated on the basis of authorisations granted by a court lacking jurisdiction could prove his guilt and justify a conviction.</p>

<b>Case</b>	Joined Cases C-469/18 and C-470/18, <i>IN and JM</i>	
<b>Date</b>	24 October 2019	
<b>ECtHR Articles</b>	<b>Article 47</b> – Right to an effective remedy and to a fair trial	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The Belgian tax authorities had started criminal investigations against two companies for carousel fraud. In the course of</p>	<p>Inadmissible</p>	<p>The situation at issue in the main proceedings, the subject matter of which is an adjustment of personal income tax returns, does not fall</p>



<p>that investigation, they were granted access to bank documents. Based on those documents, they assessed to additional income tax two individuals, who were the managing directors of the two companies charged with the carousel fraud. The taxpayers complained that the evidence used to assess them with additional income tax was obtained contrary to article 7 of the Charter and questioned whether that was compatible with the right to a fair trial protected under article 47 of the Charter.</p>		<p>within the scope of EU law.</p>
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**Minimum standard:** Entering premises or interception of communications should be authorized by the judiciary.

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

None

**Shifted away from the minimum standard:**

Mexico (1)

**Minimum standard:** Authorization within the revenue authorities should only be in cases of urgency and subsequently reported to the judiciary for ex-post ratification.

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

None

**Shifted away from the minimum standard:**

Mexico (1)

As a rule, intense disturbances to citizens' rights resulting from investigations by the tax authorities should require, particularly in the context of more intensive audits, prior judicial authorization based on an adversarial procedure (guaranteeing the *audi alteram partem* principle)<sup>331</sup> for its legitimacy in constitutional democracies under the rule of law.

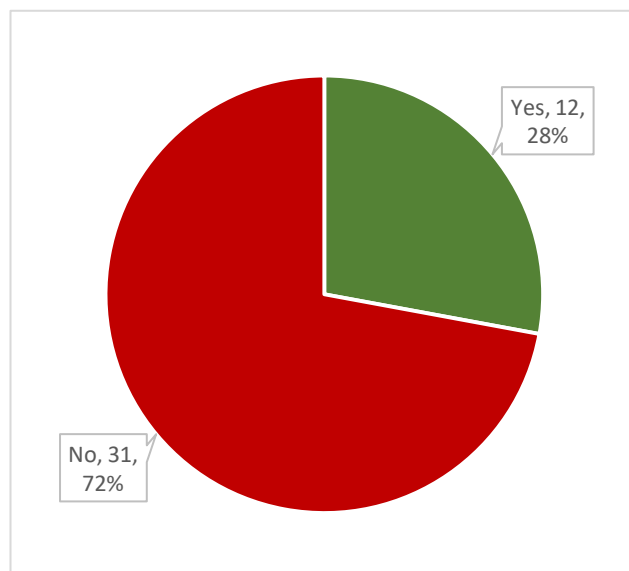
However, the possibility for the tax administration to enter premises or intercept communications without authorization by the judiciary seems to be accepted by 71% of the surveyed jurisdictions. This marks a trend, considering that, in 2018, 66% of the reports stated that their jurisdictions allowed this situation.<sup>332</sup> The statistics from 2019 are shown in Chart 36.

<sup>331</sup> See sec. 4.1.

<sup>332</sup> OPTR, *supra* n. 26 (2018), at sec. 5.5.3.

**Chart 36. Is authorization by a court always needed before the tax authority may enter and search premises?**

53 responses



**Yes:** Argentina, Brazil (1), Bulgaria, China (1), Cyprus (1), Cyprus (2), Finland, Germany, Guatemala, Japan, Kenya, Peru (1), Sweden, Switzerland, Venezuela

**No:** Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (2), Canada, Chile, China (3), Colombia, Croatia, Czech Republic, Denmark, Greece (1), Greece (2), India, Italy, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, United Kingdom, United States, Uruguay

Source: OPTR: Questionnaire 1, Question 31.

Needless to say, administrative authorization to enter and search taxpayers’ premises should be exceptional and subject to an ex post control by the judiciary.

However, only **Uruguay** reported any developments in this regard in 2019.<sup>333</sup> According to the national report, as a rule, taxpayers are not aware of the standard under which tax authorities may access taxpayers’ premises. They are not informed in advance of the intention of the tax authorities to enter their premises, and the tax authorities require no judicial authorisation to do so, except for the purpose of searching taxpayers’ dwelling places.<sup>334</sup>

**Minimum standard:** Inspection of the taxpayer’s home should require authorization by the judiciary and only be given in exceptional cases.

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

Belgium (2), Spain

**Shifted away from the minimum standard:**

Mexico (1)

**Best practice:**

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

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

**Shifted away from the best practice:**

<sup>333</sup> Some other jurisdictions reported their current situation but stated that there were no developments in 2019. See CZ: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 42; MX: OPTR Report (Academia), Questionnaire 2, Question 42; NZ: OPTR Report (Academia), Questionnaire 2, Question 42; and SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 42.

<sup>334</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 41.

Spain

Colombia, Peru (2)

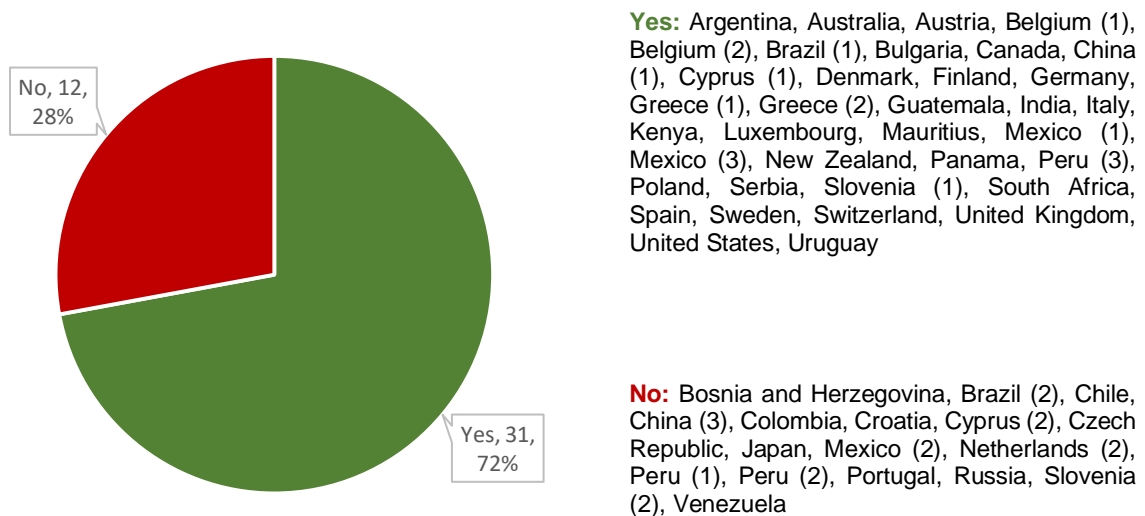
Considering the constitutional protection generally granted to citizens' dwelling places, as a consequence of their right to privacy, it is a minimum standard that the search of such places be preceded by a judicial hearing, of which the taxpayer is duly informed and in which the taxpayer has the opportunity to appear, to be heard and to adduce evidence, except in those cases when there is no other reasonable way of knowing whether a crime has been committed or when there is a risk of imminent harm not avoidable by other less intrusive means.<sup>335</sup>

Among the surveyed countries, tax authorities are authorized to search taxpayers' dwelling premises in 31 countries (72%), based on the data displayed in Chart 37. This information, linked to that of Chart 36, above, appears to determine a trend towards the attribution of powers to the tax authorities to conduct searches with minimum judicial constraints.

Regarding the specific developments in this matter in 2019, the trend towards the minimum standard set by the judiciary is noteworthy. In **Belgium**, both the Constitutional Court and Supreme Court held that the tax authorities should justify substantively the request for authorization to enter taxpayers' premises, so an effective ex post judicial review (and therefore, taxpayers' right to a proper defence) is ensured,<sup>336</sup> a trend followed by the Supreme Court of **Spain**.<sup>337</sup>

**Chart 37. May the tax authority enter and search the dwelling places of individuals?**

53 responses



Source: OPTR: Questionnaire 1, Question 32.

**Best practice:** Access to bank information should require judicial authorization.

Shifted towards/matched the best practice:

Shifted away from the best practice:

<sup>335</sup> See Weffe H., *supra* n. 130, at sec. 4.3.2.1.

<sup>336</sup> BE: OPTR Report (Academia), Questionnaire 2, Question 44.

<sup>337</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 44.

None

Canada, Guatemala, Italy, Peru (2), Peru (3)

**Best practice:** Authorization by the judiciary should be necessary for the interception of telephone communications and monitoring of internet access. Specialized offices within the judiciary should be established to supervise these actions.

Shifted towards/matched the best practice:

Shifted away from the best practice:

None

Bosnia and Herzegovina

**Minimum standard:** 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.

Shifted towards/improved the minimum standard:

Shifted away from the minimum standard:

None

Peru (2)

The general principle, stated at the beginning of this section, demands that the state's intense interference in taxpayers' affairs should be previously authorized and controlled by the judiciary, so that the rights of taxpayers are properly protected to the required standards of the rule of law. That requires judicial authorization of all activities of the state's investigative bodies that may affect fundamental rights, such as those linked with the right to privacy of financial information and communications in all their forms.

The protection of bank and financial information is declining if one is to believe that bank secrecy is "dead" and, therefore, the tax authorities' access to such information is deemed to be rationally justified under the rule of law in a democratic society.<sup>338</sup>

That seems to be the trend among the surveyed countries in 2019.<sup>339</sup> New legislation in **Italy** enabled the tax authorities and tax police to use banking information at the centre of risk assessment, based on the "particular public interest" in the fight against tax evasion,<sup>340</sup> a behaviour followed by the tax authorities of **Slovenia**.<sup>341</sup> Likewise, financial institutions are required by law in **Peru** to provide information to the tax authorities about their clients in the context of automatic exchange of information,<sup>342</sup> as is also the case in **Serbia**.<sup>343</sup>

For its part, a court order should be required before the tax authority can use phone tapping.

<sup>338</sup> I. Kolstad, [Protected Tax Havens: Cornering the Market through International Reform?](#), 11 World Tax J. 4 (2019), Journal Articles & Papers IBFD; A. Pirlot & E. (Eduardo) Traversa, [Belgium](#), in *Implementing Key BEPS Actions: Where Do We Stand?* (M. Lang et al. eds., IBFD 2019), Books IBFD; C. Gárate González & F. Yáñez, [Chile](#) in *Implementing Key BEPS Actions: Where Do We Stand?* (M. Lang et al. eds., IBFD 2019), Books IBFD; Čičin-Šain, Ehrke-Rabel & Englisch, *supra* n. 213; K. Rubinstein, [The Death of Bank Secrecy](#), (26 Apr. 2010), Journals Tax Analysts; and A.J. Sawyer, [Tax Havens "Coming in from the Cold": A Sign of Changing Times?](#), 64 Bull. Intl. Taxn. 11 (2010), Journal Articles & Papers IBFD.

<sup>339</sup> This appears to follow the trend of the hampering of procedural rights, characteristic of the "punitive tax law of the 'enemy'". See Weffe H., *supra* n. 73, at sec. 2.4.4.

<sup>340</sup> IT: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 45.

<sup>341</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 45.

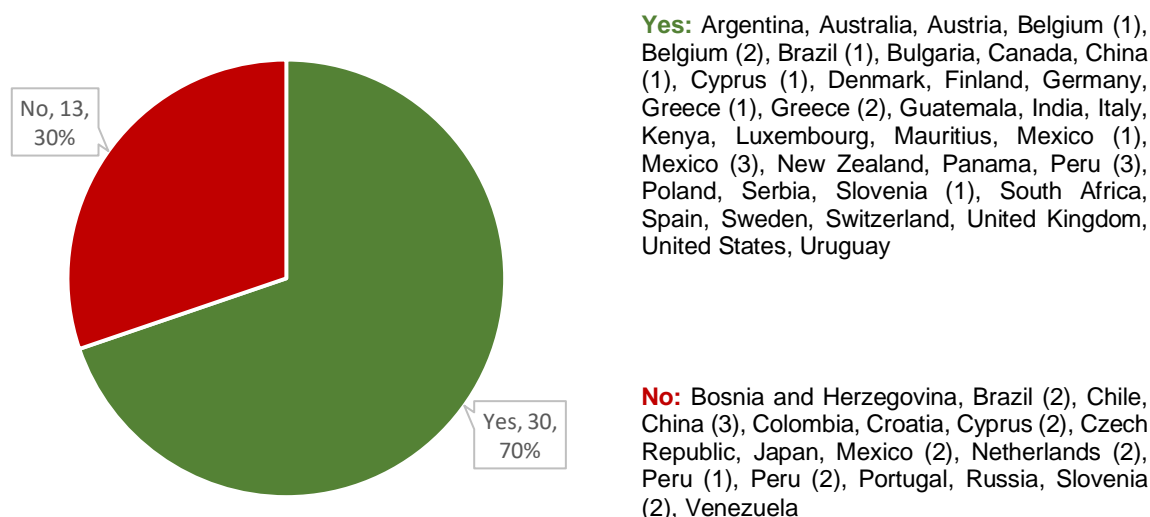
<sup>342</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 45.

<sup>343</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 45.

That is the trend in most of the surveyed jurisdictions, as shown in Chart 38.

**Chart 38. Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?**

53 responses



Source: OPTR: Questionnaire 1, Question 34.

#### 5.4. Treatment of privileged information

**Minimum standard:** 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.

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

None

**Shifted away from the minimum standard:**

Peru (2)

**Best practice:**

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

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

Spain

**Shifted away from the best practice:**

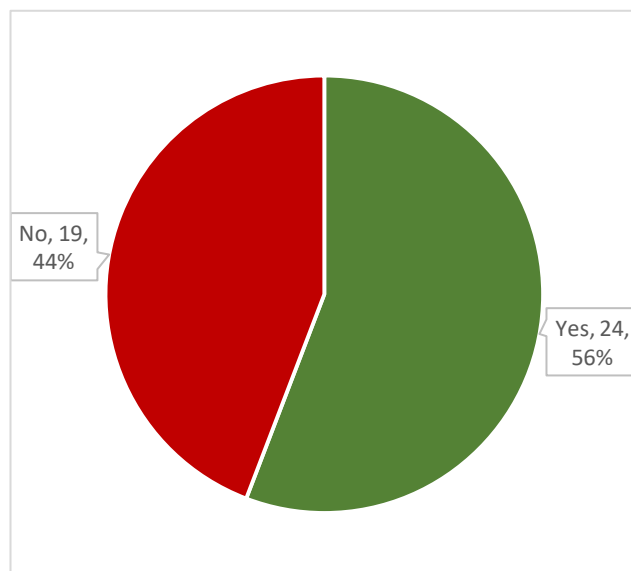
Colombia, Peru (2)

As discussed previously in section 3.13. of this yearbook, communications between the taxpayer and his advisers should be duly protected as a means to ensure the taxpayer’s rights to a proper defence, to pay the right amount of tax and to privacy. As a matter of principle, tax authorities should not be granted access to these documents, at least not without judicial authorization and control, and in very specific cases, such as those in which indicia of actual wrongdoing has been already gathered by the tax authorities.<sup>344</sup> Such is the case in a slight majority of countries, according to Chart 39.

<sup>344</sup> Baker & Pistone, *supra* n. 97, at sec. 5.4., p. 48.

**Chart 39. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?**

53 responses



**Yes:** Australia, Austria, Belgium (2), Brazil (1), Brazil (2), Canada, China (1), Colombia, Croatia, Cyprus (2), Czech Republic, Denmark, Germany, Italy, Kenya, New Zealand, Panama, Peru (3), Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Sweden, Switzerland, United Kingdom, United States

**No:** Argentina, Belgium (1), Bosnia and Herzegovina, Bulgaria, Chile, China (3), Cyprus (1), Finland, Greece (1), Greece (2), Guatemala, India, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), Peru (1), Peru (2), Poland, Spain, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 33.

In this particular regard, throughout 2019, case law in **Belgium** consistently granted the tax authorities free access to digital data of taxpayers in the case of searches on professional premises. In addition, the Court of Appeals of Brussels ruled that the tax authorities can make a copy of all data on a taxpayer’s computer without the taxpayer’s consent, and even that the right to privacy is not violated if private files are copied at the same time, a clear setback to the minimum standards discussed in this document.<sup>345</sup>

## 6. Reviews and Appeals

### 6.1. The remedies and their function

#### 2019 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<i>Immoreks Makedonija Doo Skopje</i> against North Macedonia, Application <a href="#">25311/17</a> .
<b>Date Communicated</b>	2 September 2019
<b>ECtHR Articles</b>	Article 1 Protocol 1 Article 13
<b>Issues</b>	The applicant company complains under article 1 of Protocol 1 to the Convention and article 13 of the Convention that the domestic authorities established its tax obligation in respect of the VAT deduction entitlement contrary to the relevant domestic law and that no effective procedure to challenge that decision was available to it.

**Best practice:** E-filing of requests for internal review to ensure the effective and speedy

<sup>345</sup> BE: OPTR Report (Academia), Questionnaire 2, Question 48.

**handling of the review process.**

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

Russia, Bulgaria, Peru (3)

**Shifted away from the best practice:**

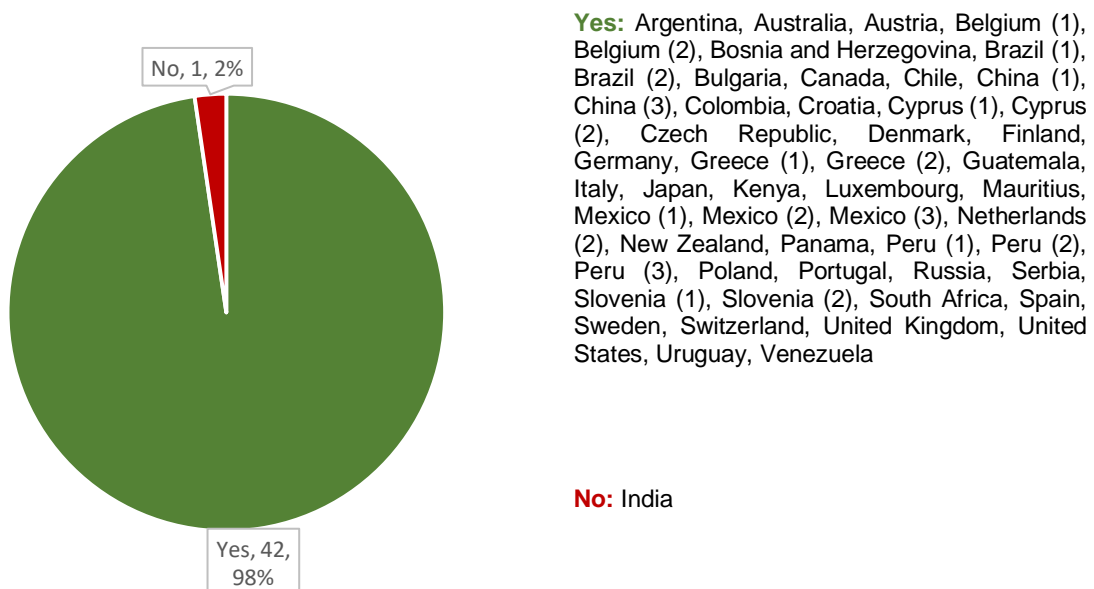
Bosnia and Herzegovina, Peru (2)

A basic principle of the rule of law demands all administrative activity be subject to some form of control, performed either by the administration itself (reviews) or by an impartial authority, such as the judiciary (appeals). This form of restraint allows the legal system to regulate itself, avoiding the improper exercise of public powers by quashing decisions that in some way do not abide by the law and therefore harm citizens' rights.

Naturally, this scheme is suited to dealing with tax assessments. There are (i) reviews, which are mechanisms that achieve the annulment of a tax notice as a consequence of the action of the same tax official who issued it or an official above him in the hierarchy; and (ii) appeals, which are remedies available to the taxpayer when a judicial authority or similar impartial body within the tax administration may quash the tax notice or determine the rights of the taxpayers in connection with it.<sup>346</sup> Hence, the existence of a procedure for an internal review of an assessment before the taxpayer's appeal to the judiciary shall be identified as a minimum standard, as is the case in the overwhelming majority of the surveyed jurisdictions, as shown in Chart 40.

**Chart 40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?**

53 responses



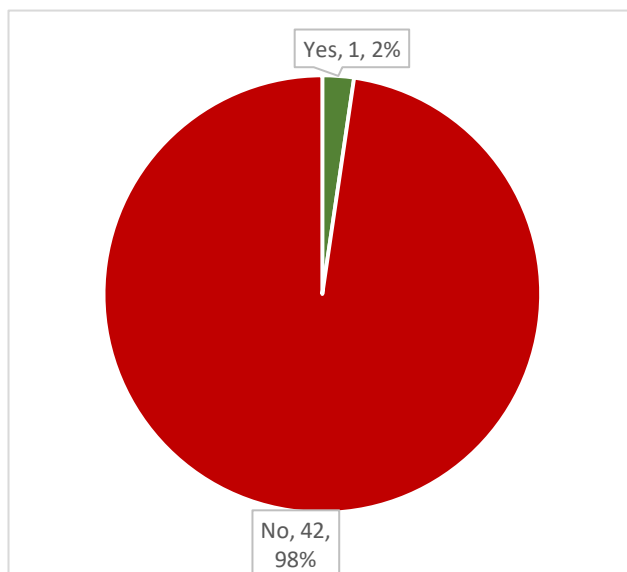
<sup>346</sup> Baker & Pistone, *supra* n. 97, at sec. 6.1., p. 49. See also B. Michel, [Report of the Proceedings of the Ninth Assembly of the International Association of Tax Judges Held in Ottawa on 28 and 29 September 2018](#), 73 Bull. Intl. Taxn. 5 (2019), Journals IBFD; and I. Young, [Taxpayer Rights and the Role of a Taxpayers' Charter](#), (1 Sep. 2017), Journals Tax Analysts.

**Source:** OPTR: Questionnaire 1, Question 40.

Once the administrative review has been performed, there is a general liberty to appeal to the judiciary. In the vast majority of the surveyed countries, there is no need for administrative permission to appeal to the first-instance tribunal, with the apparent exception of **China** and **Peru**, according to some of those countries' reports,<sup>347</sup> as depicted in Chart 41.

**Chart 41. Does the taxpayer need permission to appeal to the first-instance tribunal?**

53 responses



**Yes:** China (1), Peru (1)

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (3), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

**Source:** OPTR: Questionnaire 1, Question 47.

Even though this freedom is generally respected with regard to appeals to second-instance or higher tribunals, the possibility of filing an appeal in one of those tribunals is reduced by 20%, compared to the first instance, as shown in Chart 42, in keeping with the trend of 2018.<sup>348</sup>

So-called digital disruption has affected not only the way individuals and (mostly) multinational corporations do business but also the way tax administrations engage in their communication with taxpayers, as discussed in section 1.1. of this yearbook. In the field of reviews and appeals, the digitalization of tax administrations<sup>349</sup> has brought the possibility of e-filing not only tax returns but also reviews of incorrect tax assessments, increasing the efficiency of tax administrations both in dealing with those claims and in tax collection.

Such is the trend followed by some of the surveyed jurisdictions: in **Bulgaria**, new e-services

<sup>347</sup> CN: OPTR Report (Academia (1)), Questionnaire 1, Question 47; and PE: OPTR Report (Taxpayers/Tax Practitioners (1)), Questionnaire 1, Question 47.

<sup>348</sup> OPTR, *supra* n. 26 (2018), at sec. 5.6.1.

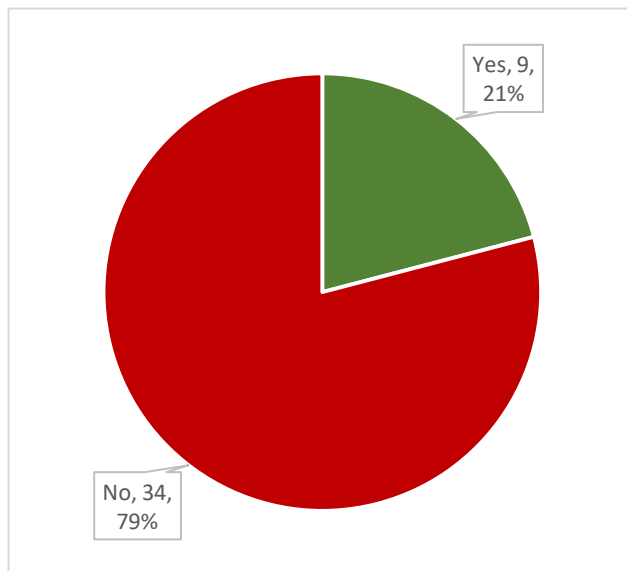
<sup>349</sup> See ICAEW, *Digitalisation of tax: international perspectives* p. 1 (ICAEW 2019), available at <https://www.icaew.com/-/media/corporate/files/technical/information-technology/thought-leadership/digital-tax.ashx> (accessed 3 Mar. 2020); M. Vucović, *Towards the Digitization of Tax Administration* (CEF-SEE 2019), available at [https://www.cef-see.org/files/Digitization\\_Tax\\_Administration.pdf](https://www.cef-see.org/files/Digitization_Tax_Administration.pdf) (accessed 3 Mar. 2020); and IOTA, *Impact of Digitalisation on the Transformation of Tax Administrations* (IOTA 2018), available at [https://www.iota-tax.org/sites/default/files/publications/public\\_files/impact-of-digitalisation-online-final.pdf](https://www.iota-tax.org/sites/default/files/publications/public_files/impact-of-digitalisation-online-final.pdf) (accessed 3 Mar. 2020).



were created;<sup>350</sup> in **Peru**, existing services were expanded;<sup>351</sup> and in **Russia**, tools to follow up in real time the status of review proceedings were activated.<sup>352</sup>

**Chart 42. Does the taxpayer need permission to appeal to the second or higher instance tribunals?**

53 responses



**Yes:** Bosnia and Herzegovina, China (1), Denmark, Finland, Germany, Mauritius, Peru (1), Slovenia (2), South Africa, Sweden, United Kingdom

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (3), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Spain, Switzerland, United States, Uruguay, Venezuela.

Source: OPTR: Questionnaire 1, Question 48.

**Minimum standard: The right to appeal should not depend upon prior exhaustion of administrative reviews.**

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

Denmark

**Shifted away from the minimum standard:**

None

Although the right of access to justice implies the possibility of bringing actions before the judiciary in order to grant citizens a prompt recourse against any kind of administrative activity (including tax assessments) without undue limitations, in practice, access to the courts is limited by the mandatory prior exhaustion of administrative reliefs in the majority of reports (and, therefore, of surveyed jurisdictions), as can be seen in Chart 43.

In this regard, good news was reported in 2019 in **Denmark**. By operation of law, from 1 July 2020, a preceding appeal to a tax court is no longer a prerequisite for an appeal to ordinary courts. Hence, access to justice no longer depends upon prior exhaustion of administrative relief.<sup>353</sup> In **India**, at times one can approach the High Court in Writ Jurisdiction without having to go through any administrative process. In the same vein, **Portugal** changed some important

<sup>350</sup> BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 50.

<sup>351</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 50.

<sup>352</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 50.

<sup>353</sup> DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 51.

rules on the appeals from first-instance court decisions, among others.<sup>354</sup>

## 6.2. Length of the procedure

**Best practice:** Reviews and appeals should not exceed two years.

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

Australia, Canada, Denmark, Japan

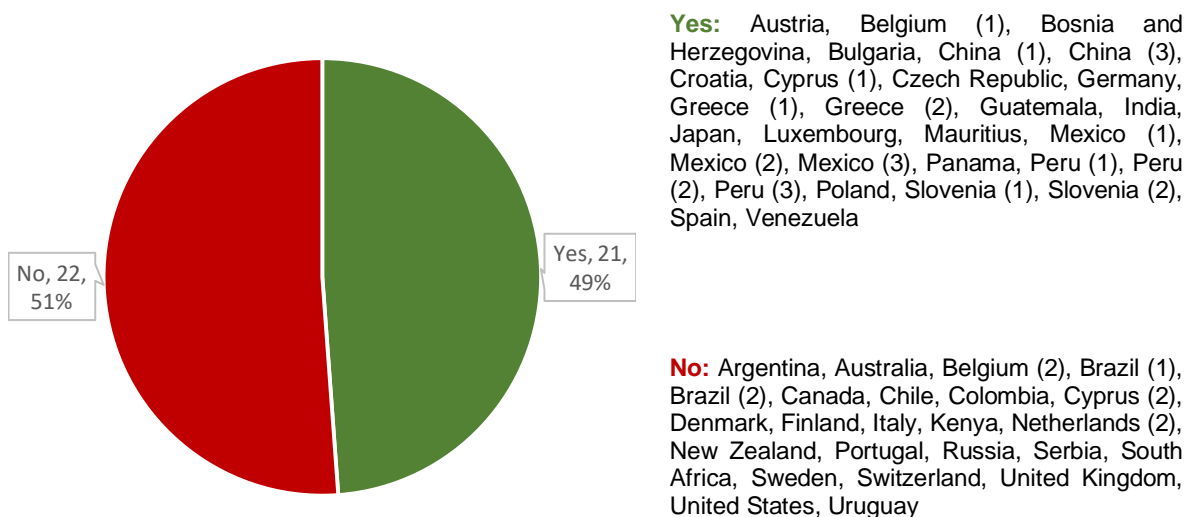
**Shifted away from the best practice:**

Bosnia and Herzegovina, Guatemala, Peru (2)

Both efficiency and certainty in tax assessment and collection are involved in the length of reviews and appeals. Taxpayers have the right to certainty regarding their tax liabilities, and the effectiveness of the efforts in tax enforcement are linked directly to the swift collection of those taxes legally due.

**Chart 43. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision before the case can proceed to a judicial hearing?**

53 responses



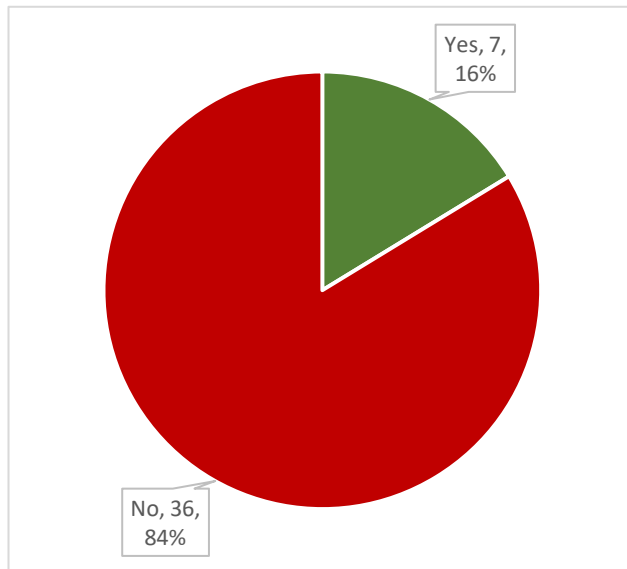
**Source:** OPTR: Questionnaire 1, Question 42.

However, delay seems to be widely practised in most surveyed countries. In practice, there are no time limits for cases to complete the judicial process in the vast majority of the surveyed countries, as depicted in Chart 44.

<sup>354</sup> PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 51.

**Chart 44. Are there time limits applicable for a tax case to complete the judicial appeal process?**

53 responses



**Yes:** China (1), China (3), Croatia, Finland, Germany, Panama, Peru (1), Russia, Serbia

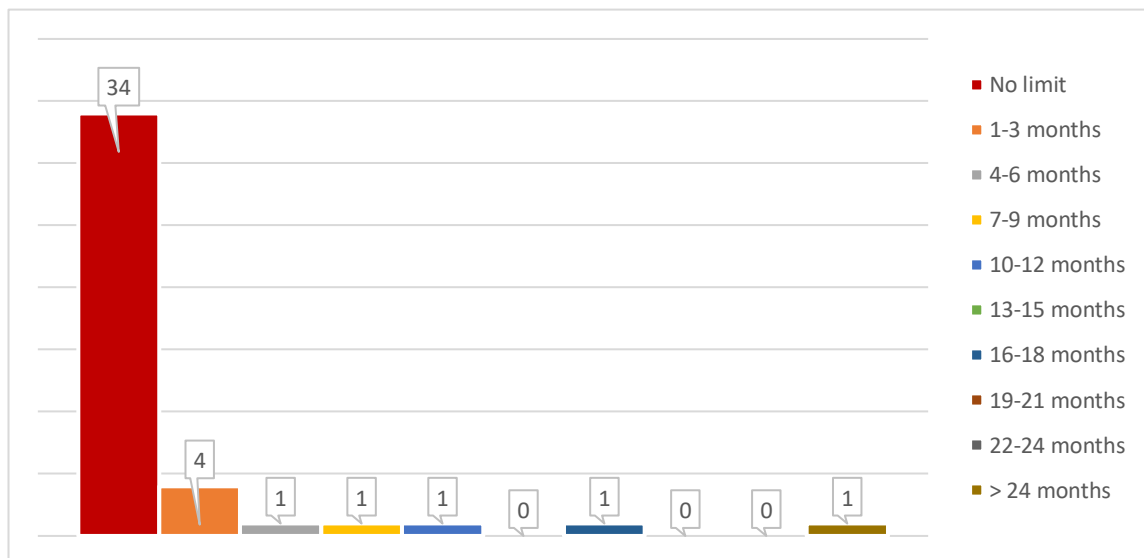
**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (2), Peru (3), Poland, Portugal, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 43.

In those rare cases in which time limits are applicable, the time limit for a tax case to be concluded varies, according to the information of Chart 45.

**Chart 45. If yes, what is the normal time it takes for a tax case to be concluded on appeal?**

53 responses



Source: OPTR: Questionnaire 1, Question 44.

**1-3 months:** Croatia, Panama, Russia, Serbia

**4-6 months:** China (1), China (3)

**7-9 months:** Chile

**No limit:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Greece (1),

**10-12 months:** Italy

**16-18 months:** Slovenia (2)

**More than 24 months:** Germany

Greece (2), Guatemala, India, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands (2), New Zealand, Peru (2), Peru (3), Poland, Slovenia (1), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

Nevertheless, there were some significant developments in 2019 towards a reduction of the length of time taken by reviews and appeals. For example, the average time for resolution of large-file objections in **Canada** is 690 days, within the standard of the best practice.<sup>355</sup> In addition, the standard review time in **Japan** is three months, and the average appeal time is one year, according to the National Tax Tribunal.<sup>356</sup>

Court reorganizations have been a way of achieving the standard set by the best practice. In **Australia**, a division dealing with small businesses' tax was created within the Administrative Appeals Tribunal. In this regard, the Tribunal's practice directions rule that, following the conclusion of the hearing process, a decision should be reached within 28 days, a very good time indeed.<sup>357</sup> Likewise, a reorganization of regional tax courts in **Denmark** is expected to speed up the hearing of appeals and reduce the overall average time spent handling appeals going forward.<sup>358</sup>

### 6.3. Alternative dispute resolution

The right to good administration implies that good faith should govern the relationship between taxpayers and the tax authorities. Therefore, when conflict arises – mainly due to different opinions regarding the assessment of taxes – the use of alternative dispute resolution (ADR) mechanisms should be widely available. ADR can ensure the fair resolution of conflicts in an efficient way, providing certainty for both parties and better results in terms of tax policy.<sup>359</sup>

According to the national reports, half of the surveyed jurisdictions have arranged for the adoption of ADR in practice, such as mediation or arbitration, before a tax case proceeds to the judiciary, as shown in Chart 46. However, only some of the surveyed jurisdictions have incorporated a system for the simplified resolution of tax disputes, according to the information in Chart 47.

<sup>355</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 52.

<sup>356</sup> JP: OPTR Report (Academia), Questionnaire 2, Question 52.

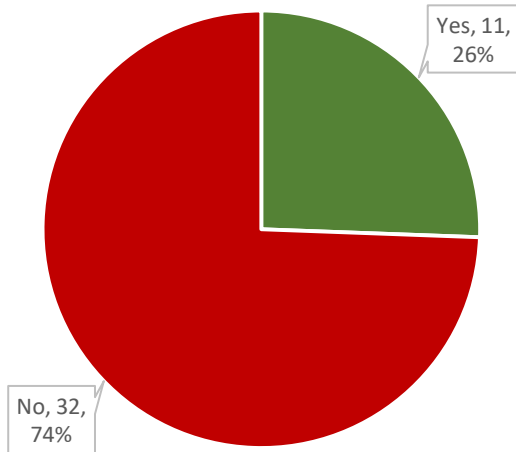
<sup>357</sup> AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 52.

<sup>358</sup> DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 52.

<sup>359</sup> See S.P. Govind & L. Turcan, *Cross-Border Tax Dispute Resolution in the 21st century: A Comparative Study of Existing Bilateral and Multilateral Remedies*, 19 *Derivs. & Fin. Instrums.* 5 (2017), Journal Articles & Papers IBFD; K. Perrou, *The Ombudsman and the Process of Resolution of International Tax Disputes – Protecting the “Invisible Party” to the MAP*, 10 *World Tax J.* 1 (2018), Journal Articles & Papers IBFD; H.M. Pit, *General Overview*, in *Dispute Resolution in the EU: The EU Arbitration Convention and the Dispute Resolution Directive* (IBFD 2018), Books IBFD; M.B.A. van Hout, *Is Mediation the Panacea to the Profusion of Tax Disputes?*, 10 *World Tax J.* 1 (2018), Journal Articles & Papers IBFD; L.F. Neto, *Baseball Arbitration: The Trendiest Alternative Dispute Resolution Mechanism in International Taxation*, 2 *Intl. Tax Stud.* 8/Special Issue (2019), Journal Articles & Papers IBFD; and G.M. Luchena Mozo, *A Collaborative Relationship in the Resolution of International Tax Disputes and Alternative Measures for Dispute Resolution in a Post-BEPS Era*, 58 *Eur. Taxn.* 1 (2018), Journal Articles & Papers IBFD.

**Chart 46. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?**

53 responses



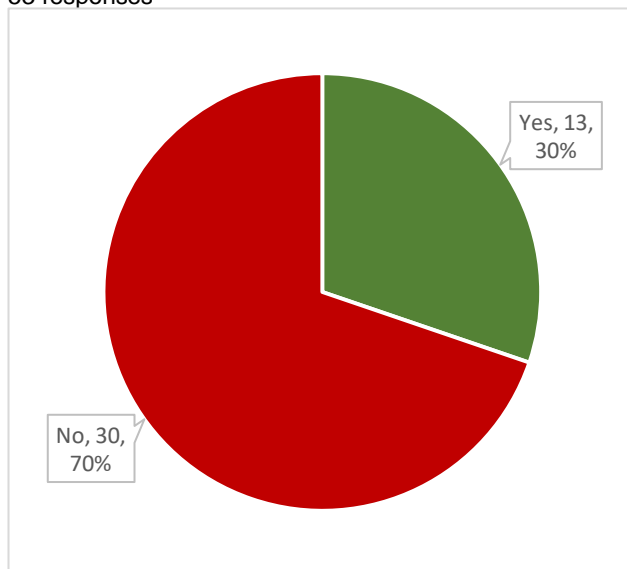
**Yes:** Australia, Belgium (1), Belgium (2), China (1), China (3), Italy, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), South Africa, United Kingdom, United States

**No:** Argentina, Austria, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Japan, Luxembourg, New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Spain, Sweden, Switzerland, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 41.

**Chart 47. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file or by e-filing)?**

53 responses



**Yes:** Australia, Belgium (2), Canada, China (1), China (3), Croatia, Denmark, Germany, Italy, Kenya, Mexico (3), Russia, Slovenia (2), United Kingdom, United States, Venezuela

**No:** Argentina, Austria, Belgium (1), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Chile, Colombia, Cyprus (1), Cyprus (2), Czech Republic, Finland, Greece (1), Greece (2), Guatemala, India, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Serbia, Slovenia (1), South Africa, Spain, Sweden, Switzerland, Uruguay

Source: OPTR: Questionnaire 1, Question 49.

#### 6.4. *Audi alteram partem* and the right to a fair trial

##### 2019 Relevant Case Law – European Court of Human Rights

Case	<i>Grytsa and Shadura v. Ukraine</i> ,* 3075/13 and 63879/13 (Committee)	
Date	27 June 2019	
ECtHR Articles	Article 6	
Facts	Decision	Comments
<p>The applicant moved from the territory of the Republic of Moldova, controlled by the so-called Moldavian Republic of Transnistria (MRT), to Ukraine to take up permanent residence. Under domestic law, repatriating Ukrainians were entitled to the tax-free and duty-free import of their foreign-registered vehicles. However, the customs office refused to apply this tax exemption in the applicant's case on the grounds that the car had not been registered by the appropriate authorities of the Republic of Moldova. She challenged this refusal before the administrative courts. The first-instance court allowed her claim. This judgment was upheld on appeal, but the Higher Administrative Court later quashed both decisions and dismissed the claim.</p>	<p><b>Article 6(1): breach of the equality of arms in the course of the appeal proceedings.</b> The Court found a violation of that provision, because the applicant had never received a copy of the customs' authorities appeal to the Higher Administrative Court and had not been notified of the proceedings before that court by any means. The domestic courts therefore deprived the applicant of the opportunity to respond to the appeal lodged in her case and fell short of their obligation to respect the principle of equality of arms.</p>	<p>*Only the case of Ms Shadura is relevant</p>

##### 2019 Relevant Inadmissibility Decisions – European Court of Human Rights

Case	<i>Bley v. Germany</i> , 68475/10 (Committee)	
Date	25 June 2019	
ECtHR Articles	Article 6 Article 7	
Facts	Decision	Comments
<p>The applicant was a manager and co-proprietor of a company that supplied milk based in the former German Democratic Republic (GDR). From 1996, his company marketed less milk than the individual quota set for it by the Council of the European Communities. At the same time, certain milk suppliers from the</p>	<p><b>Article 6(1)</b> The applicant complained that the Federal Constitutional Court had failed to refer questions to the ECJ for a preliminary ruling on the lawfulness of the surplus levy imposed under EU law and had failed to provide adequate reasoning for its refusal to do so. The Court <b>rejected this</b></p>	<p><b>Main issues – The right under the Convention to have a case referred to the ECJ for a preliminary ruling; the need to seek professional advice in tax matters; foreseeability of law setting criminal liability for tax evasion.</b></p>

<p>Land of Hesse (in the former Federal Republic of Germany) who delivered milk to the same dairy exceeded their individual quotas and risked paying a levy of 115% on the surplus (milk levy). Under German law, there was a prohibition on transferring quotas between the territories of the former GDR and the former Federal Republic of Germany (FRG). The applicant invented a leasing scheme, as a result of which the milk supplier in Hesse was in position to deliver milk that was counted against the applicant's quota. In 2006, the applicant was convicted of tax evasion. As a result of his scheme, the farmers in Hesse had avoided paying more than EUR 283,000 of surplus levy. During the proceedings, the applicant argued that he had sought advice from a tax accountant, who reassured him that there were no problems in terms of tax law. However, the courts, after questioning the tax accountant, considered that the applicant was obliged to inform him about the problematic situation or to consult a lawyer. Alternatively, he could have made enquiries with the tax office or with the Chamber of Agriculture. The Federal Constitutional Court rejected his complaint. It did not examine whether the surplus levy violated the applicant's property rights or other basic rights, as the amount of surplus levy to be charged for excess milk production was established in Council Regulation (EEC) 3950/92.</p>	<p><b>complaint as manifestly ill-founded</b> for the following reasons: The Convention does not guarantee as such any right to have a case referred to the ECJ for a preliminary ruling under Article 234 of the TFEU. However, the refusal of a request for such a referral may infringe the fairness of proceedings if it appears to be arbitrary. In the present case, the Federal Constitutional court refrained from exercising its competence of review in respect of the milk levy, for that levy was based fully on EU law and therefore subject to review by the ECJ. In any case, the levy in question had already been assessed in the light of the right to property, and the correct application of EU law was so obvious as to leave no scope for any reasonable doubt. The Federal Constitutional Court's refusal to refer the case for a preliminary ruling to the ECJ was not arbitrary.</p> <p><b>Article 7</b> The applicant complained that the provisions relied upon by the domestic courts were insufficiently precise to justify his criminal conviction. The Court <b>rejected this complaint as manifestly ill-founded</b>, because the criminal implications of the applicant's actions were sufficiently foreseeable for him as a dairy farmer working in a highly regulated market. He had clearly known about the prohibition of transferring quotas of dairy producers in the former GDR to those in the former FRG. In any case, the applicant could have sought and obtained appropriate advice, for example from a lawyer or the Chamber of Agriculture.</p>	
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- See *Karalar v. Turkey*, 1964/07 (Committee), at sec. 7.1.

### 2019 Relevant Communicated Cases – European Court of Human Rights

Case	<i>Ari-Tem Ltd. Şti.</i> Against Turkey, Application <a href="#">63398/10</a>
Date Communicated	18 December 2019

<b>ECtHR Articles</b>	Article 6 (access to a court)
<b>Issues</b>	<p>The application concerns the alleged breach of the applicant company's right of access to a court whereby it challenged the tax penalty imposed on it.</p> <p>The applicant complains under Article 6 of the Convention that the domestic courts dismissed its cases in which it contested the validity of the service of the tax penalty notices issued in respect of it to an employee of a different company registered at a different address.</p>

<b>Case</b>	<b>Francisco Javier Melgarejo Martinez de Abellanosa</b> against Spain, Application <a href="#">11200/19</a>
<b>Date Communicated</b>	2 July 2019
<b>ECtHR Articles</b>	Article 6(1) (fair trial)
<b>Issues</b>	<p>The application concerns tax proceedings against the applicant. After he paid the required amount, the tax decision that imposed on him the obligation to pay the main debt was declared null and void. As a consequence, the amount of the main debt was refunded to him. In parallel proceedings, the amounts he paid as default interest and as surcharge for late payment were not annulled.</p> <p>The appeal of the applicant before the <i>Audiencia Nacional</i> was dismissed in a judgment of 19 June 2017, and so was his appeal for the annulment of the proceedings in a decision of 3 June 2018.</p> <p>By contrast, in the case of his siblings, who, according to the applicant, were in exactly the same situation and followed the same line of appeals, the <i>Audiencia Nacional</i> ruled in their favour and declared the default interest and the surcharge for late payment null and void. The reasoning of the <i>Audiencia Nacional</i> in their case was that, once the main debt had been annulled, the default interest and the surcharge for late payment should be annulled as well.</p>

- See **Mamidoil-Jetoil Anonymos Elliniki Etairia Petrelaioidon** against Greece, Applications [42552/13](#) and [48707/13](#), at sec. 7.1.

### 2019 Relevant Case Law – European Court of Justice

<b>Case</b>	Case C-676/17, <b>Oana Mădălina Călin</b>	
<b>Date</b>	11 September 2019	
<b>ECtHR Articles</b>	<b>Article 47</b> – Right to an effective remedy and to a fair trial	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
The taxpayer had paid a tax that was subsequently declared as incompatible with EU law. The taxpayer asked for a revision of the decision that had denied her the refund of the tax. Her request was accepted, but then it was	The requirement of equivalence (namely, that the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic	AG Bobek, in his Opinion (5 February 2019), proposed that the answer is based on Article 47 of the Charter; the Court agreed with the Opinion of the AG but did not include any reference to Article 47 of the Charter.



<p>subsequently appealed. Under appeal, the court rejected her request on the additional ground that, based on a decision by the Supreme Court that had subsequently been published, her request for revision was filed after the deadline provided for in the law (30 days). The taxpayer complained that the Supreme Court decision that affected the validity of her request for revision should not apply to her case, as it was not published at the time she filed her request for revision.</p>	<p>actions, must be interpreted as not precluding national legislation, according to which the deadline to submit a request for revision of a final judgment that infringes EU law is one month and runs from the date of notification of the final judgment subject to revision.</p> <p>By contrast, the requirement of effectiveness (that is, said actions for safeguarding an individual's rights under EU law must not render impossible in practice or excessively difficult the exercise of rights conferred by EU law), in conjunction with the principle of legal certainty may preclude an exclusive deadline of 30 days for filing the request of revision of a final judgment if, at the time of filing of the request for revision, the judgment which gives that right is not yet published.</p>	
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<b>Case</b>	Case C-189/18, <b>Glencore</b>	
<b>Date</b>	16 October 2019	
<b>ECtHR Articles</b>	<b>Article 47</b> – Right to an effective remedy and to a fair trial	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The tax authorities denied the deduction of input VAT, claiming that the taxpayer was involved in VAT fraud. The decision was based on findings of the tax authorities after investigations with suppliers of Glencore, which had resulted in the reclassification of transactions that these suppliers had with third parties. The taxpayer complained that the reclassification involved his supplier, and not him.</p>	<p>The principle of respect for the rights of defence and article 47 of the Charter do not preclude, in principle, legislation or a practice of a Member State whereby, during an assessment of the right to deduct VAT exercised by a taxable person, the tax authority is bound by the findings of fact and legal qualifications already made by it in the context of related administrative procedures brought against that taxable person's suppliers, on which are based decisions which have become final finding the existence of VAT fraud committed by those suppliers, on condition (i) that it does not absolve the tax authority of the need to make evidence known to the taxable person, including evidence resulting from those related administrative procedures on the basis of which it intends to take a decision and that that taxable person is not</p>	<p>National legislation or a national practice whereby, during an assessment of the right to deduct VAT exercised by a taxable person, the tax authority is bound by the findings of fact and legal qualifications that were made by it in the context of related administrative procedures to which that taxable person was not party.</p> <p>Right to be heard; right of access to the file; effective judicial review; principle of equality of arms; adversarial principle.</p>

	<p>thereby deprived of the right to effectively call into question those findings of fact and legal qualifications during the proceedings concerning him; (ii) that that taxable person has access during those proceedings to all of the evidence collected during those related administrative procedures or any other procedure on which that authority intends to base its decision or which may be useful to the exercise of the rights of defence, unless objectives of public interest warrant restricting that access; and (iii) that the court ruling on an action against that decision be able to assess the lawfulness of the collection and use of that evidence and the findings made in the administrative decisions taken in relation to those suppliers that are decisive to the outcome of the action.</p>	
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### 2019 Relevant AG Opinions – European Court of Justice

- See Case C-482/18, *Google Ireland Ltd*, at sec. 7.1.

**Minimum standard:** *Audi alteram partem* should apply in administrative reviews and judicial appeals.

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

Japan, Spain, United States

**Shifted away from the minimum standard:**

None

As discussed in section 4.1., *audi alteram partem* is a fundamental right linked to the possibility that third parties might take action which limits a person's sphere of rights. In a democratic society under the rule of law, everyone is entitled to be heard before any change in their legal situation arises from the claim of third parties: this is, in sum, a minimum standard arising from human dignity.<sup>360</sup> Hence, it should be applied to all stages of tax assessments, including – naturally – all kinds of reviews and appeals.<sup>361</sup> That is the case in 95% of the surveyed jurisdictions, according to Chart 48.

As far as the relevant events of 2019 are concerned, the procedure of administrative reviews was improved in **Japan**, allowing the taxpayer to make oral presentations before the administrative body in charge of reviewing tax assessments.<sup>362</sup> Legislation was also modified in the **United States**, improving taxpayers' awareness vis-à-vis the reasons for denial of an appeal hearing and allowing taxpayers to access relevant information within a reasonable time

<sup>360</sup> Weffe H., *supra* n. 73, at sec. 2.

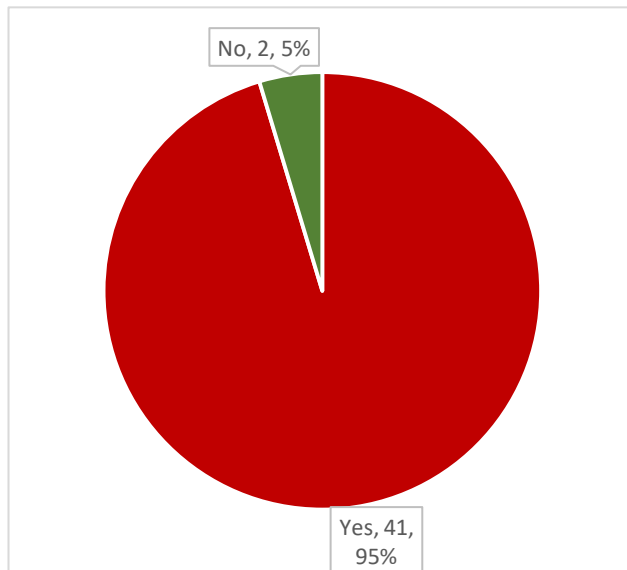
<sup>361</sup> Baker & Pistone, *supra* n. 97, at sec. 6.4., p. 51.

<sup>362</sup> JP: OPTR Report (Academia), Questionnaire 2, Question 53.

to prepare their defence. An appeals conference, however, can simply be an exchange of documents, and the IRS can deny taxpayers the opportunity for an appeals conference in certain limited circumstances.<sup>363</sup>

**Chart 48. Is the principle *audi alteram partem* (i.e. each party has a right to a hearing) applied in all tax appeals?**

53 responses



**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), South Africa, Spain, Sweden, United Kingdom, United States, Uruguay, Venezuela

**No:** China (3), Mexico (1), Slovenia (2), Switzerland

Source: OPTR: Questionnaire 1, Question 50.

**6.5. Solve et repete**

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

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

**Shifted away from the minimum standard:**  
Peru (2), Peru (3)

**Best practice:** An appeal should not require prior payment of tax in all cases.

**Shifted towards/matched the best practice:**  
None

**Shifted away from the best practice:**  
Bosnia and Herzegovina, Peru (3)

It is also obvious that there shall be no obstacles for taxpayers to access judicial remedies. Ideally, this should be a minimum standard. However, on the one hand this principle entails the risk of letting taxpayers unduly exploit reviews and appeals to delay the payment of taxes that are undoubtedly due. On the other hand, taxpayers may be deterred from lodging a genuine appeal that gravely affects their rights. In this regard, proportionality demands that

<sup>363</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 53.

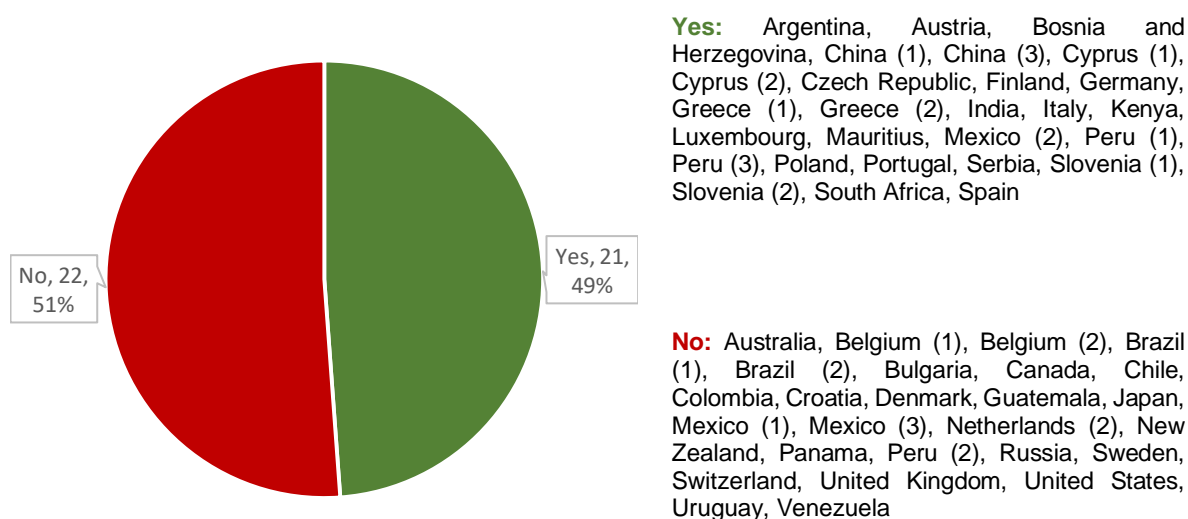
taxpayers should be allowed to file appeals in all cases, provided that judicial interim measures are taken to ensure the outcome of the process.<sup>364</sup>

Access to justice, however, is potentially hampered by *solve et repete* in nearly half of the cases, based on the results of the survey. Exceptions are recognized, e.g. an interim suspension of the debt, in 44% of countries, in keeping with the trend of 2018 of potential harm to taxpayers' rights.<sup>365</sup> Both trends are depicted in Charts 49 and 50.

According to national reports, there were only a couple of developments regarding *solve et repete* in 2019. On the one hand, legislation in **Portugal** eliminated a surplus from the overall amount secured in cases of interim suspension of foreclosure proceedings.<sup>366</sup> On the other hand, even though an interim suspension of the payment is possible before a judge, the judiciary in **Peru** held that the filing of a constitutional protection action (*amparo*) does not stop the execution of administrative acts, including tax matters.<sup>367</sup>

#### Chart 49. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. *solve et repete*)?

53 responses



**Source:** OPTR: Questionnaire 1, Question 45.

<sup>364</sup> See Baker & Pistone, *supra* n. 97, at sec. 6.5., pp. 51-52; G.W. Kofler & P. Pistone, [General Report](#), in *Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiaras Maduro & P. Pistone eds., IBFD 2011), Books IBFD; C.A. Ruiz Jiménez, [Fair Trial Rights on Taxation: The European and Inter-American Experience](#), in *Human Rights and Taxation in Europe and the World* (G.W. Kofler, M. Poiaras Maduro & P. Pistone eds., IBFD 2011), Books IBFD; and A. Tarsitano, [The Defence of Taxpayers' Rights in the Courts of Argentina](#), 59 Bull. Int. Taxn. 8 (2005), Journal Articles & Papers IBFD.

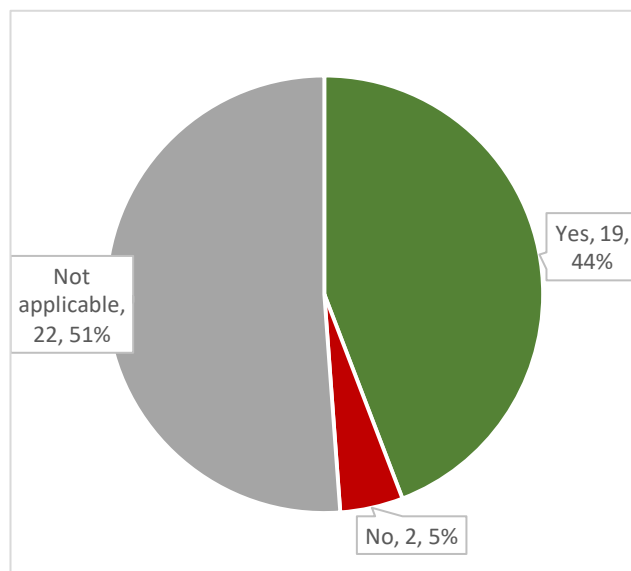
<sup>365</sup> OPTR, *supra* n. 26 (2018), at sec. 5.6.5.

<sup>366</sup> PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 54.

<sup>367</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 54.

**Chart 50. If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?**

53 responses



**Yes:** Argentina, Austria, Bosnia and Herzegovina, China (3), Cyprus (1), Czech Republic, Finland, Germany, Greece (1), Greece (2), India, Italy, Luxembourg, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (3), Poland, Portugal, Serbia, Slovenia (2), South Africa, Spain

**No:** Cyprus (2), Kenya, Slovenia (1)

**Not applicable:** Australia, Belgium (1), Belgium (2), Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), Colombia, Croatia, Denmark, Guatemala, Japan, Mexico (3), Netherlands (2), New Zealand, Panama, Peru (2), Russia, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 46.

## 6.6. Costs of proceedings

**Best practice:** The state should bear some or all of the costs of an appeal, whatever the outcome.

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

Spain

**Shifted away from the best practice:**

Bosnia and Herzegovina

**Best practice:** An appeal should not require prior payment of tax in all cases.

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

United States

**Shifted away from the best practice:**

Denmark

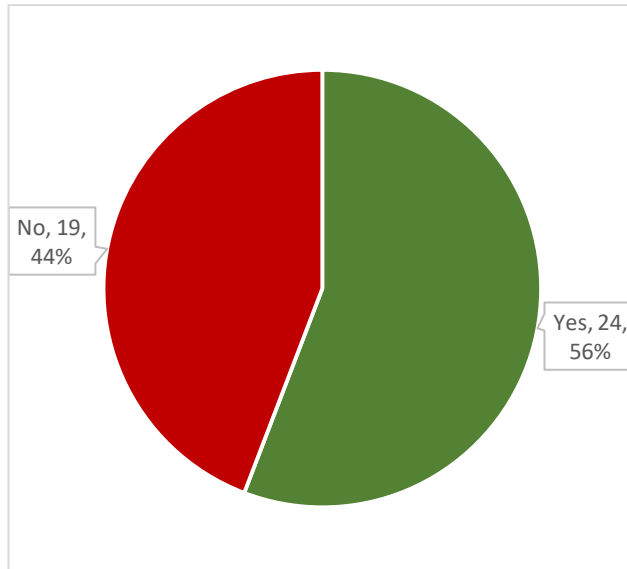
As stated by Baker and Pistone,<sup>368</sup> all proceedings imply a cost for both the tax authorities and taxpayers. Some tax systems contain rules that oblige the party that loses the appeal to bear all costs related to the procedure. This rule corresponds with general practice in the legal systems of several countries around the world and reflects the principle that the winner receives compensation for all costs that he was obliged to incur throughout the entire procedure. This practice discourages parties from litigating and encourages them to find an agreement at an early stage of the dispute.

Such is the case reported in 55% of surveyed countries, as depicted in Chart 51.

<sup>368</sup> Baker & Pistone, *supra* n. 97, at sec. 6.6., p. 52.

**Chart 51. Does the loser have to pay the costs in a tax appeal?**

53 responses



**Yes:** Argentina, Australia, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Italy, Luxembourg, Mauritius, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Spain, Switzerland, Venezuela

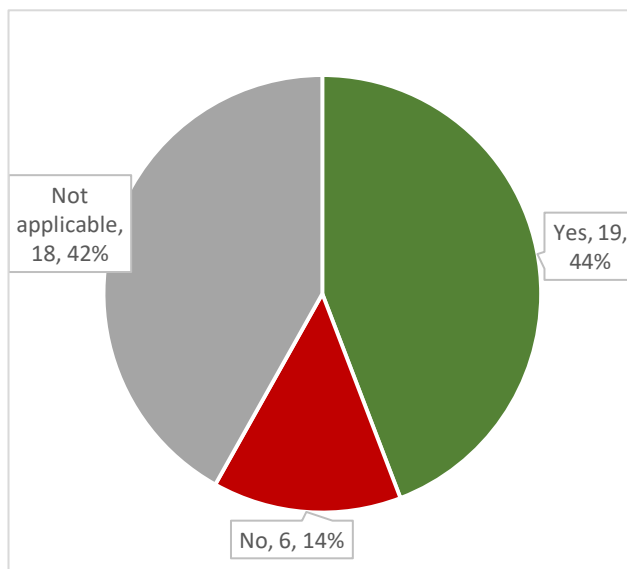
**No:** Austria, China (3), Colombia, Croatia, Finland, Guatemala, India, Japan, Kenya, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, South Africa, Sweden, United Kingdom, United States, Uruguay

Source: OPTR: Questionnaire 1, Question 51.

Where the loser has to pay the costs, 43% of the surveyed jurisdictions recognize a number of situations justifying a dispensation, as shown in Chart 52.

**Chart 52. If yes, are there situations recognized where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?**

53 responses



**Yes:** Argentina, Australia, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Bulgaria, Canada, Chile, China (1), Colombia, Cyprus (2), Denmark, Germany, Greece (1), Greece (2), Italy, Mauritius, Portugal, Serbia, Slovenia (2), Spain

**No:** Brazil (2), Cyprus (1), Czech Republic, Luxembourg, Russia, Slovenia (1), Switzerland, Venezuela

**Not applicable:** Austria, China (3), Croatia, Finland, Guatemala, India, Japan, Kenya, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, South Africa, Sweden, United Kingdom, United States, Uruguay

Source: OPTR: Questionnaire 1, Question 52.

The torch-bearer in this regard is **Spain**. In 2019, the Supreme Court annulled regulations that qualified the amounts due from the loser in administrative reviews in a general and abstract

way, not connected to the specific procedure, making them lose their true legal nature.<sup>369</sup> Providing further assistance, the **United States** Tax Court adopted a rule permitting limited entries of appearance of legal services at trial sessions, expanding the availability of such services to taxpayers at the cost of the tax authorities.<sup>370</sup>

On the other side, new legislation in **Denmark** excluded cases on the refund of dividend tax from the state's system of reimbursement of costs in tax cases. This was to prevent double payments in cases where the Danish government is forced to sue the same or similar entities in foreign courts to obtain repayments of illegitimate refunds of dividend tax, and reflected a solution already implemented in practice by the courts.<sup>371</sup>

### 6.7. Public hearings

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

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

None

**Shifted away from the minimum standard:**

Mexico (3)

Tax matters are sensitive to taxpayers. By nature, the investigation of facts and circumstances relevant for tax purposes entails a significant invasion into the affairs of taxpayers that, if handled improperly, might affect taxpayers' right to privacy, as well as their freedom of commerce, by the potential revelation of industrial secrets or commercially delicate information that might affect their competitive positions in the relevant markets. Therefore, the right to exclude the public from a hearing and the anonymization of decisions before publication in order to protect taxpayers' privacy shall be recognized as a minimum standard.

However, the majority of countries do not follow this standard, as Chart 53 shows.

No developments were reported in 2019. **Mexico** confirmed the impossibility of requesting a private hearing as a shift away from the minimum standard, a situation that was already existing in 2018.<sup>372</sup>

<sup>369</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 55.

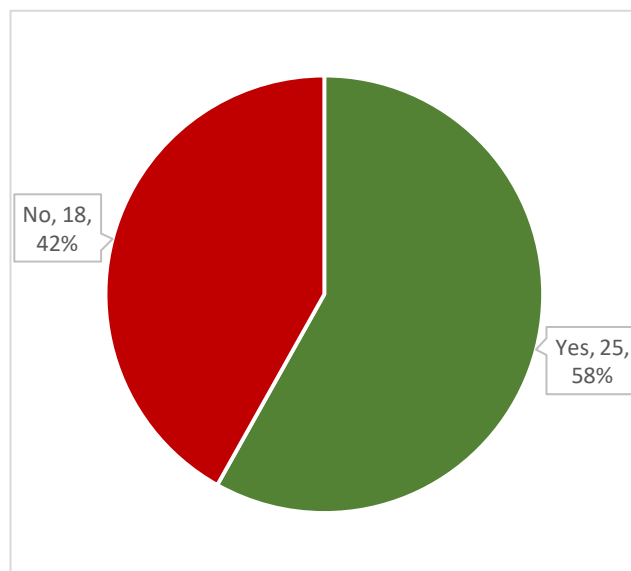
<sup>370</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 56.

<sup>371</sup> DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 56.

<sup>372</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 57; and OPTR, *supra* n. 26 (2018), at sec. 5.6.7.

**Chart 53. If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?**

53 responses



**Yes:** Australia, Austria, Belgium (2), Bulgaria, China (1), China (3), Colombia, Croatia, Cyprus (2), Denmark, Germany, Greece (1), Greece (2), Italy, Kenya, Mauritius, Panama, Poland, Portugal, Russia, Serbia, Slovenia (2), South Africa, Sweden, United Kingdom, United States, Uruguay, Venezuela

**No:** Argentina, Belgium (1), Bosnia and Herzegovina, Brazil (1), Brazil (2), Canada, Chile, Cyprus (1), Czech Republic, Finland, Guatemala, India, Japan, Luxembourg, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Slovenia (1), Spain, Switzerland

Source: OPTR: Questionnaire 1, Question 55.

### 6.8. Publication of judgments and privacy

**Minimum standard:** Tax judgments should be published.

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

Belgium (2)

**Shifted away from the minimum standard:**

Bosnia and Herzegovina, Mexico (3)

The awareness of the ways tax law is interpreted and applied in practice is one of the pillars of both transparency and certainty. Publicity helps the tax system to function more smoothly and, therefore, decrease disputes between taxpayers and tax authorities. Therefore, the publication of tax judgments should be considered as an «optimization requirement»<sup>373</sup> of tax systems

However, as pointed out in section 3.1. of this yearbook, taxpayers are entitled to privacy, particularly if sharing the information about their tax affairs might indirectly reveal commercial secrets and affect their competitive position in the market. Hence, taxpayers’ anonymity in published judgments should also be considered a minimum standard.

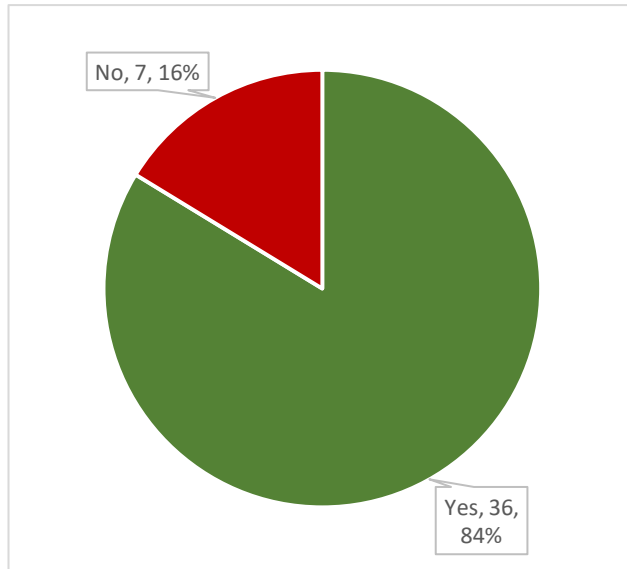
Most surveyed jurisdictions publish the decisions of their tax courts in order to protect the right of taxpayers to certainty in the interpretation and application of tax law by the tax authorities and courts, as shown in Chart 54.

<sup>373</sup> Alexy, *supra* n. 199, at pp. 47-48.



**Chart 54. Are judgments of tax tribunals published?**

53 responses



**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (3), Colombia, Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Venezuela

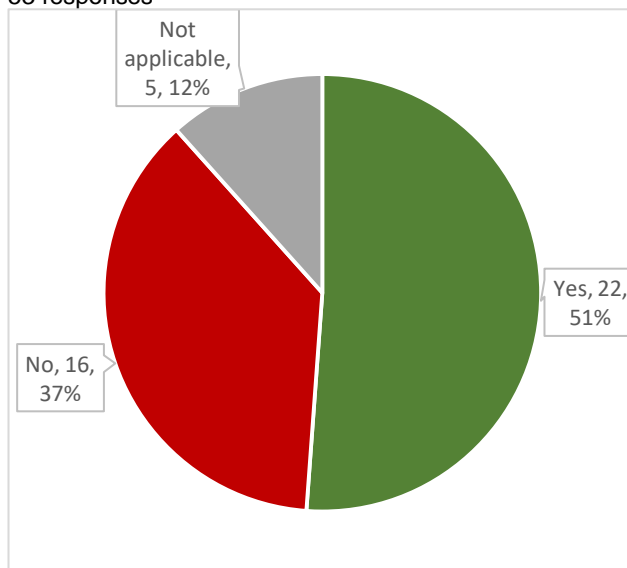
**No:** Bosnia and Herzegovina, Croatia, Cyprus (1), Finland, Mexico (1), Panama, Serbia, Uruguay

Source: OPTR: Questionnaire 1, Question 53.

In addition, a majority of reports state that their jurisdictions protect privacy through anonymization, as shown in Chart 55.

**Chart 55. If yes, can the taxpayer preserve its anonymity in the judgment?**

53 responses



**Yes:** Australia, Austria, Belgium (1), Bulgaria, Croatia, Cyprus (2), Denmark, Germany, Greece (1), Greece (2), Italy, Japan, Luxembourg, Mauritius, Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (2), Poland, Portugal, Slovenia (1), Slovenia (2), South Africa, Spain, Switzerland, United Kingdom, Venezuela

**No:** Argentina, Belgium (2), Brazil (1), Brazil (2), Canada, Chile, China (3), Colombia, Cyprus (1), Czech Republic, Guatemala, India, Kenya, Peru (1), Peru (3), Russia, Sweden, United States, Uruguay

**Not applicable:** Bosnia and Herzegovina, China (1), Finland, Mexico (1), Panama, Serbia

Source: OPTR: Questionnaire 1, Question 54.

**Belgium** shows the only development in this regard in 2019. All judicial decisions will be made public via an electronic platform of decisions of the judiciary as of 1 September 2020. In those decisions, the data that identify or can identify the parties and other persons involved in the

case must be removed.<sup>374</sup>

## 7. Criminal and Administrative Sanctions

### 7.1. The general framework

#### 2019 Relevant Case Law – European Court of Human Rights

Case	<i>Ragnar Thorisson v. Iceland</i> , 52623/14 (Committee)	
Date	12 February 2019	
ECtHR Articles	Article 4 of Protocol 7	
Facts	Decision	Comments
<p>Following the audit of the applicant's tax return for 2006, the Directorate of Tax Investigation informed the applicant about the reassessment of his taxes. The applicant was also informed about possible criminal proceedings. Following this report, the Directorate of Internal Revenue found that the applicant had failed to declare significant capital gains received in 2006. It accordingly revised the declared amounts, reassessed the applicant's taxes and imposed a 25% surcharge. The applicant paid the additional tax and the surcharge. The decision became final in February 2012 (the applicant did not appeal).</p> <p>In March 2012, the Directorate of Tax Investigation reported the matter to the Special Prosecutor, and the applicant was interviewed by the police. In October 2012, he was indicted for aggravated tax offences. In a judgment of 16 May 2013, the District Court found the applicant guilty for having under-declared his income in his tax return and sentenced him to three months' imprisonment, suspended for two years, and a fine of EUR 152,000. In May 2014, the Supreme Court upheld the applicant's conviction but reduced the fine to EUR 136,000, taking into account the tax surcharge imposed.</p>	<p>The applicant complained that he was punished twice for the same offence. Following the test developed in its previous case law, the Court found that: (i) both sets of proceedings in that case concerned a "criminal" offence (following the "Engel criteria"); (ii) the applicant's conviction and the imposition of tax surcharges were based on the same failure to declare income, and the tax proceedings and the criminal proceedings concerned the same period of time and the same amount of evaded taxes (the <i>idem</i> part is present); (iii) it was not necessary to determine whether and when the tax proceedings became "final"; and (iv) the tax proceedings and the criminal proceedings did not progress concurrently at any point, and the police's investigation was independent; therefore, there was no sufficiently close connection in substance and in time between them to be compatible with the <i>bis</i> criterion. Accordingly, <b>the Court found a violation of article 4 of Protocol 7.</b></p> <p><u>Article 41</u> The Court considered that the finding of a violation cannot be said to fully compensate the applicant for the sense of injustice and frustration that he must have felt. He was awarded EUR 5,000 for non-pecuniary damage.</p>	<p><b>Main issue – Duplication of tax and criminal proceedings for failure to provide accurate information in a tax return.</b></p> <p>This case is a follow-up to <i>A and B v. Norway</i> ([GC], 24130/11 and 29758/11, 15 November 2016) and <i>Jóhannesson and Others v. Iceland</i> (22007/11, 18 May 2017). It concerns the 4th criterion of the <i>ne bis in idem</i> test, namely the duplication of proceedings.</p> <p>See OPTR (2015-2017), <i>supra</i> n. 26, at sec. 4.7.1.</p>

<sup>374</sup> BE: OPTR Report (Academia), Questionnaire 2, Question 58.

Case	<i>Bjarni Ármannsson v. Iceland</i> , 72098/14 (Committee)	
Date	16 April 2019	
ECtHR Articles	Article 4 of Protocol 7	
Facts	Decision	Comments
<p>The applicant was the CEO of one of Iceland's largest banks, Glitnir, from 1997 to 2007. In July 2009, the Directorate of Tax Investigation initiated an audit of the applicant's tax returns. In October 2010, the applicant was informed about the referral of the case to the Directorate of Internal Revenue for possible reassessment of his taxes and possible criminal proceedings. In an email of 11 November 2010, the Directorate of Tax Investigation accepted that a decision on possible criminal procedure would be postponed until the Directorate of Internal Revenue had issued its notification letter on the reassessment of the applicant's taxes. In January 2012, the applicant received the final notification letter. On 1 March 2012, the Directorate of Tax Investigation reported the matter to the Special Prosecutor for criminal investigation. The Directorate of Internal Revenue ruling was issued on 15 May 2012. It stated that the applicant had failed to declare significant capital income received from 2006 to 2008. The applicant's taxes were reassessed, and he was imposed a 25% surcharge, which he paid. In August 2012, this decision became final.</p> <p>In September 2012, the police interrogated the applicant for the first time. In December 2012, he was indicted for having failed to declare income in his tax returns of 2007 to 2009. In a judgment of 28 June 2013, the applicant was convicted as charged and sentenced to six months' imprisonment, suspended for two years, and the payment of a fine (about EUR 241,000), the amount of which was fixed with regard to the tax surcharges imposed. On</p>	<p>The applicant complained that he was punished twice for the same offence.</p> <p>Following the test developed in its previous case law, the Court found that: (i) both sets of proceedings in that case concerned a "criminal" offence (following the "Engel criteria"); (ii) the applicant's conviction and the imposition of tax surcharges were based on the same failure to declare capital income, and the tax proceedings and the criminal proceedings concerned the same period of time and the same amount of evaded taxes (the <i>idem</i> part is present); (iii) it was not necessary to determine whether and when the tax proceedings became "final"; and (iv) the police conducted their own independent investigation, which resulted in criminal conviction. The tax proceedings and the criminal proceedings progressed in parallel only between 1 March 2012, when the matter was reported to the Special Prosecutor, and August 2012, when the Directorate of Internal Revenue's decision became final (for a period of less than five months). The applicant was indicted four months after this decision became final and convicted more than a year after the decision of the Internal Revenue was issued. There was therefore no sufficiently close connection in substance and in time between the tax proceedings and the criminal proceedings to be compatible with the <i>bis</i> criterion. The Court found a <b>violation of Article 4 of Protocol 7</b>.</p> <p><u>Article 41</u> The Court considered that the finding of a violation cannot be said to fully compensate the applicant for the sense of injustice and frustration that he must have</p>	<p><b>Main issue – Duplication of tax and criminal proceedings for failure to provide accurate information in a tax return.</b></p> <p>This case is a follow-up to <i>A and B v. Norway</i> ([GC], 24130/11 and 29758/11, 15 November 2016) and <i>Jóhannesson and Others v. Iceland</i> (22007/11, 18 May 2017). It concerns the 4th criterion of the <i>ne bis in idem</i> test, namely the duplication of proceedings.</p>

15 May 2014, the judgment became final.	felt. He was awarded EUR 5,000 for non-pecuniary damage.	
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<b>Case</b>	<b>Lopac and Others v. Croatia</b> , 7834/12 and three others (Committee)	
<b>Date</b>	10 October 2019	
<b>ECtHR Articles</b>	Article 7 Article 1 of Protocol 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>All applicants had permanent residence in countries other than Croatia. The customs administration, having found that their registered domicile was in Croatia, initiated administrative proceedings against them and ordered the applicants to pay import duties for having imported a vessel or a car into Croatia. The third applicant was also found guilty and fined for having committed an administrative offence (importing a car into Croatia without paying relevant taxes). All applicants complained to the Constitutional Court about the breach of their rights, but to no avail.</p>	<p><b>Article 1 of Protocol 1</b> (first, second and fourth applicants complained that they had been living abroad and thus, in accordance with Annex C to the Istanbul Convention, had not been bound to pay import taxes).  <b>Non-exhaustion plea by government: rejected.</b>          The first and fourth applicants did not claim the breach of their constitutional right to property in their complaints to the Constitutional Court. However, they argued that the administrative authorities' decisions ordering them to pay import taxes had been founded on an erroneous interpretation of the term "person resident" in article 5 of Annex C to the Istanbul Convention. This was sufficient for the Court to conclude that the applicants had raised in substance the issue at the domestic level.  <b>Violation of article 1 of Protocol 1:</b> interference with the applicants' rights was based on law, which did not meet the qualitative requirement of foreseeability. In <i>Zaja</i>, the Court had already found that the practice of application of article 5 of Annex C to the Istanbul Convention in Croatia at the relevant time had been inconsistent. It had given rise to uncertainty and ambiguity as to who may benefit from the exemption from import duties (in particular, whether the decisive element was <i>domicile</i> or <i>residence</i>).  <b>Article 7</b> (fourth applicant complained that his actions did not amount to an administrative</p>	<p><b>Main issue – Quality of law in fiscal matters</b> (foreseeability). See on this issue <i>Shchokin v. Ukraine</i> (23759/03 and 37945/06, § 56, 14 October 2010) and <i>Serkov v. Ukraine</i> (39766/05, § 42, 7 July 2011).          This case was a follow-up to <i>Zaja v. Croatia</i> (37462/09, 4 October 2016).          The case concerned the <b>interpretation of the term "resident of a Contracting State"</b> (article 4 of the OECD Model) and the term <b>"person resident"</b> (article 5 of Annex C to the Istanbul Convention on Temporary Admission), and therefore the qualification of the taxpayers as subject to penalties for the alleged regulatory offences.</p>

	offence and that the domestic authorities had wrongly interpreted article 5 of Annex C to the Istanbul Convention): <b>violation</b> for the same reasons as above (unforeseeability of law).	
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<b>Case</b>	<i>Baltic Master Ltd. v. Lithuania</i> , 55092/16 (Committee)	
<b>Date</b>	26 March 2019	
<b>ECtHR Articles</b>	Article 6 Article 1 of Protocol 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>In 2013, the Vilnius customs office carried out an audit of the applicant company's accounting data, related to import of certain goods from a company registered in the United States. As a result of the audit, the applicant company was ordered to pay customs tax, VAT, late payment interest and a fine in total amount of EUR 646,361. The customs office found that the applicant company and the seller in the United States were related and refused to approve 23 import declarations, because the value of the goods had been considerably lower than that declared by other importers. Following the applicant's complaint, the Tax Disputes Commission exempted the applicant company from paying late interest (EUR 7,854). The applicant company later lodged a complaint to the Vilnius Regional Administrative Court, asking it to request a preliminary ruling from the ECJ as regards the interpretation of EU customs law. The court rejected the complaint as unfounded, stating that no question as to the interpretation of EU law had arisen. In its appeal against this decision, the applicant company indicated that the case law of the ECJ regarding the application of the Community Customs Code was inconsistent and suggested to refer six detailed questions to the ECJ. The Supreme Administrative Court rejected the appeal, pointing out that the application of EU law in that case was clear enough and there was no need to refer a question to the ECJ for a</p>	<p><b>Article 6(1)</b> The applicant complained that the Supreme Administrative Court had refused to refer a question to the ECJ for a preliminary ruling and had failed to provide adequate reasons for its refusal.</p> <p><b>Applicability of article 6</b> The Court considered that proceedings in that case were "criminal" in nature, taking into account (i) the general character of the legal provisions imposing fines for tax law violations; (ii) the purpose of the penalty, which was deterrent and punitive; and (iii) the severity of the sentence (criminal offence for which the applicant company was fined in the amount of EUR 47,236). Article 6 was therefore applicable under its criminal head.</p> <p>The Court found a <b>violation of article 6(1)</b> in the applicant company's case. It noted, firstly, that the applicant company's request to seek a preliminary ruling from the ECJ was specific and included six questions. Secondly, the Supreme Administrative Court failed to make extensive references to the relevant case law of the ECJ to show that it was well developed. It was therefore unclear on what specific legal grounds the Supreme Administrative Court considered the application of EU law so obvious that no doubts could arise.</p> <p><b>Article 1 of Protocol 1</b> The applicant company complained that, because of the Supreme Administrative Court's</p>	<p><b>Main issue – The right under the Convention to have a case referred to the ECJ for a preliminary ruling.</b></p> <p>The judgment contains a comprehensive recap of the Court's general principles concerning the domestic courts' refusal to seek a preliminary ruling from the ECJ. In particular, the domestic courts are obliged to state the reasons why they have considered it unnecessary to seek a preliminary ruling.</p>

preliminary ruling.	refusal to request a preliminary ruling from the ECJ, it had had to pay various taxes and had been deprived of EUR 638,507. The Court <b>rejected this complaint as manifestly ill-founded</b> , without providing any reasons.	
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Case	<i>S.C. Totalgaz Industrie S.R.L. v. Romania</i> , 61022/10 (Committee)	
Date	3 December 2019	
ECtHR Articles	Article 1 of Protocol 1	
Facts	Decision	Comments
<p>In 2003, the applicant company imported industrial machinery and IT technology for its own use. It declared the import operations to customs and paid the duties and taxes, including the VAT. Pursuant to decision 368/1998 of the General Directorate of Customs, the value of the imported IT was not taken into account, because it was exempt from VAT. Following the audit carried out by the tax administration, the applicant was obliged to pay approximately EUR 37,000 in respect of the VAT for the import of IT and EUR 52,000 in respect of penalties. The tax administration stated that decision 368/1998 had been repealed and replaced by decision 7/2006, which made import of IT subject to VAT.</p> <p>The applicant company complained to the Court, which allowed its complaint, because it had complied with the legal provisions in force at the material time, and decision 7/2006 could not be applied retroactively. The appellate court revoked this judgment, having found that the IT was a separate product subject to VAT under law 345/2002. Decision 7/2006 had no importance in that case. As a result, the applicant had to pay EUR 37,000 in respect of VAT and EUR 84,000 in respect of surcharges and late payment interest.</p>	<p>The applicant company complained that the IT it had imported was arbitrarily subject to VAT and that the amount of the surcharges and penalties was disproportionate. The Court noted that the parties disagreed on whether the interference with the applicant company's rights had been lawful. It accepted that the interference was provided for by law 345/2002 and that it was aimed at collecting VAT, which was in the public interest.</p> <p>When assessing the proportionality of interference, the Court took into account the following: First, the applicant company acted with due diligence: it declared to customs all the imported goods, including IT, and provided all documents to the authorities, which enabled them to calculate the duties and taxes linked to import. There was therefore no intention on its part to evade payment of import duties. Second, the applicant company was not obliged to remedy the misinterpretation of the VAT legislation by the customs authorities, because it had submitted all necessary documents to it. The applicant company could not foresee that the tax authorities would in the future consider the calculation of VAT by customs authorities incorrect. Third, the amounts of surcharges and penalties were significantly higher than the amount claimed in respect of VAT. They were manifestly excessive,</p>	<p><b>Main issue – Proportionality of interference with the right to property of a taxpayer company, which acted in good faith</b> (excessive and disproportionate burden).</p>

	<p>given that the applicant acted in good faith. The Court concluded that the applicant company had to bear an excessive and disproportionate burden in that case and found a <b>violation of article 1 of Protocol 1</b>.</p>	
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- See *Ilieva v. Bulgaria*, 22536/11 (Committee), at sec. 5.3.

### 2019 Relevant Inadmissibility Decisions – European Court of Human Rights

Case	<i>Karalar v. Turkey</i> , 1964/07 (Committee)	
Date	11 June 2019	
ECtHR Articles	Article 6 Article 7	
Facts	Decision	Comments
<p>The applicant, a certified public accountant, was accused of complicity in tax evasion for confirming the contents of forged invoices and being part of a scheme set up to obtain unlawful tax refunds from the state. Later, the courts dropped these charges. Meanwhile, the tax office issued a tax penalty notice against the applicant, ordering her to pay a tax penalty for potential lost revenue and for causing loss of tax and complicity in tax evasion. The applicant failed to lodge an action against the tax penalty before the tax courts within the statutory period of 30 days. After having been served with the payment order for the tax penalty, she lodged an action to the courts seeking annulment of this order. Her action was dismissed because complaints concerning the levying and assessment of tax could not be examined in actions lodged against payment orders.</p>	<p><b>Article 6(3)(b) and (c)</b> The applicant complained that she had been prevented from challenging the tax penalty imposed on her, as she had been served with the expert report on which the penalty had been based when she had been in prison.</p> <p><b>Article 6(2)</b> The imposition of a tax penalty on the applicant for potential lost revenue at a time when the criminal proceedings against her had been ongoing had infringed her right to the presumption of innocence.</p> <p><b>Article 7</b> The Supreme Administrative Court failed to take into account the annulment of a specific provision of the Tax Procedure Act. The Court <b>dismissed all of her complaints as time-barred</b> (six-month rule). It considered that the applicant should have challenged the tax penalty imposed on her within the 30-day time limit before the tax courts. The mere fact of being in prison was not sufficient to constitute a “special circumstance” absolving her from the requirement to use the above-mentioned domestic remedy.</p>	<p><b>Main issue – Delay with lodging an appeal against tax penalty cannot be justified by the fact of being in prison.</b></p> <p>Interestingly, the Court chose to dismiss this complaint as lodged out of time rather than for non-exhaustion of domestic remedies. The second reason could have been more logical in this case.</p>

- See *Bley v. Germany*, 68475/10 (Committee), at sec. 6.3.

## 2019 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	<b><i>Holland Farming Makedonija Doo</i> and <i>Stefan Dimkovski</i></b> against North Macedonia, Application <a href="#">83901/17</a>
<b>Date Communicated</b>	2 September 2019
<b>ECtHR Articles</b>	Article 1 of Protocol 1
<b>Issues</b>	<p>The application concerns customs misdemeanour proceedings in which the applicants were fined for failing to report to the authorities 240 bumblebees imported by the applicant company (whose estimated value was MKD 10,824), thereby evading customs duties in the amount of MKD 1,949. The applicant company was fined with EUR 5,000 and its manager (the second applicant) was fined with EUR 1,000. The undeclared goods were seized.</p> <p>On 28 June 2017 the Higher Administrative Court finally upheld the fines imposed on the applicants.</p> <p>The applicants complained under article 6 of the Convention that the fines were a disproportionate interference with their right to property.</p> <p>The Court considered that the complaint fell to be examined under article 1 of Protocol 1 to the Convention (see <i>Radomilja and Others v. Croatia</i> [GC], <a href="#">37685/10</a> and <a href="#">22768/12</a>, (sec. 124, 20 March 2018))</p>

<b>Case</b>	<b><i>Antonio a.k.a Anthony a.k.a Tony BUSUTTIL</i></b> against Malta, Application <a href="#">48431/18</a>
<b>Date Communicated</b>	26 August 2019
<b>ECtHR Articles</b>	Article 6(2) (presumption of innocence)
<b>Issues</b>	<p>The applicant complains under article 6(2) of the Convention that a presumption of guilt was applied against him on the basis that he was the director of company M., despite the fact that the situation had been hidden from him.</p>

<b>Case</b>	<b><i>Mamidoil-Jetoil Anonymos Elliniki Etairia Petrelaioidon</i></b> against Greece, Applications <a href="#">42552/13</a> and <a href="#">48707/13</a>
<b>Date Communicated</b>	1 April 2019
<b>ECtHR Articles</b>	Article 6(2) (presumption of innocence) Article 7 Article 1 of Protocol 1 Article 6(1) (reasonable time)
<b>Issues</b>	<p>The applicant alleged that article 6(2) of the Convention (the guarantee of the presumption of innocence provided for in article 6(2)) had not been observed, having regard in particular to the applicant's allegations that the domestic courts had introduced a "presumption of guilt," which reverses the burden of proof and which is not provided for in domestic law.</p> <p>The applicant alleged that there had been a violation of article 7 of the Convention, in particular given the applicant's allegations that he was "found guilty" of smuggling and that he was imposed a fine on the basis</p>



	<p>of an obligation which was not provided for by law.</p> <p>The applicant alleged that his right to the peaceful enjoyment of her possessions been violated, within the meaning of article 1 of Protocol 1.</p> <p>The applicant alleged that the length of the proceedings before the Piraeus Administrative Court of First Instance and the Piraeus Administrative Court of Appeal were not compatible with the condition of judgment within a “reasonable time” within the meaning of article 6(1) of the Convention.</p>
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<b>Case</b>	<b><i>Carlos Paiva de Andrada Reis</i></b> against Portugal, Application no <a href="#">56564/15</a> .
<b>Date Communicated</b>	29 April 2019
<b>ECtHR Articles</b>	Article 6(2)
<b>Issues</b>	<p>The application concerns tax adjustment proceedings opened against the applicant.</p> <p>By a judgment of 3 July 2012, the Lisbon Tax Court ordered the applicant to pay the tax authorities the sum of EUR 240,573 in respect of VAT on the services of a company of which he was the manager.</p> <p>The applicant appealed against the judgment. He relied on a judgment of the Lisbon court of 16 July 2012, which acquitted him of the offence of breach of tax confidence on the grounds that he had not exercised de facto management of the company during the period in question.</p> <p>In a judgment of 7 May 2015, the Central Administrative Court of the South (TCAS) confirmed the judgment of the Lisbon Tax Court, considering that there was no reason to take into account the acquittal judgment of the Lisbon Court, given that the applicant had not contested his capacity as manager in his statement of claim (<i>petição inicial</i>).</p> <p>The applicant alleged that, by refusing to take into account the judgment of the Lisbon court of 16 July 2012, the TCAS infringed his right to the presumption of innocence guaranteed by article 6(2) of the Convention.</p>

<b>Case</b>	<b><i>Bragi Guðmundur Kristjánsson</i></b> against Iceland, Application <a href="#">12951/18</a>
<b>Date Communicated</b>	30 August 2019
<b>ECtHR Articles</b>	Article 4(1) of Protocol 7
<b>Issues</b>	<p>The application concerns the alleged violation of the applicant’s right not to be tried or punished twice for the same offence under article 4 of Protocol 7 of the Convention.</p> <p>Following an audit by the Directorate of Tax Investigations, the applicant’s taxes were reassessed with a 25% surcharge by the Directorate of Internal Revenue by a decision of 30 November 2012. That decision was referred by the applicant to the State Internal Revenue Board, which rendered its decision on 12 March 2014.</p> <p>On 12 November 2012, the Directorate of Tax Investigation referred the applicant’s case to the Special Prosecutor, who indicted the applicant</p>

on 21 May 2014 for aggravated tax offences. The applicant was convicted by the District Court of Reykjavík on 15 March 2016. His conviction was upheld on appeal by the Supreme Court, by a judgment of 21 September 2017.

- See *Ari-Tem Ltd. Şti.* Against Turkey, Application [63398/10](#), at sec. 6.3.

### 2019 Relevant Case Law – European Court of Justice

- See **Case C-310/16, *Dzivev***, at sec. 5.3.
- See **Joined Cases C-469/18 and C-470/18, *IN and JM***, at sec. 5.3.
- See **Case C-189/18, *Glencore***, at sec. 6.3.

### 2019 Relevant AG Opinions – European Court of Justice

<b>Case</b>	Case C-482/18, <i>Google Ireland Ltd</i>	
<b>Date</b>	12 September 2019	
<b>ECtHR Articles</b>	<b>Article 41</b> – Right to good administration <b>Article 47</b> – Right to an effective remedy and to a fair trial	
<b>Facts</b>	<b>AG Opinion</b>	<b>Comments</b>
<p>Hungary enacted a turnover-based tax on advertisement and a registration obligation that affected mainly non-resident companies. Google was subject to extremely high penalties for failure to comply with the registration requirements. In addition, there were certain procedural obstacles in connection with this penalization that made it difficult for the taxpayer to evade the fine, by contesting it in court proceedings, for example. Both aspects affected, in particular, taxpayers who were resident abroad and had not yet generated any revenue taxable in Hungary.</p> <p>The referring Court asked whether articles 41 and 47 of the Charter had an impact on the imposition of the penalties as described above.</p>	<p>AG Kokott submitted that the limitations of the possibilities for legal redress with regard to the very high coercive penalty payments in connection with the Hungarian tax on advertisements constituted an unjustified restriction of the freedom to provide services.</p>	<p>The case is discussed under freedom to provide services and not under the light of the Charter.</p>

#### Minimum standard: Proportionality and *ne bis in idem* should apply to tax penalties.

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

Belgium (2), Colombia, Spain

##### Shifted away from the minimum standard:

Brazil (1), Italy, Mexico (3), Peru (2)

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

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

Belgium (2), Colombia, Spain

**Shifted away from the best practice:**

Bosnia and Herzegovina, Italy, Mexico (1), Peru (2)

With regard to the exercise of *ius puniendi* (the state's right to punish) in tax matters, those entitled to it – tax authorities and the courts for regulatory and criminal offences, respectively<sup>375</sup> – ought to use a trial-structured procedure to determine the commission of a tax infringement and the responsibility of the taxpayer who has performed it. As a consequence, taxpayers have the right to a judicial assessment of their liability to a punitive sanction, with adequate guarantees of defence, i.e. to a due process of law. That means, at least, the rights not to incriminate themselves (*nemo tenetur se ipsum accusare*), *ne bis in idem* and proportionality, inter alia.<sup>376</sup>

In the context of criminal and administrative sanctions, along with the considerations made in section 4.1. of this yearbook, proportionality entails that criminal and administrative sanctions are to be imposed (i) only as a consequence of illegal human behaviour that effectively undermines tax collection; (ii) when there is no other legal way of remedying such harm; and (iii) according to the extent of the damage and the level of guilt of the infringing taxpayer, balanced with the requirements of general and special deterrence.<sup>377</sup>

On its side, as discussed in section 4.1. of this yearbook, *ne bis in idem* for criminal and administrative sanctions means, on its procedural limb, a prohibition of prosecuting multiple times the same fact pattern, guaranteeing taxpayers certainty and finality vis-à-vis the state's exercise of *ius puniendi*.<sup>378</sup>

Regarding proportionality, there were few developments in 2019. On the one hand, understanding it as a measure of reasonableness, new legislation in **Colombia** allows the delayed payments of tax fines up to one year. In addition, inspired by the idea of special deterrence, there is a possibility of waiver of criminal actions in the case of voluntary compliance with tax obligations linked to misreporting of assets or liabilities.<sup>379</sup>

On the other hand, the judiciary in **Brazil** qualified the recurrent lack of payment of indirect taxes as a criminal offence, even if the debt is fully acknowledged by the taxpayer (and, therefore, there is no misreporting).<sup>380</sup> In addition, the tax reform in **Mexico** introduced new penalties for tax-related offences, increasing them and qualifying tax fraud as a form of organized crime, further diminishing the procedural guarantees of taxpayers in those

<sup>375</sup> As holders of the “judicial” form of *ius puniendi*. See Weffe H., *supra* n. 63, at pp. 190-191.

<sup>376</sup> Weffe H., *supra* n. 73, at sec. 1.1.3.

<sup>377</sup> *Id.*, at sec 1.1.2.

<sup>378</sup> *Id.*

<sup>379</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 59.

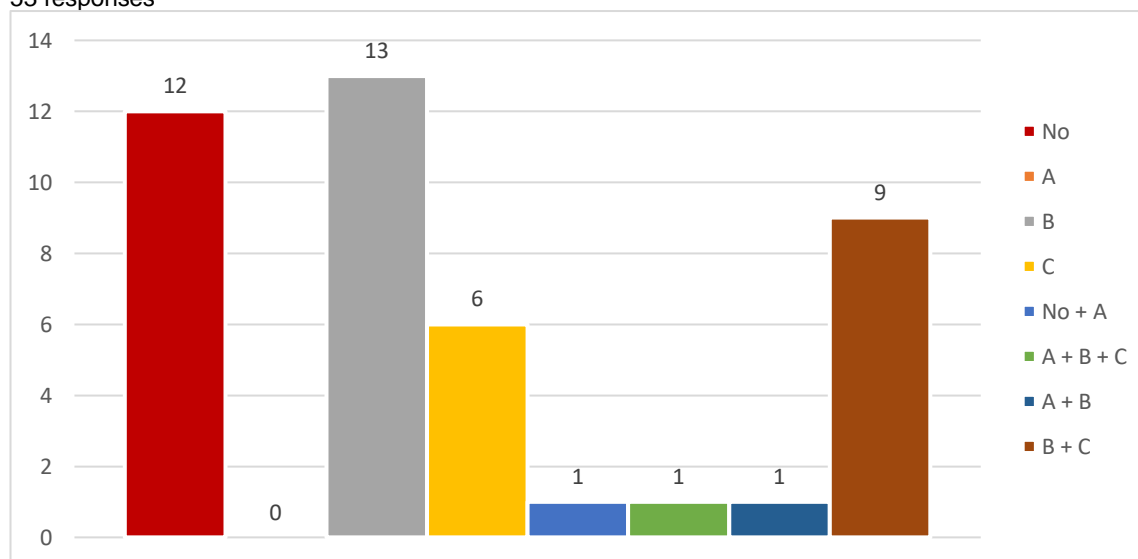
<sup>380</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 59.

situations.<sup>381</sup>

With regard to *ne bis in idem*, with slight differences from the situation presented in 2018,<sup>382</sup> the principle was reported as not applicable in 13 reports (18 in 2018). In the systems in which the principle is upheld, according to the reports, it applies in different ways: (i) to prevent the imposition of a tax penalty and tax liability, 0 reports (3 in 2018); (ii) to prevent the imposition of more than one tax penalty for the same conduct, 17 reports (12 in 2018); and (iii) to prevent the imposition of a tax penalty and criminal liability, 9 reports (6 in 2018). Additionally, there are some combinations drawn from these possibilities, of which the use of the prohibition of double jeopardy to prevent the imposition of more than one tax penalty, along with criminal liability, appears to be the most common (11 reports, compared to 16% of reports in 2018). All of these trends are depicted by country in Chart 56.

**Chart 56. Does the principle *ne bis in idem* apply in your country to prevent either: (a) the imposition of a tax penalty and tax liability; (b) the imposition of more than one penalty for the same conduct; or (c) the imposition of a tax liability and criminal liability**

53 responses



Source: OPTR: Questionnaire 1, Question 56.

**The principle does not apply (Not applicable):**  
Australia, Brazil (1), Canada, Denmark, Germany,

**The principle does not apply in my country; The imposition of a tax penalty and tax liability (Not**

<sup>381</sup> Fully complying with the requirements of the so-called punitive tax law of the “enemy”, namely (i) policification, according to which punishment comes well before harm occurs, as sanctions do not react to a past act but, rather, attempt to prevent future acts by way of “specific” prevention; (ii) disproportionate, extremely high sanctions; and (iii) hampering or suppressing of procedural rights. See Weffe H., *supra* n. 73, at sec. 2.4. Regarding the situation in **Mexico**, see C. E. Weffe H., *Derechos del Contribuyente vs expansión sancionadora. Una aproximación garantista al Derecho Tributario Sancionador post-BEPS*, in *Derechos de los Contribuyentes*, pp. 1007-1038 (C. Espinosa Berecochea ed., AMDF 2019), available at <http://www.weffe.net/weffe/index.php/component/k2/item/400-derechos-del-contribuyente-vs-expansion-sancionadora-una-aproximacion-garantista-al-derecho-tributario-sancionador-post-beps> (accessed 4 Mar. 2020).

<sup>382</sup> OPTR, *supra* n. 26 (2018), at sec. 5.7.1.

India, Kenya, Mauritius, Peru (2), Sweden, United Kingdom, United States, Uruguay

**The imposition of more than one penalty for the same conduct (B):**

Argentina, Austria, Bosnia and Herzegovina, Brazil (2), Colombia, Croatia, Cyprus (1), Czech Republic, Japan, Mexico (1), Mexico (2), Mexico (3), Peru (3), Portugal, Russia, Switzerland, Venezuela

**The imposition of a tax penalty and criminal liability (C):**

Belgium (1), Belgium (2), Finland, Greece (1), Greece (2), New Zealand, Panama, Slovenia (2), South Africa

**applicable + A):**  
China (1)

**The imposition of a tax penalty and tax liability; The imposition of more than one tax penalty for the same conduct (A +B):**

Guatemala

**The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (B + C):**

Bulgaria, Chile, China (3), Cyprus (2), Italy, Luxembourg, Netherlands (2), Peru (1), Poland, Serbia, Spain

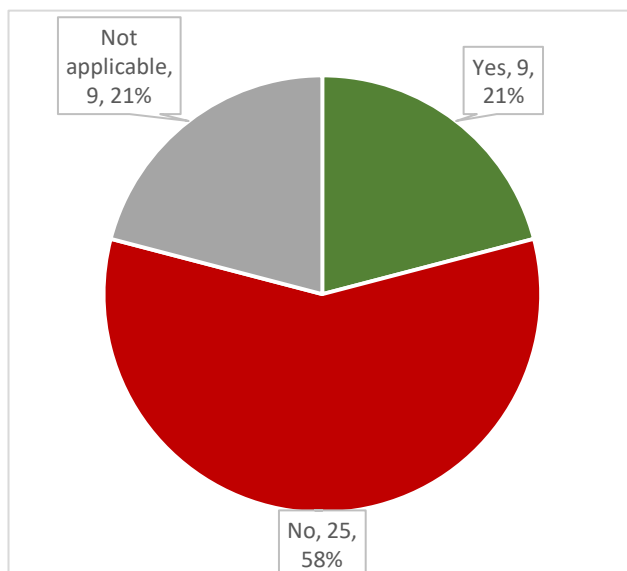
**The imposition of a tax penalty and tax liability; The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (A+B+C):**

Slovenia (1)

Based on this data, the effectiveness of the lack of implementation of *ne bis in idem* in preserving proportionality is, at the very least, doubtful. On its procedural limb, it does not seem to prevent, in practice, two parallel sets of proceedings arising from the same factual circumstances in 26 of the surveyed countries, as shown in Chart 57.

**Chart 57. If *ne bis in idem* is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?**

53 responses



**Yes:** Belgium (1), Brazil (2), China (3), Cyprus (1), Cyprus (2), Netherlands (2), New Zealand, Spain, Sweden, Switzerland, Venezuela

**No:** Argentina, Austria, Belgium (2), Bosnia and Herzegovina, Bulgaria, Chile, Colombia, Croatia, Czech Republic, Denmark, Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Luxembourg, Mexico (1), Mexico (2), Mexico (3), Panama, Peru (1), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa

**Not applicable:** Australia, Brazil (1), Canada, China (1), Germany, Kenya, Mauritius, Peru (2), United Kingdom, United States, Uruguay

Source: OPTR: Questionnaire 1, Question 57.

As for current developments, there was some progress towards the better implementation of *ne bis in idem* in **Colombia**, where, although the concurrence of criminal and administrative proceedings is possible, there is a possibility of ending the criminal prosecution in the case of voluntary compliance with those tax obligations arising from the lack of reporting or reporting

of non-existent liabilities.<sup>383</sup>

In addition, several cassation appeals have been admitted in **Spain** to determine the violation of *ne bis in idem* for possible infringements involving the alleged complicity of invoice issuers in the tax offence of the receiver. In addition, the Supreme Court annulled regulations that allowed tax authorities to request a criminal investigation once a tax assessment has been issued or a tax penalty has been imposed, in a way in which the same behaviour was, before the judgment, subject to concurrent criminal and administrative proceedings.<sup>384</sup>

On the other hand, new legislation has been enacted in **Belgium** to allow double prosecution and double sanctioning of tax infringements in cases in which both procedures are “sufficiently linked in substance and time”, as stated in the decision of the European Court of Human Rights in the case of *A & B v. Norway*.<sup>385</sup>

## 7.2. Voluntary disclosure.

**Best practice:** Voluntary disclosure should lead to reduction of penalties.

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

Colombia, Mauritius, Russia

**Shifted away from the best practice:**

None

**Minimum standard:** Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.

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

Belgium (2), Colombia, Spain

**Shifted away from the minimum standard:**

Brazil (1), Italy, Mexico (3), Peru (2)

Straightforwardly linked to proportionality, the discretionary prosecution principle is a basic standard of reasonableness in the use of *ius puniendi*, also in tax matters. Considering that penalties are only to be applied as a last resort against the taxpayer and only when no other legal measure is able to make the taxpayer abide by the law, so that penalties provide an efficient response to the harm caused by the illegal behaviour, as well as the special nature of the legal good protected by punitive tax law (i.e. the tax assessment powers of tax authorities and tax collection), voluntary disclosure is the clearest indication of value-driven reasonableness in the application of tax penalties.<sup>386</sup>

From the discretionary prosecution principle stem two basic paradigms. First, effective repentance that leads to tax collection should lead to a penalty reduction, as long as the effective harm has been diminished by the taxpayer’s behaviour. Second, this conduct should not be attained through a breach of the principle *nulla lex poenalis sine neccesitate* (no punitive

<sup>383</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Questions 59-60.

<sup>384</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudspersons, Academia), Questionnaire 2, Question 60.

<sup>385</sup> BE: OPTR Report (Academia), Questionnaire 2, Question 59. See also NO: ECtHR, 15 Nov. 2016, *A & B v. Norway*, paras. 131-132. See also OPTR, *supra* n. 26 (2015-2017), at sec. 4.7.1.

<sup>386</sup> Weffe H., *supra* n. 73, at sec. 1.1.2.

law without necessity), i.e. by increasing penalties.<sup>387</sup>

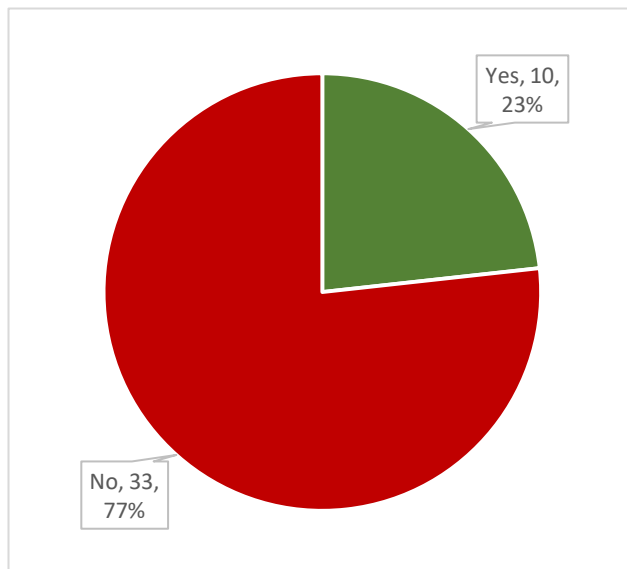
Regarding the latter standard, 76% of surveyed jurisdictions abide by it, as shown in Chart 58.

In this regard, **Colombia** has enacted a so-called standardization tax, encouraging taxpayers to voluntarily disclose the wilful misreporting of assets or non-existing liabilities, in lieu of the criminal responsibility arising from such facts, ending any possibility of prosecution based on them.<sup>388</sup> Likewise, two new voluntary disclosure schemes have been introduced by legislation in **Mauritius**, concerning small and medium-size enterprises and foreign assets.<sup>389</sup> In the same vein, the Supreme Court of **Russia** ruled that taxpayers involved in attempted tax offences will not be prosecuted or punished, in cases of attempted tax offences, when the taxpayer has abandoned voluntarily the perpetration of the offence.<sup>390</sup>

To the contrary, the **Netherlands** abolished its voluntary disclosure regime for savings/portfolio investments held in the country (box 3) and income from substantial interests (box 2).<sup>391</sup>

**Chart 58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?**

53 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Canada, Chile, China (1), China (3), Colombia, Cyprus (1), Cyprus (2), Denmark, Finland, Germany, Greece (1), Greece (2), Italy, Japan, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States

**No:** Argentina, Bulgaria, Croatia, Czech Republic, Guatemala, India, Luxembourg, Russia, Slovenia (1), Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 58.

<sup>387</sup> Id.

<sup>388</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 58.

<sup>389</sup> MU: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58.

<sup>390</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 58.

<sup>391</sup> NL: OPTR Report (Taxpayers/Tax Practitioners (2)), Questionnaire 2, Question 58.

## 8. Enforcement of Taxes

### 2019 Relevant Communicated Cases – European Court of Human Rights

<b>Case</b>	Silvano <b>Radobuljac</b> against Croatia, Application <a href="#">38785/18</a>
<b>Date Communicated</b>	6 September 2019
<b>ECtHR Articles</b>	Article 1 of Protocol 1
<b>Issues</b>	Was the fact that the state did not pay its debt to the applicant and at the same time collected its claim against him by way of enforcement in accordance with the requirements of article 1 of Protocol 1 to the Convention? In particular, was the decision refusing to extinguish the applicant's tax debt by offsetting it with his enforceable claim against the state lawful and proportionate to the aim in the general interest? Did this decision impose a disproportionate and excessive burden on the applicant?

<b>Case</b>	<b>E-iletişim Hizmetleri Tic. Ve San. A. Ş.</b> Against Turkey, Application <a href="#">44521/11</a>
<b>Date Communicated</b>	8 March 2019
<b>ECtHR Articles</b>	Article 1 of Protocol 1
<b>Issues</b>	The application concerns the applicant company's request for the reimbursement of a certain amount of tax paid to the Istanbul Metropolitan Municipality. The applicant company's request was partially granted by the Istanbul Tax Court for the years 2005 and 2006.  The applicant company complained of a violation of its rights under article 1 of Protocol 1 to the Convention on account of the lack of any interest applied to the amount reimbursed.

<b>Case</b>	<b>Anatoliy Anatolyevich Agapov</b> against Russia, Application <a href="#">52464/15</a>
<b>Date Communicated</b>	29 January 2019
<b>ECtHR Articles</b>	Article 1 of Protocol 1
<b>Issues</b>	As regards the domestic courts' decision to impose the duty to pay the tax arrears, penalty and a fine, owed by the limited liability company of which the applicant was the general director, on the latter, has there been an interference with the applicant's peaceful enjoyment of possessions within the meaning of article 1 of Protocol 1 (see <i>G.I.E.M. S.R.L. and Others v. Italy</i> [GC], <a href="#">1828/06</a> and two others, paras. 276-304, 28 June 2018)?

<b>Case</b>	<b>Mihály Nagy</b> against Hungary, Application <a href="#">6215/18</a>
<b>Date Communicated</b>	19 November 2019



<b>ECtHR Articles</b>	Article 1 of Protocol 1
<b>Issues</b>	The application concerned the attachment of two motorbikes which the applicant bought from a company. He submitted that the attachment was unjustified, since it ensued from the tax debts of the previous owner and was already statute-barred. Moreover, the claim in question was a minor sum and did not justify the attachment of two valuable motorbikes worth several thousand euro. As a result, he could not exercise his owner's rights from April 2014 to July 2017

Tax enforcement entails greater powers for tax administrations. In this stage, taxes are unquestionably due and, therefore, the public interest plays a greater role. However, it is necessary to keep in mind that the greater the powers of the tax authorities, the more risks there are for practices to be potentially harmful for taxpayers, and therefore the stronger the safeguards for the latter should be.<sup>392</sup>

**Minimum standard:** Collection of taxes should never deprive taxpayers of their minimum necessary for living.

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

United States

**Shifted away from the minimum standard:**

Brazil (1), Canada, Peru (2)

As has been said many times in this yearbook, human dignity sets strong limits on the possibilities of the tax authorities to perform their tasks. In short, no state activity, let alone tax collection, is above the right of the taxpayer to a dignified existence (*minimum vitalis*).

Some developments took place in 2019 in this matter. On the one hand, statutory and administrative protections are in place in the **United States** for taxpayers in economic hardship due to tax collection. In this regard, new legislation excluded, as of 1 January 2021, accounts from assignment to private collection agencies where the taxpayer's gross income is at or below 200% of the federal poverty line or where the taxpayer receives certain government assistance.<sup>393</sup>

On the other hand, **Brazil** has not updated exempt brackets of personal income tax since 2015, despite the inflation in that country,<sup>394</sup> and the High Administrative Court of **Uruguay** stated that shortage of monies is not an excuse for not paying taxes, although the prohibition

<sup>392</sup> Baker & Pistone, *supra* n. 97, at sec. 8., p. 57. See also W. Hellerstein & A. Appleby, [Substantive and Enforcement Jurisdiction in a Post-Wayfair World](#), (19 Oct. 2018), Journals Tax Analysts; I. De Troyer, [New Developments in International Administrative Assistance in the Recovery of Taxes](#), 58 Eur. Taxn. 5 (2018), Journal Articles & Papers IBFD; P. Baker et al., [International Assistance in the Collection of Taxes](#), 65 Bull. Intl. Taxn. 4/5 (2011), Journal Article & Papers IBFD; B. Hassan, [Enforcement Policy to Tackle Sales Tax Fraud in Pakistan](#), 24 Asia-Pac. Tax Bull. 4 (2018), Journal Articles & Papers IBFD; N. Memon, [Designing a Tax Amnesty – One Size Does Not Fit All](#), 21 Asia-Pac. Tax Bull. 1 (2015), Journal Articles & Papers IBFD; A. (Asmita) Singh, [Enforcement or Cooperation – An Analysis of the Compliance Psychology of Taxpayers](#), 21 Asia-Pac. Tax Bull. 1 (2015), Journal Articles & Papers IBFD; and A.M. Bal, [Extraterritorial Enforcement of Tax Claims](#), 65 Bull. Intl. Taxn. 10 (2011), Journal Articles & Papers IBFD.

<sup>393</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 63.

<sup>394</sup> BR: OPTR Report (Taxpayers/Tax Practitioners, Judiciary), Questionnaire 2, Question 63.

of confiscatory effects of taxation is widely acknowledged by the main scholars.<sup>395</sup> In **Canada**, a review of the Taxpayers' Ombudsman into the procedures of tax authorities revealed that a significant number of taxpayers did not understand the consequences of failure to pay tax debts, therefore affecting their rights.

**Best practice:** Authorization by the judiciary should be required before seizing assets or banking accounts

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

None

**Shifted away from the best practice:**

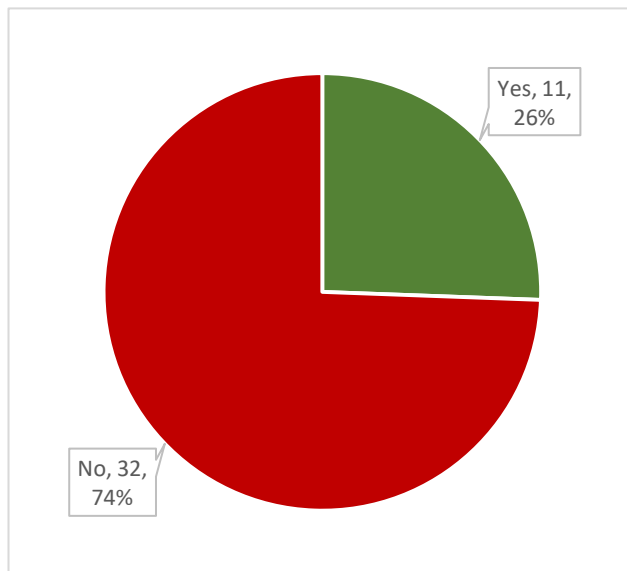
Canada, Cyprus (2), Italy, Mexico (1), Peru (2)

Additionally, taking into account the broad powers that are commonly granted to the tax authorities in the context of the enforcement of taxes, it is advisable that the judiciary exercises control over the more invasive activities performed by tax administrations, such as seizures of bank accounts and other assets. While it is now considered a best practice, court authorization of these activities should evolve into a minimum standard in the future.

Regretfully, that is not the trend in practice, even though there is an improvement compared to the situation in 2018. In that year, the percentage of reports that stated that a court order was not necessary before a seizure was 93%.<sup>396</sup> Still, a strong majority of countries (75%) indicate that there is no need for a court order for the tax authorities to access a taxpayer's bank account or other assets in their jurisdictions, as portrayed in Chart 59.

**Chart 59. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?**

53 responses



**Yes:** Argentina, Austria, Bosnia and Herzegovina, Chile, China (1), Cyprus (1), Guatemala, Luxembourg, Mexico (3), Peru (2), Switzerland, Uruguay, Venezuela

**No:** Australia, Belgium (1), Belgium (2), Brazil (1), Brazil (2), Bulgaria, Canada, China (3), Colombia, Croatia, Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), India, Italy, Japan, Kenya, Mauritius, Mexico (1), Mexico (2), Netherlands (2), New Zealand, Panama, Peru (1), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, United Kingdom, United States

Source: OPTR: Questionnaire 1, Question 60.

In this regard, there seem to be only setbacks in the practical implementation of the best

<sup>395</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 63.

<sup>396</sup> OPTR, *supra* n. 26 (2018), at sec. 8., p. 157.

practice.

In the Americas, it was reported that a few taxpayers were not notified before the tax authorities took legal actions (e.g. freezing bank accounts) to collect taxes in **Canada**, where, according to a TV report, more than 1.6 million Canadian banking records were shared with the **United States** based on certain “US indicia”, as required by the agreement between these jurisdictions.<sup>397</sup> **Mexico** does not require authorization at all in practice, even though it is formally required by law,<sup>398</sup> and in **Uruguay**, the judiciary leans towards granting tax authorities the seizure of assets or bank accounts, transforming the authorization process into a mere formality.<sup>399</sup>

In Europe, the introduction of the fourth and the fifth Anti-Money Laundering Directives has facilitated the freezing of bank accounts in **Cyprus**.<sup>400</sup> In the same vein, in **Italy**, new legislation has enabled authorities to confiscate assets presumptively associated with a tax offence when their value is “disproportionate” compared to the taxpayer’s declared income or business.

**Minimum standard:** Taxpayers should have the right to request delayed payment of arrears.

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

Brazil (2), Spain

**Shifted away from the minimum standard:**

None

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

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

Italy, Serbia

**Shifted away from the best practice:**

Mexico (1), Peru (2)

In the same vein, the powers of tax authorities in the collection of taxes are limited. Tax enforcement does not allow the tax authorities to deny the taxpayer a reasonable possibility of payment deferral or payment in instalments while safeguarding the interest of the revenue by accruing interest and proper guarantees. An overwhelming majority of reports (and therefore, of jurisdictions) agree, as shown in Chart 60.

In accordance with the principle set forth in the previous paragraph, all developments in this regard in 2019 lean towards the practical implementation of the minimum standards and best practices. In **Brazil**, a presidential measure waiting to be ratified by congress provides for further opportunities for deferred payments,<sup>401</sup> and e-filing of requests for delayed payments or arrears are now a possibility in **Serbia**.<sup>402</sup> The judiciary in **Spain** annulled the regulation that forbade the possibility of suspending the collection due to an ongoing review procedure. Also,

<sup>397</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Questions 63-64.

<sup>398</sup> MX: OPTR Report (Academia), Questionnaire 1, Question 60 and Questionnaire 2, Question 64.

<sup>399</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

<sup>400</sup> CY: OPTR Report (Tax Administration), Questionnaire 2, Question 64. This is another possible manifestation of the hampering of procedural rights that characterizes the so-called punitive tax law of the “enemy”. See Weffe H., *supra* n. 73, at sec. 2.4.

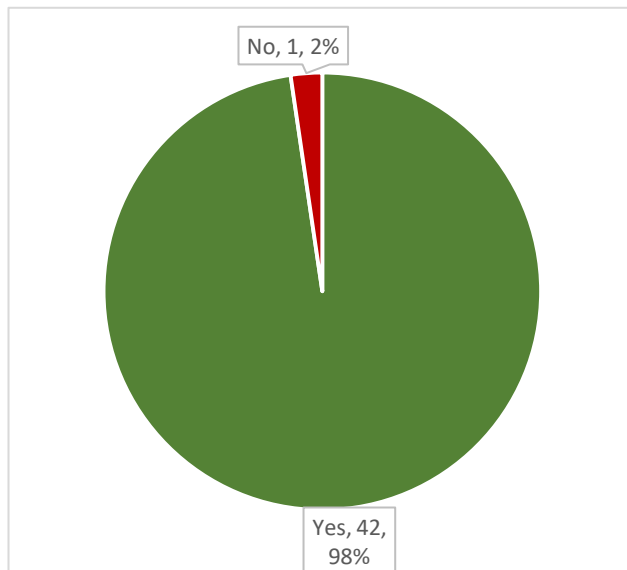
<sup>401</sup> BR: OPTR Report (Taxpayers/Tax Practitioners, Judiciary), Questionnaire 2, Question 65.

<sup>402</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 65.

the Supreme Court declared that executive surcharges do not apply once the voluntary period has ended and the payment has been deferred, as long as it has not been decided.<sup>403</sup> In addition, as reported previously in this section, there are protections in place in the **United States** for taxpayers who experience hardship.<sup>404</sup>

**Chart 60. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?**

53 responses



**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (3), Colombia, Croatia, Cyprus (1), Czech Republic, Denmark, Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

**No:** Cyprus (2), Germany

Source: OPTR: Questionnaire 1, Question 59.

Regarding the protection of taxpayers in bankruptcy, **Serbia** expanded the grace period from 12 to 24 months for taxpayers undergoing financial restructuring or reorganization, in line with Bankruptcy Law,<sup>405</sup> and in **Italy**, the Constitutional Court upheld the freedom of the debtor to design the contents of a pre-bankruptcy proposal (*accord di composizione della crisi – concordato preventivo*), including the partial satisfaction of hierarchically high credits, including tax duties. The decision quashed discrimination in the treatment of VAT debts, which are now allowed partial satisfaction.<sup>406</sup>

**Minimum standard: Temporary suspension of tax enforcement should follow natural disasters.**

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

Peru (3)

**Shifted away from the minimum standard:**

None

Finally, natural disasters are extraordinary situations in which, needless to say, more flexibility in the enforcement of taxes is a minimum standard.

<sup>403</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 65.

<sup>404</sup> US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 63.

<sup>405</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 66.

<sup>406</sup> IT: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 66.

In this regard, **Peru** shifted towards the practical implementation of the minimum standard, as special conditions for filing returns and payments of taxes for those taxpayers residing in disaster areas were approved.<sup>407</sup>

## 9. Cross-Border Situations

As stated in both OPTR reports issued so far,<sup>408</sup> there continues to be a general weakening of the practical protection of taxpayers' rights in cross-border situations.<sup>409</sup> The fact that most procedures dealing with cross-border issues in tax matters are carried out among states leaves almost no opportunities for taxpayers to participate and effectively exercise and protect their rights in procedures the outcome of which will certainly affect their rights, despite the advance represented in the recognition of legal standing for taxpayers to access the mutual agreement procedure (MAP) and mandatory binding arbitration according to articles 16(1) and 19(1) of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).<sup>410</sup>

Once again, this is wrong. Those affected by any kind of state measures should be aware of the possibility of state actions limiting their rights and be provided with appropriate mechanisms to defend themselves vis-à-vis any such claim,<sup>411</sup> including exchange of information (EoI), the MAP, arbitration or any other kind of procedure to gather evidence or solve disputes in cross-border situations.

This section will deal with those minimum standards and best practices involved in the adequate protection of taxpayers' rights in the context of cross-border situations, where the international element – and, therefore, the multiplicity of nexus – might affect the existence or the effectiveness of the safeguards for taxpayers.

### 9.1. Exchange of information

#### 9.1.1. Exchange of information on request (EoIR): The right of the taxpayer to be informed and to challenge EoI

**Minimum standard:** The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer, unless it has a reasoned request from the requesting state that the taxpayer should not be informed on the grounds that it would prejudice the investigation.

<sup>407</sup> PE: OPTR Report (Taxpayers/Tax Practitioners (3)), Questionnaire 2, Question 67.

<sup>408</sup> OPTR, *supra* n. 26, at sec. 4.9. (2015-2017) and sec. 5.9. (2018).

<sup>409</sup> Baker & Pistone, *supra* n. 97, at sec. 9., p. 58.

<sup>410</sup> [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#), (24 Nov. 2016), Treaties & Models IBFD. See also [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting: Commentary on Article 16](#), para. 193 (24 Nov. 2016), Treaties & Models IBFD; para. 3 [OECD Multilateral Convention: Commentary on Article 19](#) (2016); and OECD, [Making Dispute Resolution Mechanisms More Effective – Action 14: 2015 Final Report](#) paras. 10-12 (OECD 2015), Primary Sources IBFD.

<sup>411</sup> Weffe H., *supra* n. 130, at sec. 1., p. 431.

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

Slovenia (2)

**Shifted away from the minimum standard:**

Bosnia and Herzegovina, Canada, Mexico (1)

**Best practice:** The taxpayer should be informed that a cross-border request for information is to be made.

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

None

**Shifted away from the best practice:**

Bosnia and Herzegovina, Canada, Cyprus (2), Mexico (1)

**Best practice:** Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.

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

None

**Shifted away from the best practice:**

Bosnia and Herzegovina, Canada, Cyprus (2), Mexico (1)

**Best practice:** Provisions should be included in tax treaties setting specific conditions for EoI.

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

Croatia, Peru (3), Sweden

**Shifted away from the best practice:**

Bosnia and Herzegovina

As has been stated in many sections of this yearbook,<sup>412</sup> in the democratic state governed by the rule of law, any taxpayer, as a human being – and, hence, as holder of rights – must be previously informed of any governmental attempt to exercise its public powers that, unilaterally, might modify either the taxpayer’s legal status or sphere of rights, under conditions that allow such person to defend himself effectively, with the sole exception of those situations in which the awareness of the taxpayer might compromise the investigation due to the probability of evidence tampering or destruction.<sup>413</sup>

Needless to say, this «constitutional legal position»<sup>414</sup> is, as such, a minimum standard that has to be followed in every context in which states aspire to exercise their taxing powers, especially including cross-border situations. In an ideal world, the presence of international elements in a given taxable event should be reason enough to strengthen the protection granted to taxpayers, considering that human rights must be enforced vis-à-vis all states involved in such a situation.<sup>415</sup> In addition, to provide effective protection to this minimum standard, the best practice would be to include specific provisions regulating the time, form and conditions of the notification, and to allow – in protection of the equality of arms – EoI to

<sup>412</sup> See secs. 1.4. and 4.2.

<sup>413</sup> Weffe H., *supra* n. 130, at sec. 2.1.2.

<sup>414</sup> Alexy, *supra* n. 199, at p. 159.

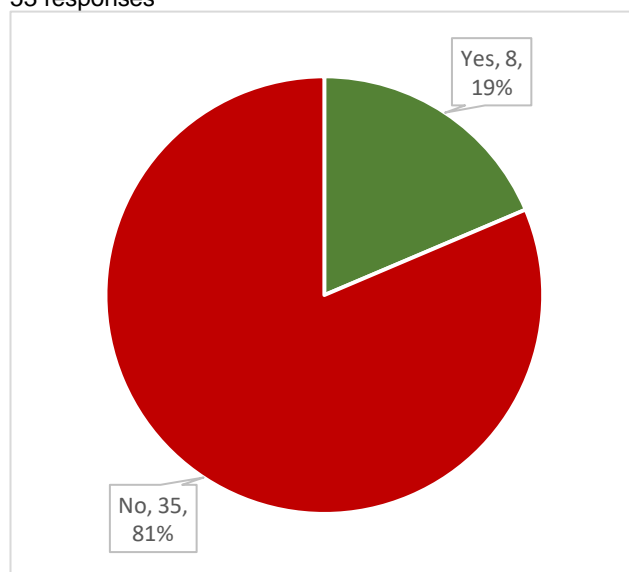
<sup>415</sup> Weffe H., *supra* n. 130, at sec. 4.3.2.

be used to gather evidence that benefits the taxpayer.

However, that does not seem to be the case for an overwhelming majority of surveyed jurisdictions. Of them, 80% state that the taxpayer's right to be informed before information relating to him is exchanged in response to a request is not granted. The trend is growing: 73% of the reports said there was no previous notification to the taxpayer in their countries in 2018 (a 7% increase).<sup>416</sup> The data is shown in Chart 61.

**Chart 61. Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?**

53 responses



**Yes:** China (1), China (3), Croatia, Czech Republic, Denmark, Germany, Panama, Slovenia (2), Switzerland, Uruguay

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, Colombia, Cyprus (1), Cyprus (2), Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), South Africa, Spain, Sweden, United Kingdom, United States, Venezuela

**Source:** OPTR: Questionnaire 1, Question 61.

The same happens with requests for EoI when such data is held by third parties. In such cases, the growth in the trend is slightly smaller: in 2018, 81% of reports claimed that no right to be informed was granted to taxpayers when the request involved gathering information from third parties, compared to 85% in 2019, a 4% growth, as depicted in Chart 62.

Hence, most developments in this area in 2019 are setbacks in the practical implementation of the minimum standards and best practices identified above. Even those shifts towards these standards and practices were offset by measures that represented a shift away from them. For instance, although new legislation on administrative cooperation, including relevant provisions on treaties and EoI, was enacted in **Croatia**, there are no provisions regarding the right to be informed or the possibility of requesting information that benefits the taxpayer.<sup>417</sup>

On a positive note, preliminary rulings from the *Cour administrative* (Supreme Administrative Court) of **Luxembourg** specifically question the compatibility of the lack of court access by the concerned taxpayer with article 47 of the Charter of Fundamental Rights of the European Union, as the lack of legal standing affects indirectly the right to be informed as

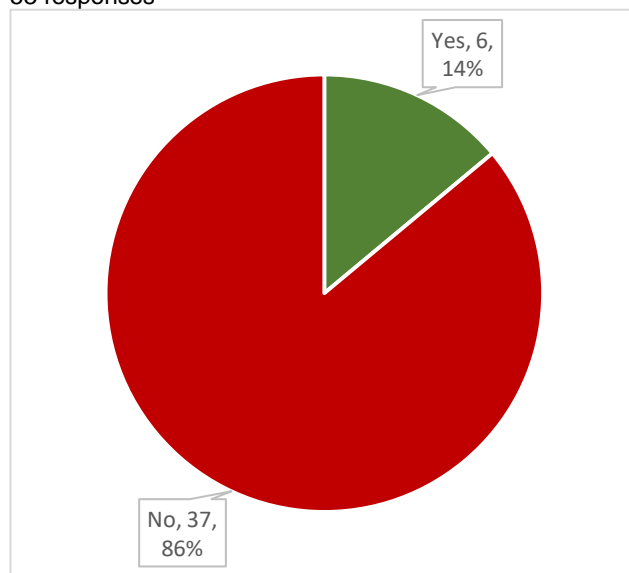
<sup>416</sup> OPTR, *supra* n. 26 (2018), at sec. 5.9.1.1.

<sup>417</sup> HR: OPTR Report (Academia), Questionnaire 2, Questions 68, 69 and 70.

to the initiation of legal proceedings.<sup>418</sup> In addition, the signing of the MLI by **Serbia** encourages expectations of improvements in taxpayers' rights protection in cross-border procedures.<sup>419</sup>

**Chart 62. Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for EoI?**

53 responses



**Yes:** China (1), China (3), Cyprus (1), Czech Republic, Germany, Panama, Switzerland, United States

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, Colombia, Croatia, Cyprus (2), Denmark, Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, United Kingdom, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 62.

### 9.1.2. A disturbing development: The removal of the right of the taxpayer to be notified in certain states under international pressure

In the same vein, following the trend initiated by the pressure of the OECD Forum on Transparency and Exchange of Information and already existing in 2015,<sup>420</sup> is the dubious practice of encouraging countries to repeal the taxpayer's right to be informed prior to the exchange of information. In 2018, the **Netherlands** reported that the right to be informed, previously granted in legislation, was removed due to the coercion exercised by this Forum.<sup>421</sup> Two more countries joined the list in 2019: **China** and **Luxembourg**, further diminishing the scope and practical application of this minimum standard, which is paramount to the practical viability of the right to a proper defence. The statistics are shown in Chart 63.

### 9.1.3. Additional safeguards in connection with EoIR

As described in section 4., and as long as the EoI is a procedural pathway for gathering evidence possibly leading to a tax assessment, the fundamental principles of proportionality,

<sup>418</sup> See [Charter of Fundamental Rights of the European Union](#), OJ C 326/02 (2012), Primary Sources IBFD. See also D. De Carolis, [The EU Dispute Resolution Directive \(2017/1852\) and Fair Trial Protection under Article 47 of the EU Charter of Fundamental Rights](#), 58 Eur. Taxn. 11 (2018), Journal Articles & Papers IBFD.

<sup>419</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 68.

<sup>420</sup> Baker & Pistone, *supra* n. 97, at sec. 9.3., pp. 62-63.

<sup>421</sup> OPTR, *supra* n. 26 (2018), at sec. 5.9.1.2.

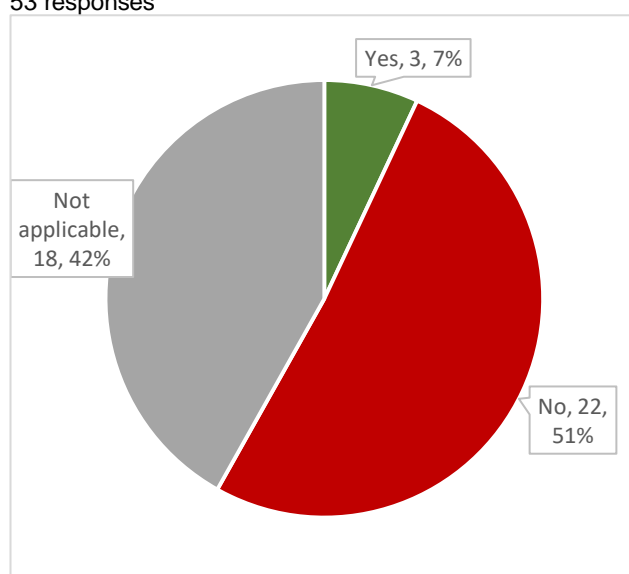


*ne bis in idem*, *audi alteram partem* and *nemo tenetur se ipsum accusare* are fully applicable to EoIR.

However, most of these principles are left without any practical possibility of implementation in the context of EoIR – and generally in cross-border procedures – since the right to be informed, the gateway to the effective exercise of the right to a proper defence by the taxpayer, is not enforced, as the statistics presented in section 9.1.2. show.

**Chart 63.** If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?

53 responses



**Yes:** China (1), Luxembourg, Netherlands (2)

**No:** Argentina, Belgium (1), Belgium (2), Brazil (1), Brazil (2), Bulgaria, Canada, Chile, Colombia, Cyprus (1), Cyprus (2), Denmark, Finland, Greece (1), Greece (2), Japan, New Zealand, Peru (1), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), South Africa, Sweden, United Kingdom, United States, Uruguay

**Not applicable:** Australia, Austria, Bosnia and Herzegovina, China (3), Croatia, Czech Republic, Germany, Guatemala, India, Italy, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), Panama, Peru (2), Slovenia (2), Spain, Switzerland, Venezuela

Source: OPTR: Questionnaire 1, Question 63.

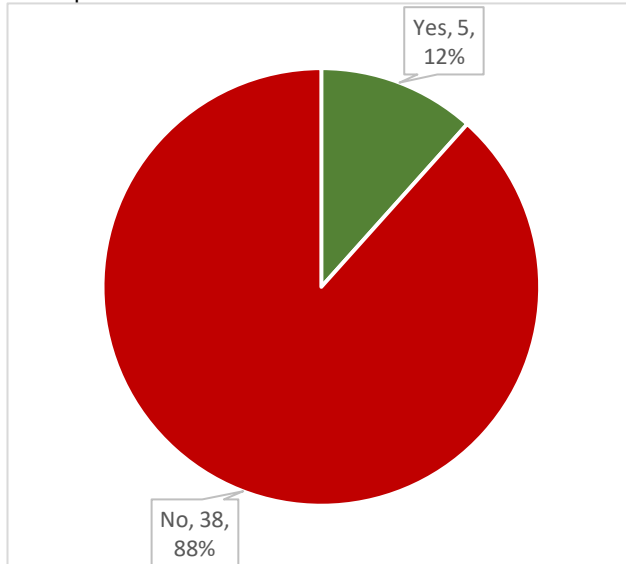
Against this background, it is logical that most surveyed jurisdictions do not recognize taxpayers' right to be heard at all and limit greatly the right to see the evidence gathered and to challenge before the judiciary the EoI relating to them with another country. The first standard, the right to be heard, is reported as not granted in 87% of countries, an increase compared to the results of 2018,<sup>422</sup> as shown in Chart 64.

As expected, something similar has happened to the right to challenge before the judiciary the results of EoIR. In 2018, 52% of the jurisdictions surveyed stated that the taxpayer had no legal standing to challenge the results of EoIR, increasing to 61% in 2019, as portrayed in Chart 65.

<sup>422</sup> OPTR, *supra* n. 26 (2018), at sec. 5.9.1.3.

**Chart 64. Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country?**

53 responses



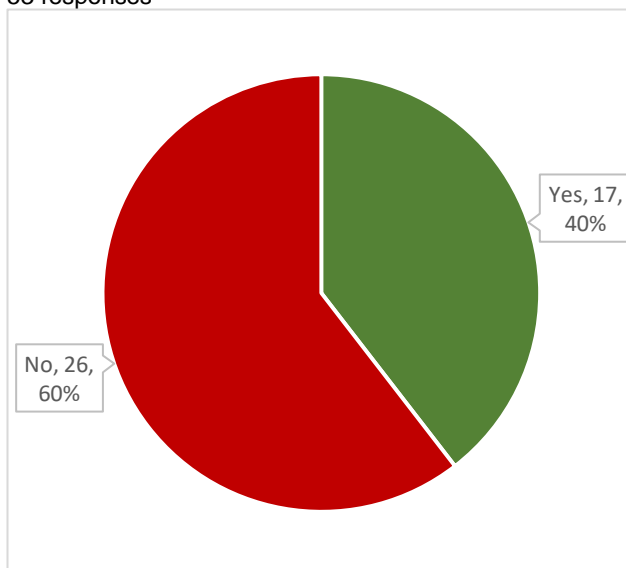
**Yes:** China (1), Cyprus (1), Cyprus (2), Germany, Panama, Switzerland, Venezuela.

**No:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (3), Colombia, Croatia, Czech Republic, Denmark, Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, United Kingdom, United States, Uruguay.

Source: OPTR: Questionnaire 1, Question 64.

**Chart 65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?**

53 responses



**Yes:** Belgium (1), Belgium (2), Brazil (2), Canada, China (1), Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Mexico (1), Mexico (3), New Zealand, Panama, Portugal, Serbia, South Africa, Spain, Switzerland, Venezuela

**No:** Argentina, Australia, Austria, Bosnia and Herzegovina, Brazil (1), Bulgaria, Chile, China (3), Colombia, Croatia, Finland, Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (2), Netherlands (2), Peru (1), Peru (2), Peru (3), Poland, Russia, Slovenia (1), Slovenia (2), Sweden, United Kingdom, United States, Uruguay.

Source: OPTR: Questionnaire 1, Question 65.

**Minimum standard:** If information is sought from third parties, judicial authorization should be necessary.

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

None

**Shifted away from the minimum standard:**

Bosnia and Herzegovina, Brazil (1), Canada, Mexico

(1), Slovenia (2)

**Best practice:** The taxpayer should be given access to information received by the requesting state.

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

None

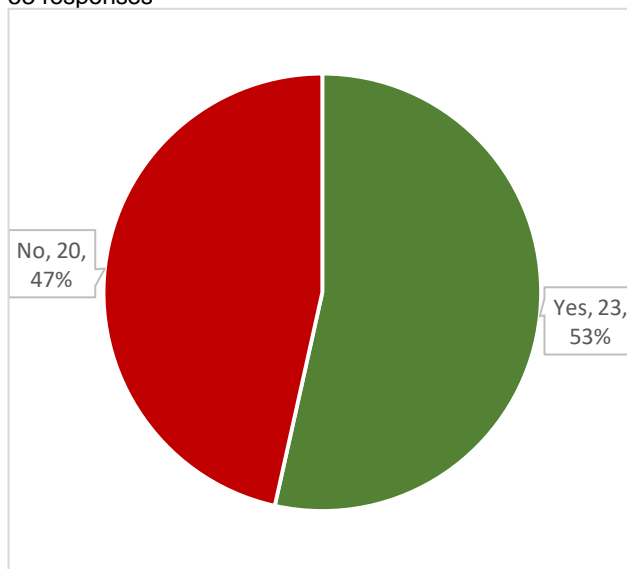
**Shifted away from the best practice:**

Bosnia and Herzegovina, Canada, Peru (2)

Following the rationale discussed in section 5.3., in a democratic state governed under the rule of law, all invasive evidence-gathering activity by that state should be controlled by a court of law, particularly when it also involves the right to confidentiality, as discussed in section 3.1. with regard to the information gathered by third parties.<sup>423</sup> Such is the case in 53% of the surveyed jurisdictions, according to Chart 66.

**Chart 66. Does the taxpayer have the right to see any information received from another country that relates to him?**

53 responses



**Yes:** Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (2), Canada, China (1), China (3), Croatia, Cyprus (1), Czech Republic, Denmark, Germany, Greece (1), Greece (2), India, Netherlands (2), Panama, Peru (3), Poland, Russia, Serbia, Slovenia (2), South Africa, Spain, Sweden, Switzerland, Uruguay, Venezuela

**No:** Argentina, Australia, Brazil (1), Bulgaria, Chile, Colombia, Cyprus (2), Finland, Guatemala, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), New Zealand, Peru (1), Peru (2), Portugal, Slovenia (1), United Kingdom, United States

Source: OPTR: Questionnaire 1, Question 66.

In internal cross-border situations, local tax authorities in **Brazil** agreed to exchange electronic accounting of taxpayers, regardless of the territoriality of the transactions the documentation of which is shared (and therefore, where the “foreseeable relevance” of said documentation is dubious).<sup>424</sup>

In this regard, no judicial authorization is needed to obtain information from third parties in **Canada**, **Mexico**<sup>425</sup> and **Slovenia**.<sup>426</sup> In the latter, this lack of authorization seems to be limited to a whistle-blower program, the Offshore Tax Informant, which allows informants to provide

<sup>423</sup> See secs. 1.3. and 4.2.

<sup>424</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 71.

<sup>425</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 71.

<sup>426</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 71.

information to the CRA in certain circumstances in relation to high-dollar international tax non-compliance in return for a reward if tax is collected through the use of the information provided through the programme.<sup>427</sup>

No developments were reported in 2019 regarding the taxpayer's right to access the information received by the requesting state. One is to assume that, since the right to be informed is not granted, the access to this information is limited to the end of the tax audit, as discussed in section 4.5.

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

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

None

**Shifted away from the best practice:**

Bosnia and Herzegovina, Mexico (3)

The trend reported in 2018<sup>428</sup> and discussed in section 3.8. regarding the judiciary upholding the admissibility of information exchanged where the originating cause was the acquisition of stolen or illegally obtained information by the requested state (e.g. the Panama Papers and the Falciani List) is now followed by **Mexico**. As a consequence of the 2019 Tax Reform, a new provision was added to allow tax authorities to use such documentation in procedures concerning tax fraud investigations.<sup>429</sup>

**Best practice:** A requesting state should provide confirmation of confidentiality to the requested state.

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

None

**Shifted away from the best practice:**

Bosnia and Herzegovina

**Minimum standard:** A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection.

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

None

**Shifted away from the minimum standard:**

Bosnia and Herzegovina, Brazil (1), Canada, Mexico (1), Slovenia (2)

Although there were five reports assessing a shift of their jurisdictions away from the minimum standard, only **Uruguay** reported that, in 2019, the tax authorities did not require independent and verifiable evidence that the requesting state observes high standards of data protection.<sup>430</sup>

<sup>427</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 71.

<sup>428</sup> OPTR, *supra* n. 26 (2018), at secs. 5.3.11. and 5.9.1.3.

<sup>429</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 73.

<sup>430</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 75.

#### 9.1.4. AEol: The different issues of taxpayer protection

**Best practice:** For automatic exchange of financial information (AEol), the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.

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

None

**Shifted away from the best practice:**

Bosnia and Herzegovina, Canada, Mexico (1)

As discussed earlier in this section,<sup>431</sup> the right to be informed is a minimum standard stemming from the fundamental principles of every tax audit.<sup>432</sup> Indeed, proportionality, *audi alteram partem*, *nemo tenetur se ipsum accusare* and *ne bis in idem* are only effectively exercised based on the taxpayer's awareness vis-à-vis the investigation carried out by the tax authorities. Without the right to be informed, the taxpayer has no way of protecting any rights he may have in this context, especially his rights to privacy and to *habeas data*.<sup>433</sup>

Following the same trend reported in 2018,<sup>434</sup> **Mexico**,<sup>435</sup> **Slovenia**<sup>436</sup> and **Uruguay**<sup>437</sup> report that the taxpayer is not notified at all of the automatic exchange of financial information. In the latter country, even the application of data protection legislation is expressly excluded to that end.

#### 9.2. Mutual agreement procedure

Fortunately, as discussed earlier in section 9., the ratification of the MLI by a growing number of countries<sup>438</sup> gives hope to a better protection of taxpayers' rights in cross-border situations, with particular regard to the MAP and mandatory binding arbitration. For European countries, the entry into force of Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union seems also to be a beam of light towards the direction of a better protection of the right of taxpayers to participate in the MAP.

Pursuant to these legal instruments, there have been positive developments in 2019 regarding the legal standing of taxpayers to initiate and participate in the MAP, although there is still a long way to go. There is more room for improvement when it comes to the right of taxpayers to see the communications exchanged by the parties in the context of a MAP. Both trends are

<sup>431</sup> See sec. 9.1.1.

<sup>432</sup> See sec. 4.1.

<sup>433</sup> See sec. 1.4.

<sup>434</sup> OPTR, *supra* n. 26 (2018), at sec. 5.9.1.4.

<sup>435</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 76.

<sup>436</sup> SI: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 76.

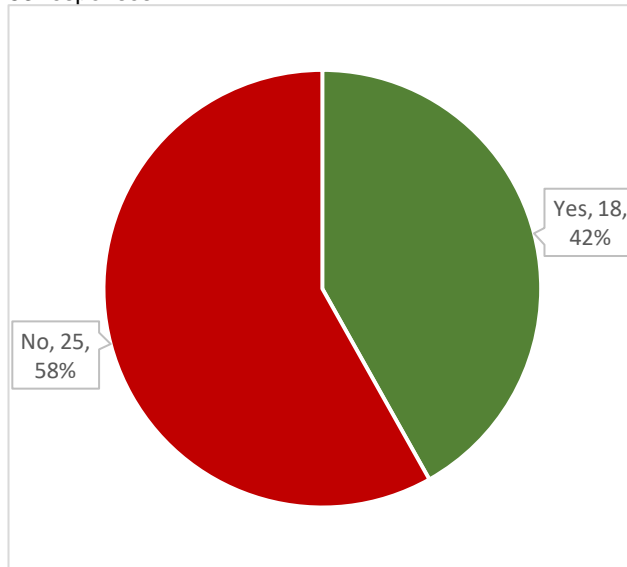
<sup>437</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 76.

<sup>438</sup> A total of 94, as of 5 Mar. 2020. Among the surveyed countries, the statistics regarding the MLI are as follows: (i) not signed (2): Brazil, Guatemala; (ii) signed (20): Argentina, Bosnia and Herzegovina, Bulgaria, Chile, China, Colombia, Croatia, Czech Republic, Germany, Greece, Italy, Kenya, Mexico, Panama, Peru, South Africa, Spain, Taiwan, United States, Venezuela; (iii) in force (22): Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, India, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Poland, Portugal, Russia, Serbia, Slovenia, Sweden, Switzerland, United Kingdom, Uruguay. See [MLI Country Monitor](#), Tables IBFD.

depicted in Charts 67 and 68.

**Chart 67. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?**

53 responses



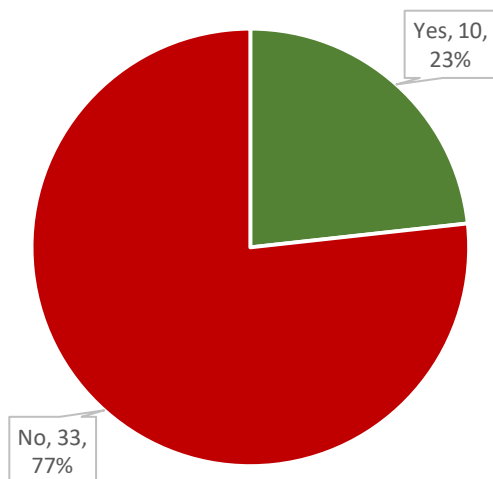
**Yes:** Argentina, Austria, China (1), Colombia, Croatia, Cyprus (1), Cyprus (2), Greece (1), Greece (2), India, Italy, Kenya, Luxembourg, Mexico (2), Mexico (3), Panama, Poland, Serbia, Slovenia (1), South Africa, Sweden, Venezuela

**No:** Australia, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (3), Czech Republic, Denmark, Finland, Germany, Guatemala, Japan, Mauritius, Mexico (1), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Portugal, Russia, Slovenia (2), Spain, Switzerland, United Kingdom, United States, Uruguay

**Source:** OPTR: Questionnaire 1, Question 67.

**Chart 68. Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?**

53 responses



**Yes:** Argentina, Brazil (2), China (1), Cyprus (1), Czech Republic, Denmark, Germany, Panama, Slovenia (1), South Africa, Sweden, Venezuela

**No:** Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Bulgaria, Canada, Chile, China (3), Colombia, Croatia, Cyprus (2), Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (2), Spain, Switzerland, United Kingdom, United States, Uruguay

**Source:** OPTR: Questionnaire 1, Question 68.

Further enhancing the practical implementation of this minimum standard, in a way that might be regarded as best practice, **Serbia** published official guidance on how to initiate the MAP,

making the complaint filing easier for taxpayers.<sup>439</sup> New legislation has regulated thoroughly the MAP in **Russia**, although there is no mention of the right of taxpayers to initiate the procedure.<sup>440</sup>

## 10. Legislation

### 10.1. The general framework

In the democratic state of law, taxation should always be the outcome of the consent of the governed. Indeed, taxes must always be legally sourced obligations: it is only when taxes originate in the people's will, expressed through its political representation in the legislature, that they can validly bind citizens to their compliance. "No taxation without representation" is, needless to say, the first of the human rights linked to taxation, and the oldest to be acknowledged.<sup>441</sup>

However, it is not sufficient for the tax liability to be established by a law which formally complies with the conditions of validity of the legal order in which it is issued to protect taxpayers' rights in practice. On the one hand, to be effectively represented in the enactment of taxes, taxpayers should ideally participate actively in the law-making process, through public consultation. On the other hand, tax legislation should always regulate taxable events *ex nunc*, (from the moment of its enactment on). Only exceptionally, through explicitly stated exceptions, narrowly drafted and interpreted, can tax law be retroactive.

### 10.2. Constitutional limits on tax legislation: Retroactive legislation

#### 2019 Relevant Case Law – European Court of Human Rights

- See **S.C. Totalgaz Industrie S.R.L. v. Romania**, 61022/10 (Committee), at sec. 7.1.

**Minimum standard:** Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail.

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

None

**Shifted away from the minimum standard:**

Belgium (2)

**Best practice:** Retrospective tax legislation should ideally be banned completely.

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

Peru (3)

**Shifted away from the best practice:**

Bosnia and Herzegovina

<sup>439</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 77.

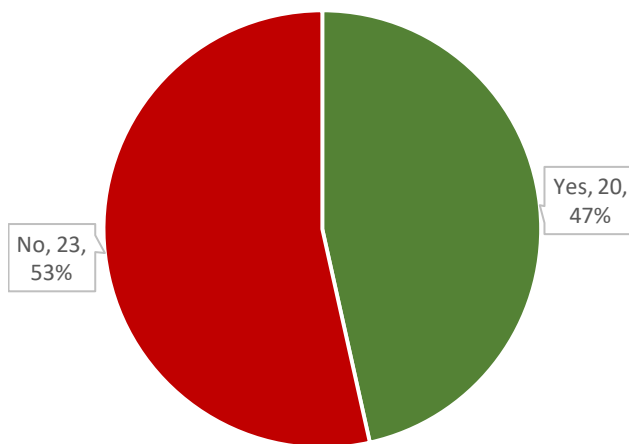
<sup>440</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 77.

<sup>441</sup> See F.J.G.M. Vanistendael, *The Role of (Legal) Principles in EU Tax Law*, in *Principles of Law: Function, Status and Impact in EU Tax Law* (C. Brokelind ed., IBFD 2014), Books IBFD; A.P. Dourado, *No Taxation without Representation in the European Union: Democracy, Patriotism and Taxes*, in *Principles of Law: Function, Status and Impact in EU Tax Law* (C. Brokelind ed., IBFD 2014), Books IBFD; European Association of Tax Law Professors (EATLP), *The Concept of Tax*, International Tax Series vol. 3, p. 21 (B. Peeters et al. eds., IBFD 2007), Books IBFD; and M.C. Fregni, *Legitimacy in Decision-Making in Tax Law: Some Remarks on Taxation, Representation and Consent to Imposition*, in *European Tax Integration: Law, Policy and Politics* (P. Pistone ed., IBFD 2018), Books IBFD.

Retrospectivity, where a tax is imposed where one previously would not have been imposed (or would have been imposed at a lower rate), should be distinguished from retroactivity, where the tax applies for the future but to the income from an already completed transaction, as well as from “petit-retrospectivity”, where a tax change announcement is made during the course of a tax year and applies to that tax year itself.<sup>442</sup> In one way or another, retroactive legislation is prohibited in the majority of surveyed jurisdictions (Charts 69 and 70).

**Chart 69. Is there a prohibition on retrospective tax legislation in your country?**

53 responses



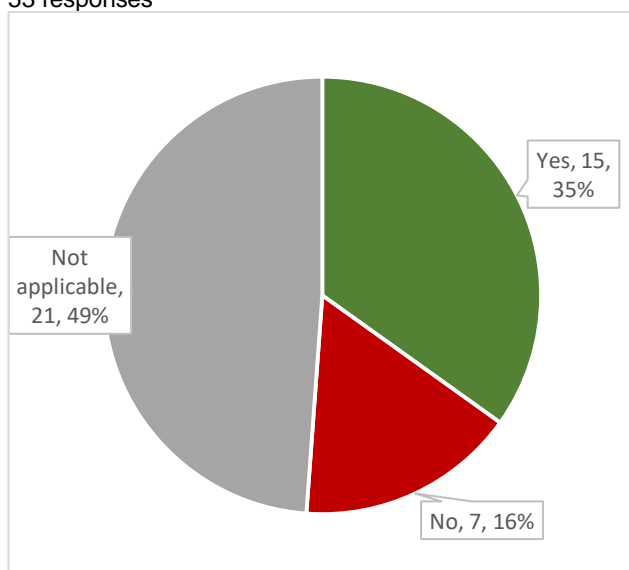
**Yes:** Argentina, Belgium (1), Brazil (1), Brazil (2), Chile, China (1), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Guatemala, Italy, Mexico (1), Mexico (2), Mexico (3), Panama, Peru (1), Peru (2), Peru (3), Poland, Russia, Slovenia (1), Slovenia (2), Sweden, Switzerland, Uruguay, Venezuela

**No:** Australia, Austria, Belgium (2), Bosnia and Herzegovina, Bulgaria, Canada, China (3), Denmark, Finland, Germany, Greece (1), Greece (2), India, Japan, Kenya, Luxembourg, Mauritius, Netherlands (2), New Zealand, Portugal, Serbia, South Africa, Spain, United Kingdom, United States

Source: OPTR: Questionnaire 1, Question 71.

**Chart 70. If no, are there restrictions on the adoption of retrospective tax legislation in your country?**

53 responses



**Yes:** Austria, Belgium (2), Bosnia and Herzegovina, China (1), China (3), Denmark, Germany, Greece (1), Greece (2), Japan, Mauritius, Netherlands (2), New Zealand, Panama, Portugal, Serbia, Spain, United Kingdom

**No:** Australia, Bulgaria, Canada, Finland, India, Kenya, United States

**Not applicable:** Argentina, Belgium (1), Brazil (1), Brazil (2), Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Guatemala, Italy, Luxembourg, Mexico (1), Mexico (2), Mexico (3), Peru (1), Peru (2), Peru (3), Poland, Russia, Slovenia (1), Slovenia (2), South Africa, Sweden, Switzerland, Uruguay, Venezuela

<sup>442</sup> Baker & Pistone, *supra* n. 97, at sec. 10.2., p. 67.



**Source:** OPTR: Questionnaire 1, Question 72.

Despite the fact that three reports stated that there were movements in the practical protection of legal certainty in 2019, only **Belgium** mentioned, very laconically, the securities accounts tax (*Effectenrekenings Taks*). The mention refers to judgment 138/2019 of the Constitutional Court of 7 October 2019, which, even though it quashed the law of 7 February 2018 enacting the securities tax, based on the violation of the principles of equality and non-discrimination, limited the effects of the decision to the future. The effects of the law are maintained for the tax due for the reference periods ending before or on 30 September 2019.<sup>443</sup>

### 10.3. Public consultation and involvement in the making of tax policy and tax law

**Best practice:** Public consultation should precede the making of tax policy and tax law.

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

China (3), Netherlands (2), Spain, United States

**Shifted away from the best practice:**

Mexico (1), Peru (3)

The protection of taxpayers' rights from a legislative perspective implies, fundamentally, the protection of (i) public participation in the legislative process, as a means of effectively ensuring the no-taxation-without-representation principle, as discussed in section 10.1.; and (ii) the integrity of the constitution, as long as tax law may be judged to contradict the basic law and thereby violate taxpayers' rights.

Public consultation has been provided for in the domestic legislation of the majority of surveyed countries (61%), as Chart 71 shows. On its side, an overwhelming majority of surveyed countries (86%) state that constitutional review is in force in the domestic law of their jurisdictions, as shown by Chart 72.

In this regard, there were just a few developments in 2019, all leaning towards public consultation as a practice. In the words of the report of the **Netherlands**, "the government uses the public consultation more and more".<sup>444</sup>

In the field of administrative regulations, in **China**, a new regulation mandates public consultation on regulatory documents "*which involve the vital interests of tax administrative counterparts or may have significant impacts on their rights and obligations, except for those that need to be kept confidential*".<sup>445</sup> In the same vein, the IRS of the **United States** is committed to public consultation when issuing interpretative tax rules. There, the standard legislative process provides the public with an opportunity to influence their representatives, fulfilling the demands of the best practice.<sup>446</sup>

<sup>443</sup> BE: OPTR Report (Academia), Questionnaire 2, Question 79. See also BE: Constitutional Court, 17 Oct. 2019, Judgment 138/2019, available at <https://www.const-court.be/public/n/2019/2019-138n.pdf> (accessed 5 Mar. 2020); and C. Van Geel, *Grondwettelijk Hof vernietigt effectentaks* (17 Oct. 2019), available at <https://legalworld.wolterskluwer.be/nl/nieuws/in-het-staatsblad/grondwettelijk-hof-vernietigt-effectentaks/> (accessed 5 Mar. 2020).

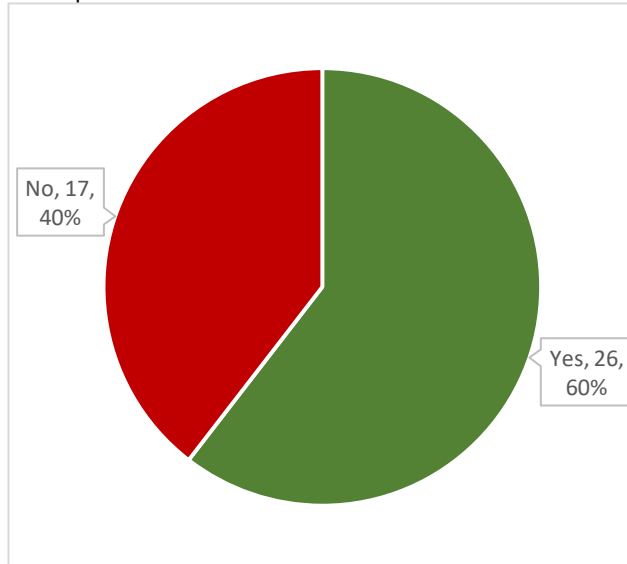
<sup>444</sup> NL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 80.

<sup>445</sup> CN: OPTR Report (Academia), Questionnaire 2, Question 80.

<sup>446</sup> US: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 80.

**Chart 71. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?**

53 responses



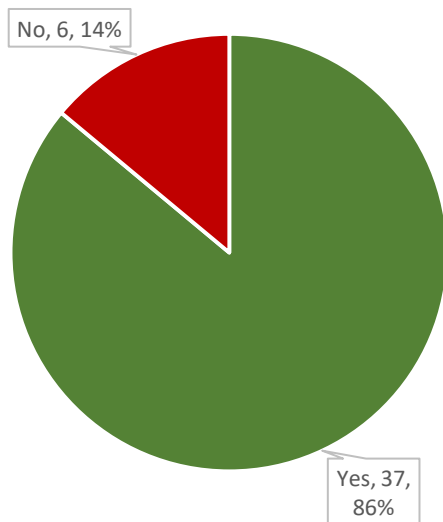
**Yes:** Austria, Bosnia and Herzegovina, Brazil (1), Bulgaria, Canada, China (1), China (3), Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), India, Kenya, Mexico (1), Mexico (3), Netherlands (2), New Zealand, Panama, Poland, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom

**No:** Argentina, Australia, Belgium (1), Belgium (2), Brazil (2), Chile, Colombia, Guatemala, Italy, Japan, Luxembourg, Mauritius, Mexico (2), Peru (1), Peru (2), Peru (3), Portugal, Russia, United States, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 69.

**Chart 72. Is tax legislation subject to constitutional review that can strike down unconstitutional laws?**

53 responses



**Yes:** Argentina, Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), Panama, Peru (1), Peru (2), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (2), South Africa, Spain, United States, Uruguay, Venezuela

**No:** China (3), Finland, New Zealand, Slovenia (1), Sweden, Switzerland, United Kingdom

Source: OPTR: Questionnaire 1, Question 70.

Finally, the Supreme Court of **Spain** quashed regulations on the immediate information system, the so-called “SII” (*Servicio Inmediato de Información*), due to the absence of the opinion of the State Council, as well as the prior consultation and public information.

## 11. Revenue practice and guidance

### 11.1. The general framework

To say that tax law is made to be obeyed is a truism. But such obedience is dependent upon the taxpayers' awareness and comprehension of the object of the law.<sup>447</sup> Hence, awareness of legal materials is a cornerstone of legal certainty and, consequently, the protection of taxpayers' rights. In practical terms, it entitles taxpayers to access all relevant legal material and to rely on binding guidance provided by the revenue authorities<sup>448</sup> (i.e. to be treated fairly).<sup>449</sup>

### 11.2. The publication of all relevant material

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

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

China (3), Chile, Colombia

**Shifted away from the minimum standard:**

Peru (2)

**Minimum standard:** Where legal material is available primarily on the Internet, arrangements should be made to provide it to those who do not have access to the Internet.

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

Canada, Cyprus (1)

**Shifted away from the minimum standard:**

Bosnia and Herzegovina

As a rule, tax authorities publish guidance on how their domestic tax systems work. That is the case reported in 97% of the surveyed countries, according to Chart 73.

This trend is evident in most of the reported developments for 2019. Tax authorities are working towards improving the awareness of tax law and administrative and court rulings through legislation, services, programmes, websites, e-mail communications, call centres and public consultation systems in **Canada**,<sup>450</sup> **Chile**,<sup>451</sup> **China**,<sup>452</sup> **Colombia**<sup>453</sup> and **Cyprus**.<sup>454</sup>

<sup>447</sup> M.D. Yochum, *Ignorance of the Law is No Excuse Except for Tax Crimes*, 27 Duq. Law Rev. 2, p. 221 (1989), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/duqu27&div=17&id=&page=> (accessed 6 Mar. 2020).

<sup>448</sup> Baker & Pistone, *supra* n. 97, at sec. 11.1, p. 68.

<sup>449</sup> Bevacqua, *supra* n. 120, at pp. 51-59.

<sup>450</sup> CA: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Questions 81-82.

<sup>451</sup> CL: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Questions 81-82.

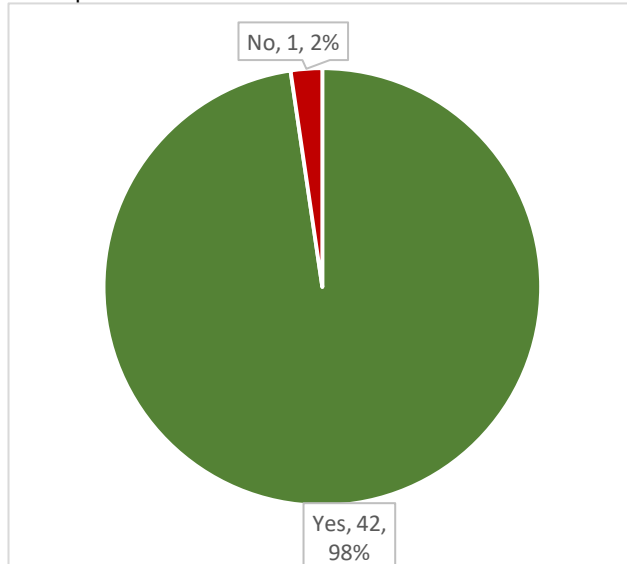
<sup>452</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Questions 81-82.

<sup>453</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Questions 81-82.

<sup>454</sup> CY: OPTR Report (Tax Administration), Questionnaire 2, Questions 81-82.

**Chart 73. Does the tax authority in your country publish guidance (revenue manuals, circulars, etc.) as to how it applies your tax law?**

53 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria, Canada, Chile, China (1), China (3), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (1), Peru (3), Poland, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, Venezuela

**No:** Argentina, Peru (2)

Source: OPTR: Questionnaire 1, Question 73.

However, the **United States'** National Taxpayers' Advocate raised concerns about the IRS not promptly disclosing all technical advice given through e-mail.<sup>455</sup> Oddly, the **Czech Republic** reports the existence of "secret" guidelines, accessible to taxpayers only if requested under legislation on the freedom of information.<sup>456</sup>

### 11.3. Binding rulings

**Minimum standard:** Binding rulings should only be published in anonymized form.

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

Belgium (2)

**Shifted away from the minimum standard:**

Peru (2)

According to the data, 74% of surveyed countries state that their countries have a general system of advance rulings available to taxpayers, as shown in Chart 74.

In most of the cases, those rulings are legally binding for the tax authorities, as shown in Chart 75.

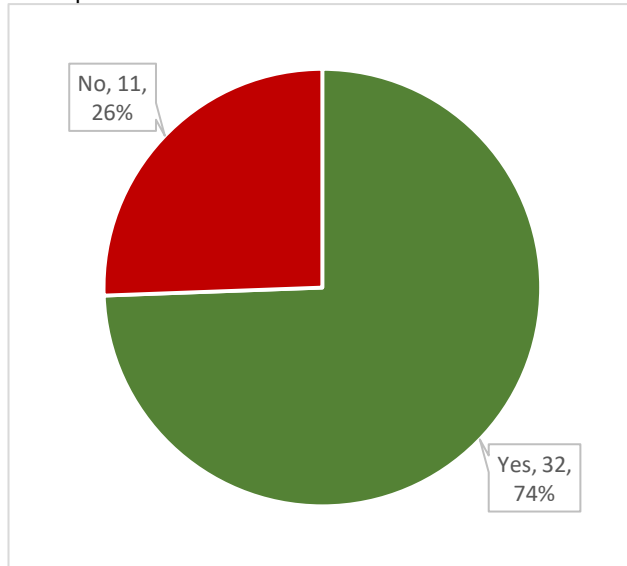
Taxpayers have the right to appeal the refusal of a ruling in 52% of the surveyed countries, based on the data displayed in Chart 76.

<sup>455</sup> US: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Questions 81-82.

<sup>456</sup> See sec. 3.11. CZ: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Questions 81-82.

**Chart 74. Does your country have a generalized system of advance rulings available to taxpayers?**

53 responses



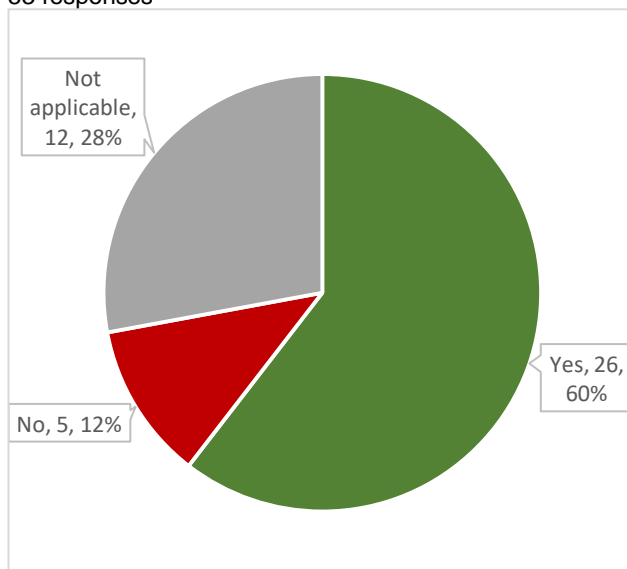
**Yes:** Australia, Austria, Belgium (1), Belgium (2), Bosnia and Herzegovina, Brazil (2), Canada, Chile, China (1), Croatia, Cyprus (2), Czech Republic, Denmark, Finland, Germany, Guatemala, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (3), Poland, Portugal, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United States, Uruguay, Venezuela

**No:** Argentina, Brazil (1), Bulgaria, China (3), Colombia, Cyprus (1), Greece (1), Greece (2), Kenya, Peru (1), Peru (2), Russia, Serbia, United Kingdom

Source: OPTR: Questionnaire 1, Question 75.

**Chart 75. If yes, is it legally binding?**

53 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Brazil (2), Chile, China (1), Croatia, Cyprus (2), Czech Republic, Denmark, Finland, Germany, Guatemala, India, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Panama, Peru (3), Portugal, Slovenia (1), Slovenia (2), South Africa, Spain, Sweden, Switzerland, United States, Uruguay

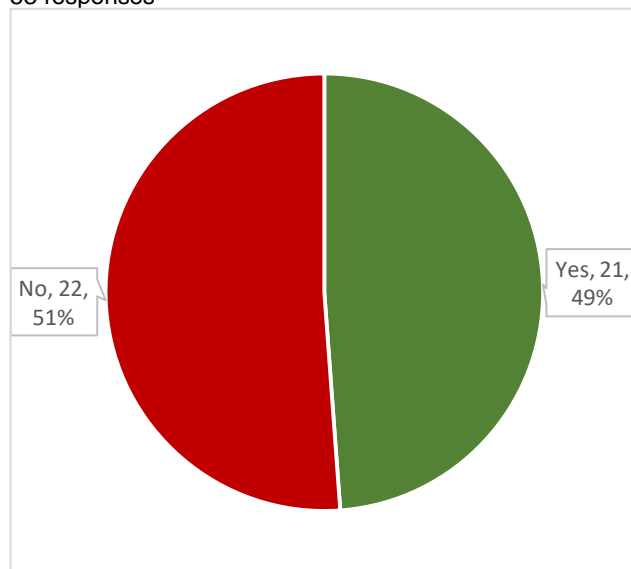
**No:** Bosnia and Herzegovina, Canada, Italy, Poland, Venezuela

**Not applicable:** Argentina, Brazil (1), Bulgaria, China (3), Colombia, Cyprus (1), Greece (1), Greece (2), Kenya, Peru (1), Peru (2), Russia, Serbia, United Kingdom

Source: OPTR: Questionnaire 1, Question 76.

**Chart 76. If a binding ruling is refused, does the taxpayer have a right to appeal?**

53 responses



**Yes:** Argentina, Austria, Belgium (1), Belgium (2), Brazil (1), Brazil (2), Bulgaria, Chile, China (1), Colombia, Cyprus (2), Denmark, Finland, Germany, India, Italy, Mexico (1), Mexico (2), Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Slovenia (1), Switzerland, Uruguay

**No:** Australia, Bosnia and Herzegovina, Canada, China (3), Croatia, Cyprus (1), Czech Republic, Greece (1), Greece (2), Guatemala, Japan, Kenya, Luxembourg, Mauritius, Mexico (3), Netherlands (2), New Zealand, Peru (3), Serbia, Slovenia (2), South Africa, Spain, Sweden, United Kingdom, United States, Venezuela

Source: OPTR: Questionnaire 1, Question 77.

Regarding this matter, the practice of **Japan** is noteworthy. There, rulings are posted on the tax authority’s website in anonymized form. The name of a ruling applicant will be disclosed only if the applicant so wishes, allowing the taxpayer to make proper decisions regarding his rights to *habeas data*.<sup>457</sup> In a more limited manner, in the **United States**, advance rulings are binding only with regard to the specific issue of the taxpayer who requested the ruling and only if all information provided is complete and correct.<sup>458</sup>

### 11.4. Non-binding guidance

**Minimum standard:** Where a taxpayer relies on published guidance of a revenue authority that subsequently proves to be inaccurate, changes should apply only prospectively.

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

Colombia

**Shifted away from the minimum standard:**

Peru (2)

From good faith – as a principle applicable to all legal relations, including the tax relationship<sup>459</sup> – stems the taxpayer’s right to rely on guidance provided by the tax authorities, i.e. legitimate expectations. Legitimate expectations are one of the manifestations of legal certainty.<sup>460</sup>

As a minimum standard, legitimate expectations require that any inaccuracies in the advice

<sup>457</sup> See sec.n 1.4. JP: OPTR Report (Academia), Questionnaire 2, Question 83.

<sup>458</sup> US: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 83.

<sup>459</sup> See sec. 1.1. Also, see D. Weber & T. Sirithaporn, *Legal Certainty, Legitimate Expectations, Legislative Drafting, Harmonization and Legal Enforcement in EU Tax Law*, in *Principles of Law: Function, Status and Impact in EU Tax Law* (C. Brokelind ed., IBFD 2014), Books IBFD; C. Romano, *Advance Tax Rulings and Principles of Law* (IBFD 2002), Books IBFD.

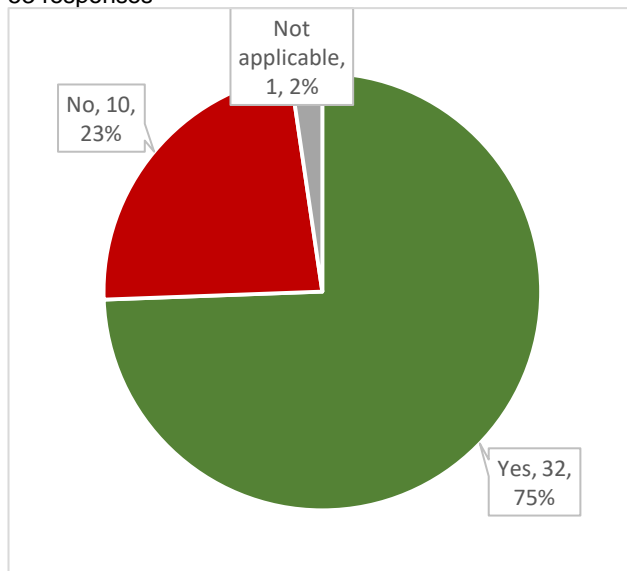
<sup>460</sup> See sec. 10.1.

given by the tax administration through an advance ruling should only apply prospectively.<sup>461</sup> In most cases, these rulings are legally binding for the tax authorities. That is the case in 74% of surveyed countries, whereas 22% do not recognize binding effects of the rulings of the tax authorities, and 4% stated that their jurisdictions do not recognize the legitimate expectations of taxpayers, as depicted in Chart 77.

In this regard, it is worth mentioning that, during 2019, the Constitutional Court of **Colombia** upheld the right of taxpayers to rely on published guidance during reviews and appeals, protecting their legitimate expectations.<sup>462</sup>

**Chart 77. If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?**

53 responses



**Yes:** Australia, Austria, Belgium (1), Brazil (1), Brazil (2), Bulgaria, Chile, China (3), Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Kenya, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), Panama, Peru (1), Peru (3), Poland, Portugal, Russia, Slovenia (1), Slovenia (2), South Africa, Spain, Switzerland, United Kingdom, Uruguay, Venezuela

**No:** Belgium (2), Bosnia and Herzegovina, Canada, Croatia, Luxembourg, Mauritius, New Zealand, Serbia, Sweden, United States

**Not applicable:** Argentina, China (1), Peru (2)

Source: OPTR: Questionnaire 1, Question 74.

## 12. Institutional framework for protecting taxpayers' rights

### 12.1. The general framework

Taxpayers' rights are legal obligations<sup>463</sup> that entail several duties on the tax authorities. Given that the state, as such, is bound to act through norms (legality) and, in order to do so, requires a particular structure to which powers and duties are attributed, taxpayers' rights require both types of institutional framework to be enforced in practice.

### 12.2. Statements of taxpayers' rights: charters, service charters and taxpayers' bills of rights

**Minimum standard:** Adoption of a charter or statement of taxpayers' rights should be a

<sup>461</sup> See sec. 10.2.

<sup>462</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Questions 81-82.

<sup>463</sup> Alexy, *supra* n. 199, at pp. 132-138.

**minimum standard.**

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

None

**Shifted away from the minimum standard:**

Bosnia and Herzegovina, Peru (2)

**Best practice:**

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

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

None

**Shifted away from the minimum standard:**

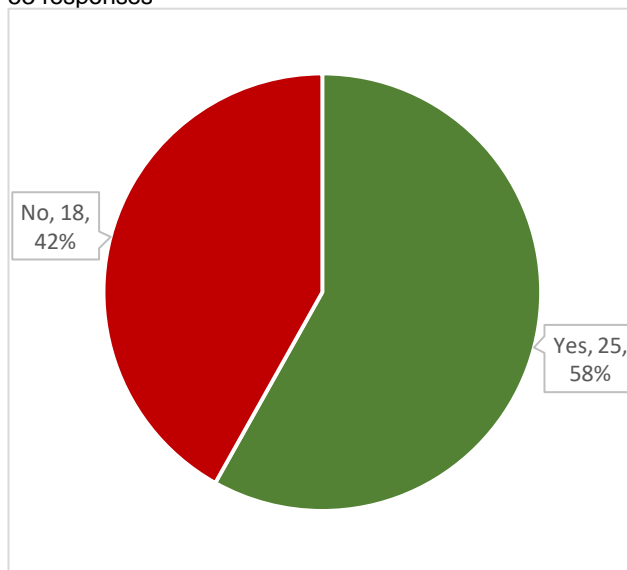
Bosnia and Herzegovina

On the one hand, the enactment of a set of rules that straightforwardly identify taxpayers' rights, such as taxpayers' bills of rights or taxpayers' charters, establishes an institutional framework of certainty regarding (i) the content; and, ideally, (ii) the scope of the rights to which taxpayers are entitled and, correlatively, the duties that the tax authorities must fulfil in this regard. With regard to the tax authorities' duties vis-à-vis taxpayers, the definition and scope of taxpayers' rights can also be defined through service charters.

59% of surveyed jurisdictions have taxpayers' charters or bills of rights (as can be seen in Chart 78), which is a slight decrease compared to the data of 2018 (60%).<sup>464</sup>

**Chart 78. Is there a taxpayers' charter or taxpayers' bill of rights in your country?**

53 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Brazil (1), Bulgaria, Canada, Chile, Colombia, Croatia, Guatemala, India, Italy, Kenya, Mauritius, Mexico (1), Mexico (2), Mexico (3), New Zealand, Panama, Peru (2), Peru (3), Poland, Serbia, South Africa, Spain, United Kingdom, United States, Uruguay, Venezuela

**No:** Argentina, Bosnia and Herzegovina, Brazil (2), China (1), China (3), Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Japan, Luxembourg, Netherlands (2), Peru (1), Portugal, Russia, Slovenia (1), Slovenia (2), Sweden, Switzerland

Source: OPTR: Questionnaire 1, Question 78.

Taxpayers' bills of rights are not legally effective in the majority of countries that have enacted them, as can be seen in Chart 79 below, keeping approximately the same trend already reported in 2018.<sup>465</sup>

As a significant development in 2019 on the issuance of taxpayers' bills of rights, the Taxpayer

<sup>464</sup> See OPTR, *supra* n. 26 (2018), at sec. 5.12.2, p. 189.

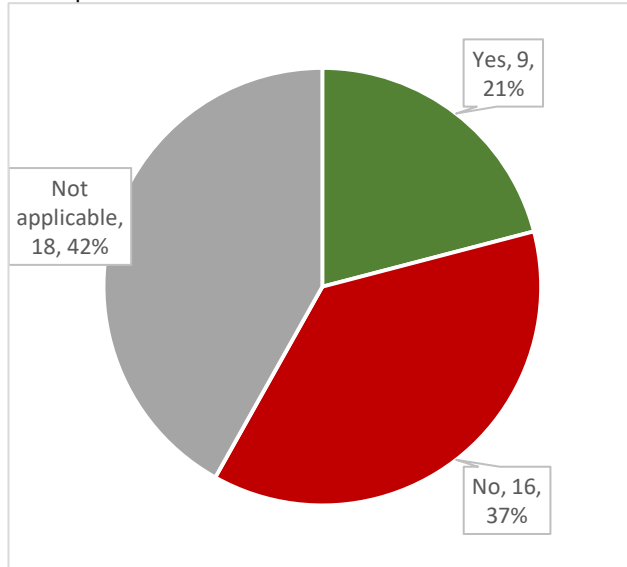
<sup>465</sup> See *id.*



First Act of the **United States** has required the tax authority to develop a comprehensive employee training strategy, including annual training on taxpayer rights and the role of the Taxpayer Advocate, by 1 July 2020.<sup>466</sup> Additionally, a charter of taxpayers' rights has been drafted in **Slovenia** by the Chamber of Tax Advisors, but the possibility of the parliament enacting such a project remains unclear.<sup>467</sup>

**Chart 79. If yes, are its provisions legally effective?**

53 responses



**Yes:** Belgium (2), Brazil (1), Chile, China (1), Italy, Mexico (1), Mexico (2), Mexico (3), Peru (3), Poland, Spain, United States, Uruguay, Venezuela

**No:** Australia, Austria, Belgium (1), Bulgaria, Canada, Colombia, Croatia, Guatemala, India, Kenya, Mauritius, New Zealand, Panama, Peru (2), Serbia, South Africa, United Kingdom

**Not applicable:** Argentina, Bosnia and Herzegovina, Brazil (2), China (3), Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Japan, Luxembourg, Netherlands (2), Peru (1), Portugal, Russia, Slovenia (1), Slovenia (2), Sweden, Switzerland

Source: OPTR: Questionnaire 1, Question 79.

Regarding best practice, in **China**, taxpayers are explicitly informed of their rights through pre-inspection notices during the audit.<sup>468</sup> Some jurisdictions rely on the awareness of the law as the standard of taxpayers' knowledge about their rights, based on the enactment of these bills of rights either as part of the tax code or as independent pieces of legislation. That is the case in the **Czech Republic**<sup>469</sup> and **Guatemala**.<sup>470</sup>

### 12.3. Organizational structures for protecting taxpayers' rights

**Best practice:**

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

Shifted towards / matched the best practice:

Shifted away from the minimum standard:

<sup>466</sup> US: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 85.

<sup>467</sup> SI: OPTR Report (Taxpayers / Tax Practitioners (2)), Questionnaire 2, Question 85.

<sup>468</sup> CN: OPTR Report (Academia (3)), Questionnaire 2, Question 85.

<sup>469</sup> CZ: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Question 85.

<sup>470</sup> GT: OPTR Report (Taxpayers / Tax Practitioners), Questionnaire 2, Question 85.

Belgium (2), Colombia, Peru (3), Spain

Bosnia and Herzegovina, Bulgaria, Peru (2)

**Best practice:** The organizational structure for the protection of taxpayers' rights should operate at a local level as well as nationally.

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

Colombia

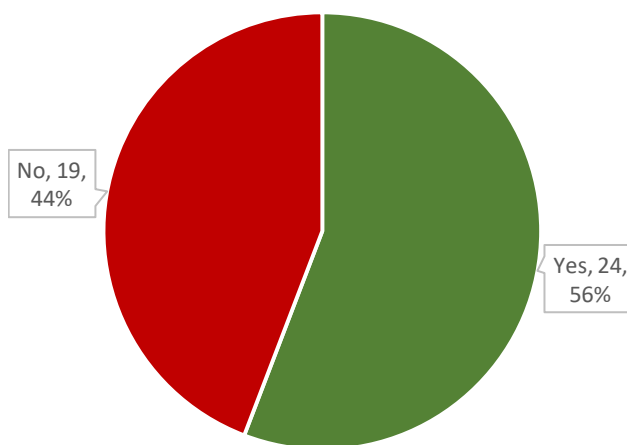
**Shifted away from the minimum standard:**

Bosnia and Herzegovina, Mexico (1), Peru (2), Slovenia (1)

On the other hand, the state can better fulfil its duties of protection of taxpayers' rights through a specialized body, preferably independent from the tax authorities, bestowed with the power of ensuring the conditions for the highest protection of taxpayers. That is the rationale behind the idea of the Taxpayer Advocate or Ombudsman.<sup>471</sup> Among the surveyed jurisdictions, (tax) ombudsmen or taxpayer advocates have been implemented in 24 countries (56%), as Chart 80 shows.

**Chart 80. Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?**

53 responses



**Yes:** Australia, Austria, Belgium (1), Belgium (2), Bulgaria, Canada, China (1), Colombia, Cyprus (2), Czech Republic, Denmark, Finland, Greece (1), Greece (2), Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (2), Peru (3), Poland, South Africa, Spain, United Kingdom, United States

**No:** Argentina, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, China (3), Croatia, Cyprus (1), Germany, Guatemala, India, Kenya, Panama, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Sweden, Switzerland, Uruguay, Venezuela

**Source:** OPTR: Questionnaire 1, Question 80.

In one third of the cases (30%), just as in 2018,<sup>472</sup> the taxpayers' ombudsman is allowed to intervene in an ongoing dispute between the taxpayer and the tax authority before it goes to

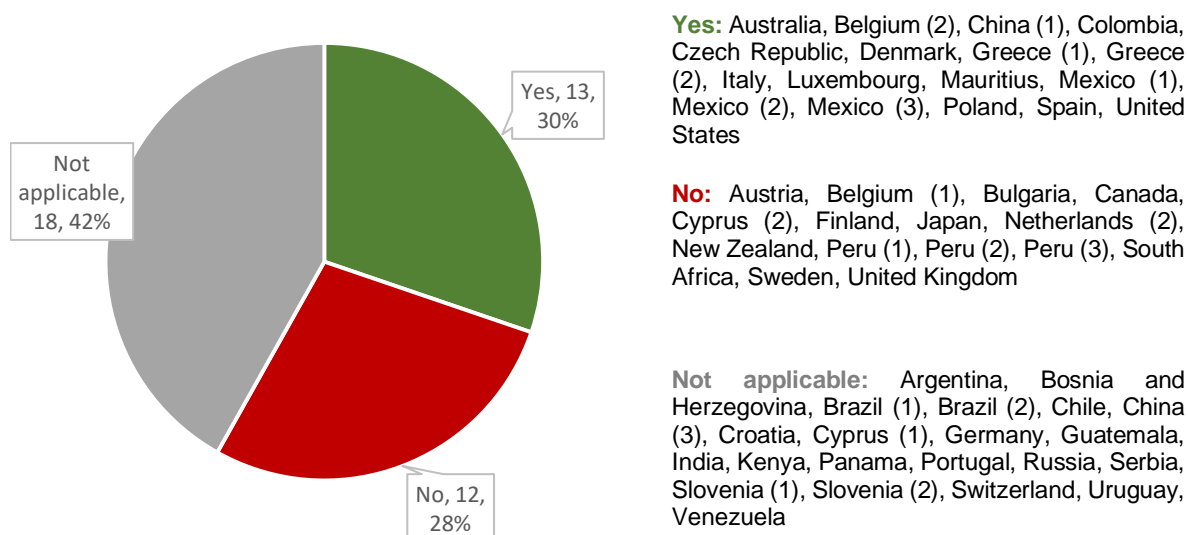
<sup>471</sup> See K. Äimä, *A European Tax Ombudsman?*, in *Legal Remedies in European Tax Law* (P. Pistone ed., IBFD 2009), Books IBFD; M. Helminen, *On a European Tax Ombudsman*, in *Legal Remedies in European Tax Law* (P. Pistone ed., IBFD 2009), Books IBFD; China, Republic Of (Taiwan) - *Taiwan Notes Efforts to Guarantee Taxpayer Rights* (20 Feb. 2020), News Tax Analysts (accessed 6 Mar. 2020); Perrou, *supra* n. 377; D.R. Bernal Ladrón de Guevara & E. Uribe Guerrero, *The Role of Prodecon, the Mexican Tax Ombudsman Agency*, in *Ensuring Taxpayer Access to Mutual Agreement Procedures*, 72 Bull. Intl. Taxn. 9 (2018), Journal Articles & Papers IBFD.

<sup>472</sup> OPTR, *supra* n. 26 (2018), at sec. 5.12.3.

court, as depicted in Chart 81.

**Chart 81. If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?**

53 responses



**Source:** OPTR: Questionnaire 1, Question 81.

Also, in slightly over two fifths of the cases (41%, an increase of 9% compared to 2018),<sup>473</sup> the ombudsman is independent from the tax authority, as shown in Chart 82.

**Colombia** leads the pack in the 2019 developments regarding the tax ombudsperson. The National Taxpayer Advocate's independence was strengthened in the law, and its management staff was enhanced. The same legislation expanded the personnel of the ombudsperson, aiming to better ensure the practical protection of taxpayers' rights, and representatives of the National Taxpayers' Advocate should mandatorily be at the main local offices of the DIAN, the tax authority. At a local level, a regional taxpayers' advocate office was created in Medellin.<sup>474</sup> In this regard, only one state in **Mexico**, Zacatecas, has been reported as having a local tax ombudsperson.<sup>475</sup>

Also from the side of new legislation, in the **United States**, the Taxpayer First Act made several changes affecting the National Taxpayer Advocate. The reform mostly aims to reinforce the advocate's independence from the tax authorities: more statistical support, coordination on research studies with the Treasury Inspector General for Tax Administration and procedural protection for Taxpayer Advocate Directives were enacted.<sup>476</sup>

**Chart 82. If yes to a (tax) ombudsman, is he/she independent from the tax authority?**

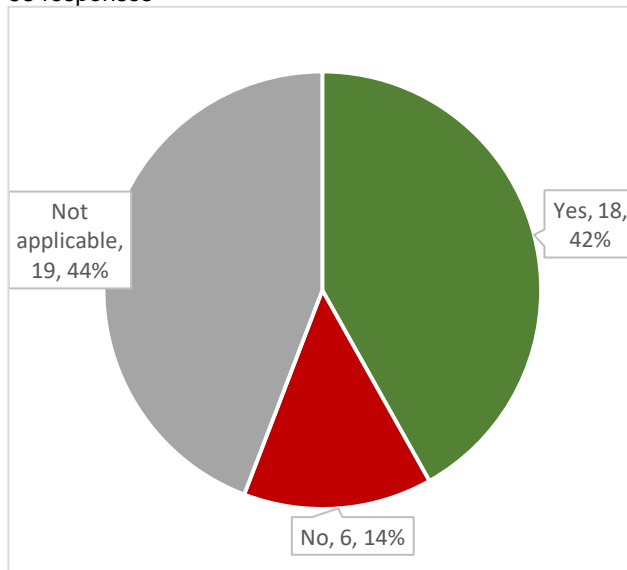
<sup>473</sup> Id.

<sup>474</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Questions 86-87.

<sup>475</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 87.

<sup>476</sup> US: OPTR Report (Taxpayers / Tax Practitioners, Academia), Questionnaire 2, Questions 86-87.

53 responses



**Yes:** Australia, Bulgaria, Canada, China (1), Colombia, Cyprus (2), Czech Republic, Denmark, Greece (1), Greece (2), Mauritius, Mexico (1), Mexico (2), Mexico (3), Netherlands (2), New Zealand, Peru (1), Peru (3), Poland, South Africa, Spain, United Kingdom, United States

**No:** Austria, Belgium (1), Belgium (2), Finland, Italy, Japan, Peru (2), Sweden

**Not applicable:** Argentina, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, China (3), Croatia, Cyprus (1), Germany, Guatemala, India, Kenya, Luxembourg, Panama, Portugal, Russia, Serbia, Slovenia (1), Slovenia (2), Switzerland, Uruguay, Venezuela

Source: OPTR: Questionnaire 1, Question 82.

Finally, progress was reported in **Spain** regarding the effectiveness of the Tax Ombudsperson. Following the advice provided by the Taxpayer Advocate, the efforts made by the tax authorities have led to a decrease in complaints made to the taxpayer advocate's office.<sup>477</sup>

<sup>477</sup> ES: OPTR Report (Taxpayers / Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 86.

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# Appendices



**Appendix «A»: 2019 topical highlights.**

The following is a summary of the contents explained in detail in the main text of the 2019 IBFD Yearbook on Taxpayers' Rights. Accordingly, it is not advisable to interpret the content expressed in this table separately from the explanations contained in the main text of this document.

Taxpayers' right	Shift towards	Shift away
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>		
<p>Identification of taxpayers</p>	<ul style="list-style-type: none"> <li>• <b>Australia:</b> The Australian Tax Office (ATO) announced the introduction of a unique Director Identification Number (DIN) to address illegal phoenix activity.</li> <li>• <b>Australia:</b> The ATO is developing GovPass, a digital identity manager across the government that allows individuals to securely and easily identify themselves, connect with government digital services and authorize people to act on their behalf.</li> <li>• <b>Canada:</b> The Canada Revenue Agency (CRA) introduced a unique Personal Identification Number for their account that must be used before a CRA call centre agent can access the taxpayer's accounts.</li> <li>• <b>Canada:</b> The CRA encouraged taxpayers to take further steps to help the CRA in managing and protecting information, such as registering with an electronic account access service, receiving email notifications/alerts, confirming the identity of CRA employees to avoid scams, etc.</li> <li>• <b>United States:</b> The Identity Protection Personal Identification Number (IP PIN) programme was expanded to 7 additional states for the 2019 filing season, and 10 more states for the 2020 filing season.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>United States:</b> The IRS can no longer allow taxpayers with religious sensitivities to claim the Child Tax Credit without providing a Social Security Number for the child, due to the requirements of the Tax Cuts and Jobs Act, enacted in December 2017.</li> </ul>
<p>Information supplied by third</p>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> The GDPR as implemented in domestic law has</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Portugal:</b> The Budget Law for 2019 widened the scope of the</li> </ul>

Taxpayers' right	Shift towards	Shift away
parties and withholding obligations	<p>represented an enhancement of confidentiality.</p> <ul style="list-style-type: none"> <li>• <b>New Zealand:</b> Process made easier through the establishment of MyIR and enhanced accuracy in withholding. Some minor 'teething' issues with BTP rollout.</li> <li>• <b>United States:</b> Legislation increased existing penalties for the improper use or disclosure of information by tax return preparers.</li> </ul>	<p>obligation of certain financial entities to automatically supply to the Tax Authority information on transfers made to tax-privileged jurisdictions.</p>
The right to access (and correct) information held by tax authorities	<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> Personal Income Tax Act amended to introduce pre-populated tax returns for individuals. Taxpayer has the right to correct the data before filing the return, as well as to refuse the pre-populated return and fill it in personally.</li> <li>• <b>Colombia:</b> First version of pre-populated returns implemented. It includes only income and the tax due. In 2020, pre-populated returns are expected to provide more information and be sent to a greater number of taxpayers.</li> <li>• <b>Colombia:</b> Legislation authorized taxpayers to electronically correct personal information held about them.</li> <li>• <b>Mexico:</b> Electronic annual form improved, allowing taxpayers to correct the information held by the tax authorities.</li> <li>• <b>South Africa:</b> The pre-populated e-filing tax return has been enhanced, and personal information may be corrected.</li> </ul>	
Communication with taxpayers	<ul style="list-style-type: none"> <li>• <b>Canada:</b> The CRA encouraged taxpayers to register with an electronic account access service, to choose to receive e-mail notifications/alerts regarding key activities, to directly communicate with the CRA to confirm the identity of the tax officials engaged in an assessment confirmation of the identity of CRA employees to avoid scams, etc.</li> <li>• <b>China:</b> Requirements regarding the Development of Online Tax Service published by the State Administration of Taxation. Local practice in different locations is subject to the respective local implementation rules. Certificate authority is</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<p>required when taxpayers log in to the online filing system in order to ensure confidentiality.</p> <ul style="list-style-type: none"> <li>• <b>Colombia:</b> <i>Dirección de Impuestos y Aduanas Nacionales</i> (DIAN) includes an alphanumeric code in all its electronic communications to prevent counterfeit.</li> <li>• <b>India:</b> Faceless e-assessment system implemented. All communications with taxpayers will be electronic only. The system has built-in checks and balances to prevent impersonation or interception.</li> <li>• <b>Peru:</b> As of 2020, more procedures can be carried out through electronic communications.</li> </ul>	
Cooperative compliance	<ul style="list-style-type: none"> <li>• <b>Austria:</b> The <i>Begleitende Kontrolle</i> (Accompanying control) system entered into force.</li> <li>• <b>Brazil:</b> The Federal Treasury Attorneys' Office issued Reg. 724, regulating the conditions for entering into a procedural agreement with the taxpayer. The special conditions to be agreed deal mainly with aspects regarding the liquidation of tax debts under judicial execution.</li> <li>• <b>Brazil:</b> Provisional Measure 899 establishes settlement through alternative dispute resolution. Debts with a lower qualification for priority are preferred to be negotiated. In general, settlements can only reduce fines and interest.</li> <li>• <b>New Zealand:</b> As part of a pilot programme, formal cooperative compliance agreements were entered into with three large taxpayers. However, although the three agreements continue, the pilot is now closed to new additions. Other active compliance regimes apply to certain other large taxpayers, but the criteria for the application of these regimes are determined by the IRD and, thus, are not available to taxpayers on a voluntary basis.</li> <li>• <b>Spain:</b> The so-called "Norma UNE 19602", a standard for the management system of tax compliance, entered into force.</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<p>The standard assists in the design of tax compliance systems for the management of tax-related risks and aims to increase compliance and transparency.</p> <ul style="list-style-type: none"> <li>• <b>Spain:</b> The Tax Administration Strategic Plan 2019-2022 envisages a new Tax Administration Code of Conduct and an Ethics Advisory Committee. The tax authority is working on a Best Tax Practice Code for self-employed persons and small and medium enterprises. The Best Tax Practice Code for Tax Professionals started to apply on a voluntary basis.</li> <li>• <b>United States:</b> The IRS Large Business &amp; International Division's Compliance Assurance Process is being expanded, and eligibility criteria have been published.</li> </ul>	
Assistance with compliance obligations	<ul style="list-style-type: none"> <li>• <b>Australia:</b> Measures to further assist indigenous communities implemented. Tax Help programme in remote areas further expanded.</li> <li>• <b>Canada:</b> The CRA further expanded measures for assisting taxpayers, implementing the Disability Advisory Committee's recommendations to make it easier to access the so-called "disability tax credit" (DTC). 3 new northern service centres opened to give residents, including indigenous ones, better access to tax services.</li> <li>• <b>China:</b> "Spring Action" programme in force to enhance tax services for people who face difficulties in meeting compliance obligations, As well as "Green Channel" for taxpayers facing difficulties in dealing with tax-filing issues opened by local authorities.</li> <li>• <b>Colombia:</b> 19 self-management points opened to facilitate access to electronic forms of communication and provide assistance to those who have difficulties (such as physical impairments or inability to use electronic means of communication).</li> <li>• <b>Spain:</b> The Tax Administration Strategic Plan 2019-2022</li> </ul>	<ul style="list-style-type: none"> <li>• <b>New Zealand:</b> shift away from counter appointments for complex enquires to encouraging telephone and online enquiries.</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<p>aims to create a specific centre (the so-called <i>Administraciones de asistencia Digital Integral, ADI</i>) to assist taxpayers by telephone and electronic media.</p> <ul style="list-style-type: none"> <li>• <b>United States:</b> IRS offers in-person assistance to taxpayers at Taxpayer Assistance Centers (TACs). Legislation codified the Volunteer Income Tax Assistance (VITA) programme, which allows funding to assist taxpayers with difficulties. Form 1040SR developed to assist seniors who may benefit from a larger-print, simpler tax form.</li> </ul>	
<p><b>2. The issue of tax assessment</b></p>		
	<ul style="list-style-type: none"> <li>• <b>Australia:</b> More pre-filled data available, along with real-time “nudge” messages for guidance while taxpayers file their e-returns. Automation also used for correcting returns. The ATO offered self-preparers with simple tax affairs the option of an automated or “push” assessment.</li> <li>• <b>Bosnia and Herzegovina:</b> A positive trend is outlined concerning e-services and new electronic possibilities within all tax authorities' agencies.</li> <li>• <b>Bulgaria:</b> New service introduced, allowing the taxpayer to review the results of ongoing and past tax audits and inspections.</li> <li>• <b>Canada:</b> The CRA held public in-person and online consultations to give Canadians the opportunity to “talk about their experience when interacting with the CRA”. The CRA received more than 3,400 written and oral submissions. The report of the consultations was published in December 2019.</li> <li>• <b>China:</b> Taxpayers' electronic filing system introduced to speed up tax assessment.</li> <li>• <b>Colombia:</b> Increase in events and meetings between taxpayers and tax authorities reported, due to the Integrated</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Italy:</b> The Italian Supreme Court (ISC) ruled that the notice of assessment is valid even if it does not mention the taxpayer's remarks. (ISC, Tax Chamber 23 January 2019, no. 1778)</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<p>Planning and Administration Model.</p> <ul style="list-style-type: none"> <li>• <b>India:</b> Electronic processing of returns in certain cases introduced, along with faceless e-assessment to speed up pending assessments and the correction of (systematic) errors.</li> <li>• <b>New Zealand:</b> Considerable investment is being made into expanding digital access as part of the IRD's business transformation programme (BTP).</li> <li>• <b>Peru:</b> Fiscal procedures that can be carried on electronically increased.</li> <li>• <b>Russia:</b> Tax authorities entitled to notify assessments, arrears and fines via SMS, e-mail and/or other legal means, provided that taxpayers give their consent in writing.</li> <li>• <b>Russia:</b> Legislation established multifunctional centres for interaction between the tax authorities and taxpayers regarding state and municipal taxes, also electronically.</li> <li>• <b>Serbia:</b> E-filing for property tax introduced. Taxpayers now allowed to submit the returns for transfer tax and inheritance and gift taxes through a public notary.</li> <li>• <b>South Africa:</b> Enhanced capability of e-filing forms to be submitted for assessment.</li> <li>• <b>Spain:</b> The Tax Administration Strategic Plan for 2019-2022 envisages an automated system for filing VAT and corporate tax returns. Regarding VAT, there is a virtual assistant (AVIVA) that supports taxpayers in calculating the amount of output VAT. The content of AVIVA has recently been broadened to cover more issues that can be useful for taxpayers.</li> </ul>	



Taxpayers' right	Shift towards	Shift away
<b>3.- Confidentiality</b>		
Guarantees of privacy in the law	<ul style="list-style-type: none"> <li>• <b>United States:</b> Further legal guarantees provided for the confidentiality of taxpayer information . Access to tax returns for contractors only granted when effective safeguards to protect taxpayer information are implemented. Penalties for improper use or disclosure of information by return preparers increased.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>New Zealand:</b> Offences of confidentiality breaches not clearly covered.</li> </ul>
Encryption – control of access	<ul style="list-style-type: none"> <li>• <b>Canada:</b> Audit Report entitled “Audit Safeguarding of Sensitive Information” released. The outcome of a survey measuring awareness of tax officials’ responsibility to maintain a strong ethical culture regarded as “positive” (see area 1, “identification of taxpayers”).</li> <li>• <b>Netherlands:</b> Control of access under improvement after a TV report released in early 2017.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> In 2019, a massive leak of personal data of approximately 4 million citizens was reported by the National Revenue Agency. During the investigation of the breach, it was revealed that the level of encryption and online security of the Agency are at meagre standards.</li> <li>• <b>Canada:</b> Department of Finance does not have a protocol outlining the steps to be followed if sensitive information is leaked. Certain IT personnel had access to computer drives containing sensitive federal-budget-related information.</li> </ul>
Administrative measures to ensure confidentiality	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> After the tax information of some Supreme Court justices and other public agents was illegally disclosed, more attention was drawn to tax secrecy, and an investigation was initiated.</li> <li>• <b>Bulgaria:</b> Data protection officers appointed.</li> <li>• <b>Canada:</b> “Audit Safeguarding of Sensitive Information” report released. No conclusions on the effectiveness of committees in providing supervision. Active follow-up on the acknowledgment of interest conflicts by tax officials. No documented protocol outlining steps if sensitive information is leaked.</li> <li>• <b>Canada:</b> 264 privacy breaches by CRA employees reported between November 2015 and November 2018, with more than 41,000 Canadians impacted. Most of the relevant CRA</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<p>employees have been disciplined or have departed the CRA.</p> <ul style="list-style-type: none"> <li>• <b>Netherlands:</b> In response to research done by a Dutch TV programme at the beginning of 2017, which showed that the personal data of citizens are not sufficiently secured, the Dutch tax authority has undertaken measures to restrict access to personal data by their employees. This is an ongoing process.</li> <li>• <b>Peru:</b> The tax administration conducts periodic internal audits to verify that only officials directly involved in the procedures of a particular taxpayer have access to their information. Officials who cannot prove an official reason for accessing the information are subject to disciplinary measures.</li> <li>• <b>Uruguay:</b> Data protection officer appointed.</li> </ul>	
Exceptions to confidentiality	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> Federal Revenue Service initiated investigations against politicians, stopped by the judiciary on the grounds that their motives were political and not technical.</li> <li>• <b>Colombia:</b> Taxpayer information is reserved and, therefore, not disclosed to politicians or used for political purposes. On the other hand, the obligation to publish tax returns was established for the President and other high-level public authorities of the executive, legislative and judicial powers of the government by Law 2013 of 2019.</li> <li>• <b>United States:</b> Court of Appeals held that the IRS Publication, which is sent to every taxpayer at the start of most enforcement actions, did not provide "reasonable notice in advance" of third-party contact, as required by the law. Legislation strengthened requirements for taxpayer notice prior to third-party contact. Implementing memorandum issued outlining new procedures for notifying taxpayers of potential third-party contact.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Czech Republic:</b> Situations reported of politicians having information on tax proceedings even if they should not have it by law.</li> <li>• <b>Netherlands:</b> "Naming and shaming" is introduced with respect to certain penalties that are imposed on tax advisers as from 1 January 2020.</li> <li>• <b>Spain:</b> Constitutional Court supports the Falciani list as lawful evidence in tax proceedings and refuses the infringement of the presumption of innocence and of the right to due process.</li> <li>• <b>New Zealand:</b> Changes that increase the sharing of taxpayer information held by the IRD with other government agencies progressively implemented. General principles may replace the current specific list of exceptions.</li> </ul>
The interplay between taxpayer confidentiality and		<ul style="list-style-type: none"> <li>• <b>Brazil:</b> Exchange of Information upon request between state authorities regarding e-tax books implemented, regardless of</li> </ul>

Taxpayers' right	Shift towards	Shift away
freedom of information legislation		<p>whether the operations have taken place within the territorial jurisdiction of the requesting tax authority.</p> <ul style="list-style-type: none"> <li>• <b>Colombia:</b> Information and procedures administered by the Risk Management System of the Tax Authority are confidential, even for the taxpayer and other public authorities. Such information can only be disclosed with judicial authorization according to legislation.</li> </ul>
Anonymised judgments and rulings	<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> Published tax rulings/judgments are strictly anonymized.</li> </ul>	
Legal professional privilege.	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> New legislation makes no distinction between tax advisers (lawyers or other tax advisers) when it comes to privilege of non-disclosure.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Cyprus:</b> With the implementation of the fourth and fifth AML Directive, the communications of taxpayers with tax advisers are not privileged with non-disclosure, and tax advisers are also faced with liability in the case that they fail to report their clients' activities that they suspect relate to money laundering.</li> <li>• <b>Mexico:</b> New Mandatory Disclosure Regime introduced that will enter into force on 1 January 2021. Schemes commercialized, designed or implemented beginning 1 January 2020 must be reported. Said disclosure will not be regarded as a breach of professional privilege. However, it is relevant to note that schemes implemented before 2020 with tax consequences that extend through 2020 must also be reported.</li> <li>• <b>Spain:</b> The draft regulations to transpose DAC 6 provide that the legal professional privilege will apply to all persons considered intermediaries according to the Directive (regardless of the economic activity they develop) in respect of both private property and confidential data obtained because of the tax advice or defence of the taxpayer related to an aggressive tax planning mechanism.</li> <li>• <b>Uruguay:</b> Senior tax officers have publicly stated that the obligation not to disclose information in connection with clients is limited only to lawyers in the framework of judicial</li> </ul>

Taxpayers' right	Shift towards	Shift away
and administrative proceedings.		
<b>4. Normal audits</b>		
<i>Ne bis in idem</i>	<ul style="list-style-type: none"> <li>• <b>Spain:</b> Tax procedures can be carried out by two different bodies (<i>Gestión</i> and <i>Inspección</i>). Judiciary determined that new assessments can be carried out as long as the facts analysed and the documentation required are different from those of the first procedure.</li> <li>• <b>Spain:</b> Judgment of Supreme Court expanded the scope of taxpayer protection by establishing the impossibility to verify, in the course of an inspection procedure, what was verified in a previous procedure that ended with a provisional assessment.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Czech Republic:</b> In the case of a breach, tax notices are not automatically null and void.</li> <li>• <b>Italy:</b> Supreme Court ruled that closely connected tax assessments and criminal proceedings do not violate <i>ne bis in idem</i> "when the administrative penalty may be considered substantially criminal in nature".</li> <li>• <b>Slovenia:</b> <i>Ne bis in idem</i> could easily be avoided by reopening tax proceedings. No equality of arms when taxpayer asks for reopening due to new evidence. Supreme Court stated that the evidence must exist by the time the first proceeding ends. Situation under judicial review.</li> <li>• <b>South Africa:</b> Audits for the same period can be redone and revised more than once. Double jeopardy only applies to criminal charges due to tax offences.</li> <li>• <b>Switzerland:</b> Supreme Court applies a rather narrow interpretation of the <i>ne bis in idem</i> principle.</li> <li>• <b>Uruguay:</b> Tax authority allowed to restart audits based on procedural mistakes affecting their validity.</li> </ul>
Principle of proportionality	<ul style="list-style-type: none"> <li>• <b>Canada:</b> CRA updated its policy regarding the presentation of documents to the CRA during an audit, partially based on judicial decisions. The policy limits the CRA's ability to request documents to those (foreseeably) relevant for the investigation, based on the audit's scope and the relevance of the material. There must be a valid business reason for seeking information from taxpayers, and this reason should be communicated to taxpayers.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Czech Republic:</b> In the case of a breach, tax notices are not automatically null and void.</li> <li>• <b>Mexico:</b> Judiciary requires that any documents require a known date of emission/signature to be held as evidence for tax purposes.</li> <li>• <b>Slovenia:</b> Principled enforcement is deteriorating in practice.</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> Necessity of a certificate of existence and representation of corporations to request tax information repealed.</li> <li>• <b>United States:</b> Some restrictions apply on repeatedly auditing the same taxpayer for the same issue for more than 2 consecutive tax periods, but these are limited and they are not in statute or regulations.</li> </ul>	
<i>Audi alteram partem</i>	<ul style="list-style-type: none"> <li>• <b>Slovenia:</b> Chamber of Tax Advisors is drafting a Code of Taxpayers' rights and publicly emphasizing the importance of these principles.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Czech Republic:</b> In the case of a breach, tax notices are not automatically null and void.</li> <li>• <b>Colombia:</b> Legislation enacted allowing the tax authority to issue a tax assessment without allowing the taxpayer to be previously heard in the case of "simplified tax assessments".</li> <li>• <b>Serbia:</b> Legislation enables the tax authority to issue a tax assessment without allowing the taxpayer to be previously heard in the case that the latter fails to submit a tax return based on publicly held information.</li> <li>• <b>Slovenia:</b> Principled enforcement is deteriorating in practice. Judiciary has become too lenient towards the tax authorities.</li> </ul>
<i>Nemo tenetur se detegere</i>	<ul style="list-style-type: none"> <li>• <b>Portugal:</b> Constitutional Court considered unconstitutional the interpretation of certain procedural rules that allowed for documents gathered during a tax inspection without prior knowledge or authorization of a judicial authority to be used as evidence in criminal proceedings against the taxpayer.</li> <li>• <b>Slovenia:</b> <i>Nemo tenetur</i> currently under judicial discussion in criminal courts. Discussion might open the issue of constitutionality of the tax legislation with a possible referral to the Constitutional Court.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>China:</b> Taxpayers are not entitled to remain silent; they have to report the truth.</li> <li>• <b>Czech Republic:</b> In the case of a breach, tax notices are not automatically null and void.</li> <li>• <b>Mexico:</b> <i>Nemo tenetur</i> is generally not respected in tax matters.</li> <li>• <b>Uruguay:</b> The tax authority considers that it is not legally required to inform the taxpayers about their right to remain silent. The High Administrative Court has not shared such an opinion.</li> </ul>
The structure and content of tax audits	<ul style="list-style-type: none"> <li>• <b>Canada:</b> CRA follows a detailed pattern for risk-based audits of large businesses, based on algorithms to identify high-risk,</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> Tax audits seem not to follow any predetermined pattern. Administrative and judicial authorities have a strong</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<p>large business taxpayers.</p> <ul style="list-style-type: none"> <li>• <b>Mexico:</b> Taxpayers entitled to request the start of a tax audit. Such a request is not binding on the tax authorities.</li> <li>• <b>New Zealand</b> Best Practice and Operational Statements for tax authorities developed, and checks are made to ensure that investigators are applying them.</li> <li>• <b>Russia:</b> Tax authority publishes guiding letters regularly.</li> <li>• <b>Spain:</b> General Guidance of the 2019 Annual Audit Plan for Taxes and Customs approved and published.</li> <li>• <b>Spain:</b> Judiciary deemed requirements for obtaining information from lawyers and attorneys with the aim to combat tax fraud unreasonable, since such possibility has not been provided for in the Annual Audit Plan.</li> <li>• <b>Spain:</b> Supreme Court established that requirements for obtaining tax information addressed to the taxpayers do not imply the beginning of an audit.</li> <li>• <b>United States:</b> Taxpayer is entitled to request the start of a tax audit. Said request is not binding on the tax authorities. Certainty may be provided through a (paid) private letter ruling.</li> <li>• <b>United States:</b> Judiciary held that IRS Publication 1, which is sent to every taxpayer at the start of most enforcement actions, did not provide "reasonable notice in advance" of third-party contacts. The IRS subsequently issued an implementing memorandum, outlining new procedures for notifying taxpayers of potential third-party contact.</li> </ul>	<p>tendency not to declare nullities regarding procedures relating to audits.</p> <ul style="list-style-type: none"> <li>• <b>Cyprus:</b> Guidelines are not published and are only available to the tax officials.</li> <li>• <b>Mexico:</b> New Mandatory Disclosure Regime obliges tax advisers to report intended tax planning schemes.</li> <li>• <b>Serbia:</b> Harmonization of general and special law provisions allowing citizens (taxpayers) to request the start of a tax audit still pending.</li> <li>• <b>Slovenia:</b> Judiciary explicitly denies the possibility of requesting the start of an audit. Seldom do the tax authorities reply to such requests.</li> </ul>
Time limits for tax audits	<ul style="list-style-type: none"> <li>• <b>Canada:</b> CRA confirmed that no formal audit timeline for audits of large taxpayers exists. Timeliness of audits depends partially on the openness and transparency of the taxpayer. Average time for resolution of a large-file objection is 690 days.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Legislation extended the audit period to 10 years in the case of tax infringements involving foreign legal arrangements.</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> An internal management system called SINTEGRA was implemented to ensure reasonable times for advancing the different stages of the audit process.</li> <li>• <b>South Africa:</b> While not legislated, SARS has made efforts to try and complete audits within 90 days. The Service Charter states 4-6 months.</li> <li>• <b>Spain:</b> Supreme Court upheld the “considerable” discretion of tax authorities to determine the term for allegations. The granting of the minimum term without justification and the tax authority’s silence on the request for an extension causes such extension to not be attributable to the taxpayer.</li> </ul>	
Tax audit report	<ul style="list-style-type: none"> <li>• <b>In 85% of reports (45)</b>, taxpayers have the right to receive a full report on the conclusions of the audit at the end of the process.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>In 75% of reports (40)</b>, there are no limits to the frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes).</li> </ul>
<b>5. More intensive audits</b>		
The general framework	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> Legislation created a specialized office within the judiciary for the investigation and prosecution of tax crimes.</li> <li>• <b>Denmark:</b> Parliamentary Ombudsman clarified aspects of best practice in cases in which a taxpayer must be deemed to be potentially liable for a criminal charge. The case involved documents from the Panama Papers and is likely to have an effect on future administration.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Canada:</b> CRA able to automatically access and review all international electronic funds transfers over CAD 10,000. Intensive review of Panama Papers conducted to identify and risk-assess taxpayers for potential investigation. More than 300 taxpayers selected for audit based on them. Canada was involved, through J5, in more than 50 investigations “involving sophisticated international enablers of tax evasion”, exchanging data at unprecedented levels.</li> <li>• <b>Mexico:</b> <i>Nemo tenetur</i> generally disregarded in this context.</li> </ul>
Court authorization or notification	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Constitutional and Supreme Courts upheld the need for substantive motivation for administrative requests for authorization for entering taxpayers’ premises in order to ensure an effective ex post judicial review.</li> <li>• <b>Spain:</b> Supreme Court deemed administrative searches to carry out audits unnecessary. Court of Cassation to</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Brussels Court of Appeals ruled that the tax authorities can make a copy of all data on the taxpayer's computer without the taxpayer's consent and even that the right to privacy is not violated if private files are copied along with it.</li> <li>• <b>Belgium:</b> Free access to digital data of taxpayers</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<p>determine the requirements of administrative entry and judicial authorization in the case of a taxpayer that pays taxes below the national sector average admitted.</p>	<p>consistently granted to tax authorities by the judiciary in the case of searches of professional premises.</p> <ul style="list-style-type: none"> <li>• <b>Italy:</b> Legislation enabled tax authorities and tax police to use information in the Archive of Financial Data (banking information). Archive is placed at the centre of risk assessment. Legislation deems of "particular public interest" the processing of personal data aimed at preventing and combating tax evasion. Italian taxpayers may see certain rights restricted (e.g. right to access documents, right to correct and delete incorrect or incomplete data, etc.).</li> <li>• <b>Mexico:</b> As long as the taxpayer does business at his/her personal dwelling, tax authorities are allowed to enter the premises without judicial authorization.</li> <li>• <b>Peru:</b> Financial institutions required by law to provide the tax authority with significant financial information about taxpayers without judicial authorization.</li> <li>• <b>Serbia:</b> Legislation widens the existing obligations of banks with regard to delivery of information to the tax authorities.</li> <li>• <b>Uruguay:</b> No prior authorization from the judiciary required, except for the purpose of searching taxpayers' dwelling places.</li> </ul>
<p><b>6. Reviews and appeals</b></p>		
<p>The remedies and their function</p>	<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> New e-services of the tax authority enabled.</li> <li>• <b>Denmark:</b> From 1 July 2020, prior exhaustion of administrative reviews is no longer needed.</li> </ul>	



Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>• <b>Peru:</b> Some forms of e-appeals enabled, beginning in 2020.</li> <li>• <b>Portugal:</b> Legislation changed some important rules on the appeals from first instance court decisions, among others.</li> <li>• <b>Russia:</b> Online service "Get to know about the appeal", enabled, a service informing taxpayers about the progress and results of appeals, along with a change in the structure of administration of the largest taxpayers.</li> </ul>	
Length of the procedure	<ul style="list-style-type: none"> <li>• <b>Australia:</b> On 1 March 2019, a Small Business Tax Division was created within the Administrative Appeals Tribunal (AAT). The AAT's practice directions indicate that, following the conclusion of the hearing process, a decision will be finalized within 28 days.</li> <li>• <b>Canada:</b> CRA indicated that the average time for resolution of a large-file objection was 690 days as of 2 November 2018.</li> <li>• <b>Denmark:</b> Speeding up the hearing of appeals and reducing the overall time of appeals; expected effects of new legislation coming into force from 1 July 2020.</li> <li>• <b>Japan:</b> National Tax Agency announced that the standard review period in Tax Offices is 3 months, and the National Tax Tribunal announced that the standard review period in the Tribunal is 1 year.</li> </ul>	
<i>Audi alteram partem</i> and the right to a fair trial	<ul style="list-style-type: none"> <li>• <b>Japan:</b> Administrative review procedure improved in favour of applicant. Applicant has the right to make oral presentation and ask tax officials questions, with the permission of judges.</li> <li>• <b>Spain:</b> Supreme Court judgment of 21 February 2019 upheld the possibility of the taxpayer to adduce and prove issues not brought up in the audit.</li> <li>• <b>United States:</b> Generally, the principle of <i>audi alteram partem</i> applies. Taxpayer First Act made several relevant changes:</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>○ Office of Appeals was renamed the "Independent Office of Appeals".</li> <li>○ IRS must give a justification for denying an appeal hearing to a taxpayer in most cases.</li> <li>○ IRS must create procedures for taxpayers to oppose such a denial, and it must report on denials to Congress.</li> <li>○ Office of Appeals must provide taxpayers with the non-privileged information in their case files at least 10 days before the appeals conference. However, an appeals conference can simply be an exchange of documents, and the IRS can deny taxpayers the opportunity for an appeals conference in certain limited circumstances.</li> <li>○ There is no right to an in-person hearing.</li> </ul>	
<i>Solve et repete</i>	<ul style="list-style-type: none"> <li>● <b>Portugal:</b> Legislation eliminated the 25% surplus (in addition to the combined amount of tax and interest assessed) from the overall amount of the guarantee to suspend tax foreclosure proceedings when taxpayers challenge additional tax assessments.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Peru:</b> Judiciary upheld that the filing of a constitutional protection's action (<i>amparo</i>) does not stop the execution of administrative acts, including tax matters.</li> </ul>
Cost of proceedings	<ul style="list-style-type: none"> <li>● <b>Spain:</b> Supreme Court annulled article 51.2 of the Revision Regulation (<i>Reglamento de Revisión</i>), since the quantification of the amount of appeal costs in a general and abstract way and disconnected from the specific procedure makes them lose their true legal nature.</li> <li>● <b>United States:</b> US Tax Court adopted a rule permitting limited entries of appearance at trial sessions, expanding availability of legal services to taxpayers.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Denmark:</b> System of reimbursement of state costs in tax cases no longer include cases on refunds of dividend tax, effective 1 January 2020.</li> </ul>
Public hearing	<ul style="list-style-type: none"> <li>● <b>In 53% of reports (28),</b> taxpayers can request a private hearing in camera to preserve secrecy/confidentiality.</li> </ul>	
Publication of judgments	<ul style="list-style-type: none"> <li>● <b>Belgium:</b> All judicial decisions will be made public through an</li> </ul>	

Taxpayers' right	Shift towards	Shift away
and privacy	electronic platform of decisions of the judicial order as of 1 September 2020. In those decisions, the data that identify or can identify the parties and other persons involved in the case need to be erased.	
<b>7. Criminal and administrative sanctions</b>		
The general framework	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> Delayed payments of tax fines up to 1 year allowed by legislation.</li> <li>• <b>Colombia:</b> As of 2019, compliance with tax obligations linked to the misreporting of assets or liabilities leads to the waiver of criminal actions.</li> <li>• <b>Spain:</b> Judiciary upheld <i>non bis in idem</i> in cases involving the alleged liability of invoice issuers as accessories to the tax offence of the receiver.</li> <li>• <b>Spain:</b> Supreme Court annulled regulation allowing the tax authority to request a criminal investigation once a tax assessment has been issued or a tax penalty has been imposed.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Legislation enacted to comply with ECtHR <i>A &amp; B v Norway</i> case law, allowing double prosecution and double sanctioning of tax infractions only in the case that both procedures are sufficiently linked in substance and in time.</li> <li>• <b>Brazil:</b> Supreme Court upheld that the recurrent lack of payment of indirect taxes, even if the debts are fully recognized by the taxpayer, qualifies as a criminal offence.</li> <li>• <b>Mexico:</b> New criminal penalties enacted. Particular forms of tax fraud (e.g. sale of “fake” invoices) deemed as organized crime and treated accordingly for criminal procedure purposes.</li> </ul>
Voluntary disclosure	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> “Standardization” tax for taxpayers misreporting assets and/or liabilities in lieu of criminal responsibility.</li> <li>• <b>Mauritius:</b> Two new voluntary disclosure schemes have been introduced under the Finance Act 2019 concerning small and medium Enterprises and foreign assets.</li> <li>• <b>Russia:</b> Supreme Court ruled that taxpayers involved in attempted tax offences will not be punished when having voluntarily and definitively stopped the commission of a crime.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Netherlands:</b> Voluntary disclosure regime abolished for savings/portfolio investments (box 3) held in the Netherlands and with respect to income from substantial interests (box 2) as of 1 January 2020.</li> </ul>
<b>8. Enforcement of taxes</b>		

Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>• <b>Brazil (Aires):</b> Provisional Measure 899/2019 (enacted by the President but still not ratified by Congress) provides for further opportunities for deferred payments in special cases.</li> <li>• <b>Italy:</b> Judiciary upheld the freedom of the debtor to design the contents of a pre-bankruptcy proposal, including the partial satisfaction of hierarchically high credits, including tax duties. Decision quashed discrimination in treatment of VAT debts, now allowed partial satisfaction.</li> <li>• <b>Peru-Montenegro:</b> Special conditions for filing returns and payment of taxes for those residing in disaster areas approved.</li> <li>• <b>Serbia:</b> As of 1 January 2019, taxpayers allowed to request delayed payment of arrears in electronic form. Grace period introduced, extended to 24 months in the case of taxpayers undergoing financial restructuring or reorganization, in line with the Bankruptcy Law.</li> <li>• <b>Spain:</b> Supreme Court annulled the regulation preventing the possibility of suspending the collection due to an ongoing review procedure. Also, Supreme Court declared that executive surcharges do not apply once the voluntary period has ended and the payment has been deferred, as long as it has not been decided.</li> <li>• <b>United States:</b> Statutory and administrative protections exist for taxpayers who would experience economic hardship due to tax collection actions. The TFA excludes accounts from being assigned to private collection agencies when the taxpayer's gross income is at or below 200% of the federal poverty line or when the taxpayer receives certain government assistance. However, the changes are not effective until 1 January 2021.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> In spite of inflation, exempt brackets of personal revenue taxes have not been increased since 2015.</li> <li>• <b>Canada:</b> A significant number of taxpayers do not understand the consequences of failure to pay tax debts. A few taxpayers were not notified before CRA took legal action (e.g. freezing bank accounts) to collect taxes.</li> <li>• <b>Canada:</b> More than 1.6 million Canadian banking records shared with the United States, TV reported.</li> <li>• <b>Cyprus:</b> Freezing of bank accounts facilitated through the introduction of the 4th and the 5th AML Directive.</li> <li>• <b>Italy:</b> Legislation enabled authorities to confiscate assets of taxpayers convicted of a tax offence where the origin of the assets cannot be explained by the taxpayer and the assets have a "disproportionate" value compared to the declared income or business.</li> <li>• <b>Mexico:</b> No judicial authorization required for freezing bank accounts or seizing assets.</li> <li>• <b>Uruguay:</b> High Administrative Court stated that shortage or lack of money is not an excuse for not paying taxes.</li> <li>• <b>Uruguay:</b> Even when prior authorization from the judiciary is required, courts tend to grant seizure requests coming from the tax authorities.</li> </ul>

Taxpayers' right	Shift towards	Shift away
<b>9.- Cross-border procedures</b>		
<p>EoIR: the right of the taxpayer to be informed of and to challenge EoI</p>	<ul style="list-style-type: none"> <li>• <b>Croatia:</b> New legislation on administrative cooperation includes provisions on treaties and exchange of information.</li> <li>• <b>Luxembourg:</b> Preliminary rulings introduced by the Luxembourg <i>Cour administrative</i> (Supreme Administrative Court) question the compatibility of the lack of court access by the concerned taxpayer in light of Charter rights, notably, article 47.</li> <li>• <b>Serbia:</b> Due to the signing of the MLI, improvements in the protection of taxpayer rights in cross-border procedures expected.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Croatia:</b> Neither right to be informed nor requests for information that benefit the taxpayer provided for in new legislation on administrative cooperation.</li> <li>• <b>Mexico:</b> Only information that benefits the tax authorities is requested.</li> </ul>
<p>Additional safeguards in connection with EoIR</p>		<ul style="list-style-type: none"> <li>• <b>Brazil:</b> Electronic accounting to be shared among local tax authorities, regardless of whether the operations took place within the territorial jurisdiction of the requesting authority.</li> <li>• <b>Canada:</b> CRA receiving information from 90 jurisdictions, providing to 64 jurisdictions and consulting with other jurisdictions to finalize best practices with respect to the use of information acquired through the CRS regime. Offshore Tax Informant Program allows informants to provide information to the CRA in certain circumstances in relation to high-dollar international tax non-compliance in return for a reward if tax is collected through the use of the information provided through the programme. No judicial authorization required.</li> <li>• <b>Mexico:</b> No judicial authorization needed for obtaining information from third parties.</li> <li>• <b>Mexico:</b> Legislation enables the tax authorities to use information provided by any third party, whether obtained legally or illegally, in procedures concerning the investigation of the sale or use of invoices that support simulated</li> </ul>

Taxpayers' right	Shift towards	Shift away
		<p>transactions.</p> <ul style="list-style-type: none"> <li>• <b>Slovenia:</b> New legislation enables tax authorities to collect necessary data from every third party. No judicial authorization is needed.</li> <li>• <b>Uruguay:</b> Independent and verifiable evidence that the requesting state observes high standards of data protection not required.</li> </ul>
<p>AEoI: the different issues of taxpayer protection</p>		<ul style="list-style-type: none"> <li>• <b>Mexico:</b> Taxpayers have no involvement at all.</li> </ul>
<p>Mutual agreement procedure</p>	<ul style="list-style-type: none"> <li>• <b>Austria:</b> EU Directive implemented, taxpayers entitled to initiate and participate in the MAP.</li> <li>• <b>Belgium:</b> EU Directive implemented, taxpayers entitled to initiate and participate in the MAP.</li> <li>• <b>Bulgaria:</b> EU Directive implemented, taxpayers entitled to initiate and participate in the MAP.</li> <li>• <b>Colombia:</b> New regulation provides the right of taxpayers to request the initiation of the MAP. Taxpayers can be heard and participate in the MAP provided that certain conditions are met.</li> <li>• <b>Russia:</b> New domestic legislation thoroughly regulates the MAP. No mention of taxpayers' possibility to request initiation.</li> <li>• <b>Serbia:</b> Official guidance on the MAP published, laying down requisites for filing a request for initiation of the procedure.</li> <li>• <b>Slovenia:</b> EU Directive implemented, taxpayers entitled to initiate and participate in the MAP. Although legally not provided for, some information is nevertheless provided for by the tax authority when additional explanations from the taxpayer are needed.</li> </ul>	

Taxpayers' right	Shift towards	Shift away
<b>10. Legislation</b>		
Constitutional limits to tax legislation: retrospective laws		<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Securities tax declared unconstitutional by Constitutional Court, applying prospectively.</li> </ul>
Public consultation and involvement in the making of tax policy and law	<ul style="list-style-type: none"> <li>• <b>China:</b> New regulation mandates public consultation on taxation regulatory documents "<i>which involve the vital interests of tax administrative counterparts or may have significant impacts on their rights and obligations, except for those that need to be kept confidential</i>".</li> <li>• <b>Netherlands:</b> The government uses public consultation more and more.</li> <li>• <b>Spain:</b> Supreme Court quashed regulation on tax information system due to the absence of the opinion of the State Council, as well as the prior consultation and public information.</li> <li>• <b>United States:</b> IRS committed to the notice-and-comment process when issuing interpretative tax rules, which gives the public an opportunity to comment on proposed rules. No special public comment procedure for tax legislation in place, but bills must go through the legislative process, which provides the public with an opportunity to weigh in with their representatives.</li> </ul>	
<b>11. Revenue practice and guidance</b>		
	<ul style="list-style-type: none"> <li>• <b>Canada:</b> CRA improved services and programmes for small and medium businesses regarding e-mail communications with tax authorities and a dedicated telephone service.</li> <li>• <b>Chile:</b> Public consultation system regarding tax court rulings introduced.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Czech Republic:</b> Tax authorities have "secret", unpublished guidelines. However, the taxpayer can ask for them under the Act on Free Access to Information.</li> <li>• <b>United States:</b> NTA raised concerns that the IRS may not be promptly disclosing all technical advice given through email.</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>• <b>China:</b> The newly amended Open Government Information Regulation enhanced the right of access to government information.</li> <li>• <b>Colombia:</b> In addition to public meetings and events, microsites have been created and strengthened to facilitate access to information, such as that related to the Simple Taxation Regime and Electronic Invoice.</li> <li>• <b>Colombia:</b> Constitutional Court upheld the right of taxpayers to rely on published guidance during reviews and appeals.</li> <li>• <b>Cyprus:</b> Improved website of the tax department.</li> <li>• <b>Japan:</b> Rulings issued by the National Tax Agency and Regional Taxation Bureaus are posted on the NTA's website in anonymized form for other taxpayers' reference. The name of a ruling applicant will be disclosed only if the applicant so wishes.</li> </ul>	
<b>12. Institutional framework for protecting taxpayers' rights</b>		
Statement of taxpayers' rights: charters, service charters and taxpayers' bills of rights	<ul style="list-style-type: none"> <li>• <b>United States:</b> Legislation requires the IRS to develop a comprehensive employee-training strategy, including annual training on taxpayer rights and the role of the Taxpayer Advocate, by 1 July 2020.</li> </ul>	
Organizational structures for protecting taxpayers' rights	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> National Taxpayer Advocate's management staff enhanced, independence strengthened through new legislation.</li> <li>• <b>Colombia:</b> Legislation aimed at expanding the personnel of the Ombudsman to guarantee the protection of taxpayers' rights. Presence of a senior executive delegate of the National Taxpayers' Advocate in main local offices of the tax authority mandatory.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Mexico:</b> Only one regional taxpayers' advocate office nationwide (Zacatecas).</li> </ul>



Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> Local taxpayers' advocate office created in Medellin.</li> <li>• <b>Spain:</b> Efforts by tax authorities have led to a decrease in complaints to the tax ombudsman.</li> <li>• <b>United States:</b> New legislation made several changes affecting Tax Ombudsman, better ensuring the advocate's independence from the IRS.</li> </ul>	

### Appendix «B»: The protection of taxpayers' rights per country (2019)

The following are the answers provided in all national reports to the questions regarding the effective implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights in 82 specific situations, as identified in Questionnaire #1 and explained in detail in the main text of this Yearbook. Accordingly, it is not advisable to interpret the content expressed in these charts separately from the explanations in the text above.

#### B.1. Argentina-Denmark

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>																					
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	In your country, is there a system of "cooperative compliance" / "enhanced relationship" that applies to some taxpayers only?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes
4	If yes, are there rules or procedures in place to ensure that this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?	N/A	No	Yes	No	No	N/A	Yes	No	N/A	No	N/A	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly and other special cases) to receive assistance in complying with their tax obligations?	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes
<b>2. The issuance of a tax assessment</b>																					
8	If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on the wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayment to them?	No	Yes	Yes	No	No	No	No	No	No	No	No	Yes		Yes	No	No	Yes	No	No	Yes
9	Does a dialogue take place in your country between the taxpayer and the tax authority	No	No	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes		Yes	Yes	Yes	Yes	No	No	Yes

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	before the issuance of an assessment in order to reach an agreed assessment?																				
10	If yes, can the taxpayer request a meeting with the tax officer?	N/A	N/A	Yes	Yes	Yes	Yes	Yes	N/A	N/A	Yes	Yes	N/A		Yes	Yes	No	Yes	N/A	N/A	Yes
<b>3. Confidentiality</b>																					
11	Is information held by your tax authority automatically encrypted?	No	No	Yes	No	No	Yes	Yes	No	No	Yes	Yes	No		Yes	No	Yes	No	No	Yes	Yes
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes		Yes	No	No	No	Yes	No	No
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	Yes	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	N/A		Yes	N/A	N/A	N/A	Yes	N/A	N/A
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes		Yes	Yes	No	No	No	Yes	Yes
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	Yes	Yes	Yes	No	No	No	Yes	No	No	Yes	Yes	Yes		Yes	No	No	No	No	No	No

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	Yes	No	No	No	Yes	Yes	No	Yes	No	No	Yes		Yes	No	No	No	No	No	Yes
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	No	Yes	No	No	No	No
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. <i>habeas data</i> or freedom of information)?	No	Yes	No	No	No	Yes	Yes	No	Yes	No	No	Yes		Yes	Yes	No	No	No	No	Yes
19	Is there a system of protection of legally privileged communication between the taxpayer and its advisers?	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes		Yes	Yes	Yes	No	No	Yes	Yes
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	N/A	No	No	Yes	Yes	Yes	No	N/A	No	No	No	N/A		No	Yes	Yes	N/A	N/A	Yes	No
<b>4. Normal audits</b>																					
21	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the	Yes	No	Yes	Yes	No	Yes	Yes	No	No	No	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	right to object and be heard before the decision is finalized)?																				
22	Are there time limits applicable to the conducting of a normal audit in your country (e.g. the audit must be concluded within so many months)?	Yes	No	No	No	Yes	Yes	No	No	Yes	No	Yes	Yes		Yes	Yes	No	No	No	No	No
23	If yes, what is the normal limit in months?	No	No	No	No	> 24	1-3	No	No	4-6	No	7-9	4-6		1-3	> 24	No	No	No	No	No
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes
25	May the opinion of independent experts be used in the audit process?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	No	Yes	No	Yes	Yes
26	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	No	Yes	Yes	No	Yes	Yes
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. the taxpayer can only receive one audit in respect of the same taxable period)?	Yes	No	Yes	No	No	Yes	No	Yes	Yes	No	No	Yes		Yes	Yes	No	Yes	No	Yes	No
28	If yes, does this mean only one audit per tax per year?	Yes	N/A	Yes	N/A	N/A	Yes	N/A	Yes	No	N/A	N/A	Yes		Yes	Yes	N/A	Yes	N/A	No	N/A
29	Are there limits to the	No	No	No	No	No	Yes	No	No	No	No	No	Yes		Yes	No	No	No	No	No	No

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes)?																				
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	No	No	No	No	No	Yes	No	Yes	No	No	No	Yes		No	No	No	Yes	No	No	No
<b>5. More intensive audits</b>																					
31	Is authorization by a court always needed before the tax authority may enter and search premises?	Yes	No	No	No	No	No	Yes	No	Yes	No	No	Yes		No	No	No	Yes	Yes	No	No
32	May the tax authority enter and search the dwelling places of individuals?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes		No	No	No	Yes	No	No	Yes
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	No	Yes		No	Yes	Yes	No	Yes	Yes	Yes
34	Is a court order required before the tax authority can intercept communications (e.g. telephone tapping or accessing electronic communications)?	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes		No	Yes	No	Yes	Yes	No	Yes
35	Is the principle <i>nemo tenetur</i> (i.e. the principle against self-	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes		Yes	No	Yes	No	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	incrimination) applied in tax investigations?																				
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	No	N/A	N/A	No	N/A	N/A	N/A	No	No	Yes	N/A	Yes		Yes	N/A	No	N/A	N/A	Yes	Yes
37	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	No	N/A	N/A	No	N/A	N/A	N/A	Yes	No	Yes	N/A	N/A		No	N/A	Yes	N/A	N/A	Yes	No
38	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge and, from that time onwards, the taxpayer's right not to self-incriminate is recognized?	No	No	Yes	No	No	Yes	No	Yes	No	Yes	No	Yes		Yes	No	No	No	Yes	Yes	Yes
39	If yes, is there a requirement to inform the taxpayer that the taxpayer can rely on the right to not self-incriminate?	N/A	N/A	Yes	N/A	N/A	Yes	N/A	Yes	N/A	Yes	N/A	N/A		No	N/A	Yes	N/A	No	No	Yes
<b>6. Reviews and appeals</b>																					
40	Is there a procedure for an internal review of an	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes



#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark	
	assessment/decision before the taxpayer appeals to the judiciary?																					
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	Yes	No	Yes	Yes	No	No	No	No	No	No	Yes		Yes	No	No	No	No	No	No	No
42	Is it necessary for the taxpayer to first bring his case before an administrative court to quash the assessment/decision before the case can proceed to a judicial hearing?	No	No	Yes	Yes	No	Yes	No	No	Yes	No	No	Yes		Yes	No	Yes	Yes	No	Yes	No	
43	Are there time limits applicable for the completion of the judicial appeal process in a tax case?	No	No	No	No	No	No	No	No	No	No	No	Yes		Yes	No	Yes	No	No	No	No	No
44	If yes, what is the normal time in months it takes for a tax case to be concluded on appeal?	No	No	No	No	No	No	No	No	No	No	No	4-6		4-6	No	1-3	No	No	No	No	No
45	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	Yes	No	Yes	No	No	Yes	No	No	No	No	No	Yes		Yes	No	No	Yes	Yes	Yes	Yes	No
46	If yes, are there exceptions recognized when the taxpayer does not need to pay before appealing (i.e. can obtain an	Yes	N/A	Yes	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A	N/A		Yes	N/A	N/A	Yes	No	Yes	Yes	N/A

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	interim suspension of the tax debt)?																				
47	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	Yes		No	No	No	No	No	No	No
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	Yes	No	No	No	No	No	Yes		No	No	No	No	No	No	Yes
49	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file or by e-filing)?	No	Yes	No	No	Yes	No	No	No	No	Yes	No	Yes		Yes	No	Yes	No	No	No	Yes
50	Is the principle <i>audi alteram partem</i> (i.e. each party has the right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	Yes
51	Does the loser have to pay the costs of a tax appeal?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		No	No	No	Yes	Yes	Yes	Yes
52	If yes, are there situations recognized in which the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	Yes	Yes	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes		N/A	Yes	N/A	No	Yes	No	Yes
53	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	No	No	Yes	Yes	Yes
54	If yes, can the taxpayer preserve its anonymity in the judgment?	No	Yes	Yes	Yes	No	N/A	No	No	Yes	No	No	N/A		No	No	Yes	No	Yes	No	Yes
55	If there is usually a public	No	Yes	Yes	No	Yes	No	No	No	Yes	No	No	Yes		Yes	Yes	Yes	No	Yes	No	Yes

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark	
	hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?																					
<b>7. Criminal and administrative sanctions</b>																						
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	B	No	B	C	C	B	No	B	B+C	No	B+C	No+A		B+C	B	B	B	B+C	B	No	
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	No	N/A	No	Yes	No	No	N/A	Yes	No	N/A	No	N/A		Yes	No	No	Yes	Yes	No	No	
58	If the taxpayer gives voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes		Yes	Yes	No	Yes	Yes	No	Yes	
<b>8. Enforcement of taxes</b>																						
59	Does the taxpayer have the right to request a deferred payment of taxes or payment	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	in instalments (perhaps with a guarantee)?																				
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	Yes	No	Yes	No	No	Yes	No	No	No	No	Yes	Yes		No	No	No	Yes	No	No	No
<b>9. Cross-border situations</b>																					
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?	No	No	No	No	No	No	No	No	No	No	No	Yes		Yes	No	Yes	No	No	Yes	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	No	No	No	No	No	No	No	No	No	No	Yes		Yes	No	No	Yes	No	Yes	No
63	If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?	No	N/A	N/A	No	No	N/A	No	No	No	No	No	Yes		N/A	No	N/A	No	No	N/A	No
64	Does the taxpayer have the right to be heard by the tax	No	No	No	No	No	No	No	No	No	No	No	Yes		No	No	No	Yes	Yes	No	No

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	authority before the exchange of information relating to him with another country?																				
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to him with another country?	No	No	No	Yes	Yes	No	No	Yes	No	Yes	No	Yes		No	No	No	Yes	Yes	Yes	Yes
66	Does the taxpayer have the right to see any information relating to him that is received from another country?	No	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes		Yes	No	Yes	Yes	No	Yes	Yes
67	Does the taxpayer have the right, in all cases, to require that the mutual agreement procedure is initiated?	Yes	No	Yes	No	No	No	No	No	No	No	No	Yes		No	Yes	Yes	Yes	Yes	No	No
68	Does the taxpayer have the right to see the communication exchanged in the context of the mutual agreement procedure?	Yes	No	No	No	No	No	No	Yes	No	No	No	Yes		No	No	No	Yes	No	Yes	Yes
<b>10. Legislation</b>																					
69	Is there a procedure in your country for public consultation before the adoption of all (or most) tax legislation?	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	No	Yes		Yes	No	Yes	Yes	Yes	Yes	Yes
70	Is tax legislation subject to constitutional review that can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
71	Is there prohibition of retrospective tax legislation in your country?	Yes	No	No	Yes	No	No	Yes	Yes	No	No	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	No
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	No	Yes	N/A	Yes	Yes	N/A	N/A	No	No	N/A	Yes		Yes	N/A	N/A	N/A	N/A	N/A	Yes
<b>11. Revenue practice and guidance</b>																					
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	N/A	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	N/A		Yes	Yes	No	Yes	Yes	Yes	Yes
75	Does your country have a generalized system of advance rulings available to taxpayers?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes		No	No	Yes	No	Yes	Yes	Yes
76	If yes, is it legally binding?	N/A	Yes	Yes	Yes	Yes	No	N/A	Yes	N/A	No	Yes	Yes		N/A	N/A	Yes	N/A	Yes	Yes	Yes
77	If a binding rule is refused, does the taxpayer have the right to appeal?	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes		No	Yes	No	No	Yes	No	Yes
<b>12. Institutional framework for protecting taxpayers' rights</b>																					
78	Is there a taxpayers' charter or taxpayers' bill of rights in	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No		No	Yes	Yes	No	No	No	No

#	Question	Argentina	Australia	Austria	Belgium (1)	Belgium (2)	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria	Canada	Chile	China (1)	China (2)	China (3)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	Denmark
	your country?																				
79	If yes, are its provisions legally effective?	N/A	No	No	No	Yes	N/A	Yes	N/A	No	No	Yes	Yes		N/A	No	No	N/A	N/A	N/A	N/A
80	Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?	No	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes		No	Yes	No	No	Yes	Yes	Yes
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	N/A	Yes	No	No	Yes	N/A	N/A	N/A	No	No	N/A	Yes		N/A	Yes	N/A	N/A	No	Yes	Yes
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	N/A	Yes	No	No	No	N/A	N/A	N/A	Yes	Yes	N/A	Yes		N/A	Yes	N/A	N/A	Yes	Yes	Yes

**B.2. Finland-Panama**

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>																			
1	Do taxpayers have the right to see the information held about them by the tax authority?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No
2	If yes, can they request the correction of errors in the information?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	N/A	Yes
3	In your country, is there a system of "cooperative compliance"/"enhanced relationship" that applies to some taxpayers only?	Yes	No	No	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	No	Yes	Yes
4	If yes, are there rules or procedures in place to ensure that this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?	No	N/A	N/A	N/A	No	N/A	Yes	No	Yes	N/A	No	Yes	N/A	N/A	Yes	Yes	No	Yes
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly or other special cases) to receive assistance in complying with their tax obligations?	No	Yes	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	No	Yes	Yes



#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
<b>2. The issuance of tax assessment</b>																			
8	If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on the wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayment to them?	No	Yes	No	No	No	No	Yes	Yes	No	No	No	No	No	No		Yes	No	Yes
9	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuance of an assessment in order to reach an agreed assessment?	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes
10	If yes, can the taxpayer request a meeting with the tax officer?	N/A	N/A	Yes	N/A	No	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
<b>3. Confidentiality</b>																			
11	Is information held by your tax authority automatically encrypted?	No	Yes	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No		No	Yes	No
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	No	Yes	Yes	No	No	Yes	No	Yes	Yes	No	Yes	No	Yes	No		Yes	Yes	Yes
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	No	Yes	Yes	Yes	N/A	Yes	N/A	Yes	Yes	No	Yes	N/A	Yes	N/A		Yes	Yes	Yes
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes	No	Yes	No		Yes	Yes	Yes

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	Yes	No	Yes	Yes	No	No	No	No	No	Yes	No	No	Yes	No		No	Yes	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	No	Yes	Yes	No	No	Yes	No	No	No	No	No	Yes	No		No	No	No
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	No	Yes	Yes	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes		No	No	No
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. <i>habeas data</i> or freedom of information)?	No	No	No	No	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes		No	Yes	No
19	Is there a system of protection of legally privileged communication between the taxpayer and its advisers?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No		Yes	Yes	Yes
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants and tax advisers)?	Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	No	No	No	N/A	N/A	N/A		Yes	No	Yes
<b>4. Normal audits</b>																			
21	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
22	Are there time limits applicable to the conducting of a normal audit in your country (e.g. the audit must be concluded within so	No	No	Yes	Yes	No	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes		No	No	Yes

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
	many months?																		
23	If yes, what is the normal limit in months?	No	No	16-18	16-18	No	19-21	1-3	No	4-6	No	No	10-12	10-12	10-12		No	No	4-6
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
25	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes
26	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. the taxpayer can only receive one audit in respect of the same taxable period)?	No	No	No	No	No	No	No	Yes	Yes	Yes	No	No	Yes	Yes		No	No	Yes
28	If yes, does this mean only one audit per tax per year?	N/A	N/A	N/A	N/A	N/A	N/A	N/A	No	No	No	N/A	N/A	No	Yes		N/A	N/A	Yes
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes)?	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No	No		No	No	Yes
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	Yes	No	No	No	No	Yes	No	No	No	No	No	No	No	No		No	Yes	Yes
<b>5. More intensive audits</b>																			
31	Is authorization by a court always needed before the tax authority may enter and search premises?	Yes	Yes	No	No	Yes	No	No	Yes	Yes	No	No	No	No	No		No	No	No
32	May the tax authority enter and search the dwelling places of individuals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes		No	Yes	Yes

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	Yes	No	No	No	No	Yes	No	Yes	No	No	No	No	No		No	Yes	Yes
34	Is a court order required before the tax authority can intercept communication (e.g. telephone tapping or accessing electronic communication)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No		Yes	Yes	No
35	Is the principle <i>nemo tenetur</i> (i.e. the principle against self-incrimination) applied in tax investigations?	No	Yes	Yes	Yes	Yes	No	No	Yes	No	No	No	No	No	No		Yes	No	Yes
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	Yes	No	No	No	N/A	N/A	No	N/A	Yes	N/A	N/A	N/A	N/A		Yes	N/A	Yes
37	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	Yes	No	No	No	N/A	N/A	No	N/A	No	N/A	N/A	N/A	N/A		No	N/A	Yes
38	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge and, from that time onwards, the taxpayer's right not to self-incriminate is recognized?	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No	No	No	No		Yes	Yes	Yes
39	If yes, is there a requirement to inform the taxpayer that the taxpayer can rely on the right to not self-incriminate?	N/A	Yes	No	No	N/A	N/A	N/A	No	N/A	Yes	N/A	N/A	N/A	N/A		Yes	No	Yes
<b>6. Reviews and appeals</b>																			

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	No	No	No	No	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes		Yes	No	No
42	Is it necessary for the taxpayer to first bring his case before an administrative court to quash the assessment/decision before the case can proceed to a judicial hearing?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes		No	No	Yes
43	Are there time limits applicable for the completion of the judicial appeal process in a tax case?	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No		No	No	Yes
44	If yes, what is the normal time in months it takes for a tax case to be concluded on appeal?	> 24	22-24	No	No	No	No	10-12	No	No	No	No	No	No	> 24		No	No	1-3
45	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No		No	No	No
46	If yes, are there exceptions recognized whereby the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	Yes	Yes	Yes	N/A	Yes	Yes	N/A	No	Yes	Yes	Yes	Yes	N/A		N/A	N/A	N/A
47	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No		No	No	No
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	Yes	Yes	No	No	No	No	No	No	No	No	Yes	No	No	No		No	No	No
49	Is there a system for the simplified resolution	No	Yes	No	No	No	No	Yes	No	Yes	No	No	No	No	Yes		No	No	No

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
	of tax disputes (e.g. by a determination on the file or by e-filing)?																		
50	Is the principle <i>audi alteram partem</i> (i.e. each party has the right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes		Yes	Yes	Yes
51	Does the loser have to pay the costs in a tax appeal?	No	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	No	No	No		No	No	No
52	If yes, are there situations recognized in which the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	N/A	Yes	Yes	Yes	N/A	N/A	Yes	N/A	N/A	No	Yes	N/A	N/A	N/A		N/A	N/A	N/A
53	Are judgments of tax tribunals published?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes		Yes	Yes	No
54	If yes, can the taxpayer preserve its anonymity in the judgment?	N/A	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	N/A	Yes	Yes		Yes	Yes	N/A
55	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	No	Yes	Yes	Yes	No	No	Yes	No	Yes	No	Yes	No	No	No		No	No	Yes
<b>7. Criminal and administrative sanctions</b>																			
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	C	No	C	C	A+B	No	B+C	B	No	B+C	No	B	B	B		B+C	C	C
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings	No	N/A	No	No	No	No	No	No	N/A	No	N/A	No	No	No		Yes	Yes	No

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
	arising from the same factual circumstances (e.g. a tax court and a criminal court)?																		
58	If the taxpayer gives voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes		Yes	Yes	Yes
<b>8. Enforcement of taxes</b>																			
59	Does the taxpayer have the right to request a deferred payment of taxes or payment in instalments (perhaps with a guarantee)?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	Yes	No	No	No	No	Yes	No	No	No	Yes		No	No	No
<b>9. Cross-border situations</b>																			
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No		No	No	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No		No	No	Yes
63	If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?	No	N/A	No	No	N/A	N/A	N/A	No	N/A	Yes	N/A	N/A	N/A	N/A		Yes	No	N/A
64	Does the taxpayer have the right to be heard	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No		No	No	Yes

#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
	by the tax authority before the exchange of information relating to him with another country?																		
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to him with another country?	No	Yes	Yes	Yes	No	No	No	No	No	No	No	Yes	No	Yes		No	Yes	Yes
66	Does the taxpayer have the right to see any information relating to him that is received from another country?	No	Yes	Yes	Yes	No	Yes	No	No	No	No	No	No	No	No		Yes	No	Yes
67	Does the taxpayer have the right, in all cases, to require that the mutual agreement procedure is initiated?	No	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes		No	No	Yes
68	Does the taxpayer have the right to see the communication exchanged in the context of the mutual agreement procedure?	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No		No	No	Yes
<b>10. Legislation</b>																			
69	Is there a procedure in your country for public consultation before the adoption of all (or most) tax legislation?	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No	No	Yes	No	Yes		Yes	Yes	Yes
70	Is tax legislation subject to constitutional review that can strike down unconstitutional laws?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes
71	Is there prohibition of retrospective tax legislation in your country?	No	No	No	No	Yes	No	Yes	No	No	No	No	Yes	Yes	Yes		No	No	Yes
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	No	Yes	Yes	Yes	N/A	No	N/A	Yes	No	N/A	Yes	N/A	N/A	N/A		Yes	Yes	Yes



#	Question	Finland	Germany	Greece (1)	Greece (2)	Guatemala	India	Italy	Japan	Kenya	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Mexico (3)	Netherlands(1)	Netherlands	New Zealand	Panama
<b>11. Revenue practice and guidance</b>																			
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes		Yes	No	Yes
75	Does your country have a generalized system of advance rulings available to taxpayers?	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
76	If yes, is it legally binding?	Yes	Yes	N/A	N/A	Yes	Yes	No	Yes	N/A	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes
77	If a binding rule is refused, does the taxpayer have the right to appeal?	Yes	Yes	No	No	No	Yes	Yes	No	No	No	No	Yes	Yes	No		No	No	Yes
<b>12. Institutional framework for protecting taxpayers' rights</b>																			
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	No	No	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes		No	Yes	Yes
79	If yes, are its provisions legally effective?	N/A	N/A	N/A	N/A	No	No	Yes	N/A	No	N/A	No	Yes	Yes	Yes		N/A	No	No
80	Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?	Yes	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes		Yes	Yes	No
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	No	N/A	Yes	Yes	N/A	N/A	Yes	No	N/A	Yes	Yes	Yes	Yes	Yes		No	No	N/A
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	No	N/A	Yes	Yes	N/A	N/A	No	No	N/A	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A

### B.3. Peru-Venezuela

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>																			
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	Yes	N/A	Yes	Yes	Yes
3	In your country, is there a system of "cooperative compliance"/"enhanced relationship" that applies to some taxpayers only?	Yes	No	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
4	If yes, are there rules or procedures in place to ensure that this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?	Yes	N/A	N/A	N/A	Yes	No	N/A	Yes	Yes	Yes	Yes	No	N/A	Yes	No	Yes	N/A	Yes
5	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly or other special cases) to receive assistance in complying with their tax obligations?	No	No	No	No	No	No	Yes	No	No	Yes	No	Yes	No	Yes	Yes	Yes	No	No

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
<b>2. The issuance of a tax assessment</b>																			
8	If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on the wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayment to them?	No	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No		No	No	No	No
9	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuance of an assessment in order to reach an agreed assessment?	No	Yes	Yes	No	Yes	No	No	Yes	Yes	No	Yes	No	Yes		Yes	Yes	Yes	No
10	If yes, can the taxpayer request a meeting with the tax officer?	N/A	Yes	Yes	N/A	Yes	N/A	N/A	Yes	Yes	N/A	No	N/A	Yes		Yes	Yes	Yes	N/A
<b>3. Confidentiality</b>																			
11	Is information held by your tax authority automatically encrypted?	No	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No		No	Yes	No	Yes
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	Yes	Yes	Yes	No	No	No	Yes	No	No	No	Yes	No	No		No	Yes	No	Yes
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	Yes	Yes	Yes	N/A	No	N/A	Yes	N/A	Yes	N/A	Yes	N/A	N/A		N/A	Yes	N/A	Yes
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No		No	Yes	No	No

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
	information?																		
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No		Yes	Yes	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	No	No	Yes	No	Yes	Yes	Yes	No	No	No	Yes	No		No	Yes	No	Yes
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	No		Yes	No	No	No
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. <i>habeas data</i> or freedom of information)?	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	No	No	No		Yes	Yes	No	No
19	Is there a system of protection of legally privileged communication between the taxpayer and its advisers?	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No		Yes	Yes	Yes	No
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	Yes	N/A	No	No	No	N/A	Yes	N/A	Yes	No	No	No	N/A		No	Yes	Yes	N/A
<b>4. Normal audits</b>																			
21	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No		No	Yes	Yes	Yes

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
22	Are there time limits applicable to the conducting of a normal audit in your country (e.g. the audit must be concluded within so many months)?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No	No		No	Yes	No	Yes
23	If yes, what is the normal limit in months?	13-15	10-12	10-12	1-3	4-6	1-3	No	4-6	No	4-6	16-18	No	No		No	> 24	No	1-3
24	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes
25	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes
26	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No		No	Yes	Yes	Yes
27	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. the taxpayer can only receive one audit in respect of the same taxable period)?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No		No	No	Yes	Yes
28	If yes, does this mean only one audit per tax per year?	N/A	No	No	Yes	Yes	No	Yes	No	N/A	N/A	N/A	N/A	No		N/A	N/A	No	Yes
29	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect of different periods or different taxes)?	No	No	No	No	No	Yes	No	No	No	No	No	No	No		No	No	No	No
30	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	No	No	No	No	Yes	No	Yes	No	No	Yes	No	No	No		No	No	Yes	Yes
<b>5. More intensive audits</b>																			
31	Is authorization by a court always needed	Yes	No	No	No	No	No	No	No	No	No	No	Yes	Yes		No	No	No	Yes

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
	before the tax authority may enter and search premises?																		
32	May the tax authority enter and search the dwelling places of individuals?	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes		Yes	Yes	Yes	No
33	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes		Yes	Yes	No	No
34	Is a court order required before the tax authority can intercept communication (e.g. telephone tapping or accessing electronic communication)?	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes
35	Is the principle <i>nemo tenetur</i> (i.e. the principle against self-incrimination) applied in tax investigations?	No	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes		Yes	Yes	Yes	No
36	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	N/A	Yes	Yes	Yes	No	N/A	No	No	No	N/A	N/A	Yes		No	No	No	N/A
37	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	No	No	No	No	N/A	No	Yes	No	N/A	N/A	No		Yes	No	Yes	N/A
38	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge and, from that time onwards, the taxpayer's right not to self-incriminate is recognized?	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes		Yes	Yes	No	No

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
39	If yes, is there a requirement to inform the taxpayer that the taxpayer can rely on the right to not self-incriminate?	N/A	N/A	Yes	Yes	N/A	N/A	N/A	Yes	No	Yes	N/A	Yes	Yes		Yes	Yes	Yes	N/A
<b>6. Reviews and appeals</b>																			
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes
41	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	No	No	No	No	No	No	No	No	Yes	No	No	No		Yes	Yes	No	No
42	Is it necessary for the taxpayer to first bring his case before an administrative court to quash the assessment/decision before the case can proceed to a judicial hearing?	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes	No	No		No	No	No	Yes
43	Are there time limits applicable for the completion of the judicial appeal process in a tax case?	Yes	No	No	No	No	Yes	Yes	No	No	No	No	No	No		No	No	No	No
44	If yes, what is the normal time in months it takes for a tax case to be concluded on appeal?	> 24	No	No	No	> 24	1-3	1-3	No	16-18	No	No	No	No		No	No	No	No
45	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No		No	No	No	No
46	If yes, are there exceptions recognized whereby the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	N/A	Yes	Yes	Yes	N/A	Yes	No	Yes	Yes	Yes	N/A	N/A		N/A	N/A	N/A	N/A

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
47	Does the taxpayer need permission to appeal to the first instance tribunal?	Yes	No	No	No	No	No	No	No	No	No	No	No	No		No	No	No	No
48	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	Yes	No	No	No	No	No	No	No	Yes	Yes	No	Yes	No		Yes	No	No	No
49	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file or by e-filing)?	No	No	No	No	No	Yes	No	No	Yes	No	No	No	No		Yes	Yes	No	Yes
50	Is the principle <i>audi alteram partem</i> (i.e. each party has the right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No		Yes	Yes	Yes	Yes
51	Does the loser have to pay the costs in a tax appeal?	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes		No	No	No	Yes
52	If yes, are there situations recognized in which the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	N/A	N/A	N/A	N/A	Yes	No	Yes	No	Yes	N/A	Yes	N/A	No		N/A	N/A	N/A	No
53	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	No	Yes
54	If yes, can the taxpayer preserve its anonymity in the judgment?	No	Yes	No	Yes	Yes	No	N/A	Yes	Yes	Yes	Yes	No	Yes		Yes	No	No	Yes
55	If there is usually a public hearing, can the taxpayer request a hearing on camera (i.e. not in public) to preserve secrecy/confidentiality?	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No		Yes	Yes	Yes	Yes
<b>7. Criminal and administrative sanctions</b>																			
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent (A) the imposition	B+C	No	B	B+C	B	B	B;C	A+B+C	C	C	B+C	No	B		No	No	No	B



#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
	of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?																		
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	No	N/A	No	No	No	No	No	No	No	No	Yes	Yes	Yes		N/A	N/A	N/A	Yes
58	If the taxpayer gives voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes		Yes	Yes	No	No
<b>8. Enforcement of taxes</b>																			
59	Does the taxpayer have the right to request a deferred payment of taxes or payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes
60	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	Yes	No	No	No	No	No	No	No	No	No	No	Yes		No	No	Yes	Yes
<b>9. Cross-border situations</b>																			
61	Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request?	No	No	No	No	No	No	No	No	Yes	No	No	No	Yes		No	No	Yes	No
62	Does the taxpayer have the right to be informed before information is sought from	No	No	No	No	No	No	No	No	No	No	No	No	Yes		No	Yes	No	No

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
	third parties in response to a specific request for exchange of information?																		
63	If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?	No	N/A	No	No	No	No	No	No	N/A	No	N/A	No	N/A		No	No	No	N/A
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country?	No	No	No	No	No	No	No	No	No	No	No	No	Yes		No	No	No	Yes
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to him with another country?	No	No	No	No	Yes	No	Yes	No	No	Yes	Yes	No	Yes		No	No	No	Yes
66	Does the taxpayer have the right to see any information relating to him that is received from another country?	No	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes		No	No	Yes	Yes
67	Does the taxpayer have the right, in all cases, to require that the mutual agreement procedure is initiated?	No	No	No	Yes	No	No	Yes	Yes	No	Yes	No	Yes	No		No	No	No	Yes
68	Does the taxpayer have the right to see the communications exchanged in the context of the mutual agreement procedure?	No	No	No	No	No	No	No	Yes	No	Yes	No	Yes	No		No	No	No	Yes
<b>10. Legislation</b>																			

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
69	Is there a procedure in your country for public consultation before the adoption of all (or most) tax legislation?	No	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	No	No	No
70	Is tax legislation subject to constitutional review that can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No		No	Yes	Yes	Yes
71	Is there prohibition of retrospective tax legislation in your country?	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No	Yes	Yes		No	No	Yes	Yes
72	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	N/A	N/A	N/A	Yes	N/A	Yes	N/A	N/A	N/A	Yes	N/A	N/A		Yes	No	N/A	N/A
<b>11. Revenue practice and guidance</b>																			
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes
74	If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes		Yes	No	Yes	Yes
75	Does your country have a generalized system of advance rulings available to taxpayers?	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes
76	If yes, is it legally binding?	N/A	N/A	Yes	No	Yes	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes		N/A	Yes	Yes	No
77	If a binding rule is refused, does the taxpayer have the right to appeal?	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	No	No	No	Yes		No	No	Yes	No
<b>12. Institutional framework for protecting taxpayers' rights</b>																			

#	Question	Peru (1)	Peru (2)	Peru (3)	Poland	Portugal	Russia	Serbia	Slovenia (1)	Slovenia (2)	South Africa	Spain	Sweden	Switzerland	Taiwan	United Kingdom	United States	Uruguay	Venezuela
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	No	No		Yes	Yes	Yes	Yes
79	If yes, are its provisions legally effective?	N/A	No	Yes	Yes	N/A	N/A	No	N/A	N/A	No	Yes	N/A	N/A		No	Yes	Yes	Yes
80	Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	No	No		Yes	Yes	No	No
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	No	No	No	Yes	N/A	N/A	N/A	N/A	N/A	No	Yes	No	N/A		No	Yes	N/A	N/A
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	Yes	No	Yes	Yes	N/A	N/A	N/A	N/A	N/A	Yes	Yes	No	N/A		Yes	Yes	N/A	N/A