

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



***The IBFD Yearbook on Taxpayers' Rights  
2020***



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# Part I

## Overview of Findings

## 1. Introduction

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

Part I of the 2020 Yearbook provides a summary of the most significant findings of this year, which serves to illustrate the overarching trends. This summary is followed by 12 short introductions to different areas, which provide a quick overview of the major developments within each of them. Finally, Part I also provides a detailed description of the method used for the underlying data.

Part II of the 2020 Yearbook elaborates on all 12 areas and provides the full set of findings for each of them, supported by reference to the underlying empirical data from the 53 reports provided for this year.

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

## 2. Most Significant Developments of the Year

The year 2020 has been significant in many ways, and the effects of the all-pervading pandemic have been palpable also in the area of taxpayer's rights. While the subject of COVID-19 can scarcely be avoided, 2020 is also significant for protecting taxpayers' rights because it marks the fifth anniversary of the IBFD Observatory on the Protection of Taxpayers Rights' work. This milestone, from the beginning with the General Report of the 69th International Fiscal Association (IFA) Congress in Basel in 2015 until this 2020 OPTR Yearbook, is a great occasion to take inventory of the overall level of protection of taxpayers' rights achieved throughout the period.

In 2020, the pandemic proved once again that necessity is the mother of invention. Several measures have been introduced that provide quantum leaps for the protection of taxpayers' rights in practice. Some of these advances may have been introduced out of necessity, but several could provide continuing protection of taxpayers' rights if made permanent. More general developments in terms of taxpayers' rights have been reported alongside these developments, which have significantly contributed to this 5-year milestone.

Much as in 2015-2019, there was significant progress in 2020 regarding taxpayers' identification and communication and the protection of data and confidential information held by tax administrations. In 2020, force majeure has prevented physical meetings, but tax administrations worldwide have found new ways to communicate, including virtual meetings, giving rise to a clear global trend towards digitalizing communication with taxpayers. While these measures present some clear advantages, they also include some risk regarding the security of taxpayers' privacy and confidentiality, and specific solutions have been devised to mitigate these risks of digitalization. These solutions include a range of specific processes to verify the taxpayer's identity, systems to prevent impersonation or duplication, identification numbers and faceless identification schemes.



The constraints on physical presence have also put a strain on ordinary tax administration procedures and systems in general, which have resulted in severe delays and backlogs due to the administrative and court systems' suspensions of operations in several states. While these issues have been dealt with by innovative measures in several jurisdictions, there are still issues such as delays and lack of information and transparency for taxpayers regarding when they can expect their cases to be handled.

Another general trend that has developed over the last 5 years<sup>1</sup> concerns confidentiality, the *third* of the Baker-Pistone areas monitored by the OPTR. The increasing number of reporting obligations for the sake of tax transparency has given rise to several taxpayer confidentiality issues. Similar findings have been reported by the International Law Association's (ILA) study group on international tax law, which is also a research project related to the protection of taxpayers' rights. The group publishes their ongoing findings in a biennial report, and for 2020 this report also deals with data protection standards and how they apply to individuals, including third parties, and, indirectly, to companies.<sup>2</sup> There has been positive development in this area since 2015, with the majority of jurisdictions providing specific guarantees for confidentiality in domestic law and sanctions for officials making unauthorized disclosures, which has been extended even further in 2020. The specific 2020 measures to cushion the blow of the pandemic have necessitated further security measures, such as special software and encryption of information to ensure confidentiality in this new and more virtual reality.

Concurrently with the developments towards greater tax transparency and the corresponding need to ensure confidentiality, 2020 has also produced several cases that test the boundaries of reporting obligations<sup>3</sup> and what the tax administrations can legally do to obtain information.<sup>4</sup> Specific measures such as "naming and shaming" also undergo scrutiny at the European Court of Human Rights (ECtHR).<sup>5</sup> In the same vein, the limits of disregarding confidentiality in the name of public interest have been tested in a ruling by the Gauteng Division of the High Court of **South Africa**, one of the highlights in taxpayers' rights protection for 2020.<sup>6</sup> Overall, developments in 2020 have provided some guidelines for

<sup>1</sup> P. Baker & P. Pistone, *General Report*, in *The Practical Protection of Taxpayers' Fundamental Rights* sec. 1.1., p. 28 (IFA Cahiers vol. 100B, 2015), Books IBFD.

<sup>2</sup> International Law Association (ILA) – Study Group on International Tax Law, *Final Report Kyoto 2020*, available in English at: <https://www.ila-hq.org/index.php/study-groups> (accessed 8 Mar. 2021).

<sup>3</sup> In particular, new reporting obligations under Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, OJ L139 (2018), Primary Sources IBFD [hereinafter DAC6]. The first referral regarding DAC6 to the Court of Justice of the European Union (ECJ) was on 21 December 2020, by Belgium (Case C-694/20). The case deals with the Belgian implementation of DAC6 and its compatibility with the Charter of Fundamental Rights regarding fair trial and respect of private life. The case is dealt with in further detail in sec. 9. of this yearbook.

<sup>4</sup> In **Belgium**, the Ghent Court of Appeals ruled in a case concerning tax officials wearing bodycams during a tax audit in a taxpayer's business premises. The cameras were ostensibly used to ensure the tax officials' safety, while in reality the filmed footage of the inspection was broadcast on television as part of a television show. According to the Court, the tax authorities violated their professional secrecy by filming a tax inspection and allowing its broadcast on television.

<sup>5</sup> HU: ECtHR, 12 Jan. 2021, no. 36345/16, *L.B. v. Hungary*, available at [https://hudoc.echr.coe.int/eng\\_-\\_itemid%22:%22001-207132%22](https://hudoc.echr.coe.int/eng_-_itemid%22:%22001-207132%22)] (accessed 9 Mar. 2021).

<sup>6</sup> ZA: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 20. The case is dealt with in further detail in sec. 3.11 of this yearbook.

determining the limits of administrative activity in this field. This trend goes hand in hand with an overarching discussion of whether compulsory public disclosure of information concerning companies is in fact a global trend or an actual schism, as the OECD and the BEPS project have accepted non-public country-by-country reporting, and, at the EU level, the European Parliament finds this insufficient. A general trend that has continued to grow since 2015 is the overall globalization of tax law, alongside the OECD and the EU's influence on how states deal with these developments and how they protect their taxpayers within that framework. For some areas of the protection of taxpayers' rights, such as criminal and administrative sanctions (the *seventh* of the Baker-Pistone areas monitored by the OPTR), 2020 has seen positive developments – for example, that the negative trend reported in previous years on the *ne bis in idem* principle (the prohibition of double jeopardy) seems to be starting to reverse.<sup>7</sup> An excellent example of this positive development is the decision of the Supreme Court of **Spain** favouring the taxpayer in a landmark ruling on double jeopardy.<sup>8</sup> Along the same path, significant developments have happened in the wake of the *A and B v. Norway* ruling from the ECtHR, which has inspired **Belgium** to introduce a new system integrating the administrative tax procedure with the prosecution of tax offences before a criminal court. Similarly, the ruling has led the Grand Chamber of the Supreme Administrative Court (Council of State) of **Greece** to harmonize its case law, overruling its previous approach.<sup>9</sup> These developments do not suggest that a balanced solution to *ne bis puniri* issues in tax matters has yet been found. A comprehensive conceptual reform is needed instead. Such reform should prohibit double jeopardy after drawing a precise dividing line between penalties, which have a predominantly punitive function, and surcharges, which top up the tax for the failure to pay it timely.

On a final note regarding the specific COVID-19-related developments of 2020, several trends have emerged as a result of taxpayers being hard-pressed to comply with their tax obligations both in terms of general compliance, new reporting requirements and the actual payments of taxes, and in terms of fully understanding and complying with the multitude of new tax incentives provided to aid them during this difficult time. Our report presents a thorough overview of these measures. At a general level, it is interesting to observe that, in the absence of any actual coordination in the approach to such issues, states have dealt with their taxpayers' needs in innovative ways, generally relaxing the fulfilment of tax compliance obligations and, in this way, facilitating a proportionate solution to such obligations in the exceptional circumstances. Albeit the situation is unique, this is an example of the importance of ensuring taxpayers' rights as part of well-functioning and efficient tax authority and revenue collection.

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

Tax compliance had to be reimagined in many ways in 2020. At the core of the interim or new measures introduced in this year stands communication between the tax administration

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<sup>7</sup> Observatory on the Protection of Taxpayers' Rights (OPTR), [The IBFD Yearbook on Taxpayers' Rights 2019](#) sec. 7.1 (IBFD 2020), Books IBFD.

<sup>8</sup> The case is dealt with in further detail in sec. 7.1. of this yearbook.

<sup>9</sup> Both examples are dealt with in more detail in sec. 7.1. of this yearbook.

and the taxpayer. The general trend since 2015 has been towards self-assessment by default and increased digitalization.<sup>10</sup> In 2020, this trend accelerated with warp speed in the majority of the surveyed jurisdictions. So much so that, in 2020, 98% of the surveyed jurisdictions reported that taxpayers could communicate electronically with their tax administration, and 91% of the surveyed jurisdictions reported that they have mechanisms in place to prevent impersonation or communication interception.

As a particularly noteworthy example, **Australia** has introduced specific measures to assist taxpayers impacted by the 2019/2020 bushfires and help them comply with their tax obligations, and similar assistance has been offered during and because of the pandemic.<sup>11</sup>

In addition, the digitalization of communication has been extended to include specific online assistance in filing tax returns and in general compliance for taxpayers during the pandemic. Surveyed jurisdictions implemented online appointments and real-time chats, and extended deadlines for filing returns across the board, among other measures. While this is largely reported as a part of overall COVID-19 assistance schemes, these initiatives could provide additional protection for taxpayers as general measures if implemented and safeguarded adequately.

## 2.2. The issue of tax assessment

Throughout the last 5 years, national practice shows continued development towards a constructive dialogue between taxpayers and revenue authorities before a tax audit occurs, increasingly built on cooperative compliance.<sup>12</sup> This trend is accompanied by an overall tendency to introduce electronic filing, both for general reporting and, in some jurisdictions, to correct tax returns and other filings, such as in the **United States**, which allows e-filing for amended individual income tax returns through commercial software.<sup>13</sup> In terms of agreeing with the tax assessment, **New Zealand** has introduced an interesting new practice by which the tax authorities can, before the audit commences, invite the taxpayer to explain the preliminary determinations implying the occurrence of a tax loss.<sup>14</sup>

For the year 2020, the dialogue between administrations and taxpayers has taken on new shapes due to the limitations on physical meetings, with several countries such as **Brazil**,<sup>15</sup> **Chile**,<sup>16</sup> **Mauritius**,<sup>17</sup> the **Netherlands**<sup>18</sup> and **Peru**<sup>19</sup> implementing virtual meetings.

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<sup>10</sup> Baker & Pistone, *supra* n. 1, at sec. 1.1., p. 23.

<sup>11</sup> AU: OPTR Report (Ombudsperson/Academia), Questionnaire 2 (Developments Form), Question 9.

<sup>12</sup> The data provided for the 2020 Yearbook reveals that 63% of the surveyed jurisdictions (27 out of 51) report that their jurisdictions have systems for cooperative compliance; cf. Chart 5 and also sec. 1.6.

<sup>13</sup> US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2 (Developments Form), Question 10.

<sup>14</sup> NZ: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 8.

<sup>15</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 9.

<sup>16</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 9.

<sup>17</sup> MU: OPTR Report (Taxpayer/Tax Practitioner) Questionnaire 2, Question 10.

<sup>18</sup> NL: OPTR Report (Taxpayer/Tax Practitioner) Questionnaire 2, Question 9.

<sup>19</sup> PE: OPTR Report (Academia/Taxpayer/Tax Practitioner) Questionnaire 2, Question 9.

Unfortunately, not all the developments in this regard are positive, as some countries have reported scarce staffing resources and consequent issues for communication with taxpayers, including **Belgium**,<sup>20</sup> **Serbia**<sup>21</sup> and the **United States**.<sup>22</sup>

### 2.3. Confidentiality

Transparency has been a continuing trend throughout the last 5 years, and it remains a significant challenge to balance the state's legitimate interest against the taxpayers' right to privacy. As described in section 1.1., 2020 has produced some important cases that test these boundaries; in addition, continuing the trend set in 2015,<sup>23</sup> most of the reports state that there are specific guarantees for confidentiality in domestic law and sanctions for officials making unauthorized disclosures.

One example of this positive development is **Bolivia's** introduction of a new high-net-worth tax act stating that tax officials and former tax officials may not disclose, assign or communicate the information obtained because of their position. Such information is reserved by operation of law, under administrative, civil or criminal responsibility.<sup>24</sup> As a stark reminder of how important these matters are, **Canada** was forced to respond to "credential surfing" cyberattacks targeting Canada Revenue Agency accounts and GCKey<sup>25</sup> services. As a result of the cyberattacks, the Canada Revenue Agency disabled online services related to changes of address and phone number, arrangements for direct deposit and appointment of an authorized representative.<sup>26</sup>

### 2.4. Normal audits

The drift away from proportionality, *ne bis in idem*, *audi alteram partem* and *nemo tenetur se ipsum accusare*, as observed in previous OPTR reports, seems to have somewhat curtailed in 2020, which is very encouraging.<sup>27</sup> One example of such positive development can be seen in relation to *ne bis in idem*: half the jurisdictions now report that the principle applies to tax audits, compared to 47% in 2019. For countries where the *ne bis in idem* principle applies to tax audits, slightly more than half report that this means only one audit per taxable period, in line with the trend since 2018.

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<sup>20</sup> BE: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 9.

<sup>21</sup> RS: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 9.

<sup>22</sup> US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2 (Developments Form), Question 9.

<sup>23</sup> Baker & Pistone, *supra* n. 1, at p. 28.

<sup>24</sup> BO: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 12.

<sup>25</sup> A GCKey is a unique electronic credential issued by the government of Canada for use with online government services.

<sup>26</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Questions 13; cf. also sec. 3.4..

<sup>27</sup> See sec. 4 for further details on the specific principles and their development.

Regarding the principles applicable to normal audits, the Court of Justice of the European Union (ECJ) ruled in *SC C.F.* (Case C-430/19) that the right of access to the administrative file is a corollary of the right to be heard before any decision is taken.<sup>28</sup>

The year 2020 has seen a significant need to extend deadlines, in part for the sake of taxpayers in meeting their reporting and compliance obligations; but the extension of deadlines has unfortunately also been prevalent on the side of the tax administration. While it is difficult to determine what a “reasonable” time limit is, this issue has been incredibly delicate due to the challenges of the pandemic, which have led to the scarce availability of personnel and the need to implement new procedures and other measures.

### 2.5. More intensive audits

As is the case for normal audits, the shift away from the fundamental principles previously reported has been curtailed in some regards to the taxpayers’ benefit. While there is room for improvement, some positive developments are discernible that balance out the trend that secrecy is a thing of the past and that tax authorities’ access to information is increasing.

For example, in **Belgium**, the tax authorities have the legal possibility to consult a register at the Belgian National Bank that holds information on the existence of bank accounts for each taxpayer. If the tax authorities wish to consult this register, they must comply with certain legal conditions, one of those being that the inquiring tax official must have a specific rank. Similarly, in **Bolivia**, the tax administration’s competence to access bank information has been reinforced,<sup>29</sup> and new financial disclosure rules for financial institutions in **Peru** mean that most of the financial information of individuals and companies will be automatically sent to the tax administration when the accounts of those individuals or companies have a balance of at least approximately EUR 3,000.<sup>30</sup>

In **Uruguay**, a positive development has been reported in case law providing relevant guidelines for the proper issuance of judicial authorizations. In a very positive development regarding the inspection of the taxpayer’s home, the Supreme Court of **Spain** ruled, on 1 October 2020, that there should be no entry authorization for prospective, statistical or indefinite purposes (i.e. a “fishing expedition”), without precisely identifying what specific information is to be obtained.<sup>31</sup>

Finally, it is noteworthy that control measures have been suspended in several jurisdictions due to the outbreak of the COVID-19 pandemic, meaning that intensive tax audits were also suspended.

### 2.6. Reviews and appeals

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<sup>28</sup> RO: ECJ, 4 June 2020, Case [C-430/19](#), *SC C.F.*, Case Law IBFD; cf. also sec. 4.1..

<sup>29</sup> BO: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 44.

<sup>30</sup> PE: OPTR Report (Taxpayers/Tax Practitioners) Questionnaire 2, Question 44.

<sup>31</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 43.

For this area, the outcome of the COVID-19 pandemic in terms of digitalization of the communication between the tax administration and taxpayers, as described in section 1.1., has offered e-filing of tax returns and other reports, just as it sometimes offers electronic filing of reviews of incorrect tax assessments, speeding up the correction of tax assessments and, therefore, increasing effectiveness.

Also positively, the previous trend towards limiting access to justice by requiring the prior exhaustion of administrative review before bringing a case to court seems to have been brought to a halt, with slightly less than half the jurisdictions now reporting that this is necessary.<sup>32</sup> Immediate access to justice is an essential component of the effective protection of fundamental rights. An important ECJ judgment confirmed in 2020 that non-independent bodies conducting administrative review in tax matters are not to be regarded as part of the judiciary, prompting the need for a comprehensive reform in Spain in order to secure swift access to justice. In line with the research conducted by the Baker-Pistone 2015 IFA report,<sup>33</sup> and continued in the framework of the European Association of Tax Law Professors (EATLP) on the relation between administrative review and judicial appeals,<sup>34</sup> it is hoped that this judgment might have a global impact.

One unfortunate development is that only 32% of the surveyed jurisdictions have arranged for the adoption of alternative dispute resolution (ADR) in practice – that is, incorporating a system for the simplified resolution of tax disputes – despite the increased effectiveness ADRs entail in solving tax disputes. EU Member States also have to implement the Tax Dispute Resolution Directive (2017/1852)<sup>35</sup> to ensure that tax disputes are resolved quickly and efficiently and avoid the unnecessary burden on businesses that may result from lengthy procedures and long periods of uncertainty. This is pivotal to ensure the right to a fair trial and the freedom to conduct a business as principles under the Charter of Fundamental Rights of the European Union.<sup>36</sup> In this context, it will also be important to secure the effective participation of the affected persons to such procedures, excluding it only when there is a clear and valid reason.

## 2.7. Criminal and administrative sanctions

For some time now, punitive tax law has tended to exceed the boundaries of the core of taxpayers' rights, as described in section 7. below. This trend has extended the applicable punitive tax liabilities to both taxpayers and third parties because of the predominance of public authority prerogatives and the efficiency of tax collection.<sup>37</sup>

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<sup>32</sup> Cf. Chart 43 and sec. 6.1..

<sup>33</sup> Baker & Pistone, *supra* n. 1,

<sup>34</sup> European Association of Tax Law Professors (EATLP), *Tax Procedures* (International Tax Series vol. 18, IBFD 2020), Books IBFD.

<sup>35</sup> Council Directive [2017/1852](#) of 10 October 2017 on tax dispute resolution mechanisms in the European Union, OJ L265 (2017), Primary Sources IBFD.

<sup>36</sup> J. Kokott, [Taxpayers' Rights](#), 60 Eur. Taxn. 1 (2020), Journal Articles & Opinion Pieces IBFD.

<sup>37</sup> C.E. Weffe H., [Taxpayers' Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting Project](#), 74 Bull. Intl. Taxn. 2, sec. 2.4.4. (2020), Journal Articles & Opinion Pieces IBFD.

As mentioned in section 1.1., 2020 has seen positive development as the negative trend reported in previous years regarding the *ne bis in idem* principle (the prohibition of double jeopardy) seems to be starting to reverse,<sup>38</sup> with some specific rulings and examples to support this – as discussed in section 7.2. of Part II of this yearbook. Besides, the ECtHR has ruled in a series of cases important to this area: for example, in the case *Agapov v. Russia*,<sup>39</sup> in which the court ruled that the tax authorities had sought to pierce the corporate veil by obliging the applicant to pay damages due from the company of which he was the managing director. According to the Court, in the absence of a judgment declaring the applicant guilty of tax evasion, this violates the European Convention on Human Rights (ECHR) requirements, in particular article 6 § 2 and article 1 of Protocol no. 1.

## 2.8. Enforcement of taxes

In previous years, the trend has been that few safeguards have been implemented to protect taxpayers' *minimum vitale*. Tax enforcement is key to financing society and therefore provides the tax authority with greater powers, and opposite this stands the taxpayer's human dignity, limiting this power by ensuring the right to a dignified existence defined as the minimum necessary for living. The need to strike the right balance between such rights requires a proportionate approach, which applies the rule of law and takes into account exceptional circumstances that may justify deviations from it.

For the year 2020, funds have been scarce among many taxpayers, and as a consequence, several countries have introduced postponements on collecting taxes, reduced interest rates for late payment of taxes, and some extension in due dates for compliance. In the absence of ad hoc measures introduced by the legislator, such circumstances should generally not justify invoking force majeure for not paying taxes on grounds related to the lack of an actual ability to pay them. However, force majeure should apply to cases of late compliance with formal obligations in the absence of proper digital infrastructure and software.

Another global trend reported in connection with the COVID-19 pandemic is the introduction of VAT reduced rates for specific goods such as medical or electronic supportive measures.

Overall, the unique situation in 2020 has served as an excellent example that tax systems should protect fundamental rights of taxpayers also by giving proper consideration to situations where taxpayers cannot meet their obligations and payments without losing the minimum necessary for living.

## 2.9. Cross-border procedures

A continued trend throughout the last 5 years is that cross-border procedures are becoming increasingly common and, presumably, this trend will only continue to grow in the framework of the implementation of the base erosion and profit shifting (BEPS) and tax transparency projects. Unfortunately, taxpayers' rights have been weakened in practice, as they are generally not involved in the cross-border procedures carried out between states. Research conducted in the framework of the EATLP<sup>40</sup> and ILA<sup>41</sup> projects affirms that non-state actors

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<sup>38</sup> OPTR, [The IBFD Yearbook on Taxpayers' Rights 2019](#) sec. 7.1. (IBFD 2020), Books IBFD.

<sup>39</sup> RU: ECtHR, 6 Oct. 2020, no. 52464/15, [Agapov v. Russia](#); see also sec. 7.1. for further details.

<sup>40</sup> EATLP, *supra* n. 34.

are not merely the objects of such procedures, but also holders of actual rights. The OPTR strongly supports the importance of a global dialogue on the effective protection of taxpayers' rights as a necessary condition to comply with the fundamental principles of the civilized nations. From such a perspective, the technical content elaborated in the framework of the OPTR contributes to the development of a global standard that also respects the collective rights of each national community to levy taxes.

The global weakening of the protection of taxpayers' rights contrasts starkly with the simultaneous development of systems to ensure taxpayers' legal standing in terms of access to mutual agreement procedures (MAPs) in article 16(1) and mandatory arbitration in article 19(1) of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (2017) (MLI). The OPTR believes that the unwillingness to secure the effective protection of taxpayers' rights in cross-border situations is a short-sighted approach to fundamental issues that will increase judicial disputes before national courts, and will potentially undermine legal certainty and the correct functioning of cross-border economic and social relations.

The same unbalanced attitude characterizes the open-ended trend towards admitting mandatory disclosure of tax minimization arrangements. The introduction of such broad obligations has given rise to many issues that could have been avoided if only the global approach to tax avoidance had taken into account the importance of securing the effective protection of fundamental rights. Insofar as protection of fundamental rights of taxpayers is a necessary corollary to protection of the rights of persons, global tax coordination should address those issues, without waiting for courts to fix it up on a case-by-case basis. Intervention is urgently needed – also considering that, in the European region, the ECJ will soon have to address the first referral on DAC6 reporting, i.e. under Council Directive 2018/822 of 25 May 2018, amending the Mutual Assistance Directive (2011/16/EU) (DAC). This referral (Case C-694/20) was made on 21 December 2020 by a Belgian court, and concerns the Belgian implementation of DAC6 and its compatibility with the Charter of Fundamental Rights regarding fair trial and respect for private life.<sup>42</sup>

The year 2020 has been an exciting one as far as cross-border procedures are concerned, as this has been the first year for reporting under some of these new measures. At the same time, it has been a particularly challenging year due to the pandemic. In terms of the first DAC6 reporting, numerous jurisdictions have postponed these initial reportings.

Surprisingly, the surveyed jurisdictions did not report many developments in 2020 regarding the exchange of information benchmarks monitored by the OPTR. However, some interesting developments have taken place at a global level: for example, in **Argentina**, where the tax authorities demonstrated that these measures are also used in practice by exceptionally interrupting the temporary cessation of activities established because of the COVID-19 pandemic to pursue a special investigation on data provided by the OECD under the automatic exchange of information.<sup>43</sup>

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<sup>41</sup> ILA Study Group on International Tax Law, *supra* n. 2.

<sup>42</sup> For further details on this case, see section 9.1.

<sup>43</sup> E.O. Meloni, [Tax Authorities Establish Special Investigation on Automatic Exchange of Information Data](#) (4



In brighter news for taxpayers' rights, the widespread ratification of the MLI furthers the protection of taxpayers' rights in cross-border situations through MAPs and mandatory binding arbitration. In the same vein, the EU tax dispute resolution mechanisms also provide better taxpayer protection in this regard at an EU level.<sup>44</sup>

## 2.10. Legislation

True to the previous trend, not many developments were reported for this area in 2020. The ECtHR ruled in *Vegotex v. Belgium*<sup>45</sup> in favour of permitting the retrospective application of a tax law, provided there are compelling reasons of general interest, which is interesting as most surveyed jurisdictions report that retrospective legislation is prohibited.<sup>46</sup>

## 2.11. Revenue practice and guidance

For taxpayers to be aware of the legal materials in ordinary times requires a certain level of transparency and guidance on the part of the tax administration, as has been evidenced in previous years. In a year dominated by a global pandemic, these measures become especially important, in order for the taxpayers to keep up with the rapid development of tax law and in order for them to be able to understand these new measures and adhere to them.

Notably, in 2020, guidelines on tax measures have been of immense importance, considering the vast number of unprecedented specialized tax rules implemented due to the COVID-19 pandemic. Consequently, numerous jurisdictions have reported news on specific guidelines intended to facilitate their citizens' understanding of the relevant tax measures.<sup>47</sup>

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

While 2020 has been a year defined by rapidly enacted legislation and new measures, and while this has been necessary to take action regarding the current situation, states must still adhere to legality and provide adequate protection of taxpayers' rights. While one report<sup>48</sup> mentioned issues in this regard, the broad introduction of these new measures was intended to safeguard the taxpayers' rights.

Some positive developments have also been reported, with **Chile** introducing a new charter for taxpayers' rights and an ombudsman to assist those taxpayers who cannot afford their defence in court.<sup>49</sup>

Finally, an interesting and important debate has arisen in the **United States** forum regarding the enforceability of the US federal taxpayers' bill of rights, and specifically the possibility of

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May 2020), News IBFD.

<sup>44</sup> J. Kokott, *supra* n. 36, at p. 3.

<sup>45</sup> BE: ECtHR, 10 Nov. 2020, no. 49812/09, [Vegotex International S.A. v. Belgium](#); see also sec. 10.2.

<sup>46</sup> Cf. Chart 69 and sec. 10.

<sup>47</sup> See also sec. 11. for details on these measures.

<sup>48</sup> IT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 9.

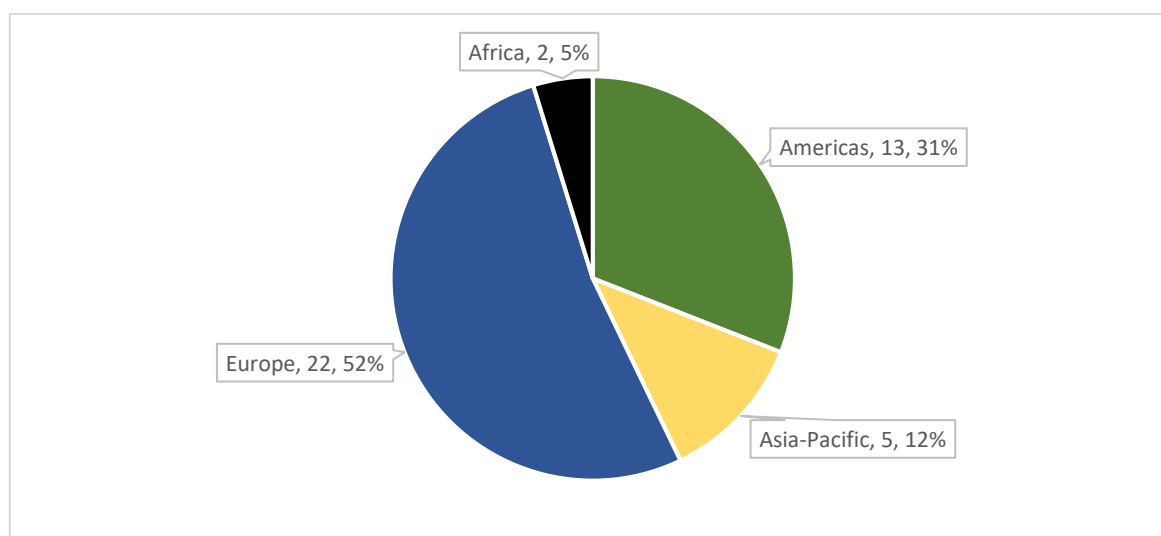
<sup>49</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 85.

directly invoking the charter as a basis for challenging acts of the tax administration without linkage to specific rules of the US Internal Revenue Code.<sup>50</sup>

### 3. Methodological Remarks

Following the OPTR’s working standard and procedure, this yearbook has been prepared based on the information provided in 50 reports from 78 national reporters from 42 countries worldwide, distributed regionally as presented in Chart A.

**Chart A. Surveyed Countries per Region**



Reporters are grouped by country. To the fullest extent possible, these groups of experts are formed by practitioners/taxpayers, tax authorities, academics, tax ombudspersons and the judiciary of each surveyed country, in order to obtain a neutral, balanced report on the situation of taxpayers’ rights in each jurisdiction. Individual reporters can have more than one affiliation simultaneously (e.g. tax administration and academia). The 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 considered not neutral. The national groups of experts for 2020 are as follows:

Country	Position	Name
Australia	Ombudsperson	Duy Dam
	Academic	John Bevacqua
Austria	Practitioner	Christina Schwarzenbacher
	Ombudsperson	Alfred Faller

<sup>50</sup> See sec. 12.3. for further details.

Country	Position	Name
Belgium	Practitioner	Jef Van Eyndhoven
	Academic	Sylvie De Raedt
Bolivia	Practitioner-Academic	Alvaro Villegas Aldazosa
Bosnia and Herzegovina	Academic	Ana Dujmovic
Brazil	Practitioner-Academic	Paulo Ayres Barreto
		Dalton Luiz Dallazem
	Judiciary	Bianor Arruda
	Academic	Luís Eduardo Schoueri
Raphael Assef Lavez		
Bulgaria	Academic	Stoycho Dulevski
	Practitioner	Boyana Milcheva
Canada	Practitioner	Salvatore Mirandola
Chile	Practitioner	Yuri Alberto Varela
China (People's Rep.)	Tax Administrator (retired)	Zhiyong Zhang
	Academic	Zhengwen Shi
Colombia	Ombudsperson	Leonardo Andrés Bautista Raba
		Yvonne Carolina Florez Cutiva
Croatia	Academic	Natasa Zunic Kovacevic
Cyprus	Tax Administrator	Yiannis Tsangaris
	Academic	Venetia Argyropoulou

Country	Position	Name
Czech Republic	Practitioner-Academic	Hana Skalická
Denmark	Tax Administrator	Henrik Klitz
	Practitioner	Henrik Peytz
Finland	Practitioner	Eero Männistö
	Academic	Kristiina Äimä
Germany	Tax Administrator	Eva Oertel
	Practitioner	Martin Bartelt
	Academic	Daniel Dürrschmidt
Greece	Judiciary	Ioannis Dimitrakopoulos
	Tax Administrator-Academic	Katerina Perrou
Guatemala	Practitioner	Alfredo Rodríguez
		Alejandra Fuentes-Pieruccini
Honduras	Tax Administrator	Roberto Ramos
India	Practitioner	Kuntal Dave
Italy	Practitioner	Pietro Mastellone
		Isabella Cugusi
	Academic	Giovanna Tieghi
Japan	Academic	Masato Ohno
Luxembourg	Judiciary	Fatima Chaouche
Mauritius	Practitioner	Ahmad Khalid Phul
Mexico	Practitioner	Luis Salinas
		Fernando Juárez Hernández

Country	Position	Name
		Diana Bernal Ladrón de Guevara
	Academic	Carlos Espinosa Berecochea
Netherlands	Practitioner	Roxana Bos
		Paul Harpin
New Zealand	Academic	Adrian Sawyer
Panama	Practitioner-Academic	Camilo Alberto Valdés Mora
Peru	Practitioner-Academic	Cecilia Delgado Ratto
	Practitioner	Esteban Montenegro Guillinta
Poland	Judiciary-Academic	Dominik Mączyński
Portugal	Practitioner	Rui Camacho Palma
Russia	Practitioner-Academic	Natalia Soloveva
	Academic	Karina Ponomareva
Serbia	Academic	Svetislav V. Kostić
		Lidija Živković
South Africa	Ombudsman	Gert van Heerden
	Academic	Jennifer Roeleveld
	Practitioner	Kevin Burt
Spain	Ombudsperson-Academic	Javier Martín Fernández
	Academic	Yolanda Martínez Muñoz
		Elizabeth Gil García
		Felipe Alonso Murillo
		Jesús Rodríguez

Country	Position	Name
		Manuel Lucas
Sweden	Practitioner	Lynda Ondrasek Olofsson
	Academic	Eleonor Kristoffersson
Turkey	Academic	Billur Yalti
United Kingdom	Practitioner	Robin Williamson
United States	Practitioner-Academic	Christine S. Speidel
Uruguay	Practitioner	Guzmán Ramírez
	Academic	Addy Mazz
Venezuela	Practitioner	Marie Roschelle Quintero
	Academic	Melissa Elechiguerra Labarca

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

In cases where there is more than one report per country, it may be reported that the same country has experienced progress and setbacks in adopting 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. Namely, each one of the two reports of **Brazil**, **Bulgaria**, **China**, **Cyprus**, **Greece**, **Mexico**, **Peru** and **Venezuela** will have a value of 0.5, for Questionnaire 1's statistical purposes as presented in pie charts such as that of Chart B, so that each of these countries is represented with an equal value vis-à-vis other countries with single reports. All divergent opinions among reporters of the same country have been reported alongside the pie charts.

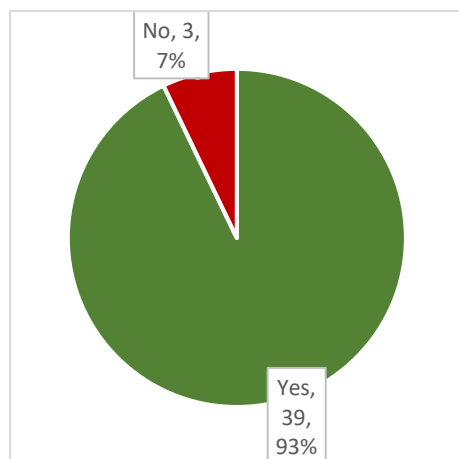
This formula aims to give all countries equal weight and to split the input of each country among the various reporters. In other words, where more than one team is involved, or a question has sub-questions, there may be decimals in the findings. All decimal results have been rounded off by (i) dropping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

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

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

50 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Croatia, Cyprus (1), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Netherlands, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Turkey, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

**No:** Cyprus (2), Mexico (2), New Zealand, Sweden

Source: OPTR: Questionnaire 1, Question 1

Reports with diverging opinions: Cyprus, Mexico

Second, through Questionnaire 2, reporters should assess assertively (shift towards/shift away) the level of compliance with 57 minimum standards and 44 best practices to protect taxpayers' rights, grouped in 87 benchmarks. 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 C. In cases in which there is more than one report per country, it may be reported that the same country has experienced progress and setbacks in the practical adoption of the minimum standard or best practice, depending on the different assessment made by the reporters concerned. In those cases, different reports from the same country have been identified by a number, as they appear in Appendix B of this yearbook.

Third, reporters should provide an impartial, non-judgemental summary of events occurring in 2020 (legislation enacted, administrative rulings, circulars, case law and tax administration practices) that grounds each report's assessment of the level of compliance with the above-mentioned benchmarks for the practical protection of taxpayers' rights. The information is presented, editorially selected, throughout this yearbook. Reporters do not always substantiate their evaluations, which makes it methodologically impossible to report the reasons for diverging assessments in the cases of multiple reports for a single country, as seen in Charts B and C.

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

**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

<p><b>the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure.</b></p>	
<p><b>Shifted towards/improved the minimum standard:</b></p> <p>Denmark, Peru (2)</p>	<p><b>Shifted away from the minimum standard:</b></p> <p>Canada, Mexico (1), Peru (2)</p>
<p><b>Best practice: Following an audit, a report should be prepared even if the audit does not result in additional tax or refund.</b></p>	
<p><b>Shifted towards/matched the best practice:</b></p> <p>Peru (1)</p>	<p><b>Shifted away from the best practice:</b></p> <p>Peru (2)</p>

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

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

Their findings are presented throughout this yearbook, as shown in Chart D.

#### Chart D. Sample of jurisprudential information

2020 Relevant Case Law – European Court of Human Rights		
<b>Case</b>	<i>Antonov v. Bulgaria</i> , no. 58364/10	
<b>Date</b>	28 May 2020	
<b>ECHR articles</b>	Article 1 of Protocol no. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>The case concerned the applicant's complaint that the authorities had failed to comply with final court judgments ordering a tax refund in his favour.</p> <p>In 2000-2001 the applicant was audited by the tax authorities. They issued a tax assessment charging him EUR 28,128 in VAT and income tax, including interest. In 2004, after judicial</p>	<p><b>Article 1 of Protocol no. 1:</b> The tax authorities' failure to refund the applicant's unduly paid taxes breached his right to property.</p> <p><u>Admissibility of the complaint:</u></p> <p>(1) While the applicant was refunded the unduly collected taxes, including interest (years later) the authorities never acknowledged the alleged violation;</p>	<p>Interestingly, in this case, the tax authorities were extremely reluctant to refund to the applicant the unduly paid taxes with interest. Instead of abiding by the final domestic judgments, they persistently sought to prove the absence of any initial errors on their part when making the tax assessment. In such situations, tax authorities should have the duty to refund taxes in due course.</p>



<p>review proceedings, the Varna Regional Court instructed the tax authorities to carry out a fresh audit. The Court found that the 2001 tax assessment had been in breach of the statutory provisions because the applicant had been audited as an individual, whereas the taxes charged were related to the activity of a private agricultural association for which he was the legal representative. Following a new audit in 2004 covering the same period as that in the 2001 assessment, the tax authorities issued another assessment, charging the applicant EUR 20,825. The applicant brought further judicial review proceedings and in 2007 the Supreme Administrative Court (SAC) set aside the 2004 assessment, finding that the taxes levied had not been due. In the final judgments of November 2008 and December 2008, the SAC reiterated this finding and ordered the authorities to refund the applicant, with interest. The applicant's requests for a refund were then stayed, pending the outcome of the proceedings brought by the tax authorities seeking a declaration of nullity and a reopening of the proceedings. The authorities' actions were ultimately unsuccessful, and 3.5 years later, the applicant was refunded the unduly collected taxes.</p>	<p>(2) The applicant's failure to inform the Court about the refund received in 2012 did not amount to abuse of the right to individual petition.</p> <p><u>On the merits:</u></p> <p>(1) On the basis of two final court judgments in his favour and the relevant statutory provisions the applicant had a legitimate expectation and, hence, a "possession" consisting of the right to be refunded unduly paid taxes.</p> <p>(2) The delay in enforcing the final judgments in the applicant's favour and refunding the unduly paid sums amounted to an interference with the right to property. However, it was not justified because, instead of proceeding with the refund within 30 days as required by law, the tax authorities brought various actions before the courts, all of which had to be dismissed. It appears that none of these actions had any prospect of success; however, the tax authorities pursued their actions with persistence, thereby forcing the applicant into several pointless sets of proceedings.</p> <p><b>Violation:</b> The unjustified delay in enforcing the final judgments and refunding the applicant the sums unduly collected from him was imputable to tax authorities and upset the fair balance that has to be struck between the general and individual interest.</p> <p><b>Article 41:</b> EUR 3,500 in respect of non-pecuniary damage.</p>	
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### 2020 Relevant Inadmissibility Decisions – European Court of Human Rights

<b>Case</b>	<b><i>Christian Religious Organization of Jehovah's Witnesses v. Armenia (dec.)</i>, no. 73601/14</b>	
<b>Date</b>	29 September 2020	
<b>ECHR articles</b>	Article 9 § 1 Article 1 of Protocol no. 1	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
The case concerns the authorities' refusal to exempt a religious organization from	<b>Article 9 § 1:</b> The applicant organization complained that the refusal to exempt its imports of	In this case, the Court maintained its well-established position that, in such a complex sphere as the

<p>taxation on regular imports of religious material.</p> <p>The applicant organization appealed unsuccessfully against the tax authorities' refusal to exempt its regular imports of donated religious literature and other materials from the payment of VAT, as well as the manner used to calculate the tax due.</p>	<p>donated religious literature from taxation, as well as the arbitrary imposition of a grossly inflated customs value on them, was in breach of its right to the freedom of religion.</p> <p>(1) The Court reiterated that a fiscal measure could constitute an interference with the exercise of the rights secured under article 9 if that measure were found to have a real and serious impact on a religious community's ability to pursue its religious activity.</p> <p>(2) In the present case, the authorities' refusal to apply the tax exemption provided for in domestic legislation had not had such an effect on the applicant organization as to fundamentally undermine its ability to develop its religious activity. The applicant organization had not submitted that, as a result of the impugned measure, it had found itself in such financial hardship that it had been prevented from guaranteeing its adherents' freedom to exercise their religious beliefs.</p> <p>The complaint was declared <b>inadmissible as manifestly ill-founded</b>.</p> <p><b>Article 1 of Protocol no. 1:</b> The Court also declared the complaint under this provision <b>inadmissible as manifestly ill-founded</b>. The Court found that levying VAT on the applicant organization's imports of religious literature had not upset the balance between the protection of their rights and the public interest in securing the payment of taxes. The Court noted, in particular, that the organization was required to pay 20% and 30% VAT, which could not be considered exorbitant, and that the organization did not claim that such a sum in VAT had fundamentally undermined its financial situation. The Court also stressed that the applicant organization had been able to dispute the tax authority's relevant decisions before the courts exercising jurisdiction in administrative matters and had not claimed that that procedure had failed to meet the requisite</p>	<p>imposition of VAT, the respondent state should be afforded a particularly wide margin of appreciation. A fiscal measure can be considered as breaching the requirements of article 1 of Protocol no. 1 only if it has imposed an unreasonable or disproportionate burden on the taxpayer. The taxpayer should demonstrate that his financial position has been fundamentally undermined by the impugned measure so as to deprive him of the minimum amount of money necessary for living.</p>
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	procedural standards.	
<b>2020 Relevant Case Law – Court of Justice of the European Union</b>		
<b>Case</b>	<b>C-430/19, SC C.F. (Tax Inspection)</b>	
<b>Date</b>	4 June 2020	
<b>EU Charter Articles</b>	47	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
<p>CF, a commercial company governed by Romanian law, was the subject of a tax inspection carried out by the regional administration concerning corporation tax and VAT. That tax inspection was suspended for a period of 6 months to allow the regional Directorate-General, which is responsible for combating fraud, to conduct an investigation in which the public prosecutor attached to the Tribunal Cluj participated. The criminal investigation ended with a decision that no further action should be taken. In its tax inspection report, the regional administration stated that the commercial transactions between CF and two of its suppliers were fictitious because the two suppliers, micro-enterprises subject to turnover tax at 3% (while CF was taxed at 16%) did not have the technical or logistical capacity to provide the services for which they had invoiced CF. After CF's acquired a copy of the tax inspection report from the regional administration, CF appealed against the tax inspection report and requested access to the full administrative file. CF stated that it had not been informed, at the time of the tax inspection, of the manner in which the criminal investigation might have influenced the inspection carried out by the tax authorities.</p>	<p>The general EU law principle of observance of the rights of the defence must be interpreted to mean that, in the context of national administrative procedures for inspection and determination of the taxable amount for VAT purposes, where (i) a taxable person has not been allowed access to the information in the administrative file that was taken into consideration when an administrative decision imposed additional tax liabilities on that taxable person, and (ii) the Court finds that, in the absence of that irregularity, the outcome of the procedure might have been different, the principle requires that that decision be annulled.</p>	<p>The right of access to the administrative file is a corollary of the right to be heard before any decision is taken.</p>
<b>2020 Relevant Admissibility Decisions – Inter-American Court of Human Rights</b>		
<b>Case</b>	<b>Oswaldo Senen Paredes v. Ecuador</b>	

Date	9 August 2020	
ACHR articles	Article 8 Article 25	
Facts	Decision	Comments
<p>Mr Oswaldo Senen Paredes claimed that the Ecuadorian state was internationally responsible for the violation of his rights to fair trial and judicial protection on account of the material impediment that he allegedly faced in accessing justice in order to judicially question two settlements of income tax for the 2004 and 2005 fiscal years, as he was required to post bonds to access a due process, and he could not pay such bonds due to financial incapacity.</p> <p>In 2007, two tax proceedings were started against Mr Paredes by the Ecuadorian tax authority, which led this authority to determine that the alleged victim owed the amounts of USD 90,860.38 and USD 23,322.74 for the 2004 and 2005 fiscal years respectively.</p> <p>Both amounts were established in orders to pay adopted by the tax authority.</p> <p>On 9 June 2008, the tax authority notified Mr Paredes of an order to pay USD 90,860.38 for an alleged difference in the 2004 income tax statement. The taxpayer stated that this sum was erroneous, because it exceeded in a disproportionate way what could be materially generated by his economic activity, which involved growing palm hearts and engaging in retail sale of beef.</p> <p>The alleged victim pointed out that the tax authority assumed that he had a 97% profit margin over his sales.</p> <p>On 19 January 2009, Mr Paredes filed a suit before the Ecuadorian Tax Court, questioning the tax authority's resolution. The Tax Court established that, before starting</p>	<p><b>Admissibility Report No. 207/20, Inter-American Commission on Human Rights:</b></p> <p>The Inter-American Commission on Human Rights found Mr Paredes' claim admissible in relation to articles 8 and 25 of the American Convention on Human Rights.</p> <p>The Commission noted that the allegations of the taxpayer referred concretely to the impossibility of his bringing a complaint before competent domestic courts about his tax status, due to the requirement to deposit certain bonds that he was unable to post.</p> <p>In this sense, the Commission considered that, if true, the facts described above could involve violations to the rights enshrined in articles 8 (right to a fair trial) and 25 (right to judicial protection") of the American Convention on Human Rights, to the detriment of Mr. Paredes.</p>	<p>This case recalls a judgment issued (in 2002) by the Inter-American Court of Human Rights, in the case <i>José María Cantos v. Argentina</i>.</p> <p>Mr Cantos had filed a legal action against the provincial tax authority of Santiago del Estero (in Argentina), in an effort to collect damages because of certain irregularities committed at the time of auditing his companies. More specifically, he claimed the payment of approximately USD 2,780,000,000. The Federal Supreme Court of Argentina required from the claimant the payment of a judicial tax (in Spanish, <i>tasa judicial</i>) for an amount of USD 83,400,000 (i.e. 3% of the claimed damages). The Inter-American Court found that – by imposing such requirement – the Argentine state had violated articles 8 and 25 of the American Convention on Human Rights, which recognize respectively the taxpayer's right to a fair trial and judicial protection. Therefore, the Court ordered the Argentine state to refrain from collecting such judicial tax.</p> <p>Despite the apparent similarities, it should be noted that, in the case in question, the Inter-American Court of Human Rights also recognized that the right of access to a domestic court is not absolute and may therefore be subject to certain limitations. Ultimately, the Inter-American Court based its judgment solely on the grounds that the intention to collect the above sum of money was excessive and disproportionate, which must be analysed and determined on a case-by-case basis.</p> <p>That said, and in accordance with the Commission's recent report, the protection of the right to a fair trial appears to have been affected insofar as no effective</p>

<p>the proceeding, the taxpayer was required to post a bond equivalent to 10% of the amount of taxes (i.e. USD 9,086). The alleged victim stated that he did not have the money to post such bond.</p> <p>In 2007, the tax authority had begun another proceeding against the same taxpayer, also for the assessment of income tax, on this occasion concerning the 2005 fiscal year. As a result of this proceeding, on 14 November 2008, the tax authority notified Mr Paredes of the order to pay allegedly owed taxes for a total amount of USD 23,322.74.</p> <p>In view of this, the alleged victim filed once again a suit to challenge the new order to pay before the Tax Court, which by order of 1 July 2009, established that – prior to this proceeding – the taxpayer was required to post a bond equivalent to 10% of the amount of taxes (i.e. USD 2,332).</p> <p>Mr Paredes refused to post the bond, on the grounds that it was unconstitutional. The Tax Court submitted this case to the Constitutional Court for it to decide whether or not article 7 of the Reform Law for Tax Equality in Ecuador, which established the obligation to post the bond, was in compliance with the standards of the Ecuadorian National Constitution. On 5 August 2010, the Constitutional Court decided that such article was constitutional.</p> <p>In October 2010, the file was returned to the Tax Court to order that the bond be posted. As Mr Paredes was not economically capable of depositing the required sum, the judicial proceeding initiated by him was closed.</p> <p>In sum, the alleged victim judicially challenged the settlement and collection of the aforementioned amounts of taxes (i.e. USD 90,860.38 and USD 23,322.74). In both judicial</p>		<p>mechanism was made available to suspend the payment of the bonds and provide the taxpayer access to justice. If it is true that the taxpayer lacked the financial capacity to post such bonds, the Tax Court should have acknowledged this special situation.</p>
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<p>proceedings, he was requested to post a bond in accordance with the value of each order to pay, which amounted to the equivalent to 10% of such amounts (i.e. USD 9,086 and USD 2,332). The taxpayer was not in a financial situation that allowed him to post the judicial bonds as a precondition for the Courts to hear his complaints. Both proceedings were closed precisely for the failure to post the bonds.</p> <p>The claim submitted by Mr. Paredes with the Inter-American Commission on Human Rights was based on the argument that he was not afforded equal access to judicial review of administrative decisions about tax matters which, in his view, were arbitrary and infringed upon his rights.</p>		
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# Part II

## 2020 Developments

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

### 1.1. General issues

The need to establish a legal relationship between the tax administration and the taxpayer is at the core of any tax system. In order to do so, it is pivotal to identify the taxpayer sufficiently and adequately.

This identification exercise involves several considerations, especially as it involves parties of a very different nature, as the tax administration is a public institution and a taxpayer is a person enjoying rights. This fundamental difference means that it is crucial to ensure the taxpayer's rights regarding the information collected about them by the authorities and maintain this confidentiality while ensuring adequate protection of the public interest involved in tax collection.

To ensure that sufficient information is obtained and safeguarding the process thereafter, proper communication between the administration and the taxpayer is necessary for general compliance on the taxpayer's side and performing assessments audits on the tax administration's side.

Self-assessment, by default, has become a trend in tax compliance, alongside high levels of digitalization. This development holds great potential, but, at the same time, it also carries risks to taxpayers' rights.<sup>51</sup>

This trend was particularly noteworthy in 2020. The COVID-19 pandemic and the resulting restrictions forced many states to either change or upgrade their taxpayer identification and communication systems, along with their tax assessment procedures.

### 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, India, Japan, United States

**Shifted away from the minimum standard:**

Panama

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

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

India

**Shifted away from the minimum standard:**

Panama

In 2020, the continued development of the digitalization of communications with taxpayers, which the OPTR has observed since 2015,<sup>52</sup> reached a new level, propelled by the global situation. The need to maintain adequate safeguards against the risk of identity theft and the

<sup>51</sup> P. Baker & P. Pistone, *supra* n. 1, at sec. 1.1., p. 23.

<sup>52</sup> *Id.*, at sec. 1.1., p. 24.



need to aid those who need or prefer alternative methods of communication should still be protected, even in a time of crisis.

The Tax Office of **Australia** has systems in place to safeguard the integrity of taxpayers' data, including a process to verify a taxpayer's identity before they can access their tax data online, in person or over the phone.<sup>53</sup> In **India**, a system has been put in place to prevent impersonation and duplication when issuing identification numbers, and for income tax purposes, a Permanent Account Number (PAN) is used, linked to its Biometric Adhaar number. Additionally, a faceless e-assessment scheme includes appellate proceedings before the first appellate authority (namely the Commissioner of Income Tax Appeals), so all communication with taxpayers is conducted electronically.<sup>54</sup>

A similar system is in place in **Japan**, with an identification number card introduced in 2016. The dissemination of this card increased from 15.0% in January 2020 to 24.2% in January 2021, partly because it makes it possible to request COVID-19 subsidies online as early as possible.<sup>55</sup>

Finally, the **United States** reported that the Internal Revenue Service has expanded its Identity Protection Personal Identification Number (IP PIN) programme. The Internal Revenue Service assigns an IP PIN to victims of tax-related identity theft. Also, taxpayers in some states may request an IP PIN. The IRS expanded this option to ten additional states in spring 2020, and to all taxpayers in 2021.<sup>56</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:**

None

**Shifted away from the minimum standard:**

Mexico

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

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

None

**Shifted away from the best practice:**

Mexico, United Kingdom

Conducting tax assessments and collecting taxes may require collaboration between the tax administration and third parties concerning the underlying transaction. Third parties may act

<sup>53</sup> AU: OPTR Report ((Tax) Ombudsperson/Academia), Questionnaire 2, Question 1.

<sup>54</sup> IN: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Questions 1 and 6.

<sup>55</sup> JP: OPTR Report (Academia), Questionnaire 2, Question 1.

<sup>56</sup> US: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 1.

as personal guarantors of the taxpayer's tax liability or may replace the taxpayer in its duties, either partially or entirely, and may assist the tax administration by providing information that is relevant to the taxable event in question.

These third parties should ideally be obligated to maintain confidentiality about the information regarding the taxable event obtained by them and passed on to the tax administration.<sup>57</sup>

A trend continued from the 2019 OPTR Report that the surveyed countries' legal systems protected the confidentiality of the information obtained by third parties and passed on to the tax administration as part of tax compliance.

Against this continued positive trend, **Mexico** stands out, as it reported to have shifted away from the minimum standard. Following the path of the OECD/G20 BEPS Action 12 Final Report<sup>58</sup> and after an amendment to the Mexican Federal Tax Code, the tax authorities now require the disclosure of "reportable transactions", which usually involve transactions that render a tax benefit in Mexico. The tax adviser (or, in his absence, the taxpayer) shall report these transactions. In any event, according to Mexican law, disclosure of these transactions no longer constitutes a breach of professional secrecy.<sup>59</sup> This Yearbook will provide further information on this development in section 3.14. when discussing (legal) professional privilege.

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

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

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

Australia, Colombia

**Shifted away from the minimum standard:**

Panama

**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:**

Cyprus

**Shifted away from the minimum standard:**

Panama

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

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

Chile, Colombia, Cyprus, Greece, United States

**Shifted away from the best practice:**

Panama

<sup>57</sup> OPTR minimum standard 3.

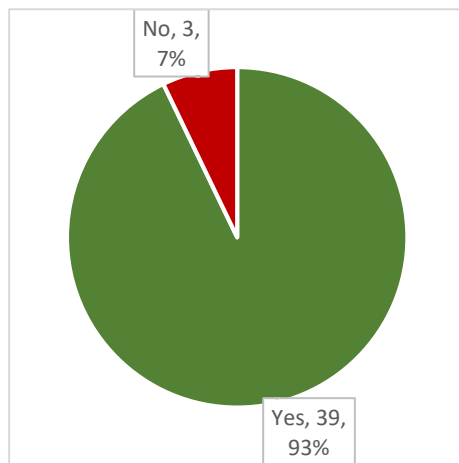
<sup>58</sup> OECD/G20, *Mandatory Disclosure Rules – Action 12: 2015 Final Report* (OECD 2015), Primary Sources IBFD.

<sup>59</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 3.

Once the tax administration possesses the relevant data necessary for conducting the tax assessments, whether it is by way of pre-populated tax returns, information from third parties or additional information from the taxpayers, it is crucial to safeguard the right of the taxpayers to access and correct the information about them held by the tax administration. This right is known as *habeas data* and encompasses the taxpayer’s entitlement to (i) access the data about him stored by the tax administration; (ii) 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.

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

50 responses



Source: OPTR: Questionnaire 1, Question 1

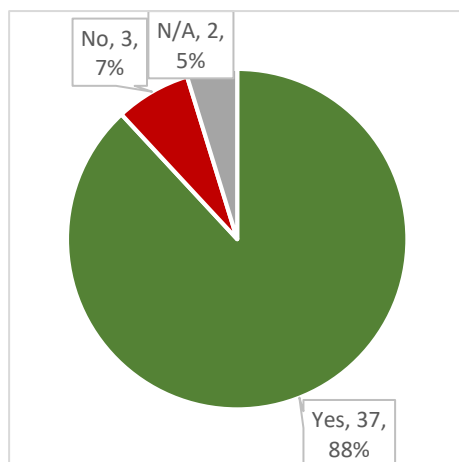
**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (1), Guatemala, Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Netherlands, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Turkey, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

**No:** Cyprus (2), Mexico (2), New Zealand, Sweden

**Reports with diverging opinions:** Cyprus, Mexico

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

50 responses



Source: OPTR: Questionnaire 1, Question 2

**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Netherlands, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

**No:** Brazil (2), Guatemala, Mexico (2), Turkey

**Not applicable:** Cyprus (2), New Zealand, Sweden

**Reports with diverging opinions:** Brazil, Cyprus, Mexico

As the compared data collected since 2018<sup>60</sup> and Charts 1 and 2 show, there seems to be a possible development towards the OPTR benchmarks in this regard.

On the practical side, the surveyed jurisdictions have displayed various practices for the taxpayers to be made aware of the information and conduct the necessary changes, most of which have traditionally involved some electronic declaration form. This trend continued in 2020, with **Colombia** adding to the statistics with a system in which the taxpayers can modify the pre-filled tax returns containing the information from third parties to reflect their economic reality. In practice, tax authorities share with taxpayers guidelines for consulting their information reported by third parties via email.<sup>61</sup> Taxpayers in the **United States** have the right to request information about themselves under the Freedom of Information Act, and the IRS website now links to an electronic portal for the submission of requests.<sup>62</sup>

Likewise, **Cyprus** has introduced a new electronic taxation service, known as the “Tax Gateway”, which is accessible with the same login as the one used for the general tax system. The new Tax Gateway provides a central point of information. All citizens, businesses and representatives can acquire information about debts owed and payments made to the department, register self-assessed, temporary and withholding taxes and make electronic payments through online banking.<sup>63</sup>

**Australia** implemented a similar system, whereby the Australian Taxation Office pre-populates individuals’ returns with third-party data, such as interest, dividends, salary and private health insurance details. Individuals are encouraged to check and, where need be, edit this information before filing their return.<sup>64</sup>

Finally, the **Greek** Supreme Administrative Court held, in a decision from 2020, that taxpayers must be given access to the electronic file that the tax administration holds about them. Among the information that the taxpayer should be given access to is information concerning any unauthorized access to the data by third persons. Following this ruling, a guideline was published on taxpayers’ rights with regard to accessing information and correcting inaccuracies.<sup>65</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:

Australia, Colombia, Cyprus, Denmark, Honduras, India, Mexico, United States

#### Shifted away from the minimum standard:

None

<sup>60</sup> See OPTR, [2018 General Report on the Protection of Taxpayers’ Rights](#), sec. 5.1.6.

<sup>61</sup> CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Questions 4 and 5.

<sup>62</sup> US: OPTR Report (Tax Administration), Questionnaire 2, Question 5.

<sup>63</sup> CY: OPTR Report (Tax Administration), Questionnaire 2, Question 5.

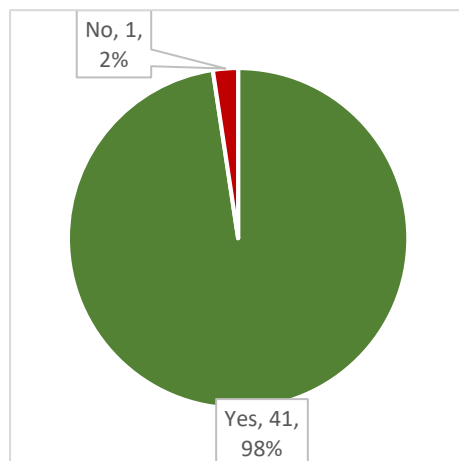
<sup>64</sup> AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 4.

<sup>65</sup> GR: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 5.

The use of electronic means of communication between taxpayers and tax administrations continues to be a trend. In fact, in 2020, 98% of the surveyed countries reported that taxpayers could communicate electronically with their tax administrations, as Chart 3 shows, just like in 2019. A similar development is observed regarding the mechanisms to prevent impersonation or communication interception, as illustrated in Chart 4: only 9% of the surveyed countries reported not having such a system, compared to 14% in 2019.

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

50 responses



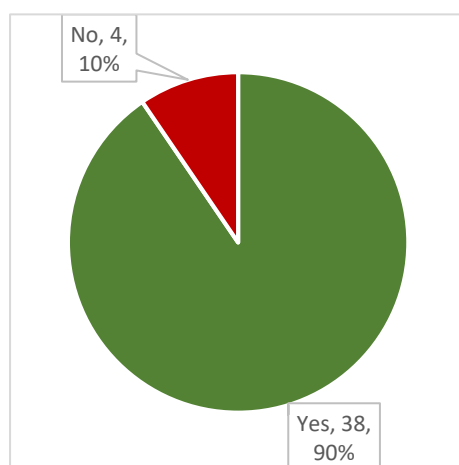
**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2),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

**No:** Japan

Source: OPTR: Questionnaire 1, Question 3

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

50 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Honduras, India, Italy, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Panama, Peru (1), Peru (2), Poland, Portugal, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

**No:** Guatemala, Japan, Netherlands, Russia

Source: OPTR: Questionnaire 1, Question 4

Among the countries that introduced or enhanced electronic communications with taxpayers are **Belgium**,<sup>66</sup> **Cyprus**,<sup>67</sup> **Denmark**,<sup>68</sup> **Mauritius**,<sup>69</sup> the **Netherlands**,<sup>70</sup> **India**,<sup>71</sup> **Mexico**<sup>72</sup> and **Honduras**.<sup>73</sup>

An essential factor in this development has been the need for electronic communication due to the physical distance policy arising from the COVID-19 pandemic in 2020. For example, in **Mexico**, electronic measures (the so-called “SAT ID”) have been implemented to renew electronic signatures that are required for submitting tax returns or e-filings. This system allows taxpayers to renew their signatures electronically if they have expired less than a year prior. It requires verification of the identity of the taxpayer and also introduced a video identity verification procedure to prevent impersonation.<sup>74</sup> In **Colombia**, the DIAN mobile app now includes a module for consulting the veracity of emails.<sup>75</sup>

### 1.6. Cooperative compliance

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

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

Brazil, China (People’s Rep.), Honduras, Poland, United States

**Shifted away from the minimum standard:**

Panama

Cooperative compliance has been on the rise in recent years,<sup>76</sup> as reported in the 2019 OPTR Yearbook. However, this trend seemed to decline slightly in 2020: 63% of surveyed countries utilized cooperative compliance in 2020, compared to 64% in 2019. Chart 6 shows that regulating the procedures that are necessary for ensuring the equal treatment of taxpayers and non-discriminatory application are still pending, as was also the case in 2019.

There are positive developments as well, with **Honduras** initiating a cooperative compliance pilot project with the University of Vienna. This project seeks to promote bilateral agreements between the taxpayers and the tax administration within a voluntary, cooperative tax

<sup>66</sup> BE: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 6.

<sup>67</sup> CY: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 6.

<sup>68</sup> DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 6.

<sup>69</sup> MU: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2 (Developments Form), Question 6.

<sup>70</sup> NL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2 (Developments Form), Question 6.

<sup>71</sup> IN: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 6. *See also* sec. 1.2.

<sup>72</sup> MX: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 6

<sup>73</sup> HN: OPTR Report (Tax Administration), Questionnaire 2, Question 6

<sup>74</sup> MX: OPTR (Taxpayers/Tax Practitioners) Questionnaire 2, Question 6.

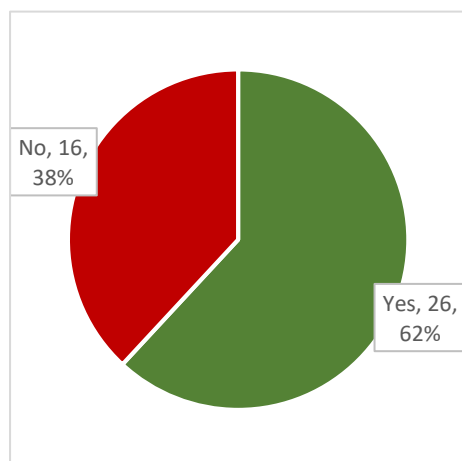
<sup>75</sup> CO: OPTR Report (Tax Ombudsman), Questionnaire 2, Question 5.

<sup>76</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 & Opinion Pieces IBFD.

compliance system.<sup>77</sup>

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

50 responses



**Yes:** Australia, Austria, Belgium, Brazil (1), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Croatia, Denmark, Finland, Guatemala, Italy, Japan, Mauritius, Mexico (2), Netherlands, New Zealand, Panama, Poland, Portugal, Russia, South Africa, Spain, Sweden, United Kingdom, United States, Venezuela (1), Venezuela (2)

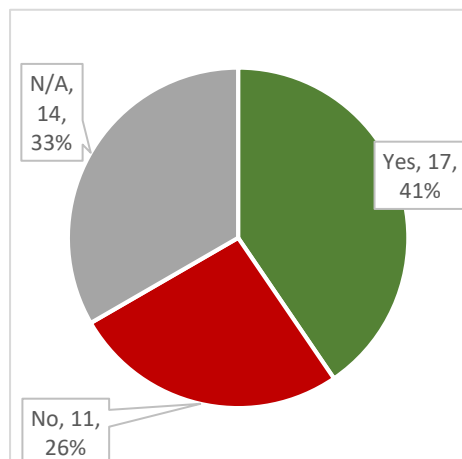
**No:** Bolivia, Bosnia and Herzegovina, Brazil (2), Bulgaria (1), Bulgaria (2), Chile, Cyprus (1), Cyprus (2), Czech Republic, Germany, Greece (1), Greece (2), Honduras, India, Luxembourg, Mexico (1), Peru (1), Peru (2), Serbia, Turkey, Uruguay

**Reports with diverging opinions:** Brazil, Mexico

Source: OPTR: Questionnaire 1, Question 5

**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?**

50 responses



**Yes:** Austria, Brazil (1), Brazil (2), China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Croatia, Guatemala, Italy, Mauritius, Mexico (2), Netherlands, Panama, Poland, Portugal, South Africa, Spain, United States, Venezuela (1), Venezuela (2)

**No:** Australia, Belgium, Bolivia, Canada, Denmark, Finland, Japan, New Zealand, Russia, Sweden, United Kingdom

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

**Reports with diverging opinions:** Mexico

Source: OPTR: Questionnaire 1, Question 6

**Poland** has implemented a correct settlement programme based on close cooperation between the largest taxpayers and the tax administration. The cooperation programme aims to ensure compliance by establishing close and ongoing cooperation between tax authorities and taxpayers based on the principle of voluntary and mutual trust, understanding and transparency. The provisions enable the conclusion of advanced transfer pricing agreements

<sup>77</sup> HN: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2, Question 7.

and are intended only for taxpayers with at least EUR 50 million in revenue.<sup>78</sup>

**Brazil** also issued a special tax dispute settlement procedure in 2020, with highly detailed criteria regarding the taxpayer’s capacity to comply with his obligations, considering the specific effects of the COVID-19 crisis.<sup>79</sup>

Additionally, **China (People’s Rep.)** signed more cooperative compliance agreements with large, highly compliant taxpayers in 2020 as compared to 2019.<sup>80</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 remote areas and those unable or unwilling to use electronic forms of communication.

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

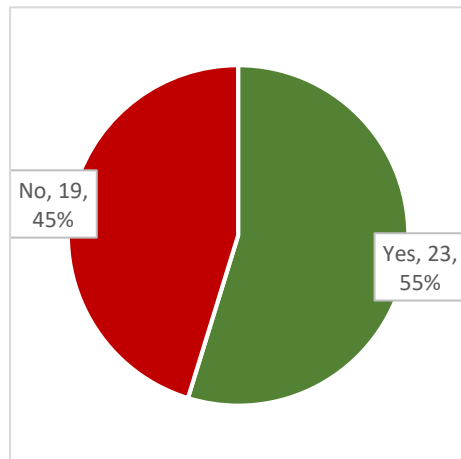
Australia, Belgium, Brazil, Canada, Chile, Colombia, Netherlands, United Kingdom, United States

**Shifted away from the minimum standard:**

Panama, United States

**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?**

50 responses



**Yes:** Australia, Austria, Belgium, Bulgaria (1), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Cyprus (2), Czech Republic, Denmark, Germany, Honduras, India, Italy, Japan, Mauritius, Mexico (1), Mexico (2), New Zealand, Panama, South Africa, Sweden, Turkey, United Kingdom, United States

**No:** Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (2), Chile, Croatia, Cyprus (1), Finland, Greece (1), Greece (2), Guatemala, Luxembourg, Netherlands, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, Spain, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** Cyprus, Bulgaria

**Source:** OPTR: Questionnaire 1, Question 7

Concerning special arrangements for individuals facing difficulties in complying with their tax obligations, as in many other areas, 2020 was an exceptional year. Many taxpayers have faced difficulties and have not been able to conduct their business under normal conditions

<sup>78</sup> PO: OPTR Report (Judiciary, Academia), Questionnaire 2, Question 7.

<sup>79</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 7.

<sup>80</sup> CN: OPTR Report (Tax Administration), Questionnaire 2, Question 7.



due to COVID-19 restrictions.

Several countries, including **Australia**,<sup>81</sup> **Brazil**,<sup>82</sup> **Canada**,<sup>83</sup> **Chile**,<sup>84</sup> **Colombia**,<sup>85</sup> **Mexico**,<sup>86</sup> the **Netherlands**<sup>87</sup> and the **United States**,<sup>88</sup> have introduced special online assistance as part of larger schemes to aid in filing tax returns and general compliance for taxpayers during the pandemic. The surveyed jurisdictions implemented online appointments and real-time chats and extended deadlines for filing returns, among other measures.

The **United States** reported a shift away from the standards in this area. By late March 2020, in-person assistance from the IRS and most non-profits had shut down, and IRS telephone helplines and Taxpayer Assistance Centers were closed, including the Taxpayer Advocate Service. The IRS could not open and process mail for weeks, causing a large backlog of correspondence, tax returns and checks. Although IRS offices began to reopen in June, services available in person are still reduced.

## 2. The Issuance of a 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:**

Australia, Belgium, Brazil, Colombia, Guatemala, Netherlands, Poland

**Shifted away from the best practice:**

Serbia, United States

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

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

Chile, Cyprus, Greece, Guatemala, Peru, Mauritius, Netherlands, Poland, Sweden, Turkey, United States

**Shifted away from the best practice:**

United Kingdom, United States

<sup>81</sup> AU: OPTR Report (Academia), Questionnaire 2, Question 7.

<sup>82</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 7.

<sup>83</sup> CA: OPTR Report (Taxpayer/Tax Practitioner), Questionnaire 2, Question 7.

<sup>84</sup> CL: OPTR Report (Taxpayer/Tax Practitioners), Questionnaire 2 (Developments Form), Question 8.

<sup>85</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2 (Developments Form), Question 8.

<sup>86</sup> MX:OPTR Report (Academia), Questionnaire 2, Question 7.

<sup>87</sup> NL: OPTR Report (Academia), Questionnaire 2, Question 7.

<sup>88</sup> US: OPTR Report (Taxpayer/Tax Practitioners/Academia), Questionnaire 2 (Developments Form), Question 8.

## 2020 Relevant Case Law – European Court of Human Rights

Case	<b>Antonov v. Bulgaria, no. 58364/10</b>	
Date	28 May 2020	
ECHR articles	Article 1 of Protocol no. 1	
Facts	Decision	Comments
<p>The case concerned the applicant's complaint that the authorities had failed to comply with final court judgments ordering a tax refund in his favour.</p> <p>In 2000-2001, the applicant was audited by the tax authorities. They issued a tax assessment charging him EUR 28,128 in VAT and income tax, including interest. In 2004, after judicial review proceedings, the Varna Regional Court instructed the tax authorities to carry out a fresh audit. The Court found that the 2001 tax assessment had been in breach of the statutory provisions because the applicant had been audited as an individual, whereas the taxes charged were related to the activity of a private agricultural association for which he was the legal representative. Following a new audit in 2004, covering the same period as that in the 2001 assessment, the tax authorities issued another assessment, charging the applicant EUR 20,825. The applicant brought further judicial review proceedings, and in 2007, the Supreme Administrative Court (SAC) set aside the 2004 assessment, finding that the taxes levied had not been due. In the final judgments of November 2008 and December 2008, the SAC reiterated this finding and ordered the authorities to refund the applicant, with interest. The applicant's requests for a refund were then stayed, pending the outcome of the proceedings brought by the tax authorities seeking a declaration of nullity and a reopening of the proceedings. The authorities' actions were ultimately unsuccessful, and 3.5 years later, the applicant was refunded the</p>	<p><b>Article 1 of Protocol no. 1:</b> The tax authorities' failure to refund the applicant's unduly paid taxes breached his right to property.</p> <p><u>Admissibility of the complaint:</u></p> <p>(1) While the applicant was refunded the unduly collected taxes, including interest (years later), the authorities never acknowledged the alleged violation.</p> <p>(2) The applicant's failure to inform the Court about the refund received in 2012 did not amount to abuse of the right to individual petition.</p> <p><u>On the merits:</u></p> <p>(1) On the basis of two final court judgments in his favour and the relevant statutory provisions, the applicant had a legitimate expectation and, hence, a "possession" consisting of the right to be refunded unduly paid taxes.</p> <p>(2) The delay in enforcing the final judgments in the applicant's favour and refunding the unduly paid sums amounted to an interference with the right to property. However, it was not justified because, instead of proceeding with the refund within 30 days, as required by law, the tax authorities brought various actions before the courts, all of which had to be dismissed. It appears that none of these actions had any prospect of success; however, the tax authorities pursued their actions with persistence, thereby forcing the applicant into several pointless sets of proceedings.</p> <p><b>Violation:</b> The unjustified delay in enforcing the final judgments and refunding the applicant the sums</p>	<p>Interestingly, in this case, the tax authorities were extremely reluctant to refund to the applicant the unduly paid taxes with interest. Instead of abiding by the final domestic judgments, they persistently sought to prove the absence of any initial errors on their part when making the tax assessment. In such situations, tax authorities should have the duty to refund taxes in due course.</p>

unduly collected taxes.	unduly collected from him was imputable to tax authorities and upset the fair balance that has to be struck between the general and individual interest.  <b>Article 41:</b> EUR 3,500 in respect of non-pecuniary damage.	
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## 2020 Relevant Inadmissibility Decisions – European Court of Human Rights

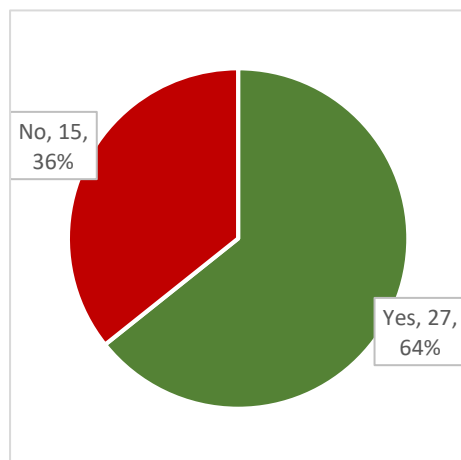
Case	<i>Christian Religious Organization of Jehovah's Witnesses v. Armenia (dec.)</i> , no. 73601/14	
Date	29 September 2020	
ECHR articles	Article 9 § 1 Article 1 of Protocol no. 1	
Facts	Decision	Comments
<p>The case concerns the authorities' refusal to exempt a religious organization from taxation on regular imports of religious material.</p> <p>The applicant organization appealed unsuccessfully against the tax authorities' refusal to exempt its regular imports of donated religious literature and other materials from the payment of VAT, as well as the manner used to calculate the tax due.</p>	<p><b>Article 9 § 1:</b> The applicant organization complained that the refusal to exempt its imports of donated religious literature from taxation, as well as the arbitrary imposition of a grossly inflated customs value on them, was in breach of its right to the freedom of religion.</p> <p>(1) The Court reiterated that a fiscal measure could constitute an interference with the exercise of the rights secured under article 9 if that measure were found to have a real and serious impact on a religious community's ability to pursue its religious activity.</p> <p>(2) In the present case, the authorities' refusal to apply the tax exemption provided for in domestic legislation had not had such an effect on the applicant organization as to fundamentally undermine its ability to develop its religious activity. The applicant organization had not submitted that, as a result of the impugned measure, it had found itself in such financial hardship that it had been prevented from guaranteeing its adherents' freedom to exercise their religious beliefs.</p> <p>The complaint was declared <b>inadmissible as manifestly ill-founded.</b></p> <p><b>Article 1 of Protocol no. 1:</b> The</p>	<p>In this case, the Court maintained its well-established position that, in such a complex sphere as the imposition of VAT, the respondent state should be afforded a particularly wide margin of appreciation. A fiscal measure can be considered as breaching the requirements of article 1 of Protocol no. 1 only if it has imposed an unreasonable or disproportionate burden on the taxpayer. The taxpayer should demonstrate that his financial position has been fundamentally undermined by the impugned measure so as to deprive him of the minimum amount of money necessary for living.</p>

	<p>Court also declared the complaint under this provision <b>inadmissible as manifestly ill-founded</b>. The Court found that levying VAT on the applicant organization's imports of religious literature had not upset the balance between the protection of their rights and the public interest in securing the payment of taxes. The Court noted, in particular, that the organization was required to pay 20% and 30% VAT, which could not be considered exorbitant, and that the organization did not claim that such a sum in VAT had fundamentally undermined its financial situation. The Court also stressed that the applicant organization had been able to dispute the tax authority's relevant decisions before the courts exercising jurisdiction in administrative matters and had not claimed that that procedure had failed to meet the requisite procedural standards.</p>	
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A constructive dialogue between taxpayers and revenue authorities is essential for protecting taxpayers' rights. Good faith and fair dealing form part of this cooperation, and according to the national reports, country practice shows a continued trend towards building this foundation.

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

50 responses



**Yes:** Austria, Belgium, Bolivia, Bosnia and Herzegovina, Canada, Chile, China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Croatia, Cyprus (1), Denmark, Germany, Guatemala, Honduras, Italy, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Panama, Portugal, Spain, Turkey, United Kingdom, United States, Uruguay

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

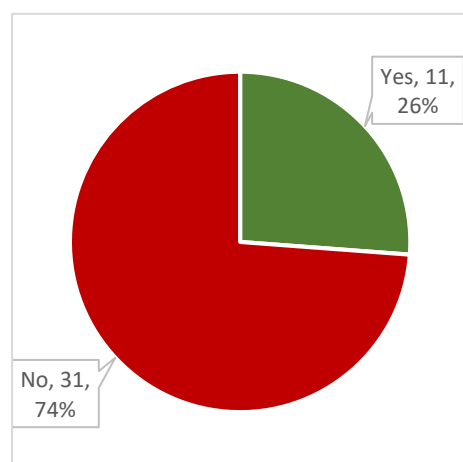
**Reports with diverging opinions:** Cyprus

**Source:** OPTR: Questionnaire 1, Question 8

In the year 2020, the dialogue between administrations and taxpayers took new forms due to physical meeting limitations in several countries, like **Brazil**,<sup>89</sup> **Chile**,<sup>90</sup> **Mauritius**,<sup>91</sup> the **Netherlands**<sup>92</sup> and **Peru**,<sup>93</sup> implementing virtual meetings. Chart 8 shows that this is part of the continued trend towards building a positive dialogue.

**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 an incorrect basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?**

50 responses



**Yes:** Australia, Austria, China (People's Rep.) (1), China (People's Rep.) (2), Denmark, Germany, Italy, Japan, Mexico (2), Panama, Serbia, South Africa, United Kingdom

**No:** Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Finland, Greece (1), Greece (2), Guatemala, Honduras, India, Luxembourg, Mauritius, Mexico (1), Netherlands, New Zealand, Peru (1), Peru (2), Poland, Portugal, Russia, Spain, Sweden, Turkey, United States, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** Mexico

**Source:** OPTR: Questionnaire 1, Question 9

In this regard, the practice implemented by **New Zealand** is noteworthy. The tax authorities can invite the taxpayer, before the audit commences, to explain the preliminary determinations implying the occurrence of a tax loss. Should those explanations be found satisfactory, no tax examinations are conducted, and if not satisfactory, as long as the taxpayer declares and pays the tax due within a specific timeframe, the tax loss penalty is reduced from 100% to 20% of the tax loss. This explanation mechanism does not apply to tax fraud cases.<sup>94</sup>

In the context of the COVID-19 pandemic, some countries, like **Belgium**,<sup>95</sup> **Serbia**<sup>96</sup> and the **United States**,<sup>97</sup> have reported scarce staffing resources and consequent issues for

<sup>89</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 9.

<sup>90</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 9

<sup>91</sup> MU: OPTR Report (Taxpayer/Tax Practitioner), Questionnaire 2, Question 10.

<sup>92</sup> NL: OPTR Report (Taxpayer/Tax Practitioner), Questionnaire 2, Question 9.

<sup>93</sup> PE: OPTR Report (Academia/Taxpayer/Tax Practitioner), Questionnaire 2, Question 9.

<sup>94</sup> NZ: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 8.

<sup>95</sup> BE: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 9.

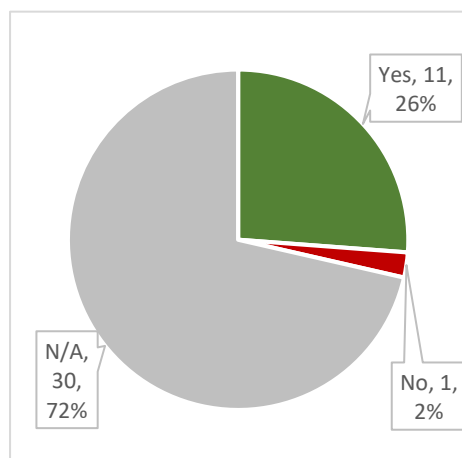
<sup>96</sup> RS: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 9.

<sup>97</sup> US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2 (Developments Form), Question 9.

communication with taxpayers, and **Italy** has even reported issues with the legitimacy of tax rules from a constitutional perspective due to the increasing role of administrative orders instead of legislative measures to deal with the pandemic.<sup>98</sup> At the other end of the scale, the **Australian** Tax Office has introduced specific measures to assist taxpayers impacted by the 2019/2020 bushfires and help them comply with their tax obligations, and similar assistance has been offered because of the pandemic.<sup>99</sup>

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

50 responses



**Yes:** Austria, China (People's Rep.) (1), China (People's Rep.) (2), Denmark, Italy, Japan, Mexico (2), Netherlands, Panama, Portugal, South Africa, United Kingdom, United States

**No:** Germany

**Not applicable:** Australia, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Finland, Greece (1), Greece (2), Guatemala, Honduras, India, Luxembourg, Mauritius, Mexico (1), New Zealand, Peru (1), Peru (2), Poland, Russia, Serbia, Spain, Sweden, Turkey, Uruguay, Venezuela (1), Venezuela (2)

**Source:** OPTR: Questionnaire 1, Question 10

**Reports with diverging opinions:** Mexico

To establish a solid foundation for cooperation between the taxpayer and the tax administration, communicating errors and remedying negative consequences are essential. As part of this, electronic measures for notifying the taxpayer about systematic errors in assessing taxes and arrangements for repayments are in place in some countries, but the overall tendency is still that the majority lacks them, as evidenced in Chart 9.

In this regard, the **United Kingdom** reported a setback. Her Majesty's Revenue and Customs was charged with delivering support to businesses struggling due to the pandemic and did so with commendable speed. One group that was eligible for support under the "self-employed income support scheme" (SEISS) was that of sub-contractors in the construction industry. Workers in this group generally have a basic rate of tax deducted at source by those contracting their services, which leads some of them to think (incorrectly) that they are employed, whereas Her Majesty's Revenue and Customs regards them as self-employed and under an obligation to file an annual self-assessment return. The data needed in order to identify those eligible for a SEISS grant are taken from the self-assessment database, and because several sub-contractors who were under the misapprehension that they were employees were not in the habit of filing returns, they were not identified as eligible for a SEISS grant and received no money from Her Majesty's Revenue and Customs. It would

<sup>98</sup> IT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 9.

<sup>99</sup> AU: OPTR Report (Ombudsperson/Academia), Questionnaire 2 (Developments Form), Question 9.

have been a best practice for Her Majesty's Revenue and Customs to have contacted those subcontractors to rectify their tax position to receive what they were entitled to, but so far, Her Majesty's Revenue and Customs has resisted doing so because they (the subcontractors) are responsible for their tax. According to the reporters' assessment, this is a case of denying taxpayers their rightful entitlement because they were laboring under a misapprehension about their tax affairs, which Her Majesty's Revenue and Customs has done nothing to correct.<sup>100</sup>

There is an overall tendency for countries to introduce electronic filing, which has been introduced in **Cyprus**,<sup>101</sup> **Mauritius**,<sup>102</sup> **Peru**,<sup>103</sup> **Poland**,<sup>104</sup> **Switzerland**<sup>105</sup> and the **Netherlands**<sup>106</sup> in various forms. The **United States** also sets an example of a best practice through e-filing amended individual income tax returns by means of commercial software.<sup>107</sup> **Greece** sets another example of a best practice with a decision by the Administrative Supreme Court,<sup>108</sup> which states that the tax authorities must grant the taxpayer access to the electronic file held about him, including any information about unauthorized access by third persons.<sup>109</sup>

### 3. Confidentiality

#### 3.1. General issues

"Transparency" has been a buzzword in taxation in the aftermath of the 2008 financial crisis, in particular, in the last 5 years with the revelations exposed by scandals like the LuxLeaks in late 2014 and the Panama Papers in 2016, which have brought a significant shift in policymaking power<sup>110</sup> and increased the need for tax transparency.<sup>111</sup>

This tendency is also apparent when analysing the developments in this area, as described in the country reports for the OPTR over the last 5 years, which reflect the importance of transparency.

While transparency provides a clearer picture of where substance is present and aids tax authorities in obtaining information about taxpayers' potentially taxable transactions, states'

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<sup>100</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 3.

<sup>101</sup> CY: OPTR Report (Academia), Questionnaire 2, Question 10.

<sup>102</sup> MU: OPTR Report (Academia), Questionnaire 2, Question 10.

<sup>103</sup> PE: OPTR Report (Taxpayer/Tax Practitioner), Questionnaire 2, Question 10.

<sup>104</sup> PO: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 10.

<sup>105</sup> CH: OPTR Report (Academia), Questionnaire 2, Question 10.

<sup>106</sup> NL: OPTR Report (Taxpayer/Tax Practitioner), Questionnaire 2, Question 10.

<sup>107</sup> US: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2 (Developments Form), Question 10.

<sup>108</sup> GR: Administrative Supreme Court, Decision number 681/2020.

<sup>109</sup> GR: OPTR Report (Tax Administration), Questionnaire 2, Question 10.

<sup>110</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/njls/vol5/iss1/2> (accessed 8 March 2021).

<sup>111</sup> Weffe, *supra* n. 33, at sec. 2.4.4.

legitimate interests must be balanced against the taxpayers' right to privacy.

### 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 that sanctions are enforced).

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

Bolivia, Brazil, Chile, China (People's Rep.), Portugal

**Shifted away from the minimum standard:**

Canada, Panama

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

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

Bolivia

**Shifted away from the minimum standard:**

Panama

#### 2020 Relevant Admissibility Decisions – Inter-American Court of Human Rights

- See *María Meyber Bichakdjian Altounian and Others v. Uruguay*, Inadmissibility Report No. 222/19.

Continuing the trend set in 2015,<sup>112</sup> most of the reports state that there are specific guarantees for confidentiality in domestic law and sanctions for officials making unauthorized disclosures. The development continued in 2020, with **Bolivia** introducing a new high-net-worth tax act, stating that (former) tax officials may not disclose, assign or communicate the information obtained because of their position. Such information is legally reserved under administrative, civil or criminal responsibility.<sup>113</sup> Likewise, **Chile** amended its Tax Code to enshrine the Chilean Internal Revenue Service obligation to guarantee taxpayer information confidentiality.<sup>114</sup> Videoconference confidentiality between tax authorities and taxpayers was secured by special software in the **Netherlands**,<sup>115</sup> and **Portugal** introduced specific rules allowing for the encryption of information for standard audits (the so-called “standard audit file for tax”).<sup>116</sup>

<sup>112</sup> Baker & Pistone, *supra* n. 1, at p. 28.

<sup>113</sup> BO: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 12.

<sup>114</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Developments Form, Benchmark 11.

<sup>115</sup> NL: OPTR Report (Taxpayers/Tax Practitioners), Developments Form, Benchmark 11.

<sup>116</sup> PT: OPTR Report (Taxpayers/Tax Practitioners), Developments Form, Benchmark 11.



At the other end of the scale, **Canada** has introduced a searchable registry of companies that have availed themselves of the Canada Emergency Wage Subsidy. The list details all of the companies that have received the subsidy or will soon receive it, but it does not detail how much each company or group received.<sup>117</sup>

### 3.3. Encryption – Control of access

**Best practice:** Encrypt information about taxpayers that is held by the tax authority to the highest possible level.

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

Chile, Honduras, Netherlands, Portugal

**Shifted away from the best practice:**

Panama

**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:**

Panama

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

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

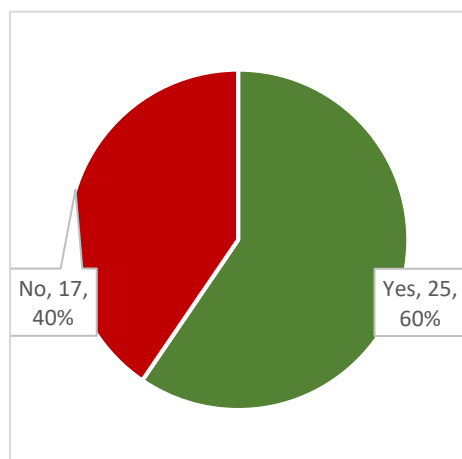
Peru

**Shifted away from the best practice:**

Canada, Panama

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

50 responses



**Yes:** Austria, Bolivia, Brazil (1), Brazil (2), Bulgaria (2), Canada, Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Honduras, India, Italy, Japan, Mauritius, Mexico (1), New Zealand, Poland, Russia, Serbia, Spain, Sweden, Turkey, United States, Venezuela (1)

**No:** Australia, Belgium, Bosnia and Herzegovina, Bulgaria (1), Colombia, Croatia, Cyprus (1), Finland, Guatemala, Luxembourg, Mexico (2), Netherlands, Panama, Peru (1), Peru (2), Portugal, South Africa, United Kingdom, Uruguay, Venezuela (2)

**Reports with diverging opinions:** Bulgaria, Cyprus, Mexico, Venezuela

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

While most reports state that automatic encryption is a standard followed in the surveyed

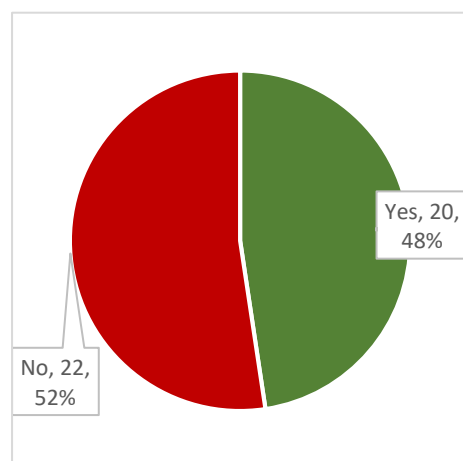
<sup>117</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 11.

jurisdictions, as evidenced in Chart 11, a slight decline in the development is observed as compared to 2019.

In August 2020, **Canada** responded to “credential surfing” attacks targeting the Canada Revenue Agency (CRA) accounts and GCKey services. Fraudsters used the usernames and passwords of 9 million users of the approximately 12 million active GCKey accounts to attempt to access government services. Hackers could exploit vulnerability in security software configuration, bypassing the CRA security questions and gaining access to a user’s CRA account. As a result of the cyberattacks, the CRA disabled online services related to changes of address and phone number, arranging for direct deposits and appointing an authorized representative. Individuals whose accounts were compromised received a letter from the CRA explaining how to confirm their identity and reactivate their account.<sup>118</sup>

**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?**

50 responses



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

**No:** Australia, Bolivia, Bosnia and Herzegovina, Bulgaria (2), Canada, Colombia, Croatia, Cyprus (1), Denmark, Finland, Guatemala, Italy, Luxembourg, Mexico (2), Netherlands, Panama, Peru (2), Poland, Portugal, Russia, South Africa, Sweden, United Kingdom, Uruguay

**Reports with diverging opinions:** Bulgaria, Cyprus, Mexico, Peru

Source: OPTR: Questionnaire 1, Question 12

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

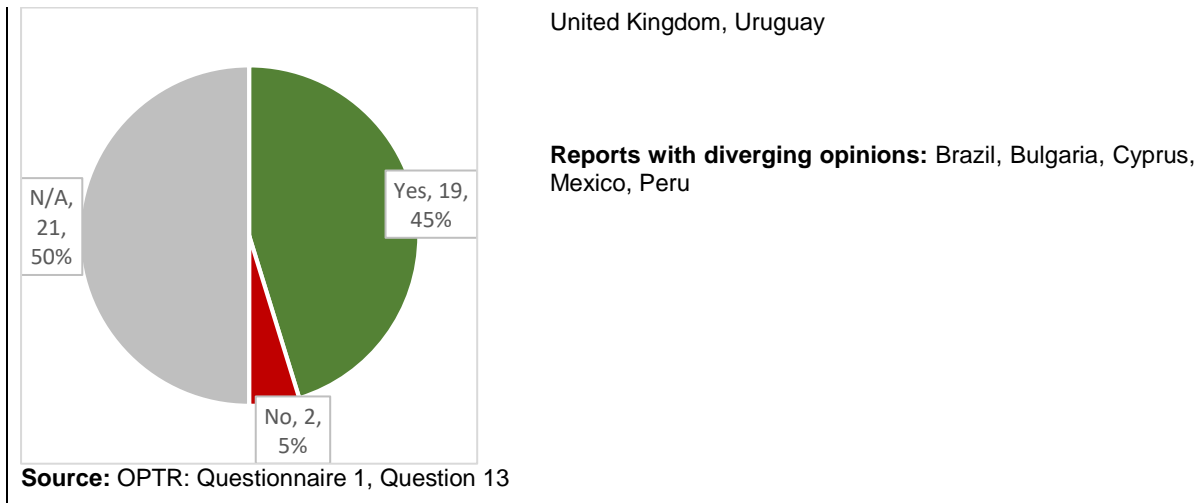
50 responses

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

**No:** Brazil (2), Mexico (2), Netherlands

**Not applicable:** Australia, Bolivia, Bosnia and Herzegovina, Bulgaria (2), Canada, Colombia, Croatia, Cyprus (1), Denmark, Finland, Guatemala, Italy, Luxembourg, Panama, Peru (2), Poland, Portugal, Russia, South Africa, Sweden,

<sup>118</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 13.



In November 2020, **Peru** obtained certification of its security and confidentiality standards by the OECD.<sup>119</sup>

### 3.4. Auditing of access

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

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

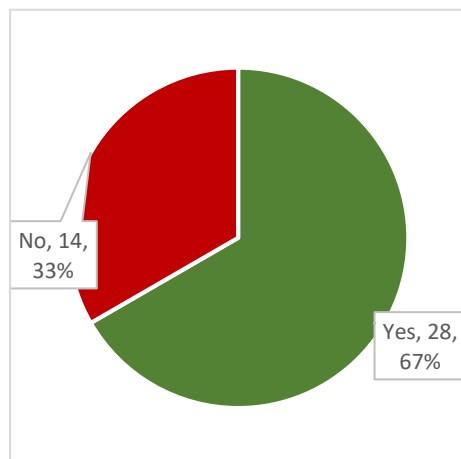
Canada

**Shifted away from the minimum standard:**

Panama

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

51 responses



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

**No:** Bolivia, Bosnia and Herzegovina, Brazil (2), Bulgaria (1), Croatia, Cyprus (1), Cyprus (2), Guatemala, Italy, Mexico (1), Mexico (2), Panama, Peru (2), Poland, South Africa, United Kingdom, Uruguay, Venezuela (1), Venezuela (2)

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

**Reports with diverging opinions:** Brazil, Bulgaria, Peru

<sup>119</sup> PE: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 13.

Auditing the access to data provides a minimum safeguard to protect the taxpayers' information from leaks and mismanagement.

The trend in this matter since 2015 is that the majority of surveyed jurisdictions have provided such minimum protection, as evidenced in Chart 14. However, the only factual development in this regard arose in response to a "credential surfing" attack on the **Canada** Revenue Agency servers, as reported in section 3.3. of this Yearbook. This scarcity of reported developments in 2020 is worth noticing, considering the elevated risk of information leaks due to the increased use of electronic means of communication between tax authorities and taxpayers due to the COVID-19 pandemic, as reported in sections 1.2., 1.5. and 1.7. of this Yearbook.

### 3.5. Administrative measures to ensure confidentiality

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

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

None

**Shifted away from the minimum standard:**

Panama

Likewise, there were no reported developments regarding administrative measures to ensure confidentiality to tax officials in 2020, something remarkable in the context of the (increased) need for ensuring confidentiality because of the COVID-19 pandemic. Only **Panama** reported a shift away from the minimum standard in this matter, albeit without providing factual grounds for such an assessment.<sup>120</sup>

### 3.6. Official responsibility for data confidentiality

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

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

None

**Shifted away from the best practice:**

Panama

In the same sense, there were no reported developments in 2020 regarding data protection officers' appointment at the senior level and local tax offices.

### 3.7. Breaches of confidentiality – Investigations

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

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

Belgium, Canada

**Shifted away from the minimum standard:**

Panama

Trends in this regard slightly declined as compared to 2019. Twenty-seven percent of countries (34% in 2019) stated that tax officials were prosecuted in the last decade for

<sup>120</sup> PA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

unauthorized access to taxpayers’ data, as shown in Chart 15.

As mentioned in section 3.3., **Canada** experienced cyberattacks, and the Canadian Revenue Agency stated that it was cooperating with the Royal Canadian Mounted Police (RCMP) in its ongoing investigation of these attacks. The CRA has not revealed the specific nature of the attacks or the security measures to address them in order not to jeopardize the RCMP investigators’ work.<sup>121</sup>

### 3.8. Breaches of confidentiality – Remedies

**Minimum standard:** Provide remedies for taxpayers who are victims of unauthorized disclosures of confidential information.

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

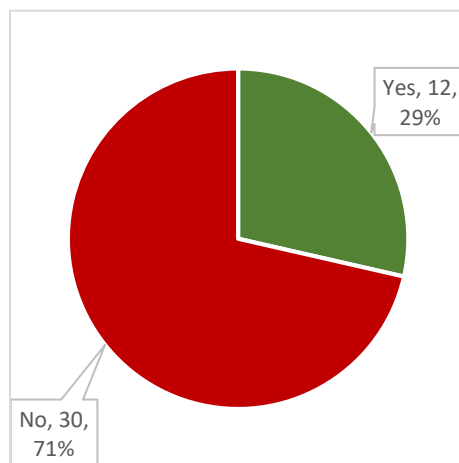
Belgium, Colombia

**Shifted away from the minimum standard:**

Mexico, Panama

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

50 responses



**Yes:** Australia, Austria, Brazil (1), Bulgaria (1), Canada, China (People’s Rep.) (1), Finland, Germany, Honduras, Luxembourg, New Zealand, Sweden, United Kingdom, United States

**No:** Belgium, Bolivia, Bosnia and Herzegovina, Brazil (2), Bulgaria (2), Chile, China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Mauritius, Mexico (1), Mexico (2), Netherlands, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Turkey, Uruguay, Venezuela (1), Venezuela (2)

**Source:** OPTR: Questionnaire 1, Question 15

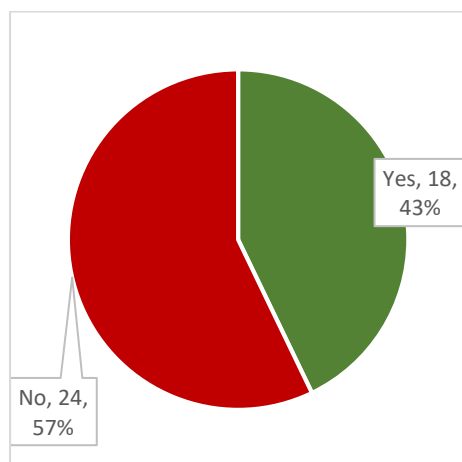
**Reports with diverging opinions:** Brazil, Bulgaria, China (People’s Rep.)

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

50 responses

**Yes:** Australia, Brazil (1), Bulgaria (1), Bulgaria (2), China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Denmark, Finland, Greece (1), Greece (2), Honduras, India, Italy, Panama, Peru (2), Russia, Serbia, Sweden, Turkey, United States, Venezuela (1), Venezuela (2)

<sup>121</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 16.



Source: OPTR: Questionnaire 1, Question 16

**No:** Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (2), Canada, Chile, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Germany, Guatemala, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Poland, Portugal, South Africa, Spain, United Kingdom, Uruguay

**Reports with diverging opinions:** Brazil, Peru

A curious development in this regard took place in **Belgium**. In Ghent, the Court of Appeal ruled<sup>122</sup> on tax officials wearing bodycams during a tax audit on a taxpayer’s business premises. The cameras were allegedly used to ensure the tax officials’ safety, while in reality, the filmed footage of the inspection was broadcast on television as part of a television show called “De Fiscus”. The taxpayer agreed with the tax authorities on the taxes due but challenged this agreement in court. According to the Court, the tax authorities violated their professional secrecy by filming a tax inspection and allowing its broadcast on television, but this did not lead to the tax assessment’s nullity. The tax authorities were ordered to pay (symbolic) damages (of EUR 1). Additionally, the tax authorities were ordered to publicly acknowledge their error and were obliged to have an announcement to that effect published in seven Flemish newspapers and primetime television.

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

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

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

Colombia

**Shifted away from the minimum standard:**

Panama

The sole reported development in 2020 in this regard was in **Colombia**, where the tax authorities compiled, in an internal circular, guidance for tax officials on transparency and confidentiality, which serves as a practical example of enhancing taxpayers’ rights in this area.<sup>123</sup>

### 3.10. Exceptions to taxpayer confidentiality – Disclosure in the public interest:

<sup>122</sup> BE: OPTR Report (Academic), Questionnaire 2 (Developments Form), Benchmark 17.

<sup>123</sup> CO: OPTR Report (Ombudsperson), Questionnaire 2, Question 17.

### 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:**

None

**Shifted away from the minimum standard:**

Bolivia, Guatemala, Mexico, Panama

**Best practice:**

Require judicial authorization before any disclosure of confidential information by the revenue authorities.

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

None

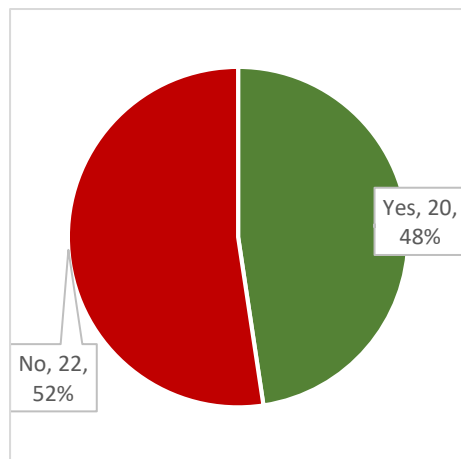
**Shifted away from the best practice:**

Mexico

Naming and shaming is currently awaiting scrutiny at the European Court of Human Rights.<sup>124</sup> In *L.B. v. Hungary*, the Court set out to rule on the legitimate aim of naming and shaming to protect a country’s economic wellbeing and determine whether it strikes a fair balance between the taxpayer’s right to privacy and the interest of the community in the case at hand.

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

50 responses



**Yes:** Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Croatia, Finland, Greece (1), Greece (2), Guatemala, Mauritius, Mexico (1), Mexico (2), Panama, Peru (2), Portugal, Serbia, South Africa, Spain, Turkey, United Kingdom, Venezuela (1)

**No:** Australia, Austria, Belgium, Chile, Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Honduras, India, Italy, Japan, Luxembourg, Netherlands, New Zealand, Peru (1), Poland, Russia, Sweden, United States, Uruguay, Venezuela (2)

**Reports with diverging opinions:** Peru, Venezuela

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

In **Bolivia**, new legislation from 2020 strikes down information confidentiality during the tax enforcement stage. The tax administration may require the payment of the tax debt through publications made in the media.<sup>125</sup>

In **Mexico**, new legislation from 2020 subjects to information disclosure any federal, state or

<sup>124</sup> *L.B. v. Hungary*, *supra* n. 5.

<sup>125</sup> BO: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 19.

county entity or individual or business entity that handles public funds if they are not compliant with their taxes. The same rationale applies to public and private companies that fail to request a “tax status certificate” (*Constancia de situación fiscal*). Also, taxpayers using false invoices to obtain tax deductions will be named and shamed. Additionally, there is a new registry of Digital Services Providers (DSPs) that provides certain digital services to Mexican customers without a physical presence in Mexico. This provision aims to make DSPs register with the Mexican tax authorities, properly charge and report the VAT on sales made to Mexican customers and report the number of transactions they carry out. Failure to comply with such obligations will prevent such DSPs from participating in the Mexican market by “shutting down” access to the market through the Internet, following a procedure outlined in the Federal Tax Code. Finally, the tax authorities will regularly publish a list of DSPs, both compliant and non-compliant.<sup>126</sup>

As from 1 January 2020, specific penalties imposed on tax advisers may be published in the **Netherlands**.<sup>127</sup>

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

**Minimum standard:** There should be no disclosure of confidential taxpayer information to politicians or where it might be used for political purposes.

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

South Africa

**Shifted away from the minimum standard:**

Panama

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

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

None

**Shifted away from the best practice:**

Panama

The ruling of the Gauteng Division of the High Court of **South Africa** of 23 March 2020 is, without hesitation, one of the highlights of the protection of taxpayers’ rights.<sup>128</sup> The Court denied the Public Prosecutor access to taxpayer information held by the South African Revenue Service about the country’s former president. The parties disputed the Public Prosecutor’s possibility to subpoena tax authority officials to disclose taxpayer information that is legally deemed confidential without being previously authorized by a court of law. The Court ruled that “the powers given the Public Protector to subpoena a witness to give evidence or to produce a document may not be invoked to coerce that witness to violate the

<sup>126</sup> MX: OPTR Report (Taxpayers/Tax Practitioners) Questionnaire 2, Question 19.

<sup>127</sup> NL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 19.

<sup>128</sup> ZA: OPTR Report (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 20.



law under which such a witness operates”, granting the tax authorities relief against the Public Prosecutor’s request on the grounds of taxpayer information confidentiality.<sup>129</sup>

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

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

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

Brazil, Finland

**Shifted away from the minimum standard:**

Colombia, Panama

#### 2020 Relevant Inadmissibility Decisions – European Court of Human Rights

<b>Case</b>	<i>Andriy Romanenko v. Ukraine</i> , Application No. 2843/16,
<b>Date Communicated</b>	9 November 2020
<b>ECHR articles</b>	Article 10, §§ 1-2
<b>Issues</b>	<p>The applicant challenged a refusal to acquire official information from public officials’ declarations before the courts, relying both on the law on Access to Public Information and the Law on Prevention and Fight against Corruption, according to which the public officials’ declarations’ were open to the public. In his application before the Court, he also claimed that he needed copies of the original declarations and not extracts from them in order to have trustworthy information and avoid manipulations. After one re-examination of the case, on 30 September 2015, the High Administrative Court upheld the decision of the Court of Appeal, which partly allowed the applicant’s claims ordering the disclosure of the information contained in the financial declarations. The courts, however, concluded that the copies of the original financial declarations could not be provided to the applicant, as part of the information contained in them (for example, the address and the individual tax number) was confidential in nature.</p> <p>In a recent case, <i>L.B. v. Hungary</i> (no. 36345/16, 12 January 2021), the Court found no violation of article 8 of the ECHR. It considered that the publication of the applicant’s identifying data, including his home address, was justified in the circumstances of the case due to the taxpayer failing to fulfil his tax obligations.</p>

<sup>129</sup> ZA: High Court, Gauteng Division, 23 Mar. 2020, Case 84074/19, *SARS v. Public Protector and others*, available at, at [LAPD-DRJ-HC-2020-05 - CSARS v PP and Others \(84074-19\) \[2020\] ZAGPPHC 33, \[2020\] 2 All SA 427 \(GP\) \(23 March 2020\).pdf](#) (accessed 17 Feb. 2021).

The present case should also be compared to the case *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* ([GC], no. 931/13, 27 June 2017). In that case, the court found no violation of the applicant companies' rights under article 10 of the ECHR on account of an order restraining the mass publication of tax information.

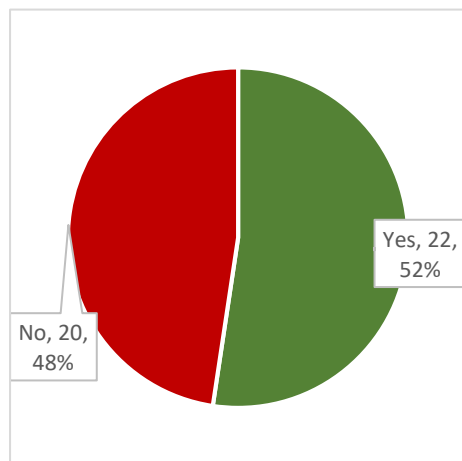
In **Brazil**, new legislation on personal data protection has entered into force, restricting third parties' access to data in electronic invoices.<sup>130</sup>

In **Finland**, the tax administration interpreted the EU General Data Protection Regulation<sup>131</sup> so that taxpayers whose annual income is at least EUR 100,000 may opt not to be included in the list of wealthy persons concerning the previous fiscal year's assessment. The list is published in the press annually on 1 November. The taxpayers' right to privacy is better protected now that individuals have the right to remain anonymous.<sup>132</sup>

Regretfully, there has been an increase in cases with taxpayers not being allowed to access information about themselves in **Colombia**. This increase originates from taxpayers who have been classified as high-risk regarding requests for refunds, as these taxpayers cannot know the reason for this classification.<sup>133</sup>

**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)?**

50 responses



**Yes:** Australia, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), China (People's Rep.) (1), Colombia, Croatia, Cyprus (2), Denmark, Finland, Guatemala, Honduras, India, Italy, Mexico (1), Mexico (2), New Zealand, Panama, Peru (1), Poland, Russia, Serbia, United States, Venezuela (2)

**No:** Austria, Belgium, Bulgaria (2), Canada, Chile, China (People's Rep.) (2), Cyprus (1), Czech Republic, Germany, Greece (1), Greece (2), Japan, Luxembourg, Mauritius, Netherlands, Peru (2), Portugal, South Africa, Spain, Sweden, Turkey, United Kingdom, Uruguay, Venezuela (1)

**Reports with diverging opinions:** Bulgaria, China (People's Rep.), Cyprus, Peru, Venezuela

Source: OPTR: Questionnaire 1, Question 18

### 3.13. Anonymized judgments and rulings

<sup>130</sup> BR: OPTR Report (Academia), Developments Form, Benchmark 21.

<sup>131</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ([General Data Protection Regulation](#)), OJ L 119 (2016), Primary Sources IBFD.

<sup>132</sup> FI: OPTR Report (Academia), Developments Form, Benchmark 21.

<sup>133</sup> CO: OPTR Report ((Tax) Ombudsperson), Developments Form, Benchmark 21.

**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:**

Panama, Guatemala

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

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

None

**Shifted away from the best practice:**

None

**Guatemala** moved away from the minimum standard, since tax judgments, published in all cases, are not anonymized.<sup>134</sup>

### 3.14. (Legal) professional privilege

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

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

Spain

**Shifted away from the minimum standard:**

Bulgaria, Mexico, Netherlands, Panama, Portugal, Sweden

**Best practice:** Professional privilege should apply to all tax advisers who supply similar advice as lawyers. Information imparted in circumstances of confidentiality may be privileged against disclosure.

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

None

**Shifted away from the best practice:**

Mexico, Netherlands, Panama, Sweden

**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:**

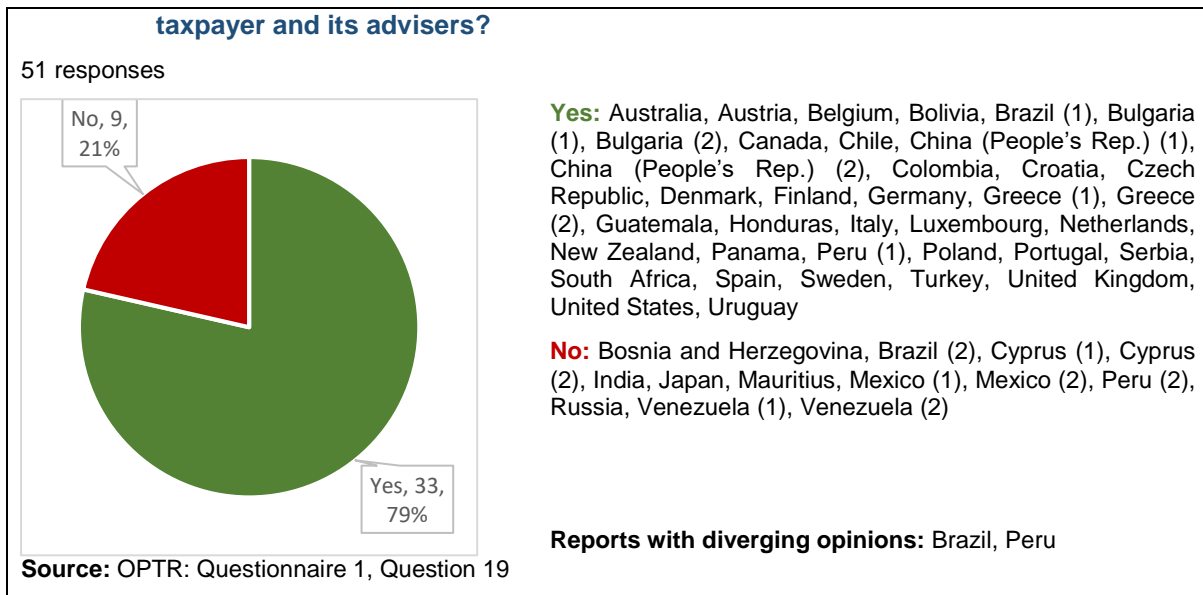
None

**Shifted away from the minimum standard:**

Panama

**Chart 19. Is there a system of protection of legally privileged communications between the**

<sup>134</sup> GT: OPTR Report (Taxpayers/Tax Practitioners), Developments Form, Benchmark 22.



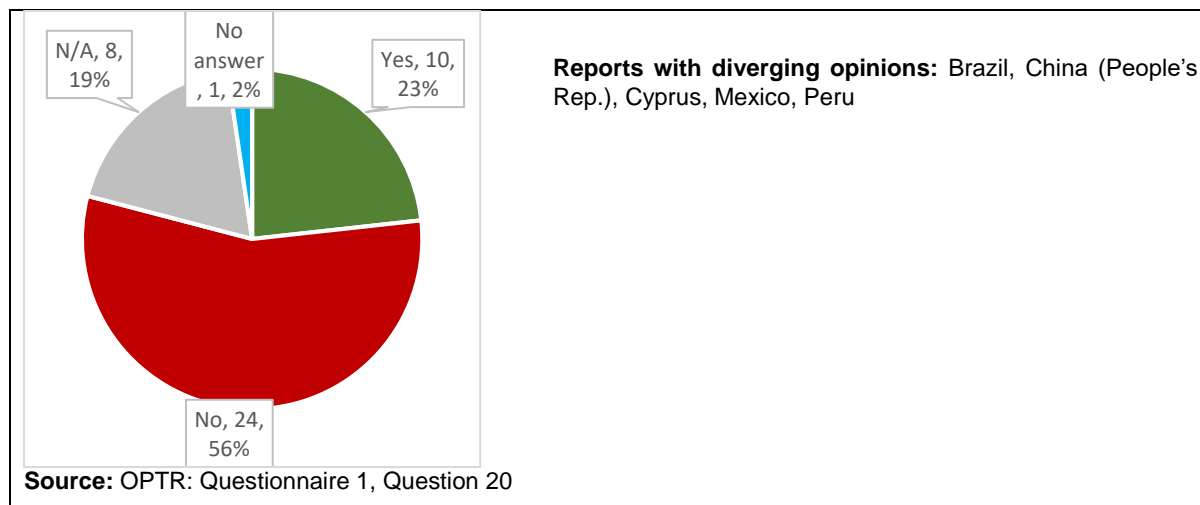
The effects of applying DAC 6<sup>242</sup> to taxpayers' rights continued in 2020 with **Portugal** reporting significant doubts as to the Directive's compatibility with the Portuguese Constitution, as disclosure prevails even over the legal privilege applicable to lawyers.<sup>135</sup>

The **Netherlands** had a public consultation for a legislative proposal to limit legal professional privilege for lawyers and notaries. In **Bulgaria**,<sup>136</sup> legal professions are excluded from the primary reporting obligation arising from DAC 6 due to attorney-client privilege, but attorneys are obliged to report the identity of the client who is obliged to disclose the details of the cross-border arrangement.



<sup>135</sup> PT: OPTR Report (Taxpayers/Tax Practitioners), Developments Form, Benchmark 23.

<sup>136</sup> BU: OPTR Report (Taxpayers/Tax Practitioners), Developments Form, Question 23.



**Spain** has enacted legislation<sup>137</sup> to transpose DAC 6 into domestic legislation, providing that legal professional privilege will apply to all persons considered intermediaries.<sup>138</sup>

In **Russia**, tax advisers' legal professional privilege is not regulated by legislation, as the Russian laws only protect advocate-client communications. The law does not protect communication with persons without advocate status (including private practitioners and in-house counsel). However, persons who have received the information necessary for tax control in connection with the performance of their professional duties, particularly advocates and auditors, cannot be questioned as witnesses during tax audits.<sup>139</sup> Also, as from 1 April 2020, the tax authorities shall publish decisions taken "on the application of methods to ensure the fulfilment of the obligation to pay taxes and on decisions on the adoption of interim measures" within 3 days from the date of adoption of the relevant decision of the tax authorities. Such information cannot constitute a tax secret.<sup>140</sup>

Finally, **Mexico** incorporated mandatory disclosure rules into its Federal Tax Code for the first time in 2020. If a scheme falls within the scope of reportable transactions, the disclosure must include the name and tax ID of the taxpayer and its tax advisers, the name of the taxpayer's legal representatives and a detailed description of the transaction. According to the new legislation, reporting does not constitute a breach of professional secrecy under any law, and the legislation contains penalties of up to USD 1 million for failing to disclose a reportable transaction.<sup>141</sup>

<sup>137</sup> ES: Law 10/2020 (29 Dec. 2020), modifying the General Tax Law (*Ley General Tributaria*), at preliminary remark II and additional provision 23.2, available at <https://www.boe.es/eli/es/l/2020/12/29/10> (accessed 12 Mar. 2021).

<sup>138</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 23.

<sup>139</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Developments Form, Question 23.

<sup>140</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 24.

<sup>141</sup> MX: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 23.

## 4. Normal Audits

### 4.1. Tax audits and their foundation principles

Tax audits are a fundamental part of tax administrations' means to enforce the law. While much tax reporting and many tax returns are pre-populated for tax assessments, it is sometimes necessary to investigate facts and legal qualifications to determine potential tax liability and the appropriate amount thereof. This investigation is part of the tax legislation's practical enforcement, and it requires that the tax authorities abide by the law, just as it necessitates that taxpayers' rights are adequately addressed and protected from a procedural perspective. By focusing on the procedural aspects of the tax audits and by applying procedural law as a starting point, tax audits should be developed around four fundamental 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 right against self-incrimination.

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

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

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

Belgium, Mauritius, Uruguay

**Shifted away from the minimum standard:**

Panama

## 2020 Relevant Case Law – Court of Justice of the European Union

Case	C-430/19, SC C.F. (Tax Inspection)	
Date	4 June 2020	
EU Charter Articles	47	
Facts	Decision	Comments
CF, a commercial company governed by Romanian law, was the subject of a tax inspection carried out by the regional administration concerning corporation tax and VAT. That tax inspection was suspended for a period of 6 months to allow the regional Directorate-General,	The general EU law principle of observance of the rights of the defence must be interpreted to mean that, in the context of national administrative procedures for inspection and determination of the taxable amount for VAT purposes, where (i) a taxable person has not been	The right of access to the administrative file is a corollary of the right to be heard before any decision is taken.

<p>which is responsible for combating fraud, to conduct an investigation in which the public prosecutor of the Tribunal Cluj participated. The criminal investigation ended with a decision that no further action should be taken. In its tax inspection report, the regional administration stated that the commercial transactions between CF and two of its suppliers were fictitious because the two suppliers, microenterprises subject to turnover tax at 3% (while CF was taxed at 16%) did not have the technical or logistical capacity to provide the services for which they had invoiced CF. After CF's legal representative acquired a copy of the tax inspection report from the regional administration, CF appealed against the tax inspection report and requested access to the full administrative file. CF stated that it had not been informed, at the time of the tax inspection, of the manner in which the criminal investigation might have influenced the inspection carried out by the tax authorities.</p>	<p>allowed access to the information in the administrative file that was taken into consideration when an administrative decision imposed additional tax liabilities on that taxable person; and (ii) the Court finds that, in the absence of that irregularity, the outcome of the procedure might have been different, the principle requires that that decision be annulled.</p>	
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Positive development has been made in this area, as the High Administrative Court (*Tribunal de lo Contencioso Administrativo*) in **Uruguay** has highlighted that reassessment of real estate property taxes constitutes an infringement of legal certainty and security standards. The Court ruled that a reassessment of these taxes could constitute a violation of *ne bis in idem* in terms of tax settlements and, therefore, pose a risk to the stability of legal relationships between taxpayers and tax authorities.<sup>142</sup>

In **Mauritius**, amendments passed under the Anti-Money Laundering and Combatting the Financing of Terrorism Act 2020 have improved on the principle of proportionality. Previously, a taxpayer could be assessed for income tax while simultaneously facing criminal charges for offences that were not compounded. The *ne bis in idem* principle only shielded the taxpayer from being punished twice for the same criminal offence and not from the same act, constituting two different criminal offences. The recent amendments mean that the revenue authority now has the discretion to stay any related assessment or claim intended to be raised, where the matter concerns either tax evasion or a money laundering offence that is being enquired, investigated or prosecuted.<sup>143</sup>

<sup>142</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 27.

<sup>143</sup> MU: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 25.

Throughout all of 2020, the COVID-19 pandemic affected the possibility of conducting regular audits. For instance, as from 18 March 2020, in **Belgium** all “non-essential or less urgent” inspections at taxpayer premises were postponed. Only those inspections necessary to protect the financial interests of the state were maintained. However, nothing changed, for inspections that could be carried out remotely via electronic applications.<sup>144</sup>

**Minimum standard:** In the application of proportionality, tax authorities may only request information that (i) is strictly needed; (ii) not otherwise available; and (iii) is the least burdensome on taxpayers.

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

Chile

**Shifted away from the minimum standard:**

Brazil, Guatemala, Panama

As reported by the OPTR in previous years (e.g. 2019), there are frequent instances of the tax authorities requesting information that is irrelevant to the tax assessment, otherwise available and, at times, the most burdensome on taxpayers. In this regard, **Brazil** reports a growing trend of tax authorities requiring information not directly connected to tax assessments, such as internal decision-making records, names of managers involved in decisions and market-sensitive information.<sup>145</sup>

Regarding proportionality, **Chile** has concluded a tax reform that establishes taxpayers’ rights, including an article explicitly stating that the taxpayer is exempt from providing information that is not strictly needed and that the tax authority’s acts must not disturb the normal operations of taxpayers.<sup>146</sup>

In terms of setbacks, **Guatemala** has reported that updates to the taxpayer register now require companies to reveal information about their shareholders, even though it is not public information and is considered irrelevant to the tax obligations.<sup>147</sup>

**Best practice:** In application of *ne bis in idem*, the taxpayer should only receive one audit per taxable period, unless facts become known after the audit is completed.

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

Spain, Uruguay

**Shifted away from the best practice:**

Panama

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

For tax proceedings, *ne bis in idem* means that the taxpayer must only be subject to one audit per taxable period that comprehensively covers all possible issues that might arise

<sup>144</sup> BE: OPTR Report (Academia), Developments Form, Benchmark 25.

<sup>145</sup> BR: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, Academia), Questionnaire 2, Question 26.

<sup>146</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 26.

<sup>147</sup> BR: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

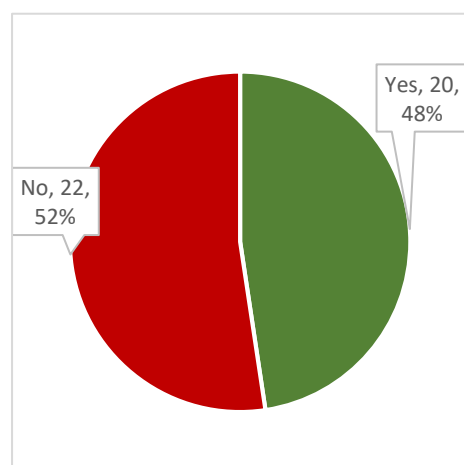


from the underlying investigation. The sole exception is facts that become known after the audit is completed.

A positive development is detected in this area, as Chart 21 shows half the jurisdictions report that the principle applies to tax audits – compared to 47% in 2019. For the countries where the *ne bis in idem* principle applies to tax audits, slightly more than half of them report that this means only one audit per taxable period, as evidenced by Chart 22, following the trend since 2018.

**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)?**

50 responses



**Yes:** Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Cyprus (1), Czech Republic, Greece (1), Greece (2), Honduras, Japan, Luxembourg, Mexico (1), Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, Uruguay, Venezuela (2)

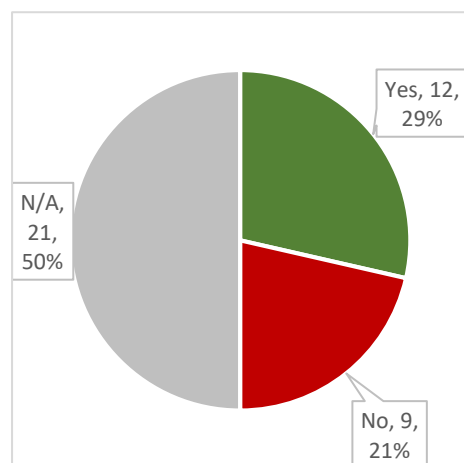
**No:** Australia, Belgium, Brazil (1), Brazil (2), Canada, Croatia, Cyprus (2), Denmark, Finland, Germany, Guatemala, India, Italy, Mauritius, Mexico (2), Netherlands, New Zealand, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Venezuela (1)

**Reports with diverging opinions:** Cyprus, Mexico, Venezuela

Source: OPTR: Questionnaire 1, Question 21

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

51 responses



**Yes:** Austria, Bosnia and Herzegovina, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Cyprus (1), Greece (1), Greece (2), Honduras, Japan, Panama, Poland, Portugal, Serbia, Venezuela (2)

**No:** Bolivia, Bulgaria (1), Bulgaria (2), Chile, Czech Republic, Luxembourg, Mexico (1), Mexico (2), Peru (1), Peru (2), Russia, Uruguay

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

**Reports with diverging opinions:** Cyprus, Venezuela

Source: OPTR: Questionnaire 1, Question 22

On this matter, **Spain** reports that their tax system acknowledges the possibility that two different bodies (*Gestión-Inspección*) carry out the so-called “tax verifications”. In this regard, a judgment of 3 June 2020 from the Spanish Supreme Court expands the scope of taxpayers’ protection by establishing the nullity and, consequently, the non-interruption of the

limitation period when misusing a verification procedure.<sup>148</sup> The Supreme Court also ruled on 16 October and 17 December 2020 that tax authorities should derive all consequences arising from the documentation under examination and not issue partial assessments, as the latter would harm the *ne bis in idem* principle and the taxpayers' right to certainty.<sup>149</sup>

The 2020 tax reform of **Chile**, as described above, also states that the taxpayer should not be subject to more than one audit regarding the same facts or items of a previous audit.<sup>150</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:**

Colombia, Uruguay

**Shifted away from the minimum standard:**

Panama

Most surveyed jurisdictions have formally integrated into their assessment procedures the *audi alteram partem* principle, i.e. the right to be heard before any decision, as evidenced by Chart 23.

In the COVID-19 pandemic context, **Colombia** grants *audi alteram partem* in tax audits through new legislation, providing for virtual inspections guaranteeing assistance for taxpayers while carrying out audits. Decree with force of law 807 of 2000 provided for the virtual realization of accounting and tax inspections, as well as inspection, surveillance and control visits by the tax authority. In this way, it has been possible to continue carrying out audits and guarantee the assistance of taxpayers and their advisers.<sup>151</sup> On the other hand, **Denmark** has allowed for communication between tax officials and taxpayers through videoconferencing, although limited. For instance, meetings cannot be recorded; the chat function can only be used to share and comment on non-confidential materials and information outside the scope of the EU General Data Protection Regulation, due to the risk of insufficient protection. The same applies to the function of screen sharing during a Microsoft Teams meeting. Materials shared on-screen pose a risk as screen shots may copy them.<sup>152</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)?**

50 responses

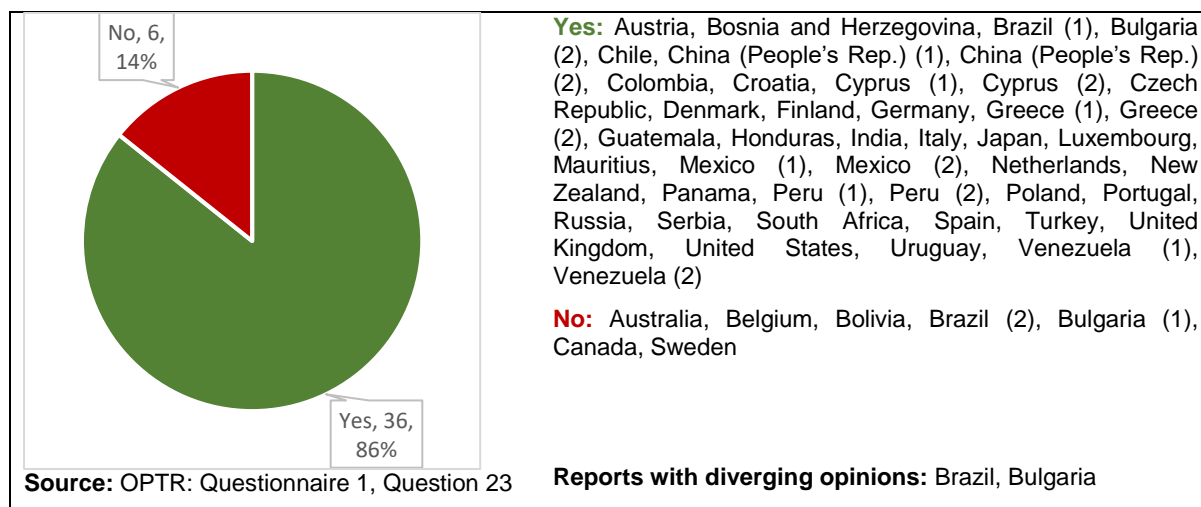
<sup>148</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 27.

<sup>149</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 27.

<sup>150</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 27.

<sup>151</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 28.

<sup>152</sup> DK: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 28.



In this regard, the High Administrative Court of **Uruguay** upheld the taxpayers' right to present their views, including those opposed to those of the tax authorities, before the decisions of the latter become final. According to the Court, the principle applies even to so-called "implied/tacit decisions" (i.e. those communicated to taxpayers only by invoices and not through formal resolutions).<sup>153</sup>

In the same vein, the 2020 tax reform of **Chile**, as described above, established a new process of reviewing the authority of the Chilean Internal Revenue Service regarding tax rulings that, in the eyes of the taxpayer, violate their rights.<sup>154</sup> In **Guatemala**, the tax code allows the taxpayer to have a meeting with the tax administration before the adjustments. However, these meetings do not permit the taxpayer to provide factual information and present their views before the tax authorities' decisions become final.<sup>155</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:**

None

**Shifted away from the minimum standard:**

None

There were no reported changes regarding *nemo tenetur* in 2020. Such a situation would halt the trend towards limiting the principle that the OPTR has been reporting since 2018,<sup>156</sup> although not curtailing it.

<sup>153</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 28.

<sup>154</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 28.

<sup>155</sup> GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Form), Question 28.

<sup>156</sup> OPTR, *supra* n. 60, at sec. 5.5.2.; OPTR, [The IBFD Yearbook on Taxpayers' Rights 2019](#), Part II, secs. 4.1., 5.5. and 9.1. (IBFD 2020), Books IBFD; and Weffe, *supra* n. 33, at sec. 2.4.4.

## 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:**

Spain

**Shifted away from the best practice:**

Panama

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

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

None

**Shifted away from the best practice:**

Panama

**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:**

Panama

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

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

None

**Shifted away from the minimum standard:**

Panama

**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:**

Spain

**Shifted away from the best practice:**

Panama

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

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

None

**Shifted away from the minimum standard:**

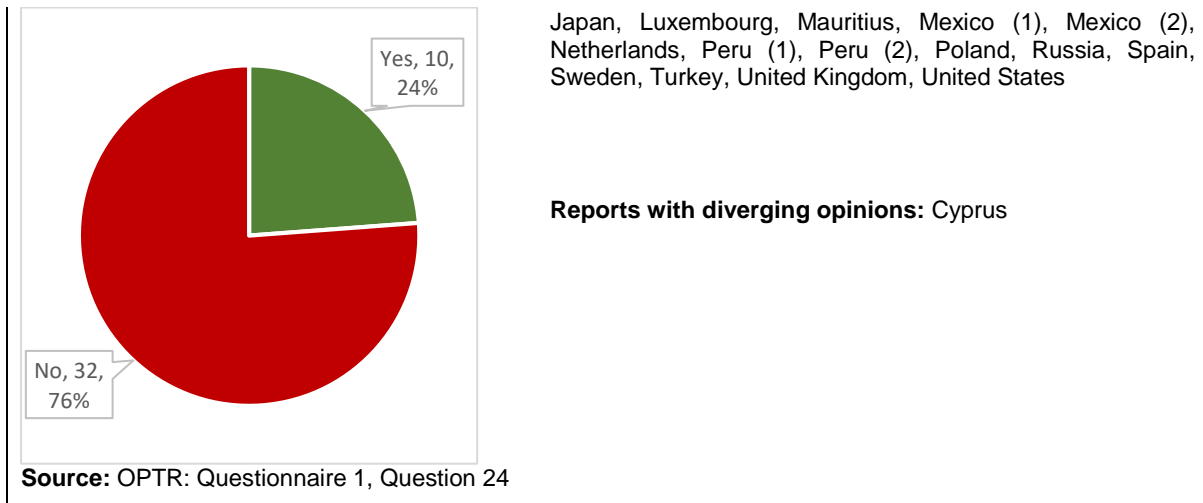
Panama

### 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)?

50 responses

**Yes:** Cyprus (1), Guatemala, Honduras, India, New Zealand, Panama, Portugal, Serbia, South Africa, Uruguay, Venezuela (1), Venezuela (2)

**No:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Croatia, Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Italy,



The fundamental principles described in section 4.1. provide the framework for tax audits in the respective jurisdictions, and within this framework, the states are free to set their requirements, content and structure of the audits. While this margin for the states to determine their policy is a fundamental part of the tax systems, this does not preclude or contradict a global manual of good practice in tax audits.<sup>157</sup>

While states have different legal constitutions and traditions, tax audits among them are similar and all based on the rule of law, which makes a global guideline feasible and, at the same time, it provides the taxpayers with the awareness of the restricting measures from the states in order for them to exercise their right to a defence properly.

While no significant developments were reported towards this best practice in 2020, **Spain** has reported that the tax administration has approved the 2020 Annual Audit Plan for Taxes and Customs' general guidance.<sup>158</sup> Likewise, tax authorities in **Mauritius** intend to soon publish a charter detailing the rights of taxpayers during a tax audit.<sup>159</sup>

Taxpayers' right to request the start of an audit is not acknowledged in the majority of the surveyed jurisdictions, as evidenced by Chart 24. **Spain** reports that the Supreme Court ruled that the authorization of entry and registration addressed to the taxpayer does not imply the beginning of an audit, since a previous formal report to the taxpayer is required.<sup>160</sup>

### 4.3. Time limits for normal audits

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

<sup>157</sup> See M. Cadesky, I. Hayes & D. Russell, *Towards Greater Fairness in Taxation: A Model Taxpayer Charter* p. 199 (AOTCA, CFE, STEP 2016).

<sup>158</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 30.

<sup>159</sup> MU: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 31.

<sup>160</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 33.

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

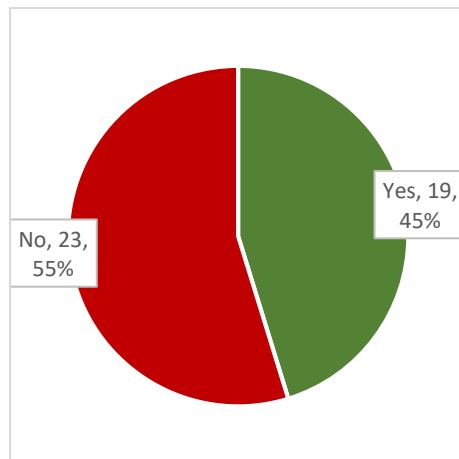
Uruguay

**Shifted away from the best practice:**

Panama

**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)?**

50 responses



**Yes:** Bolivia, Bulgaria (1), Bulgaria (2), Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Czech Republic, Greece (1), Greece (2), Honduras, India, Mexico (1), Mexico (2), Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Spain, Turkey, United States, Venezuela (1), Venezuela (2)

**No:** Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Canada, Croatia, Cyprus (1), Cyprus (2), Denmark, Finland, Germany, Guatemala, Italy, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Serbia, South Africa, Sweden, United Kingdom, Uruguay

**No answer:** Slovenia

**Source:** OPTR: Questionnaire 1, Question 25

The need for certainty for taxpayers is a fundamental right, which establishes the need for a reasonable time limit for audits. This best practice is still not present in most surveyed jurisdictions, as evidenced by Chart 25, following the trend in previous years, where the number was below 50%.

It is difficult to determine what a “reasonable” time limit is, and it will undoubtedly differ from jurisdiction to jurisdiction based on their specific legal context and background. For most of the surveyed jurisdictions, no formal timeline for audits exists, but a continued effort to significantly reduce the average time has been reported. Chart 26 illustrates the average applicable time limit for tax audits throughout the surveyed countries.

For the year 2020, this issue has been incredibly delicate due to the pandemic’s challenges of scarce personnel availability and the need to implement new procedures and other measures. These challenges will naturally be reflected in audit times as well, and countries like **Poland**<sup>161</sup> and **Russia**<sup>162</sup> reported deadline deferrals for tax audits. In this regard, **Brazil** reported many deadline postponements to 31 August 2020, providing taxpayers with the proper time to access documents and information requested in the tax audit,<sup>163</sup> and **Chile**

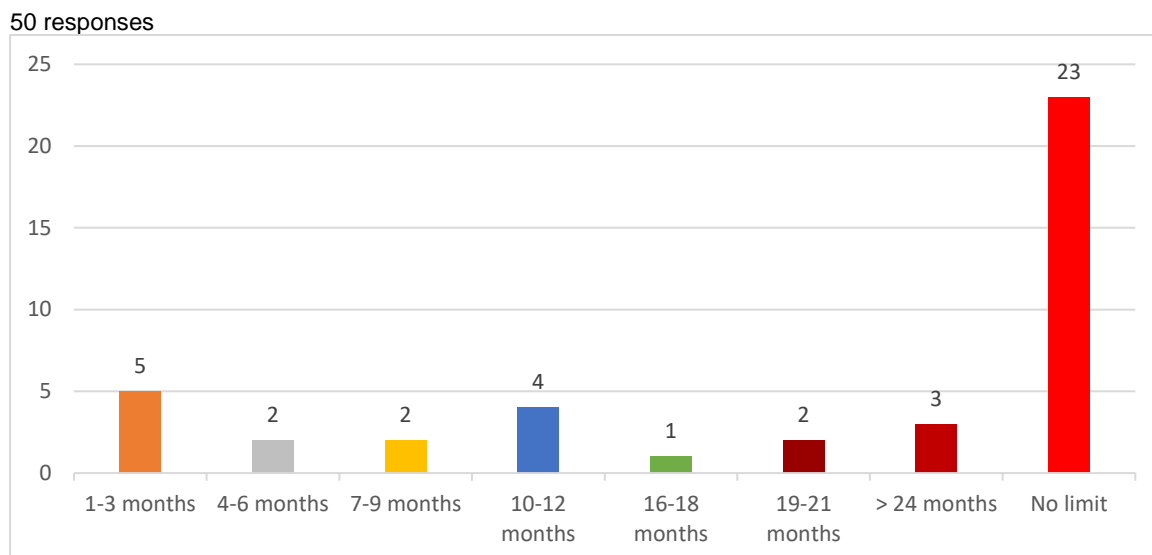
<sup>161</sup> PL: OPTR Report (Judiciary/Academia), Questionnaire 2 (Developments Survey), Question 35.

<sup>162</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 35.

<sup>163</sup> BR: OPTR Report (Academia), Questionnaire 2 (Developments Survey), Question 35.

enshrined in its tax code the obligation of tax authorities to abide by the legal time limits to conduct audits.<sup>164</sup>

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



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

**1-3 months:** China (People's Rep.) (1), China (People's Rep.) (2), Panama, Poland, Russia, Venezuela (1)

**4-6 months:** Bulgaria (1), Bulgaria (2), Portugal

**7-9 months:** Chile, Honduras

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

**16-18 months:** Spain

**19-21 months:** Greece (1), Greece (2), India

**More than 24 months:** Colombia, Czech Republic, United States, Venezuela (2)

**No limit:** Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Canada, Croatia, Cyprus (1), Cyprus (2), Denmark, Finland, Germany, Guatemala, Italy, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Serbia, South Africa, Sweden, United Kingdom, Uruguay

**Reports with diverging opinions:** Venezuela

As a very positive development in this area, the High Administrative Court in **Uruguay** has stressed that the number of surcharges to be assessed over unpaid taxes should be diminished where, in the course of audits, delays occur as a result of the lack of speed and efficiency of the tax authorities. This positive development may serve, indirectly, to discourage delays by the tax authorities.<sup>165</sup>

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

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

<sup>164</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Survey), Question 35.

<sup>165</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 35.

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

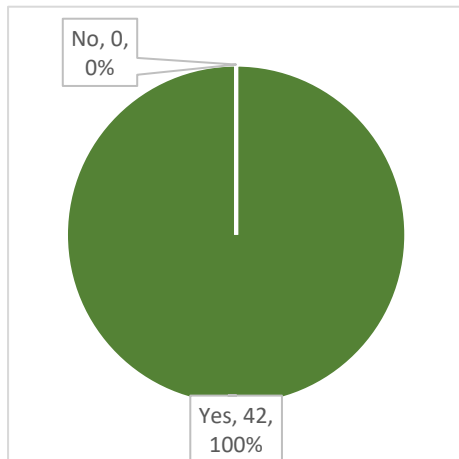
None

**Shifted away from the minimum standard:**

Panama

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

51 responses



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

**No:** None

**No answer:** Slovenia

**Source:** OPTR: Questionnaire 1, Question 27

The right to a proper defence entails that taxpayers are entitled to be represented and assisted by tax professionals throughout the entire tax audit process. In terms of establishing and assessing the relevant facts and circumstances for tax purposes, it is essential for both tax administrations and taxpayers to be able to rely on the expert opinions of independent professionals for assistance.

Almost all surveyed jurisdictions acknowledge this taxpayer right to representation, as Chart 27 shows. Similarly, most surveyed jurisdictions allow for the opinions of independent experts to be used in the audit process, as illustrated in Chart 28.

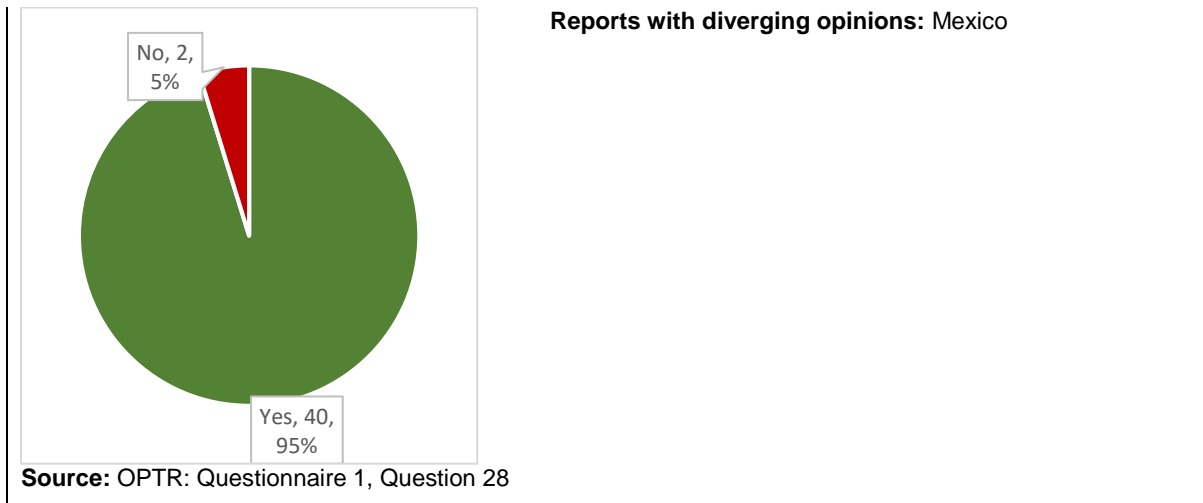
**Chart 28. May the opinions of independent experts be used in the audit process?**

50 responses

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

**No:** Croatia, Guatemala, Mexico (2)





### 4.5. The audit report

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

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

None

**Shifted away from the minimum standard:**

Panama

**Best practice:**

The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct factual inaccuracies and to express the taxpayer’s view.

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

None

**Shifted away from the best practice:**

None

**Best practice:**

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

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

None

**Shifted away from the best practice:**

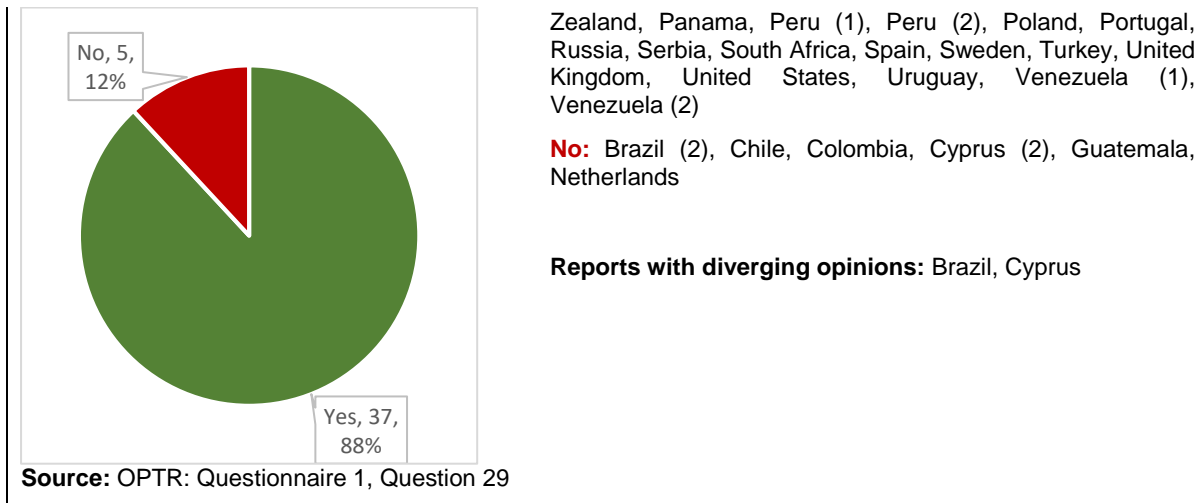
None

All administrative procedures must eventually end with a conclusion and a formal expression of the administration’s findings. For taxpayers, this entails an assessment including a declaration of the relevant legal provisions and the facts of the case and an assessment of the taxpayer’s conduct, which has prompted and justified the exercise of public powers.

**Chart 29. Is the taxpayer rightfully entitled to a full report on the conclusions of the audit at the end of the process?**

50 responses

**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Bulgaria (1), Bulgaria (2), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Croatia, Cyprus (1), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), New



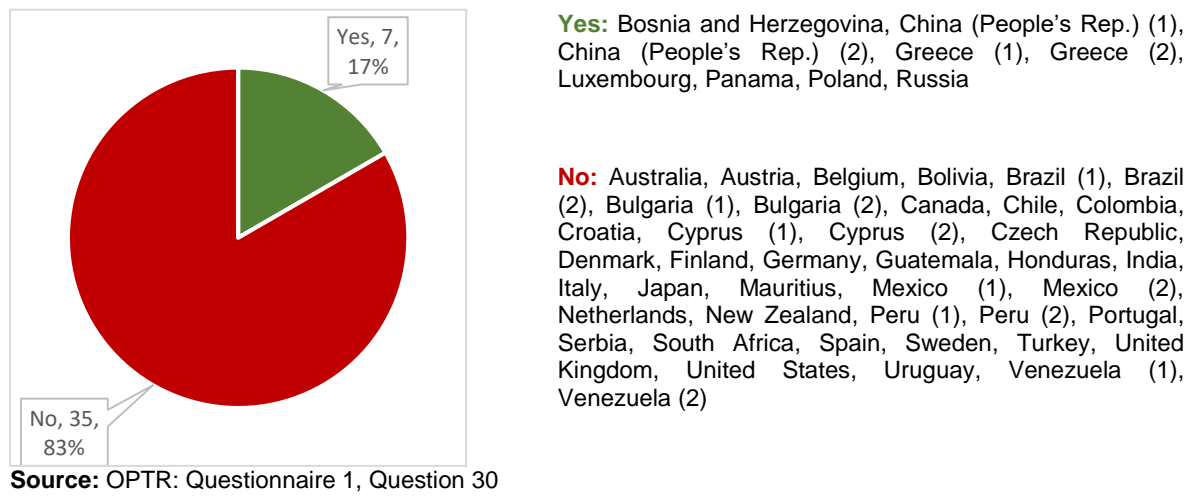
Zealand, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

**No:** Brazil (2), Chile, Colombia, Cyprus (2), Guatemala, Netherlands

**Reports with diverging opinions:** Brazil, Cyprus

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

51 responses



**Yes:** Bosnia and Herzegovina, China (People's Rep.) (1), China (People's Rep.) (2), Greece (1), Greece (2), Luxembourg, Panama, Poland, Russia

**No:** Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Italy, Japan, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Portugal, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

This conclusion and expression of the findings must be adequately explained so it is clear why the tax administration has taken the given measure and so the taxpayer has the opportunity to (i) review the administrative measure in order to determine whether it was taken according to the law; and (ii) exercise the necessary defence against the measure taken by the tax administration.

The taxpayer has the right to receive a comprehensive report of the audit's conclusion when the process is complete, and as evidenced in Chart 29, most surveyed jurisdictions acknowledge this right.

The final report must reflect the safeguard that it is final and include the *ne bis in idem* principle, i.e. there should be a limit to the frequency of audits of the same taxpayer regarding different periods or different taxes. However, as demonstrated by Chart 30, only one in five surveyed jurisdictions apply such a limit.

## 5. More Intensive Audits

### 5.1. The general framework

**Best practice:** More intensive audits should be limited and only occur when strictly necessary to ensure an effective reaction to non-compliance.

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

Russia

**Shifted away from the best practice:**

Panama

Beyond regular audits, the tax administration may have reason to conduct more intensive audits of high-risk taxpayers or if it has indicia pointing to possible non-compliance by taxpayers, especially those entailing potential criminal responsibility.<sup>166</sup> The foundation for these more intensive audits will be a thorough investigation and fact-finding, in order to establish the case's outline. These fact-finding powers must be limited, in order to protect the human dignity of taxpayers, and must be under the rule of law.

In practice, this assessment of the circumstances that may tip the scale to a more intense audit may very well be conducted as part of a regular audit. The change in the assessment's nature (e.g. from ordinary to something that may make the taxpayer liable for a criminal or regulatory offence) also changes the audit procedures. When this happens, the taxpayer should be fully informed about the proceedings, and the *nemo tenetur* principle (the right to avoid self-incrimination) must be fully protected. Consequently, without these protective measures, the taxpayers' statements should not be used in the audit or elsewhere.

In this regard, **Russia** reports that most control measures have been suspended due to the outbreak of the COVID-19 pandemic, meaning that no additional intensive tax audits between related parties were scheduled in the first semester and ongoing inspections were suspended.<sup>167</sup>

### 5.2. The implications of the *nemo tenetur* principle in connection with subsequent criminal proceedings

**Minimum standard:** If, in the course of an audit, it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that point, the taxpayer should have stronger protection of his right to silence and his statements should not be used in the audit procedure.

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

None

**Shifted away from the minimum standard:**

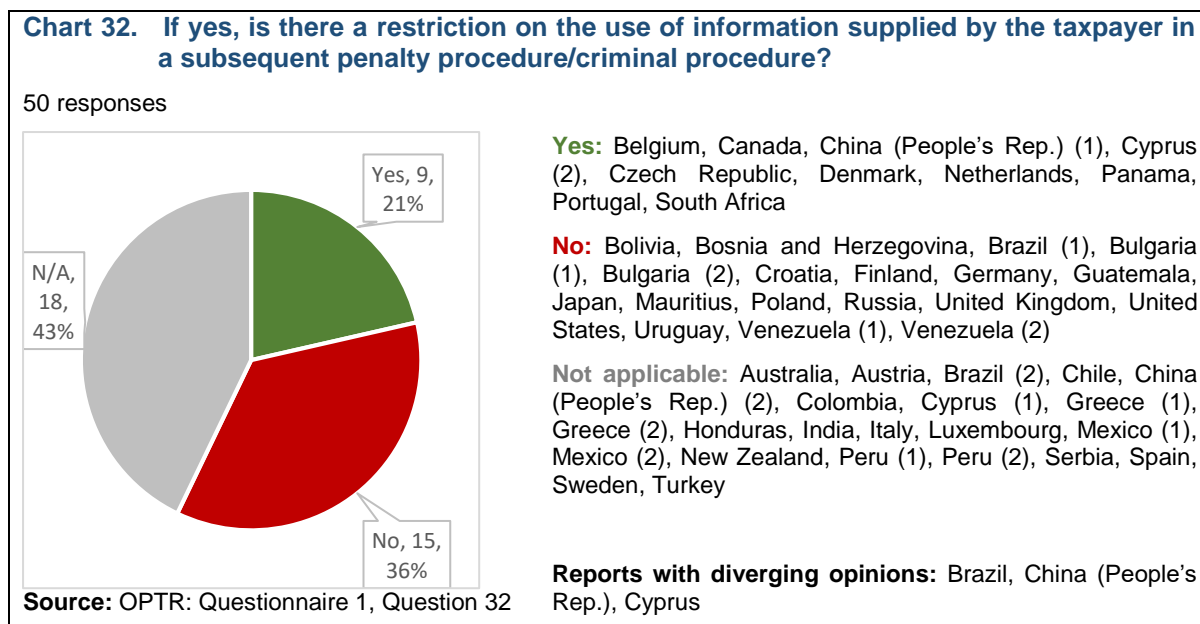
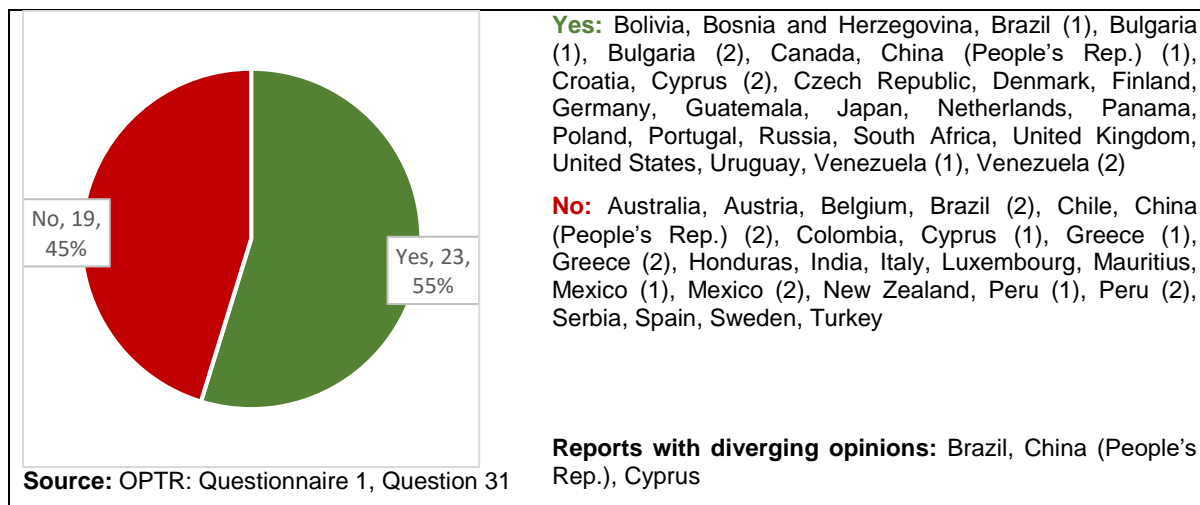
Panama

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

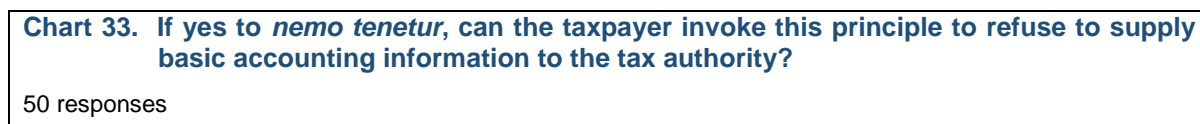
50 responses

<sup>166</sup> Baker & Pistone, *supra* n. 1, at sec. 5.1., p. 44.

<sup>167</sup> RU: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 39.

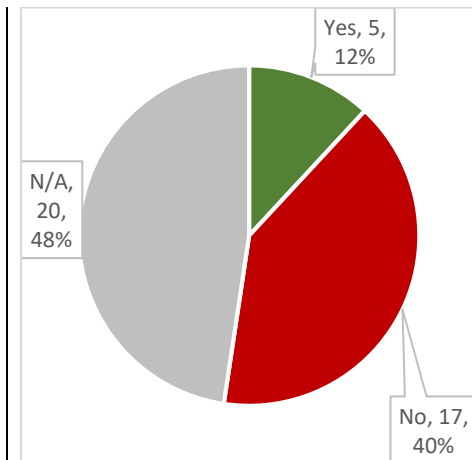


The trends regarding the acknowledgement of *nemo tenetur* in the context of intensive audits have not changed significantly since 2018:<sup>168</sup> effective protection of this taxpayer right is still diminishing.<sup>169</sup>



<sup>168</sup> OPTR, *supra* n. 10, at sec. 5.5.2.

<sup>169</sup> OPTR, *supra* n. 109, at sec. 5.2.



Source: OPTR: Questionnaire 1, Question 33

**Yes:** Bulgaria (2), Canada, Croatia, Czech Republic, Germany, Uruguay

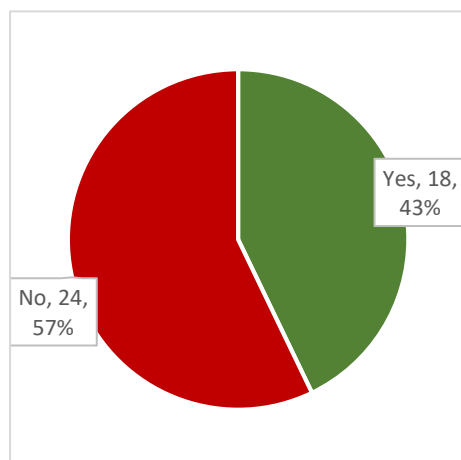
**No:** Bolivia, Bosnia and Herzegovina, Brazil (1), Bulgaria (1), China (People’s Rep.) (1), Cyprus (2), Denmark, Guatemala, Japan, Mauritius, Netherlands, Panama, Poland, Portugal, Russia, South Africa, United Kingdom, United States, Venezuela (2)

**Not applicable:** Australia, Austria, Belgium, Brazil (2), Chile, China (People’s Rep.) (2), Colombia, Cyprus (1), Finland, Greece (1), Greece (2), Honduras, India, Italy, Luxembourg, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Serbia, Spain, Sweden, Turkey, Venezuela (1)

**Reports with diverging opinions:** Brazil, Bulgaria, China (People’s Rep.), Cyprus, Venezuela

**Chart 34. In your country, is there a procedure to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or criminal charge and, from that time onwards, the taxpayer’s right to avoid self-incrimination is recognized?**

51 responses



Source: OPTR: Questionnaire 1, Question 34

**Yes:** Austria, Bolivia, Canada, China (People’s Rep.) (1), Cyprus (2), Denmark, Germany, India, Japan, Luxembourg, Netherlands, New Zealand, Panama, Poland, Serbia, South Africa, Sweden, United Kingdom, United States

**No:** Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Chile, China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Czech Republic, Finland, Greece (1), Greece (2), Guatemala, Honduras, Italy, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Portugal, Russia, Spain, Turkey, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** China (People’s Rep.), Cyprus

The trends regarding the acknowledgement of *nemo tenetur* in the context of intensive audits have not changed significantly since 2018:<sup>170</sup> effective protection of this taxpayer right is still going downward.<sup>171</sup> Half of the surveyed jurisdictions apply the principle in tax investigations, as Chart 31 shows, and one-third of countries do not restrict the use of information supplied by the taxpayer in a subsequent penalty procedure or criminal investigation, which represents a reduction of 10% from the 2018 statistics (45%). If *nemo*

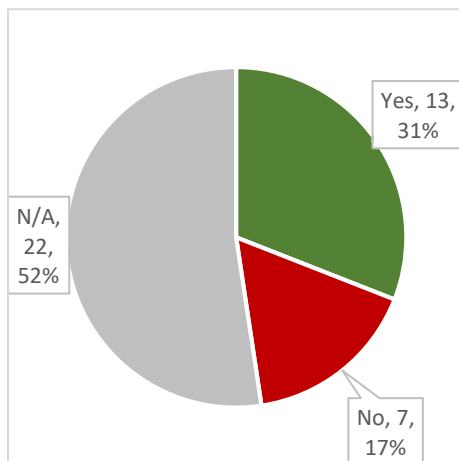
<sup>170</sup> OPTR, *supra* n. 10, at sec. 5.5.2.

<sup>171</sup> OPTR, *supra* n. 109, at sec. 5.2.

*tenetur* is acknowledged, taxpayers can only invoke the principle to refuse to supply basic accounting information to the tax authority in 10% of surveyed jurisdictions by 2020, a slight reduction from the 13% reported in 2018. *Nemo tenetur* is guaranteed – through a procedure that helps identify when it is likely that the taxpayer may be liable for a penalty or criminal charge and, from that point onwards, is therefore protected from self-incrimination – in 42% of surveyed countries, a decline of 9% compared to the 2019 statistics. Warnings meant to inform taxpayers of their applicable *nemo tenetur* rights in the tax procedure have also declined, from 40% in 2019 to 29% in 2020.

**Chart 35. If yes, is it required to inform the taxpayer that he is protected from self-incrimination?**

51 responses



Source: OPTR: Questionnaire 1, Question 35

**Yes:** Austria, Canada, Cyprus (2), Denmark, Germany, Luxembourg, Netherlands, Panama, Poland, Serbia, Sweden, United Kingdom, United States, Uruguay

**No:** Bolivia, China (People’s Rep.) (1), Greece (1), Guatemala, Japan, Mauritius, New Zealand, South Africa

**Not applicable:** Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Chile, China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Czech Republic, Finland, Greece (2), Honduras, India, Italy, Mexico (1), Mexico (2), Peru (1), Peru (2), Portugal, Russia, Spain, Turkey, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** China (People’s Rep.), Cyprus, Greece

### 5.3. Court authorization or notification

**Minimum standard:** The entering of premises or interception of communications should be authorized by the judiciary.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

Panama

**Minimum standard:** Authorization within the revenue authorities should only be granted in urgent cases and should be subsequently reported to the judiciary for ex-post ratification.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

Panama

**Minimum standard:** Inspection of the taxpayer’s home should require authorization by the judiciary and should only be given in exceptional cases.

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

None

**Shifted away from the minimum standard:**

Panama

**Best practice:**

Where tax authorities intend to search a taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, unless there is evident danger of documents being removed or destroyed.

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

Spain

**Shifted away from the best practice:**

Panama

**Best practice:**

Access to bank information should require judicial authorization.

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

Uruguay

**Shifted away from the best practice:**

Belgium, Bolivia, Panama, Peru

**Best practice:**

Authorization by the judiciary should be necessary for the interception of telephone communications and monitoring of online activity. Specialized offices within the judiciary should be established to supervise these actions.

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

None

**Shifted away from the best practice:**

Panama

**Minimum standard:** The seizure of documents should be subject to a requirement to give reasons why it is necessary, and there should be a set timeframe in which the documents must be returned.

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

None

**Shifted away from the minimum standard:**

Mexico, Panama

As stated at the beginning of this section, more intense audits require more vigorous protection of taxpayers' rights under the rule of law. This intense scrutiny of taxpayer affairs should be authorized in advance and controlled by the judiciary, including those activities linked to the right to privacy of financial information and communications of any kind.

Trends show that bank secrecy is a thing of the past. Consequently, tax authorities' access to banking information is on the rise.

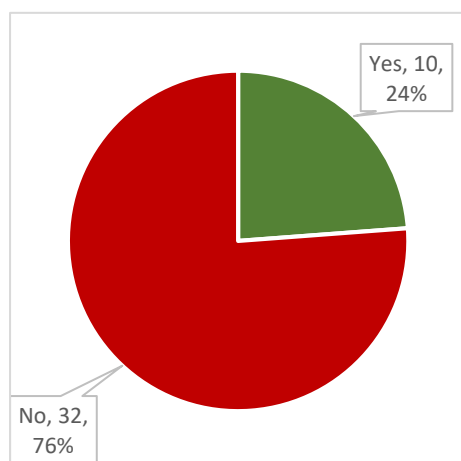
## 2020 Relevant Inadmissibility Decisions – European Court of Human Rights

<b>Case</b>	<b>GOTALIMPA, LDA v. Portugal</b> , Application No. 14914/17
<b>Date Communicated</b>	15 September 2020
<b>ECHR articles</b>	Articles 6, 8 and 13
<b>Issues</b>	<p>The application concerns access by the tax authority (<i>Autoridade Tributária e Aduaneira</i>) to the identity and bank information of the recipients of bank cheques (<i>cheques ao portador</i>) issued by the applicant, within the framework of a criminal investigation opened against it.</p> <p>The applicant lodged a motion with the public prosecutor in charge of the proceedings to have the tax authority's access to the identity and bank information of the recipients of the applicant's bank cheques declared illegal on the grounds that it lacked the required authorization from the public prosecutor.</p> <p>On 9 December 2016, the public prosecutor dismissed the motion, explaining that the tax authority's access to the identity and bank information of the applicant's bank cheque recipients had been a mere procedural irregularity, which could thus be rectified. For this purpose, the public prosecutor issued the missing authorization. The applicant was unable to appeal against this decision.</p> <p>Invoking Article 8 §§ 1 and 2, the applicant complains of the tax authority's access to the company's bank cheques without the prior authorization of the public prosecutor. Under Articles 6 § 1 and 13 of the Convention, it also complains of the absence of a domestic remedy in this respect.</p>

- See **N.B. v Latvia**, Application no. 67101/17, at sec. 5.4.

**Chart 36. Is authorization by a court always needed before the tax authority can enter and search premises?**

50 responses



**Yes:** Brazil (1), Croatia, Cyprus (1), Cyprus (2), Finland, Germany, Greece (1), Guatemala, Japan, Peru (2), South Africa, Sweden, Turkey

**No:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Czech Republic, Denmark, Greece (2), Honduras, India, Italy, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Panama, Peru (1), Poland, Portugal, Russia, Serbia, Spain, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

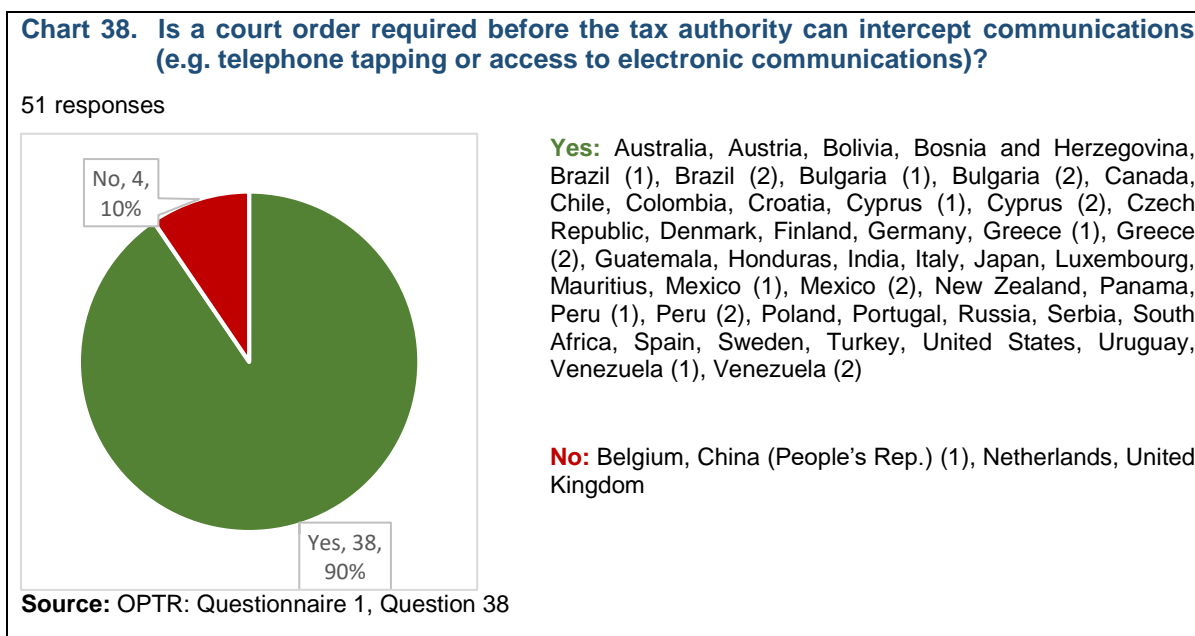
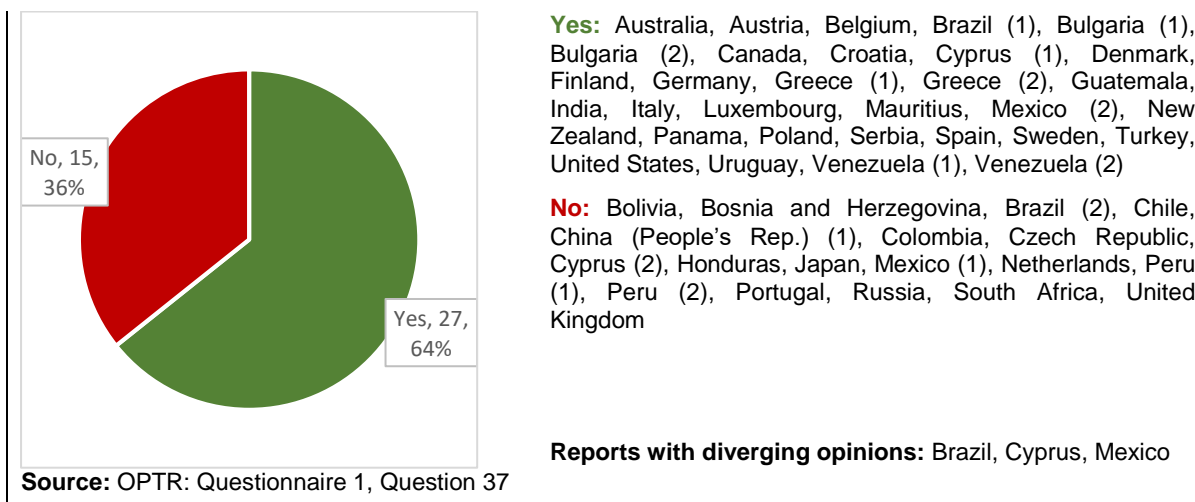
**Reports with diverging opinions:** Brazil, Greece, Peru

Source: OPTR: Questionnaire 1, Question 36

**Chart 37. Can the tax authority enter and search the dwelling places of individuals?**

51 responses





In **Belgium**, the tax authorities have the legal right to consult a register at the Belgian National Bank, which holds bank account information for each taxpayer. If the tax authorities wish to consult this register, they must comply with certain legal conditions, one of those being that the inquiring tax official must have a specific rank. However, the Court of Appeal of Antwerp<sup>172</sup> has ruled that consultations by an official with a lower grade does not necessarily lead to the nullity of the tax assessment, based on the obtained information.<sup>173</sup> Similarly, in **Bolivia**, the tax administration's competence to access bank information has been reinforced,<sup>174</sup> and new financial disclosure rules for financial institutions in **Peru** mean

<sup>172</sup> BE: Judgement of the Court of Appeal of Antwerp of 21 January 2020.

<sup>173</sup> BE: OPTR Report (Academia), Questionnaire 2 (Developments Survey), Question 44.

<sup>174</sup> BO: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 44.

that most of the financial information of individuals and companies will be automatically sent to the tax administration when the accounts of those individuals or companies have a balance of at least approximately EUR 3,000.<sup>175</sup>

In **Uruguay**, positive development has been reported in case law providing relevant guidelines for the proper issuance of judicial authorizations. These guidelines stipulate that (i) courts are not allowed to automatically validate tax authorities' requests/actions but rather must exercise adequate control and analysis over any and all requests; (ii) tax authorities are required to accurately identify the names of the bank account holders, meaning that authorization requests submitted in vague and generic terms (for instance, requests for information on bank accounts associated with credit cards used by individual taxpayers, regardless of whether such accounts belong to the same taxpayers or to other non-identified individuals/entities) must be rejected; (iii) banks cannot be compelled to provide tax authorities with information aimed to identify the stores in which the taxpayers conducted their purchases; and (iv) tax authorities are required to provide courts with reasonable evidence suggesting that taxpayers committed tax evasion, even when the requests for information originally came from foreign authorities in the framework of international agreements.

In a very positive development regarding the inspection of the taxpayer's home, the Supreme Court of **Spain** ruled, on 1 October 2020, that there should be no entry authorization for prospective, statistical or indefinite purposes (i.e. a "fishing expedition") without precisely identifying what specific information is to be obtained.<sup>176</sup>

#### 5.4. Treatment of privileged information

**Minimum standard:** The seizure of documents should be subject to a requirement to give reasons why it is necessary, and there should be a set timeframe in which the documents must be returned.

Shifted towards/improved the minimum standard:

None

Shifted away from the minimum standard:

Mexico

**Best practice:** If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisers and the original left with the taxpayer.

Shifted towards/matched the best practice:

None

Shifted away from the best practice:

None

**Minimum standard:** Where invasive techniques are applied, they should be limited in time to avoid a disproportionate impact on taxpayers.

<sup>175</sup> PE: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 44.

<sup>176</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 43.

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

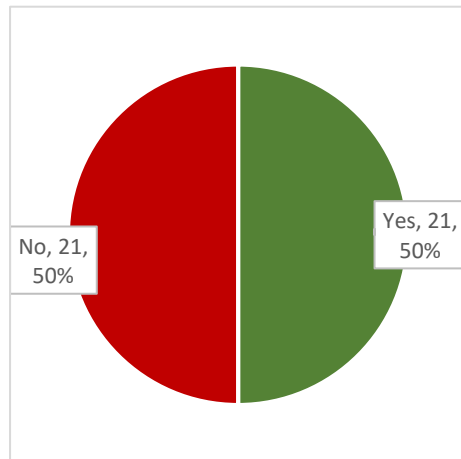
None

**Shifted away from the best practice:**

None

**Chart 39. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?**

50 responses



**Yes:** Australia, Austria, Canada, China (People’s Rep.) (1), Colombia, Cyprus (2), Czech Republic, Denmark, Germany, Italy, New Zealand, Panama, Poland, Portugal, Russia, Serbia, South Africa, Sweden, Turkey, United Kingdom, United States, Venezuela (2)

**No:** Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Chile, Croatia, Cyprus (1), Finland, Greece (1), Greece (2), Guatemala, Honduras, India, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, Peru (1), Peru (2), Spain, Uruguay, Venezuela (1)

**Reports with diverging opinions:** Cyprus, Venezuela

Source: OPTR: Questionnaire 1, Question 39

**2020 Relevant Inadmissibility Decisions – European Court of Human Rights**

<b>Case</b>	<i>N.B. v. Latvia</i> , Application no. 67101/17
<b>Date Communicated</b>	9 November 2020
<b>ECHR articles</b>	Article 8
<b>Issues</b>	<p>The application concerns the search at the applicant’s home, which premises she also used for providing legal and accounting services, and the seizure of her computer in connection with criminal proceedings against her clients concerning tax evasion. The applicant is a witness in those proceedings.</p> <p>The search of the applicant’s home was authorized on the basis of a search warrant of 12 December 2016 issued by an investigating judge. On 13 February 2017, police officers of the Finance Police Department of the State Revenue Service arrived at her home and seized her computer. The applicant lodged complaints regarding the search warrant and actions taken by the police officers during the search. On 10 March 2017, an appellate court judge upheld the lawfulness of the search warrant. On 25 May 2017, a superior prosecutor dismissed the applicant’s request to return her computer. Upon repeated requests by the applicant, on 29 May 2018, the computer was returned to her. There is no information about the current stage of proceedings in relation to the criminal investigation.</p>

To ensure taxpayers’ rights to (i) a proper defence; (ii) pay the correct amount of tax; and (iii) privacy, the communication between taxpayers and their advisers must be duly protected, as discussed in section 3.13. of this yearbook. Only in cases where the tax administration has

already gathered indicia of actual wrongdoing should access to this communication be granted to the authorities.<sup>177</sup>

Previously, most countries reported such a practice, but as evidenced by Chart 39, this has decreased, with only 43% of the jurisdictions reporting such procedures.

An example of this unfortunate development is the 2020 amendment to the federal tax code in Mexico that allows the tax authorities to seize the property of third parties, which may have a relationship with the taxpayer. Before this amendment, the tax authorities were only allowed to seize third parties' property when held jointly with the taxpayer.<sup>178</sup>

Regarding the use of invasive techniques, the Supreme Court of **Mauritius** recently observed that the provisions relating to statutory time limits for conducting an audit give rise to an incongruous interpretation, due to the various amendments to the Income Tax Act 1995. It recommended that the legislator look into the matter. However, the Finance Act 2020 had no amendments in 2020.<sup>179</sup>

## 6. Reviews and Appeals

### 6.1. The remedies and their function

**Best practice:** There should be e-filing of requests for internal review to ensure the effective and speedy handling of the review process.

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

Chile, Colombia, Cyprus, Peru, Russia

**Shifted away from the best practice:**

None

**Minimum standard:** The right to appeal should not depend upon prior exhaustion of administrative reviews.

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

None

**Shifted away from the best practice:**

None

Tax administrative activity must be controlled to preserve both its effectiveness and its compliance with the rule of law. This control might be either an internal review by the administration itself or an appeal system before an impartial authority. These control systems form part of the principle of the rule of law and ensure the proper exercise of public powers by quashing decisions that do not abide by the law and, therefore, harm the rights of citizens.

Namely, these control mechanisms consist of (i) reviews that allow for the annulment of a tax notice as a consequence of the same official who issued it or by an official with a higher rank; and (ii) appeals that allow a judicial authority or similar impartial body within the tax

<sup>177</sup> Baker & Pistone, *supra* n. 1, at sec. 5.4., p. 48.

<sup>178</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 45.

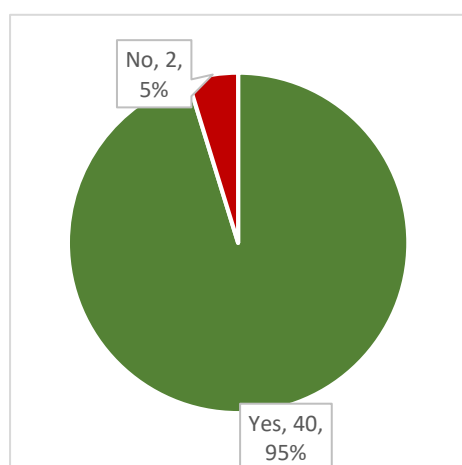
<sup>179</sup> MU: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 48.

administration to quash the tax notice or to determine the right of the taxpayers in connection with it.<sup>180</sup>

Therefore, the minimum standard within this area should be to grant a procedure for an internal review of a given tax assessment before appealing to the judiciary or a similar impartial body. As evidenced by Chart 40, most surveyed jurisdictions have such a control system in place. However, there has been a noticeable decline in the development from 98% in 2019 to 93% in 2020.

**Chart 40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?**

50 responses



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

**No:** India, Turkey

Source: OPTR: Questionnaire 1, Question 40

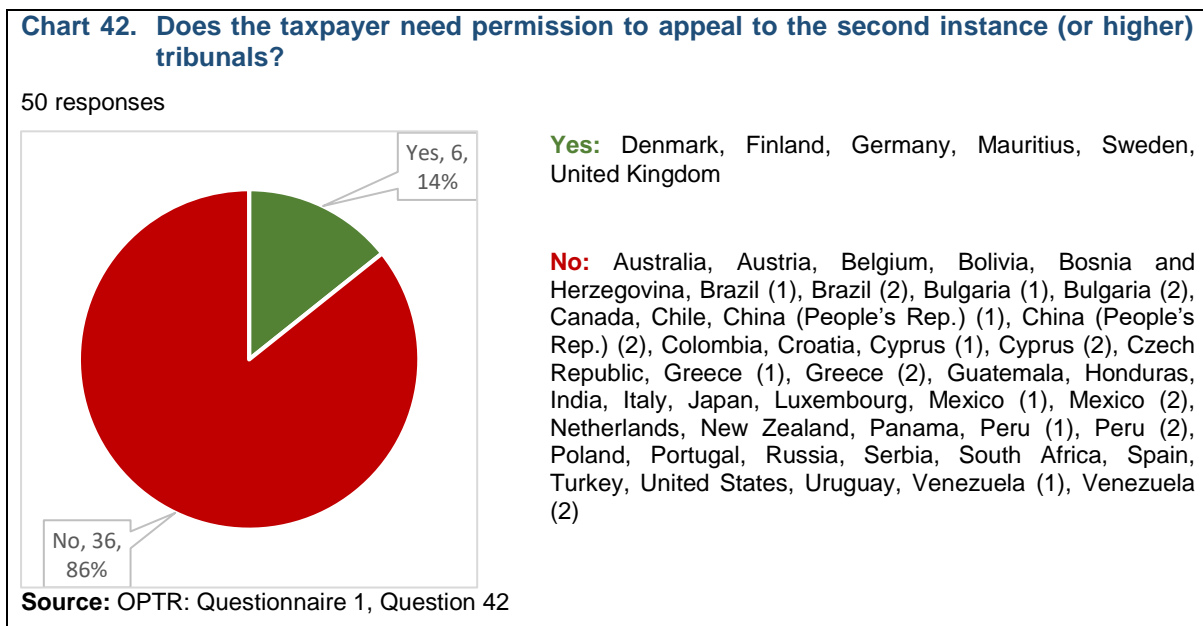
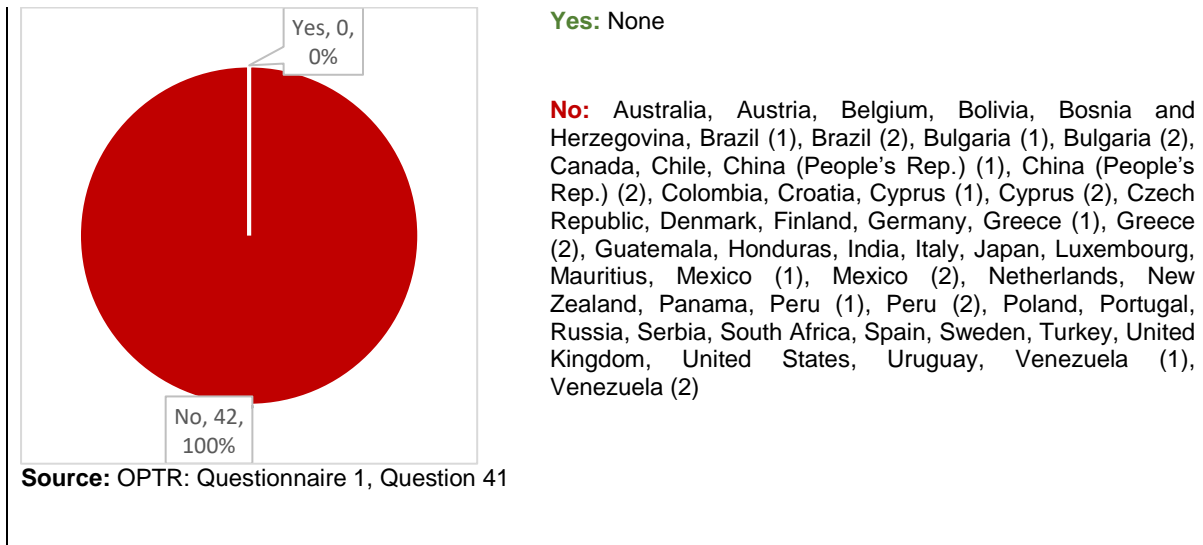
After the administrative review concludes, there should be unlimited access to appeal to the judiciary, which is the case in most surveyed jurisdictions, as evidenced by Chart 41. Generally, access to appeal is merely for the judiciary's first instance, as the possibility of filing an appeal for a second instance (or higher) without needing permission is reduced to 83%, as shown in Chart 42.

For most surveyed jurisdictions, it is a requirement that all administrative channels have been exhausted before bringing the matter before the courts, as evidenced by Chart 43. Besides, delays seem to be common in most surveyed jurisdictions since no time limit exists to complete the cases in those countries, as demonstrated by Chart 44 in section 6.2. The rare examples in which time limits exist seem to vary in length, as illustrated in Chart 45 and in section 6.2. of this yearbook.

**Chart 41. Does the taxpayer need permission to appeal to the first instance tribunal?**

50 responses

<sup>180</sup> Baker & Pistone, *supra* n. 1, at sec. 6.1., p. 49.



As a logical outcome of the COVID-19 pandemic, the digitalization of communication between the tax administration and taxpayers, as described in section 1.1., has resulted in e-filing of tax returns and other reports (as is sometimes offered in incorrect tax assessments). This is a positive development in terms of effectiveness since it shortens the time to correct assessments. In 2020, several countries followed this trend, with **Cyprus** introducing its so-called “Tax Gateway,” as described in section 1.4., for such filings.<sup>181</sup> **Mexico** also reported positive development in the digitalization of communication with taxpayers because of the global pandemic.<sup>182</sup> In **Colombia**, a resolution to regulate the electronic submission of

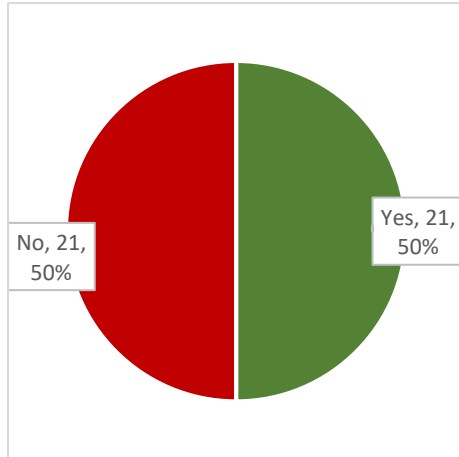
<sup>181</sup> CY: OPTR (Tax Administration), Questionnaire 2, Question 49.

<sup>182</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 49.

applications, appeals and other documents has been drafted and presented for public consultation.<sup>183</sup> Finally, the **Netherlands** introduced requirements to communicate and file all documents electronically before the Supreme Court.<sup>184</sup>

**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?**

50 responses



**Yes:** Austria, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), China (People’s Rep.) (1), Croatia, Cyprus (2), Czech Republic, Finland, Germany, Greece (1), Guatemala, Honduras, India, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Panama, Peru (1), Peru (2), Poland, Spain, Turkey, Venezuela (2)

**No:** Australia, Belgium, Bolivia, Brazil (1), Brazil (2), Canada, Chile, China (People’s Rep.) (2), Colombia, Cyprus (1), Denmark, Greece (2), Italy, Netherlands, New Zealand, Portugal, Russia, Serbia, South Africa, Sweden, United Kingdom, United States, Uruguay, Venezuela (1)

**Reports with diverging opinions:** China (People’s Rep.), Cyprus, Greece, Venezuela

Source: OPTR: Questionnaire 1, Question 43

## 6.2. Length of the procedure

**Best practice:** Reviews and appeals should not exceed 2 years.

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

India

**Shifted away from the best practice:**

Brazil, Canada, Colombia, Denmark, Guatemala, Poland

### 2020 Relevant Case Law – European Court of Human Rights

- See *Vegotex International S.A. v. Belgium*, no. 49812/09, at sec. 10.2.

### 2020 Relevant Admissibility Decisions – Inter-American Court of Human Rights

Case	<i>Luis Esteban Gallardo Martínez v. Peru</i>
Date	17 June 2020

<sup>183</sup> CO: OPTR ((Tax) Ombudsperson), Questionnaire 2, Question 49.

<sup>184</sup> NL: OPTR (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Survey), Question 49.

ACHR articles	Article 8 and Article 46	
Facts	Decision	Comments
<p>Mr Luis Esteban Gallardo Martínez alleged to have suffered the violation of his right to a fair trial for having been prosecuted for the crime of tax fraud for more than 10 years in an arbitrary manner.</p> <p>In 2000, the Peruvian Prosecutor's Office initiated two criminal proceedings against Mr Luis Esteban Gallardo Martínez for the crime of tax fraud.</p> <p>Regarding the first proceeding, the alleged victim stated that, on various occasions, he sought the early conclusion of the process and greater speed on the part of the justice bodies, but the requests were not met.</p> <p>In view of the alleged delay in resolving this first proceeding, on 12 December 2011, Mr Gallardo filed a writ of habeas corpus, alleging the violation of his right to a reasonable period and his right of defence. Courts rejected the claim <i>in limine</i>.</p> <p>In response, Mr Gallardo filed a constitutional complaint and on 11 June 2013, the Constitutional Court reversed the decision of inadmissibility and ordered the habeas corpus petition to be processed. The alleged victim argued that afterwards he had not been made aware of said habeas corpus action.</p> <p>With regard to the second proceeding, the alleged victim maintained that the authorities also delayed the process arbitrarily. Along these lines, Mr Gallardo denounced that on 9 January 2017, he requested the National Criminal Chamber of the Supreme Court to issue a statute of limitation but that it did not comply with issuing such a document.</p> <p>Based on these events, Mr Gallardo stated that the two proceedings for tax fraud</p>	<p>Inadmissibility Report No. 158/20, Inter-American Commission on Human Rights</p> <p>The Inter-American Commission on Human Rights declared the claim inadmissible for formal reasons.</p> <p>Based on the information provided to it, the Commission concluded that there was an undue exhaustion of domestic remedies, so it could not consider as proven the admissibility requirement set forth in article 46.1.A of the American Convention on Human Rights.</p>	

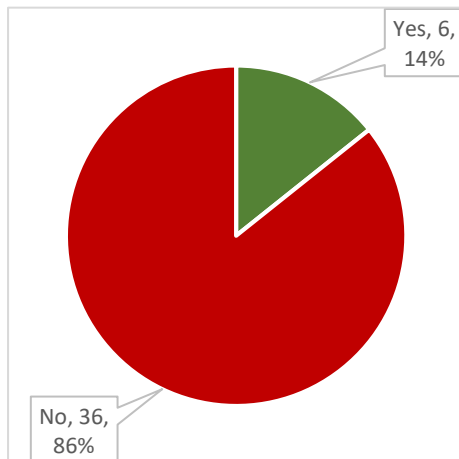


instituted against him violated his right of defence and reasonable time, since both cases were deliberately delayed by the judicial authorities.

Taxpayers have the right to certainty about their tax liabilities. Hence, reviews and appeals should be swift to provide tax collection effectiveness and improve the efficiency of tax systems. Achieving this in ordinary times can be challenging, and doing so during a global pandemic can be even more challenging, as evidenced by the surveyed countries.

**Chart 44. Are there time limits applicable within a tax case to complete the judicial appeal process?**

50 responses



**Yes:** China (People's Rep.) (1), China (People's Rep.) (2), Croatia, Honduras, Panama, Russia, Serbia, Venezuela (2)

**No:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland, Portugal, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1)

**Reports with diverging opinions:** Venezuela

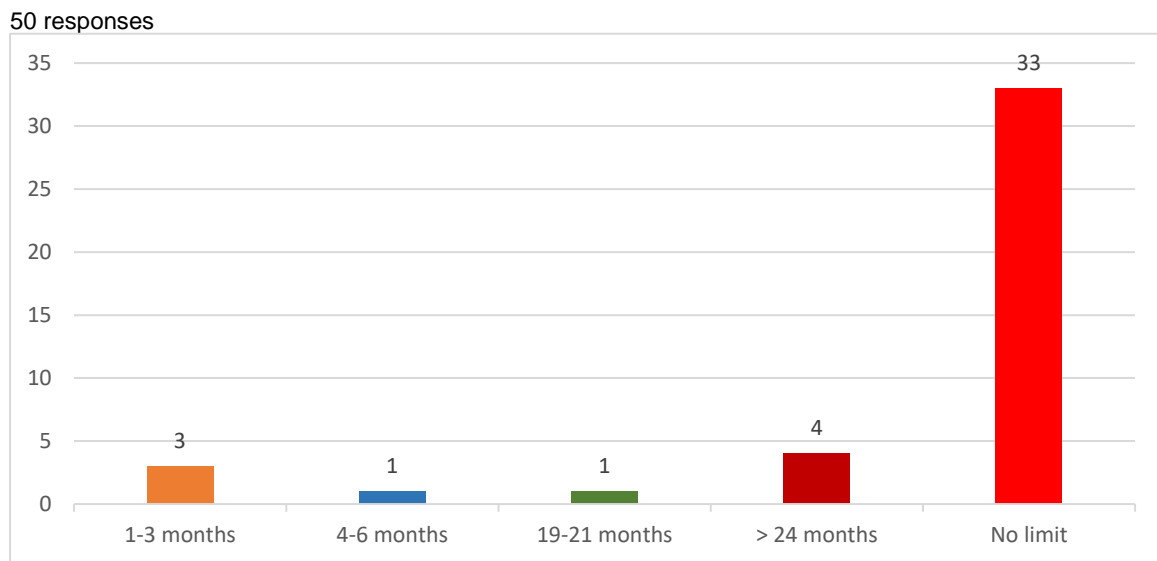
**Source:** OPTR: Questionnaire 1, Question 44

Among other countries, **Poland** has reported delays due to the pandemic.<sup>185</sup> **Denmark** reports similar delays and backlogs due to the suspension of court operations until the implementation of online communications to solve the issue. In this regard, the Regional Appeal Boards held the first digital hearings and decided appeals via Teams in December 2020 in order to maintain functioning and shorten the time spent handling appeals due to lockdown. Digital hearings were made possible by inserting a specific legal basis in the rules of procedure for the Regional Appeal Boards effective from 1 July 2020. The Danish Parliamentary Ombudsman once again drew attention to and criticized the time spent handling appeals at the Tax Appeals Agency and emphasized the importance of informing the taxpayer of the expected time of the appeal's decision.<sup>186</sup>

**Chart 45. If yes, what is the normal time it takes for a tax case to be concluded on appeal?**

<sup>185</sup> PO: OPTR Report (Judiciary, Academia), Questionnaire 2 (Developments Survey), Question 51.

<sup>186</sup> DK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Developments Survey), Question 51.



Source: OPTR: Questionnaire 1, Question 45

**1-3 months:** China (People's Rep.) (2), Panama, Russia, Serbia

**4-6 months:** China (People's Rep.) (1)

**29-21 months:** Greece (2)

**More than 24 months:** Bolivia, Croatia, Honduras, Portugal, Venezuela (2)

**No limit:** Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Guatemala, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1)

**Reports with diverging opinions:** China (People's Rep.), Greece, Venezuela

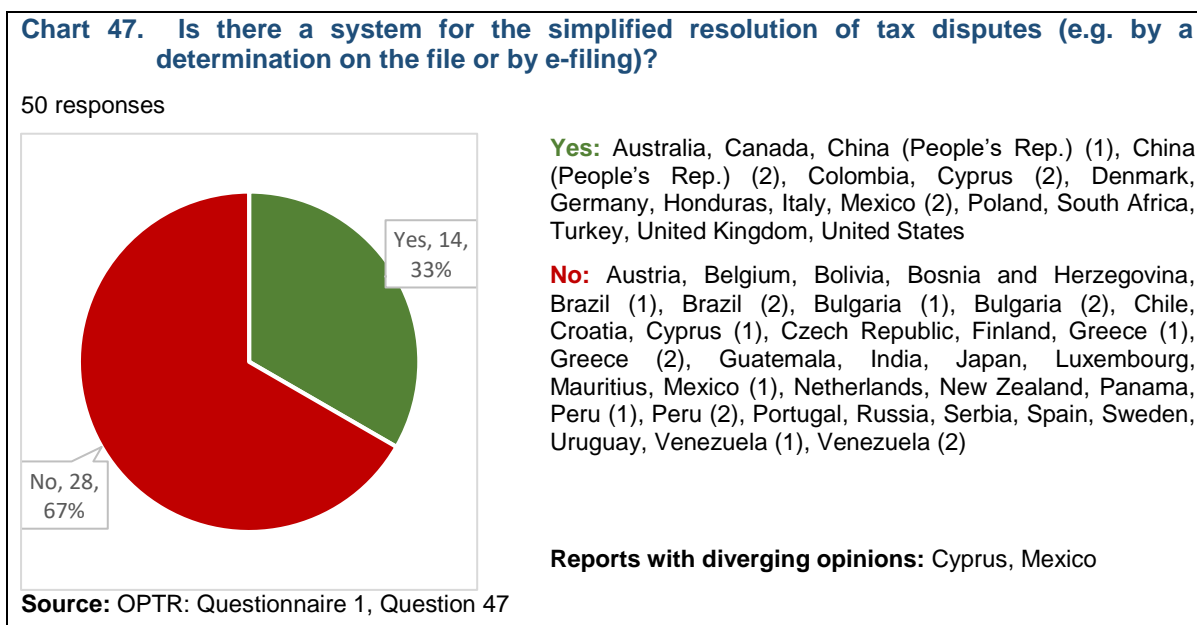
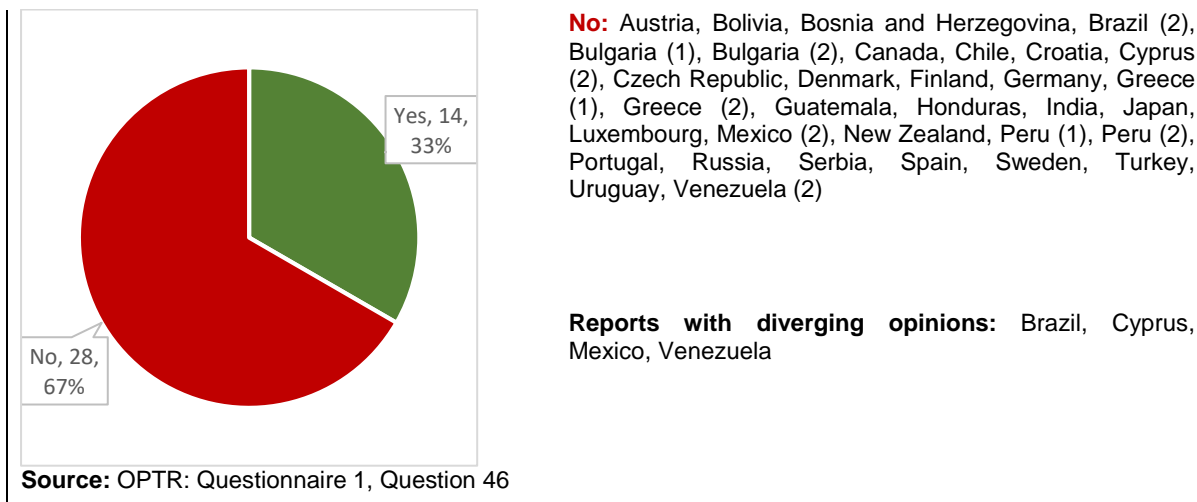
### 6.3. Alternative dispute resolution

Despite the best efforts of both tax administration and taxpayers, conflicts will arise concerning their differing opinions on tax assessments. Even with a good administration where good faith governs the relationship between taxpayers and authorities, ADR can be necessary to resolve conflicts efficiently. In the end, this provides certainty for both parties and holds the possibility to provide better results in terms of tax policy.

**Chart 46. Are there any arrangements for ADR (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?**

50 responses

**Yes:** Australia, Belgium, Brazil (1), China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Cyprus (1), Italy, Mauritius, Mexico (1), Netherlands, Panama, Poland, South Africa, United Kingdom, United States, Venezuela (1)



Unfortunately, as evidenced by Chart 46, only 32% of the surveyed jurisdictions have arranged for the adoption of ADR in practice by incorporating a system for the simplified resolution of tax disputes, as illustrated by Chart 47.

On the positive side of developments, the Senate in **Brazil**<sup>187</sup> proposed creating a special tax arbitration aimed at preventing future lawsuits by resolving disputes involving factual issues. The special tax arbitration procedure may be initiated during a tax audit at the request of any of the parties, provided that the tax administration has not issued a tax assessment notice. The arbitral award is binding for the parties. Moreover, it prevents the initiation of administrative proceedings or inspection measures concerning the factual and

<sup>187</sup> D. Canen, [Senate Presents Bill for Creation of Special Tax Arbitration](#) (21 Sep. 2020), News IBFD.

legal matters that are subject to arbitration.

#### 6.4. *Audi alteram partem* and the right to a fair trial

#### 2020 Relevant Case Law – European Court of Human Rights

Case	<i>Khodorkovskiy and Lebedev v. Russia (No. 2)</i> , no. 51111/07 and 42757/07	
Date	14 January 2020	
ECHR articles	Article 6 § 1 (criminal) and Article 6 § 3 (c) and (d) Article 6 § 2 Article 7 Article 8 Article 18 and Article 8	
Facts	Decision	Comments
<p>The case concerned the complaints related to the second trial of former senior executives at the Yukos oil company, Mr Khodorkovskiy and Mr Lebedev.</p> <p>After being convicted of tax evasion in 2005 and sent to penal colonies, both applicants faced fresh criminal charges in 2009. A new trial began in March 2009 and ended in their second conviction in December 2010 for the misappropriation or embezzlement of oil and for laundering illicitly gained profits. In essence, the trial court found that the applicants had used their influence and position to get Yukos production entities to sell their crude oil at cheap prices to Yukos trading companies, which had then exported it for a higher price on world markets. The profits had then been sent to Russian and foreign corporate accounts controlled by the applicants. During the trial, when the applicants were held in enclosed glass boxes, the judge refused to call several witnesses for the defence and rejected requests for finance and oil market specialists to come and testify in the applicants' favour on the expert reports that had been part of the prosecution's case.</p> <p>On appeal, the trial court's verdict was upheld but the applicants' sentence was reduced from 14 to</p>	<p><b>Article 6 § 1 (criminal) and Article 6 § 3 (c) and (d):</b> The applicants complained about numerous shortcomings that, in their view, had rendered their trial unfair.</p> <p>(1) It was impossible to have confidential contact with the lawyers during the trial, which was a <b>violation of the applicants' rights to participate effectively in the trial court proceedings and to receive practical and effective legal assistance.</b></p> <p>The Court noted that all the documents the defence lawyers wished to show to their clients first had to be reviewed by the judge (a similar violation had already been found in the first case of the applicants). Moreover, they had been held in a glass dock, which had reduced their direct involvement in the trial and separated them from their lawyers, making any confidential contact impossible. The applicants' rights had therefore been restricted in a way that was neither necessary nor proportionate.</p> <p>The court examined five groups of complaints under this head. It found violations of article 6 on account that (i) the applicants had not been able to cross-examine the expert witnesses, whose reports were later used against</p>	<p>While this case is not about tax offences, the court's findings under article 7 can have repercussions for future tax matters. The applicants' complaint under article 7 raises an important issue about an <u>extensive and unforeseeable interpretation of domestic law inconsistent with the essence of the criminal offence</u>. The court stressed that transfers of oil from the production entities of Yukos to its trading companies were lawful purchase-sale transactions under civil law. The applicants could not have foreseen that these transactions would be interpreted as "stealing" in the future. However, Judges Dedov and Lemmens disagreed with the majority's finding in that respect and pointed out that the applicants had used lawful transactions to commit crimes. In their view, the majority failed to assess the applicants "entire economic activity" aimed at depriving the minority shareholders of the dividends that they would have normally received (see joint dissenting opinion of Judges Lemmens and Dedov).</p>

13 years of imprisonment. The appeal court rejected the applicants' arguments that, among other things, (i) they were not guilty of stealing because the transactions between the production and trading had been legal and valid; (ii) the trial judge's permitting of evidence had been biased; (iii) they had been tried twice for the same offence; and (iv) their prosecution had been politically motivated. Three sets of supervisory review proceedings further reduced their sentences. Mr Khodorkovsky was pardoned in December 2013, while Mr Lebedev completed his sentence in January 2014. Vladimir Putin, prime minister at the time of the second trial, made various public statements during the proceedings, referring to Mr Khodorkovsky and the Yukos case.

them; (ii) the trial court refused to admit most of the expert evidence proposed by the defence; (iii) the applicants had not been able to obtain the questioning of various defence witnesses, both in Russia and abroad; (iv) the trial court refused to admit exculpatory material to the case file or to order its disclosure; and (v) the trial court had relied on a number of earlier judicial decisions, including those delivered in the proceedings in which the applicants had not been defendants.

**Article 6 § 2:** The applicants complained that Mr Putin's public statements made in 2009 and 2010 had breached their right to the presumption of innocence.

The court found **no violation** of the above provision. It noted the particular circumstances in which the contested statements had been made and considered that they did not give rise to any Article 6 § 2 issues.

**Article 7:** The applicants complained that they were subjected to an extensive and novel interpretation of the criminal law.

The court examined whether the acts the applicants were convicted of, namely "misappropriation and embezzlement", fell within a definition of a criminal offence, which was sufficiently accessible and foreseeable. It noted that the contracts for sale of oil from the production entities of Yukos had been valid under civil law at the time. It was thus difficult to understand how a reciprocal transaction that was valid under civil law could amount to "the unlawful and uncompensated taking...of another's property", which was the definition of "stealing" in domestic law. Furthermore, the notion of "deceit" that was mentioned in the domestic judgments as the way the applicants had obtained approval for the oil sale agreements did not appear as a qualifying element in either the offence of "misappropriation or embezzlement" or that of

	<p>“stealing”. The acts imputed to the applicants therefore were not punishable under the criminal provisions applied by the courts. The court concluded that the applicants could not have foreseen that their entering into the transactions on oil sale from the production entities of Yukos to its trading companies could have constituted misappropriation or embezzlement. It was equally unforeseeable that the profits from the sale of the oil would be found to constitute the proceeds of a crime, the use of which could amount to money laundering.</p> <p>The court also found a <b>violation of Article 8</b> on account of the lack of long-stay visits in the applicants’ remand prisons and <b>no violation of Article 18</b> with regard to the applicants’ complaint about an alleged political motivation for their detention, criminal prosecution and punishment.</p>	
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**Minimum standard:** *Audi alteram partem* should apply in administrative reviews and judicial appeals.

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

Spain, United States

**Shifted away from the minimum standard:**

Panama

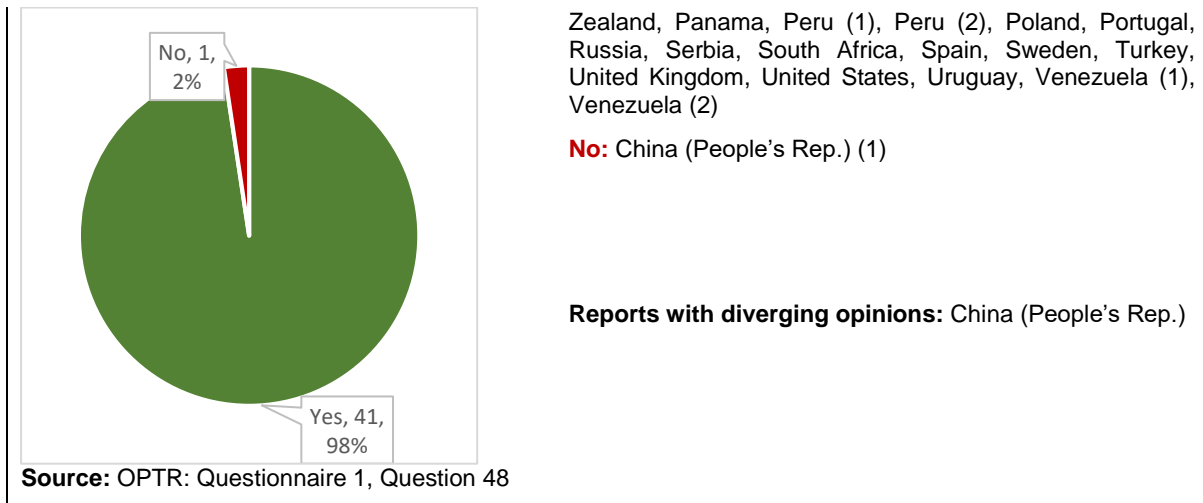
Taxpayers are entitled to be heard under the rule of law before any change in their legal situation arises from third parties’ claims. This right to be heard – *audi alteram partem* – is a fundamental right linked to third parties limiting a taxpayer’s rights, and it should apply at all stages of the tax assessments, including reviews and appeals.<sup>188</sup> As evidenced by Chart 48, this is also the case in the vast majority of surveyed jurisdictions.

**Chart 48. Is the principle *audi alteram partem* (i.e. each party has a right to a hearing) applied in all tax appeals?**

51 responses

**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New

<sup>188</sup> Baker & Pistone, *supra* n. 1, at sec. 6.4., p. 51.



Zealand, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1), Venezuela (2)

**No:** China (People's Rep.) (1)

**Reports with diverging opinions:** China (People's Rep.)

In **Spain**, the Supreme Court ruled on 26 November 2020 that expert evidence proposed by the administration in the so-called abbreviated appeal should grant the taxpayer the possibility of controlling such evidence by presenting allegations and adducing counter-proof. This possibility may determine the suspension of the oral hearing and the setting of a new date.<sup>189</sup>

The United States has also reported a similar development, as the Office of Appeals has begun providing taxpayers with the non-privileged information in their case files no later than 10 days before the appeals conference. Here, the principle of *audi alteram partem* generally applies; however, an appeals conference can simply be an exchange of documents, and the Internal Revenue Service can deny taxpayers the opportunity for an appeals conference in certain limited circumstances. There is no right to an in-person hearing.<sup>190</sup>

### 6.5. Solve et repete

**Minimum standard:** Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing the interim suspension of payment.

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

Spain

**Shifted away from the minimum standard:**

Panama

**Best practice:** An appeal should not require prior payment of tax in all cases.

<sup>189</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 52.

<sup>190</sup> US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 52.

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

Uruguay

**Shifted away from the best practice:**

Panama

**2020 Relevant Admissibility Decisions – Inter-American Court of Human Rights**

Case	<b><i>Oswaldo Senen Paredes v. Ecuador</i></b>	
Date	9 August 2020	
ACHR articles	Article 8 Article 25	
Facts	Decision	Comments
<p>Mr Oswaldo Senen Paredes claimed that the Ecuadorian state was internationally responsible for the violation of his rights to fair trial and judicial protection on account of the material impediment that he allegedly faced in accessing justice with the aim to judicially question two settlements of income tax for the 2004 and 2005 fiscal years, as he was required to post bonds to access a due process, and he could not pay such bonds due to inancial incapacity.</p> <p>In 2007, two tax proceedings were started against Mr Paredes by the Ecuadorian tax authority, which led this authority to determine that the alleged victim owed the amounts of USD 90,860.38 and USD 23,322.74 for the 2004 and 2005 fiscal years respectively.</p> <p>Both amounts were established in orders to pay adopted by tax authority.</p> <p>On 9 June 2008, the tax authority notified Mr Paredes of an order to pay USD 90,860.38 for an alleged difference in the 2004 income tax statement. The taxpayer stated that this sum was erroneous, because it exceeded in a disproportionate way what could be materially generated by his economic activity, which involved growing palm hearts and engaging in retail sale of beef.</p> <p>The alleged victim pointed out that the tax authority assumed that he had a 97% profit margin over his sales.</p> <p>On 19 January 2009, Mr Paredes filed a suit before the Ecuadorian Tax Court, questioning the tax authority's resolution. The Tax Court established</p>	<p><b>Admissibility Report No. 207/20, Inter-American Commission on Human Rights:</b></p> <p>The Inter-American Commission on Human Rights found Mr Paredes' claim admissible in relation to articles 8 and 25 of the American Convention on Human Rights.</p> <p>The Commission noted that the allegations of the taxpayer referred concretely to the impossibility of his bringing a complaint before competent domestic courts about his tax status, due to the requirement to deposit certain bonds that he was unable to post.</p> <p>In this sense, the Commission considered that, if true, the facts described above could involve violations to the rights enshrined in articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, to the detriment of Mr Paredes.</p>	<p>This case recalls a judgment issued (in 2002) by the Inter-American Court of Human Rights, in the case <i>José María Cantos v. Argentina</i>.</p> <p>Mr Cantos had filed a legal action against the provincial tax authority of Santiago del Estero (in Argentina), in an effort to collect damages because of certain irregularities committed at the time of auditing his companies. More specifically, he claimed the payment of approximately USD 2,780,000,000.</p> <p>The Federal Supreme Court of Argentina required from the claimant the payment of a judicial tax (in Spanish, <i>tasa judicial</i>) for an amount of USD 83,400,000 (i.e. 3% of the claimed damages). The Inter-American Court found that – by imposing such requirement – the Argentine state had violated articles 8 and 25 of the American Convention on Human Rights, which recognize respectively the taxpayer's right to a fair trial and judicial protection. Therefore, the Court ordered the Argentine state to refrain from collecting such judicial tax.</p> <p>Despite the apparent similarities, it should be noted that, in the case in question, the Inter-American Court of Human Rights also recognized that the right of access to a domestic court is not absolute and may therefore be subject to certain limitations. Ultimately, the Inter-American Court based its judgment solely on the grounds that the intention to collect the above sum of money was excessive and disproportionate, which must be analysed and determined on a case-by-case basis.</p>



that, before starting the proceeding, the taxpayer was required to post a bond equivalent to 10% of the amount of taxes (i.e. USD 9,086). The alleged victim stated that he did not have the money to post such bond.

In 2007, the tax authority had begun another proceeding against the same taxpayer, also for the assessment of income tax, on this occasion concerning the 2005 fiscal year. As a result of this proceeding, on 14 November 2008, the tax authority notified Mr Paredes of the order to pay allegedly owed taxes for a total amount of USD 23,322.74.

In view of this, the alleged victim filed once again a suit to challenge the new order to pay before the Tax Court, which by order of 1 July 2009, established that – prior to this proceeding – the taxpayer was required to post a bond equivalent to 10% of the amount of taxes (i.e. USD 2,332).

Mr Paredes refused to post the bond, on the grounds that it was unconstitutional. The Tax Court submitted this case to the Constitutional Court for it to decide whether or not article 7 of the Reform Law for Tax Equality in Ecuador, which established the obligation to post the bond, was in compliance with the standards of the Ecuadorian National Constitution. On 5 August 2010, the Constitutional Court decided that such article was constitutional.

In October 2010, the file was returned to the Tax Court to order that the bond be posted. As Mr Paredes was not economically capable of depositing the required sum, the judicial proceeding initiated by him was closed.

In sum, the alleged victim judicially challenged the settlement and collection of the aforementioned amounts of taxes (i.e. USD 90,860.38 and USD 23,322.74). In both judicial proceedings, he was requested to post a bond in accordance with the value of each order to pay, which amounted to the equivalent to 10% of such amounts (i.e. USD 9,086 and USD 2,332). The taxpayer was not in a financial situation that allowed him to post the judicial bonds as a precondition for the Courts to hear his complaints. Both

That said, and in accordance with the Commission's recent report, the protection of the right to a fair trial appears to have been affected insofar as no effective mechanism was made available to suspend the payment of the bonds and provide the taxpayer access to justice. If it is true that the taxpayer lacked the financial capacity to post such bonds, the Tax Court should have acknowledged this special situation.

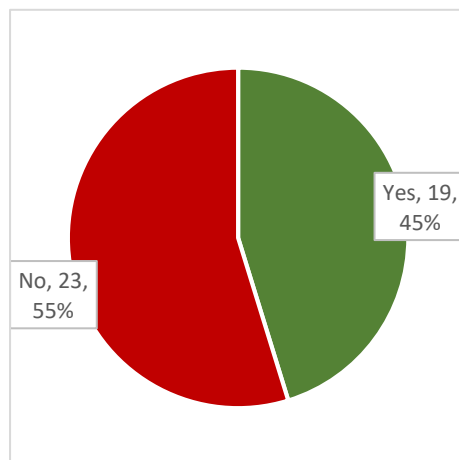
proceedings were closed precisely for the failure to post the bonds.

The claim submitted by Mr Paredes with the Inter-American Commission on Human Rights was based on the argument that he was not afforded equal access to judicial review of administrative decisions about tax matters which, in his view, were arbitrary and infringed upon his rights.

The principle of *solve et repete*, i.e. pay and then retrieve, is a means of striking a proportionate balance between the need of the taxpayers to be able to lodge a genuine appeal in a matter that gravely affects their rights and the need to prevent the risk that these taxpayers unduly exploit reviews and appeals to delay the payment of taxes due. By enforcing mandatory payment of assessments before appeals can be made, such a risk may be lowered, but at the price of hampering taxpayers' right to appeal. As evidenced by Chart 49, this is the case in 45% of the surveyed jurisdictions.

**Chart 49. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. *solve et repete*)?**

50 responses



**Yes:** Austria, Bolivia, Bosnia and Herzegovina, China (People's Rep.) (1), China (People's Rep.) (2), Cyprus (1), Cyprus (2), Finland, Germany, Greece (1), Greece (2), India, Italy, Luxembourg, Mauritius, Netherlands, Poland, Portugal, Serbia, South Africa, Spain, United Kingdom

**No:** Australia, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Croatia, Czech Republic, Denmark, Guatemala, Honduras, Japan, Mexico (1), Mexico (2), New Zealand, Panama, Peru (1), Peru (2), Russia, Sweden, Turkey, United States, Uruguay, Venezuela (1), Venezuela (2)

Source: OPTR: Questionnaire 1, Question 49

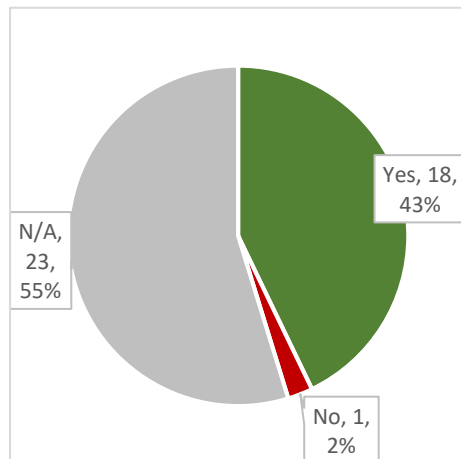
Some positive developments have been reported in **Uruguay**, where courts cannot legally demand the prior payment of taxes as a precondition for the courts to hear the taxpayers' complaint. The Supreme Court has recently allowed taxpayers to collect interest from the actual day of payment of the undue taxes instead of before this date, as was the practice until the ruling.<sup>191</sup> From the judiciary, the Supreme Court of **Spain** ruled that an enforcement order (*providencia de apremio*) was not required pending the administrative appeal

<sup>191</sup> UY: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 53.

outcome,<sup>192</sup> and courts in **India** have held that any appellate forum has the inherent power to grant a stay in appropriate cases. However, there is no legal provision for this.<sup>193</sup>

**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?)**

50 responses



**Yes:** Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), China (People's Rep.) (1), Cyprus (1), Finland, Germany, Greece (1), Greece (2), India, Italy, Luxembourg, Mauritius, Netherlands, Poland, Portugal, Serbia, South Africa, Spain, United Kingdom

**No:** China (People's Rep.) (2), Cyprus (2)

**Not applicable:** Australia, Belgium, Brazil (1), Brazil (2), Bulgaria (2), Canada, Chile, Colombia, Croatia, Czech Republic, Denmark, Guatemala, Honduras, Japan, Mexico (1), Mexico (2), New Zealand, Panama, Peru (1), Peru (2), Russia, Sweden, Turkey, United States, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** Bulgaria, China (People's Rep.), Cyprus

Source: OPTR: Questionnaire 1, Question 50

### 6.6. Costs of proceedings

**Best practice:** The state should bear some or all of the costs of an appeal, whatever the outcome.

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

None

**Shifted away from the best practice:**

Panama

**Best practice:** Legal assistance should be provided to those taxpayers who cannot afford it

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

Chile, United States

**Shifted away from the best practice:**

Panama

Tax proceedings are a costly affair for both tax administrations and taxpayers. In addition, some states oblige the losing party to bear all costs related to the appeals procedure, in line with the idea that the winner receives full compensation for all costs incurred throughout the entire procedure. Essentially, this an efficient incentive for the parties to refrain from litigation

<sup>192</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2 (Development Survey), Question 53.

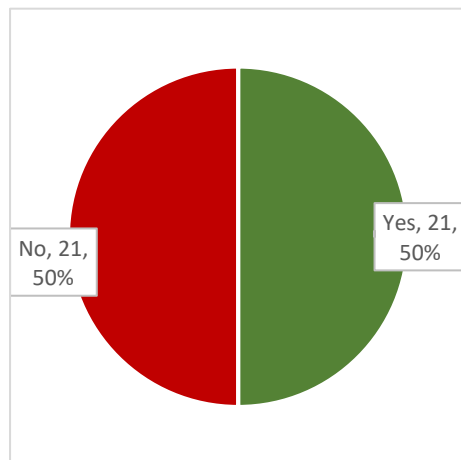
<sup>193</sup> IN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 53.

and find an alternative agreement in the early stages of the dispute.

Surveyed countries seem to shift towards this best practice. 49% of countries reported that the loser bears all costs in a tax appeal, as evidenced by Chart 51, compared to 56% in 2019 and 61% in 2018. However, as shown in Chart 52, only 37% of the surveyed jurisdictions recognize some situations justifying a dispensation from these rules.

**Chart 51. Does the loser have to pay the costs in a tax appeal?**

50 responses



**Yes:** Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (2), Cyprus (1), Cyprus (2), Germany, Greece (1), Greece (2), Guatemala, Italy, Luxembourg, Mauritius, Portugal, Russia, Serbia, Spain, Turkey, United Kingdom, Venezuela (1), Venezuela (2)

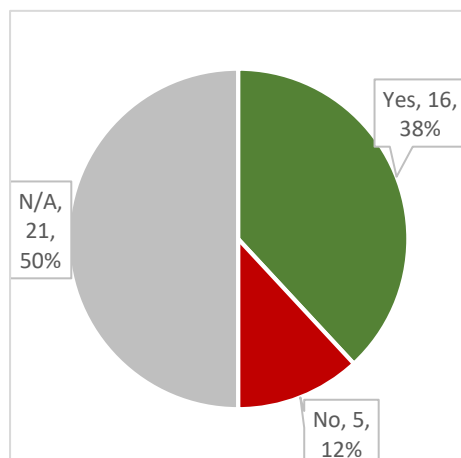
**No:** Austria, Bolivia, Brazil (2), China (People's Rep.) (1), Colombia, Croatia, Czech Republic, Denmark, Finland, Honduras, India, Japan, Mexico (1), Mexico (2), Netherlands, New Zealand, Panama, Peru (1), Peru (2), Poland, South Africa, Sweden, United States, Uruguay

**Reports with diverging opinions:** Brazil, China (People's Rep.)

Source: OPTR: Questionnaire 1, Question 51

**Chart 52. If yes, are there situations recognized where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?**

50 responses



**Yes:** Australia, Belgium, Brazil (1), Bulgaria (1), Canada, Chile, Cyprus (2), Germany, Greece (1), Greece (2), Guatemala, Italy, Luxembourg, Mauritius, Portugal, Serbia, Spain, United Kingdom

**No:** Bosnia and Herzegovina, Bulgaria (2), China (People's Rep.) (2), Cyprus (1), Russia, Turkey, Venezuela (1), Venezuela (2)

**Not applicable:** Austria, Bolivia, Brazil (2), China (People's Rep.) (1), Colombia, Croatia, Czech Republic, Denmark, Finland, Honduras, India, Japan, Mexico (1), Mexico (2), Netherlands, New Zealand, Panama, Peru (1), Peru (2), Poland, South Africa, Sweden, United States, Uruguay

**Reports with diverging opinions:** Brazil, Bulgaria, China (People's Rep.), Cyprus

Source: OPTR: Questionnaire 1, Question 52

In **Chile**, a tax reform has introduced a tax ombudsman, who can provide legal assistance to every taxpayer, including assistance in a judicial appeal. Unfortunately, the new tax

ombudsman institution has not yet been implemented.<sup>194</sup> The matter of the (tax) ombudsperson will be addressed in section 12 of this yearbook.

For the **United States**, a positive development has been reported as well, with the Tax Court expanding its rule to permit limited entries of appearance in additional circumstances. This may expand the availability of legal services to taxpayers, and in addition the Internal Revenue Service Office of Chief Counsel has worked with non-profit programs to hold pro bono settlement days nationwide.<sup>195</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:**

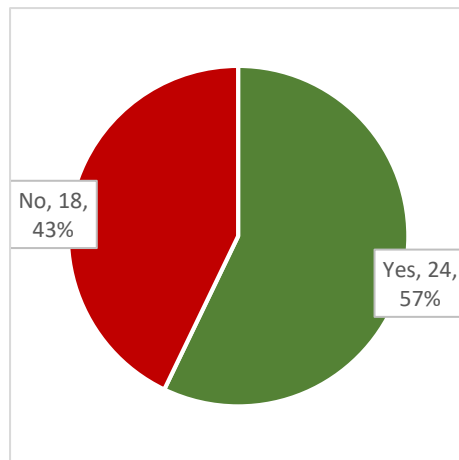
Mexico

**Shifted away from the minimum standard:**

Panama

**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?**

50 responses



**Yes:** Australia, Austria, Belgium, Bulgaria (1), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Cyprus (2), Denmark, Germany, Greece (1), Greece (2), Honduras, Italy, Mauritius, Panama, Poland, Portugal, Russia, Serbia, South Africa, Sweden, United Kingdom, United States, Uruguay, Venezuela (2)

**No:** Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (2), Chile, Croatia, Cyprus (1), Czech Republic, Finland, Guatemala, India, Japan, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Spain, Turkey, Venezuela (1)

**Reports with diverging opinions:** Bulgaria, Cyprus, Venezuela

**Source:** OPTR: Questionnaire 1, Question 53

By investigating facts and circumstances relevant for tax purposes, the administration will inevitably touch upon matters of considerable sensitivity to the taxpayers. This is in itself an invasion of their affairs and, if not handled properly, this activity may even affect the taxpayer’s right to privacy and their freedom of establishment by revealing delicate information or industrial secrets, as addressed in section 3 of this yearbook.

<sup>194</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 55.

<sup>195</sup> US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 55.

Consequently, the right to exclude the public from a hearing and the anonymization of decisions before publication should be recognized as minimum standards. In this regard, Chart 53 shows a slight decline: 56% of surveyed jurisdictions allow the taxpayer to request a hearing in camera, compared to 58% in 2019. Nonetheless, **Mexico** has reported a positive development in this area, stating that hearings are now private, compared to a shift away from the minimum standard in 2019, when such a hearing was reported to be impossible.<sup>196</sup>

### 6.8. Publication of judgments and privacy

**Minimum standard:** Tax judgments should be published.

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

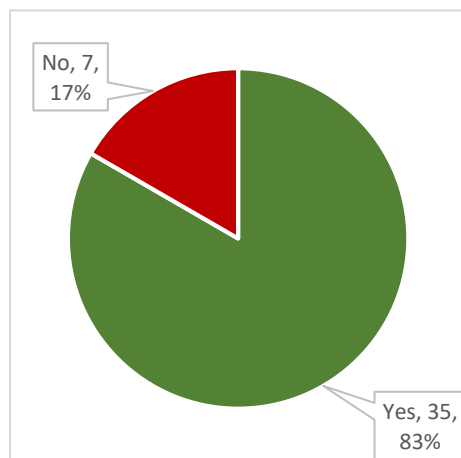
Chile

**Shifted away from the minimum standard:**

Panama

**Chart 54. Are judgments of tax tribunals published?**

50 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, South Africa, Spain, Sweden, United Kingdom, United States, Venezuela (1), Venezuela (2)

**No:** Bosnia and Herzegovina, Croatia, Finland, Honduras, Serbia, Turkey, Uruguay

**Source:** OPTR: Questionnaire 1, Question 54

For transparency and certainty, awareness of how the tax rules are interpreted and applied in practice is pivotal. As part of this, the publication of tax judgements is an important measure to provide clarity for taxpayers and decrease disputes with the tax administration. As evidenced by Chart 54, this is the case in the majority of the surveyed jurisdictions.

**Chile** has moved towards this minimum standard by amending its tax code. It now establishes that all final tax court judgements should be published.<sup>197</sup>

At the same time, taxpayers are entitled to privacy and, as stated above, the publication of rulings without proper regard to the sensitive information contained in them may have severe adverse effects for the taxpayers. Therefore, ensuring taxpayers’ privacy should equally be protected by a minimum standard. As evidenced by Chart 55, a slight majority of surveyed

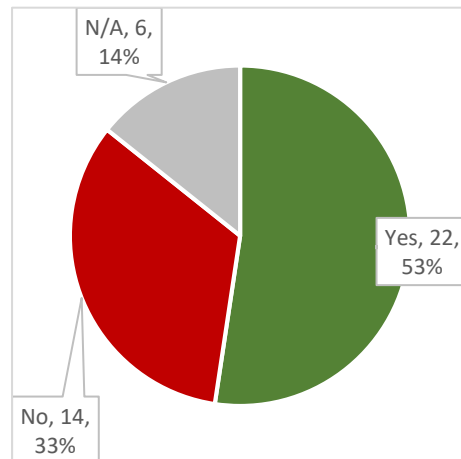
<sup>196</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 56.

<sup>197</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 57.

jurisdictions preserve taxpayers' anonymity in tax judgments.

**Chart 55. If yes, can the taxpayer preserve its anonymity in the judgment?**

50 responses



**Yes:** Australia, Austria, Bulgaria (1), Bulgaria (2), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Panama, Peru (1), Peru (2), Poland, Portugal, South Africa, Spain, United Kingdom

**No:** Belgium, Bolivia, Brazil (1), Brazil (2), Canada, Chile, China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Cyprus (1), Guatemala, India, Russia, Sweden, United States, Uruguay, Venezuela (2)

**Not applicable:** Bosnia and Herzegovina, Croatia, Finland, Honduras, Serbia, Turkey, Venezuela (1)

**Reports with diverging opinions:** Cyprus, Venezuela

Source: OPTR: Questionnaire 1, Question 55

## 7. Criminal and Administrative Sanctions

### 7.1. The general framework

**Minimum standard:** Proportionality and *ne bis in idem* should apply to tax penalties.

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

Spain

**Shifted away from the minimum standard:**

Panama, United Kingdom

**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, Greece

**Shifted away from the best practice:**

Mexico, Panama, Turkey

## 2020 Relevant Case Law – European Court of Human Rights

Case	<i>Agapov v. Russia</i> , no. 52464/15		
Date	6 October 2020		
ECHR Articles	Article 6 § 2 Article 1 of Protocol no. 1		
Facts	Decision	Comments	

<p>The case concerned the applicant's complaint that he had been made to pay tax arrears owed by the company, Argo-RusCom Ltd, for which he was the managing director.</p> <p>In 2013, the tax inspection authorities audited Argo-RusCom Ltd and found that the company had evaded payment of VAT. They ordered payment of tax arrears with interest and penalty totalling approximately EUR 330,000. The commercial courts confirmed the lawfulness of the tax authorities' claims in a final decision in 2015. The applicant's company, not being able to pay the sum owed, was liquidated and deregistered in 2015. In the meantime, in 2014 the investigating authorities refused to institute criminal proceedings against the applicant on the charge of tax evasion as prosecution was time-barred. The tax authorities then sued the applicant for damage caused by tax evasion committed by him in the amount of EUR 330,000. The civil courts, referring to the audit report and investigator's decision of 2014, found him liable for his company's debt, stating in particular that he had committed "illegal acts with a criminal intent to evade the payment of taxes" and caused damages to the Russian budget. All his appeals were unsuccessful.</p>	<p><b>Article 6 § 2 of the Convention</b> (presumption of innocence): The applicant complained that the civil court's decision had pronounced him guilty of tax evasion.</p> <p>(1) The Court concluded that the applicant had indeed been "charged with a criminal offence". Furthermore, there was a direct causal link between the concluded criminal proceedings and the civil proceedings for damages brought against the applicant by the tax authorities. Complaint was therefore admissible.</p> <p>(2) The wording of the civil courts should be construed as imputing criminal liability to the applicant because (i) it went beyond determining facts and included the judicial authorities' opinion on the applicant's <i>mens rea</i>; and (ii) no justification was provided for the impugned choice of words made by the domestic courts.</p> <p>Conclusion: <b>violation</b> (imputation of criminal guilt inconsistent with right to presumption of innocence).</p> <p><b>Article 1 of Protocol no. 1:</b> The domestic courts' decision to impose on the applicant the duty to pay tax arrears, penalty and a fine owed by the company of which he had been the managing director violated his right to property.</p> <p>Obligation to pay damages imposed on the applicant was indeed an interference with his property rights. However, this interference was not lawful: the courts' decisions were devoid of any legal basis under Russian law. The applicant's duty was based on an allegation of the applicant's criminal conduct for which he had never been convicted.</p> <p>Conclusion: <b>violation</b> (the order for the applicant to pay damages to the tax authorities was made in an arbitrary fashion).</p> <p><b>Article 41:</b> Non-pecuniary damage award EUR 7,800; pecuniary damages awarded in the amount EUR 688 (amount of</p>	<p>By obliging the applicant to pay damages due by the company of which he was the managing director, the domestic tax authorities sought to pierce the corporate veil. However, in the <u>absence of an effective judgment declaring the applicant guilty of tax evasion</u>, such court decision violates the Convention, in particular Article 6 § 2 and Article 1 of Protocol no. 1.</p>
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	damages paid by the applicant).	
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Case	<b><i>Edata-Trans S.R.L. v. The Republic of Moldova</i></b> , no. 55887/07 [Committee]	
Date	17 March 2020	
ECHR Articles	Article 1 of Protocol no. 1	
Facts	Decision	Comments
<p>The case concerned the applicant company's complaint about tax adjustment and fiscal penalties imposed on it owing to fraudulent behaviour on the part of the supplier.</p> <p>The applicant company had a transaction with company F, according to which it paid the value of goods including VAT. Two years later, the tax authorities found that the invoice issued by company F had been forged. The tax authorities decided that the applicant company had infringed its obligations by declaring the amounts paid under a forged invoice. They recalculated the income tax and VAT and obliged the applicant company to pay these amounts together with fine and interest.</p> <p>The first instance court held in favour of the applicant company, noting that it had acted in good faith and could not have known that the invoice had been forged. The Supreme Court set aside this judgment and held that the applicant company had to pay the VAT due.</p>	<p><b>Article 1 of Protocol no. 1:</b> The applicant complained that it had to pay VAT with penalties despite having acted in good faith.</p> <p>(1) The Court held that the applicant company had a legitimate expectation to be able deduct the VAT paid to its supplier because at the moment of the transaction it could not have known that the invoice had been forged.</p> <p>(2) The tax authorities' refusal to allow the deduction of the VAT and its decision to make a tax adjustment and impose penalties constituted an interference with the company's right to property.</p> <p>(3) With reference to "<i>Bulves</i>" AD v. <i>Bulgaria</i>, the Court held that this interference was disproportionate. The applicant company had duly complied with its obligations and should not have been held responsible for the fraudulent behaviour of its supplier. <b>Violation.</b></p> <p><b>Article 41:</b> EUR 5,176 for pecuniary damage (amount paid to the state) and EUR 3,000 for non-pecuniary damage.</p>	<p>This case confirms the approach taken in "<i>Bulves</i>" AD v. <i>Bulgaria</i> (no. 3991/03, 22 January 2009) and confirmed in <i>Euromak Metal Doo v. the former Yugoslav Republic of Macedonia</i> (no. 68039/14, 14 June 2018).</p>

Case	<b><i>Avto Atom Doo Kochani v. North Macedonia</i></b> , no. 21954/16 [Committee]	
Date	28 May 2020	
ECHR Articles	Article 1 of Protocol no. 1	
Facts	Decision	Comments
<p>The case concerned the applicant company's complaint that the</p>	<p><b>Article 1 of Protocol no. 1</b></p> <p>(1) The applicant company's right</p>	<p>This case confirms the approach taken in "<i>Bulves</i>" AD v. <i>Bulgaria</i> (no. 3991/03, 22 January 2009)</p>

<p>domestic authorities had deprived it of the right to deduct VAT it had paid on received goods due to an error committed by its supplier.</p> <p>In 2007, the tax authorities audited the applicant, a limited liability company specializing in passenger transport in buses. They issued a payment order imposing an additional VAT demand, which, according to them, had unlawfully been deducted from the applicant company's VAT obligation on the basis of invoices issued by one of its suppliers, a petrol station. It was established that the latter had not been registered for the purposes of VAT (its owner was later convicted for tax evasion). The applicant company paid the amount due in several instalments in 2007-2008.</p>	<p>to claim a deduction from its VAT obligation amounted to a "legitimate expectation" and thus a "possession".</p> <p>(2) The applicant company had no possibility to perform an online verification of the supplier's VAT status through a special system. They relied on the supplier's invoices, which contained all the necessary data, and had no information that the supplier had committed tax evasions. The applicant company had no reason at any relevant time to suspect the supplier of any unlawful actions and could not therefore monitor, control or secure its compliance with VAT obligations. The tax authorities should have sought the VAT debt from the supplier. <b>Violation.</b></p> <p><b>Article 41:</b> EUR 52,468 in respect of pecuniary damage (the value of the VAT that the applicant company had to bear).</p>	<p>and confirmed in <i>Euromak Metal Doo v. the former Yugoslav Republic of Macedonia</i> (no. 68039/14, 14 June 2018).</p>
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- See *Vegotex International S.A. v. Belgium*, no. 49812/09, at sec. 10.2.

### 2020 Relevant Admissibility Decisions – Inter-American Court of Human Rights

Case	<i>María Meyber Bichakdjian Altounian and Others v. Uruguay</i>	
Date	24 October 2019 (Published in 2020)	
ACHR Articles	Article 8 Article 11 Article 46	
Facts	Decision	Comments
<p>Ms. María Meyber Bichakdjian Altounian and her two sons (Berch and Aram Rupenian Bichakdjian) directly or indirectly held the rights to four radio stations, namely: (i) Concierto; (ii) Concierto Punta; (iii) Radio Uno; and (iv) Radio Independencia.</p> <p>On 11 August 2004, the Uruguayan tax authorities issued a resolution ruling that Parasel SA – a local corporation which was owned by Ms. Bichakdjian and was, in turn, the sole proprietor of one of the above radio stations (i.e. Concierto) – had committed tax fraud for not paying corporate income tax and</p>	<p><b>Inadmissibility Report No. 222/19, Inter-American Commission on Human Rights:</b></p> <p>The Inter-American Commission on Human Rights decided to declare the claim inadmissible.</p> <p>The Commission considered that, despite the alleged victims' arguments, there were not sufficient elements for it to conclude, <i>prima facie</i>, that the American Convention on Human Rights may have been violated.</p> <p>In connection with the right to a fair trial and possible violation of presumption of innocence, the</p>	<p>The Commission's report might be considered questionable to the extent that the principles of proportionality and <i>ne bis in idem</i> would seem to have been infringed. Tax sanctions should penalize, but not result in other kind of repercussions (e.g. the prevention of taxpayers from continuing to conduct their business activities). Furthermore, any tax system should avoid exposing taxpayers to the obligation to defend themselves more than once in respect of the same alleged violation (as seems to have been the case here).</p> <p>Beyond this, the Inter-American</p>

<p>VAT, as a result of which it was fined.</p> <p>The alleged victims claimed that, since 2005, the tax authorities had, in breach of tax confidentiality, undertaken a media campaign publicly stating that the Rupenian brothers would be criminally charged, causing great harm to their image.</p> <p>The tax authorities subsequently filed criminal proceedings against the alleged victims for the possible crime of tax fraud. The complaint submitted by the tax authorities contended that the taxpayers unlawfully transferred more than half of the invoices from the customers of Concierto (of Montevideo) to Concierto Punta (of Maldonado) for the purpose of defrauding the treasury and benefiting from tax exemptions applicable only to radio broadcasting stations in the country's inland regions.</p> <p>On 28 March 2007, the executive branch issued a resolution to withdraw the authorizations granted to the alleged victims and their companies for the operation of the four radio stations. They stated that such resolution specifically referred to the sanctions imposed by the tax authorities on the alleged victims and the initiation of criminal proceedings against them, and pointed out, among other considerations, that “the maneuvers that constituted tax infringements leading as a result to criminal proceedings, and the loss of certain personal requirements demanded from radio broadcasters, severely undermine the public interest”.</p> <p>The resolution of the executive branch was implemented on 9 July 2007, on which day the four radio stations were forced to stop broadcasting.</p> <p>The alleged victims claimed that their human rights were violated, among other reasons because: (i) the permits were withdrawn without any criminal conviction and when a ruling on the legal</p>	<p>Commission observed that the alleged victims did not contribute sufficient elements indicating that the pending criminal proceedings against them were a determinant factor in the decision to revoke the permits for the operation of the radio stations.</p> <p>Furthermore, in the opinion of the Inter-American Commission, the alleged victims had not filed any complaints – under domestic laws – regarding the supposed media campaign that they alleged was carried out by the Uruguayan tax authorities. Therefore, the Commission could not conclude that remedies available under domestic laws had been properly exhausted – regarding these allegations – pursuant to the requirement provided in article 46.1.A of the American Convention on Human Rights.</p>	<p>Commission highlighted an ancillary (though relevant) matter.</p> <p>As a matter of fact, the alleged victims had not argued a violation of articles 8 and 11 of the American Convention on Human Rights. Their claim was based instead on articles 5 (right to protection of honor, personal reputation, and private and family life) and 26 (right to due process of law) of the American Declaration of the Rights and Duties of Man.</p> <p>In the opinion of the Commission, this would have been a mistake. Once the American Convention on Human Rights enters into force with respect to any given state (in this case, Uruguay), the latter and not the Declaration becomes the primary source of applicable law for the Commission, as long as the claim refers to rights that are identical in both instruments.</p> <p>In the case in question, the Commission concluded that the rights invoked by the alleged victims were not beyond reach of the protection provided by articles 8 and 11 of the American Convention on Human Rights. Therefore, they had had to invoke the provisions included in the Convention.</p> <p>Finally, if it is true that the Uruguayan tax authorities conducted a media campaign against the alleged victims, their right to privacy would have been infringed as a result of an intentional breach of taxpayers' confidentiality. Unauthorized disclosure of taxpayers' information should never happen.</p>
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<p>action calling for nullification of the tax authorities' resolution was still pending; the presumption of innocence was therefore violated; (ii) the tax authorities' sanctions were aimed solely at Parasel SA and its broadcasting station (i.e. Concierto), but without any grounds the permits of all four radio stations were withdrawn; and (iii) the radio broadcasting permits were withdrawn on the basis of a tax liability issue that could be remedied; other measures, such as granting the permit-holders time to pay the debt, were feasible; the measure was therefore disproportionate.</p> <p>In response to these allegations, the Uruguayan state argued that the tax and criminal proceedings filed against the alleged victims, members of a well-known family, were carried out in observance of the principle of equality and in a historical context in which the state gave priority to investigating tax crimes to combat poverty, promote fiscal equity, and mitigate the impacts of the economic crisis sustained by the country in 2001.</p>		
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Part of the state's tax system is the right to punish – *ius puniendi* – which entitles the tax authorities to exercise this power against regulatory offences and entitles the courts to exercise their power against criminal offences. A trial-structured procedure should be applied in both situations to exercise these powers, to determine the tax infringement and the sanction against the taxpayer who has committed it.

The procedural aspects of the process entail that the taxpayer has the right to a due process of law, meaning that they have the right to a judicial assessment of their liability to a punitive sanction with adequate guarantees of defence. In the context of sanctions, this means that the taxpayer has – at the very least – the right not to incriminate themselves (*nemo tenetur se ipsum accusare*), the right not to be prosecuted multiple times for the same fact pattern (*ne bis in idem*) and to proportionality.<sup>198</sup>

In this regard, proportionality requires that criminal and administrative sanctions are subject to several constraints and are therefore only to be imposed (i) 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

<sup>198</sup> Weffe, *supra* n. 33, at sec. 1.1.3.

guilt of the infringing taxpayer, balanced with the requirements of general and special deterrence.<sup>199</sup>

The negative trend on *ne bis in idem* reported in 2019 seems to be starting to reverse.<sup>200</sup> The principle was reported as not applicable in 8 countries in 2020, a 39% decrease from 2019 (when it was reported as not applicable in 13). In those 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: 1 report (0 in 2019); (ii) preventing the imposition of more than one tax penalty for the same conduct: 8 reports (17 in 2019); and (iii) to prevent the imposition of a tax penalty and criminal liability: 6 reports (9 in 2019). Additionally, some combinations drawn from these possibilities were reported, of which 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 (6 reports, compared to 11 reports in 2019). These findings are evidenced by Chart 56.

In terms of the effectiveness of the implementation of the *ne bis in idem* principle, Chart 57 illustrates a positive development compared to 2019, as only 33% of the surveyed jurisdictions report that it does not prevent two parallel sets of proceedings arising from the same factual circumstances in practice, compared to 58% in 2019.

The *ne bis in idem* principle provides certainty and finality against the state's exercise of punitive powers. In that regard, **Spain** reports a positive development: the Supreme Court stated that a taxpayer sanctioned for non-compliance with his documentation obligations as a result of issuing false invoices or documents could not be declared jointly liable in the payment of the penalty imposed on the recipient of the invoice. Separate sanctions for conduct that has already served to grade another conduct or qualify the latter as very serious is tantamount to double jeopardy.<sup>201</sup> As described in section 4.1, **Mauritius** has recorded a similarly positive development due to amendments brought in by the Anti-Money Laundering and Combatting the Financing of Terrorism Act.

**Belgium** was inspired by the ECtHR *A and B v. Norway* case to introduce a new *una via* (one way) system for sanctioning tax offences, by integrating the administrative tax procedure with the prosecution of tax offences before a criminal court. The criminal court ruling on the criminal proceedings related to the tax offence will now also rule on an "independent civil claim" from the tax administration, in which it can claim both taxes and administrative sanctions. The criminal court can impose criminal and administrative sanctions on the tax offender, as long as the combination of these sanctions is not disproportionate.<sup>202</sup>

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<sup>199</sup> Id., at sec 1.1.2.

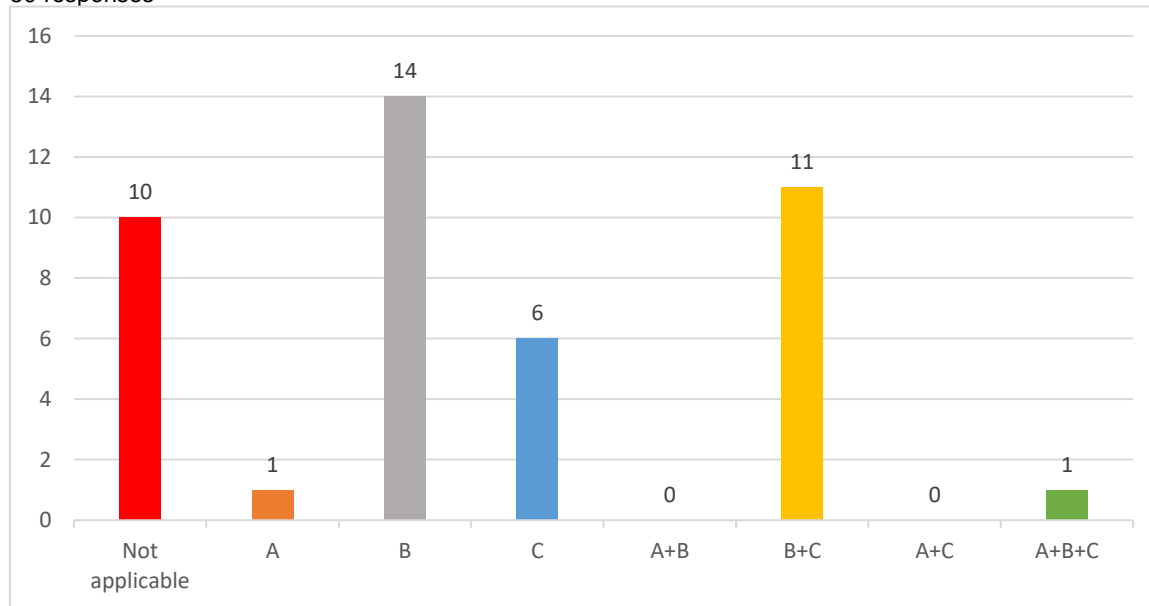
<sup>200</sup> OPTR, *The IBFD Yearbook on Taxpayers' Rights 2019* sec. 7.1. (IBFD 2020), Books IBFD.

<sup>201</sup> SP: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58.

<sup>202</sup> BE: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 58.

**Chart 56. Does the principle *ne bis in idem* apply in your country to prevent either: (a) the imposition of a tax penalty and tax liability; (b) the imposition of more than one penalty for the same conduct; or (c) the imposition of a tax penalty and criminal liability?**

50 responses



Source: OPTR: Questionnaire 1, Question 56

**The principle does not apply (Not applicable):**

Australia, Brazil (1), Denmark, Germany, India, Mauritius, South Africa, Sweden, Turkey, United States, Uruguay

**The imposition of a tax penalty and the tax liability (A):**

Bulgaria (1)

**The imposition of more than one tax penalty for the same conduct (B):**

Austria, Bolivia, Brazil (2), Bulgaria (2), Chile, China (People's Rep.) (2), Colombia, Cyprus (1), Czech Republic, Japan, Mexico (1), Mexico (2), Panama, Peru (1), Peru (2), Portugal, Russia, Venezuela (1)

**The imposition of a tax penalty and criminal liability (C):**

Belgium, Bosnia and Herzegovina, Canada, Finland, Greece (1), Greece (2), New Zealand

**The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (B + C):**

China (People's Rep.) (1), Croatia, Cyprus (2), Guatemala, Honduras, Italy, Luxembourg, Netherlands, Poland, Serbia, Spain, United Kingdom

**The imposition of a tax penalty and tax liability; The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (A+B+C):**

Venezuela (2)

**Reports with diverging opinions:**

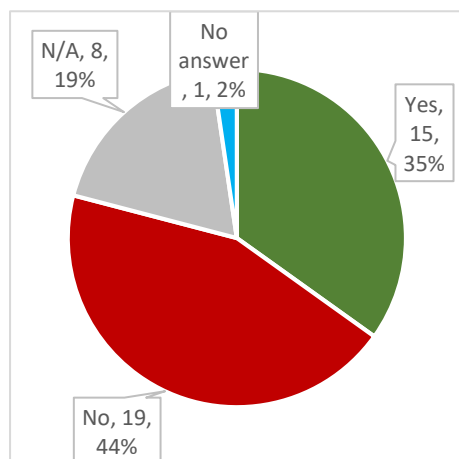
Brazil, Bulgaria, China (People's Rep.), Cyprus, Venezuela

The *A and B v. Norway* case, along with the ECJ *Menci* ruling, has also resulted in the Grand Chamber of the Supreme Administrative Court (Council of State) of **Greece** harmonizing its case law, overruling its previous approach. Following this development, the Greek tax code has been amended to reflect the *ne bis in idem* requirements. The new rules provide that the criminal procedure is initiated only after the issuance of a final administrative

act or a final judgment by an administrative court concerning the tax violation at issue.<sup>203</sup>

**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)?**

50 responses



**Yes:** Bolivia, Brazil (2), China (People's Rep.) (1), China (People's Rep.) (2), Cyprus (1), Cyprus (2), Czech Republic, Greece (1), Greece (2), Guatemala, Honduras, Mexico (2), Netherlands, New Zealand, Panama, Spain, Sweden, United Kingdom, Venezuela (1), Venezuela (2)

**No:** Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Croatia, Finland, India, Italy, Japan, Luxembourg, Mexico (1), Peru (1), Peru (2), Poland, Portugal, Russia, Serbia

**Not applicable:** Australia, Brazil (1), Denmark, Germany, Mauritius, South Africa, Turkey, United States, Uruguay

**Reports with diverging opinions:** Brazil, Mexico

Source: OPTR: Questionnaire 1, Question 57

Regrettably, adverse developments have also been reported in the **United Kingdom**, with cases of disproportionate penalties between 150% and 200% of the potential lost revenue in cases concerning not deliberate tax evasion, but merely ordinary pensioners making mistakes in their tax returns due to ignorance of the terms of double taxation treaties regarding foreign pension income. This conduct goes against previous case law, which states that there can be circumstances in which ignorance of the law could be a reasonable excuse – for example, when the law's requirements are complex and not well known.<sup>204</sup> A similar sanction is reported in **China**, although both administrative and criminal penalty laws contain the *ne bis in idem* principle. Although it enshrines proportionality of fines as a principle, the starting point of fines for tax evasion is 50% of the tax amount unpaid or underpaid, and the maximum is five times the amount. The penalty is hefty, and the tax authorities have much discretion on the exact fine.<sup>205</sup>

Also, negatively, the Constitutional Court in **Turkey** has decided in an individual case that the application of both administrative and criminal sanctions does not violate the *ne bis in idem* principle, as the two sanctions seek different goals and legal benefits.<sup>206</sup> In **Mexico**, the tax administration has, in cooperation with the Attorney General, threatened criminal sanctions in order to collect tax assessments, which were being challenged in court, from large taxpayers. The threat was that, if the taxpayers pursued litigation, the Attorney General's office would initiate criminal actions against the company's board of directors. This

<sup>203</sup> GR: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 59.

<sup>204</sup> UK: OPTR Report (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 58.

<sup>205</sup> CH: OPTR Report (Academia), Questionnaire 2 (Development form) Question 58.

<sup>206</sup> TR: OPTR Report (Academia), Questionnaire 2, Question 59.

action resulted in at least three multinational companies paying more than USD 1 billion in taxes.<sup>207</sup>

## 7.2. Voluntary disclosure

**Best practice:** Voluntary disclosure should lead to reduction of penalties.

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

Mauritius

**Shifted away from the best practice:**

Netherlands, Panama

**Minimum standard:** Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures.

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

None

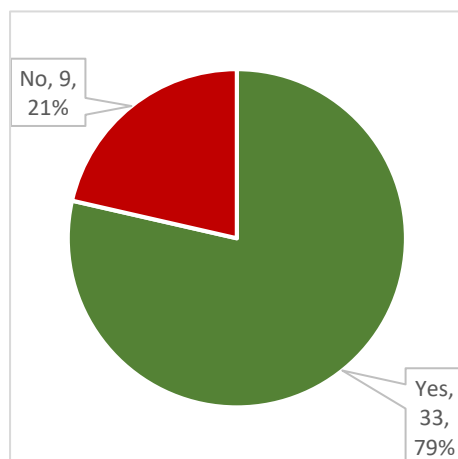
**Shifted away from the minimum standard:**

Panama

Subjecting taxpayers to penalties should be the last resort and should only be used when no legal measure is suitable to make the taxpayer abide by the law. This standard is linked to the proportionality of the state’s use of power, so the penalties provide an efficient response to the harm caused by the taxpayer’s illegal behaviour and ensures the legal good, i.e. the tax assessment powers of the tax authorities and the tax collection for the revenue of the state. Hence, the punitive tax system is based, keeping these fundamentals in mind, on value-driven reasonableness in applying tax penalties, and voluntary disclosure is the most unambiguous indication of this.<sup>208</sup>

**Chart 58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?**

50 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Honduras, Italy, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Panama, Peru (1), Peru (2), Poland, Portugal, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States

**No:** Croatia, Cyprus (1), Greece, (2), Guatemala, India, Japan, Luxembourg, Russia, Uruguay, Venezuela (1), Venezuela (2)

<sup>207</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development form) Question 59.

<sup>208</sup> Weffe H., *supra* n. 33, at sec. 1.1.2.



**Source:** OPTR: Questionnaire 1, Question 58    **Reports with diverging opinions:** Cyprus, Greece

Continuing this line of reasoning, the taxpayer's effective repentance that leads to the collection of taxes should correspond to a penalty reduction, provided that the taxpayer's repentant behaviour has effectively diminished the harm brought about by their initial breach of the law. This result should not be prompted by increasing penalties, as this would fundamentally be a breach of the principle of no punitive law without necessity (*nulla lex poenalis sine neccesitate*).<sup>209</sup>

In 79% of the surveyed jurisdictions, the taxpayer's voluntary disclosure results in reduced or zero penalties, as evidenced by Chart 58. Conversely, new legislation in the **Netherlands** in force from January 2020 states that voluntarily filed tax returns (*spontane aangiften*) are treated as a tax return for which the taxpayer has received an invitation to file. As such, these voluntary tax returns are subject to regular corrections and possible sanctions, such as fines, like all other tax returns, leading to a situation whereby voluntary tax returns can more easily lead to a penalty.

## 8. Enforcement of Taxes

**Minimum standard:** Collection of taxes should never deprive taxpayers of their minimum necessary for living.

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

Canada, Colombia, Honduras, India

**Shifted away from the minimum standard:**

Brazil, Mexico, Panama

## 2020 Relevant Inadmissibility Decisions – European Court of Human Rights

<b>Case</b>	<i>Rustamkhanli v. Azerbaijan</i> , no. 24460/16
<b>Date Communicated</b>	3 February 2020
<b>ECHR Articles</b>	Articles 6 and 8, P1-1
<b>Issues</b>	The application concerns the imposition of a financial sanction and the freezing of the bank accounts following an allegedly unlawful tax inspection carried out at the <i>Qanun</i> magazine editorial office ( <i>Qanun Jurnalı Redaksiyası</i> ), a company of which the applicant was the owner and director.

Tax enforcement is key to financing society and, therefore, of significant public interest. Consequently, enforcement entails greater powers for the tax administrations in the collection of taxes due.<sup>210</sup> The greater the tax administration's powers, the greater the risks

<sup>209</sup> *Id.*

<sup>210</sup> The ECJ decision (Fifth Chamber) in IT: ECJ, 24 Feb. 2021, [Case C-95/19](#), *Agenzia delle Dogane v. Silcompa SpA*, Case Law IBFD, is very interesting in this regard. It prevents the possibility of multiple tax recovery procedures within the European Union for the same excise taxes due. As stated by the decision, "[i]n the light of the foregoing considerations, the answer to the question referred is that Article 12(3) of Directive 76/308, read in conjunction with Article 20 of Directive 92/12, must be interpreted as meaning that, in the context of an action disputing enforcement measures taken in the Member State in which the requested

of practices that are potentially harmful to taxpayers, and therefore this is an area in need of strong safeguards.<sup>211</sup>

Opposite this power of tax collection for the state stands the taxpayer's human dignity, which limits the state's power as it ensures the taxpayer the right to a dignified existence (*minimum vitale*), defined as the minimum necessary for living.

Amid a global pandemic and economic crisis, funds are scarce for many taxpayers. Consequently, many countries have introduced postponements on collecting taxes, reduced interest rates for late payment of taxes, and some extension in due dates for compliance, such as **India**<sup>212</sup> and **Colombia**.<sup>213</sup> Other countries have refrained from doing so, such as **Brazil**, where many states and municipalities (such as São Paulo and its capital) did not provide any relief regarding collecting taxes, not even postponement of the payments.<sup>214</sup> Other measures include reducing VAT rates for specific goods such as medical equipment in the **Netherlands**,<sup>215</sup> **Slovenia**,<sup>216</sup> **Portugal**,<sup>217</sup> **Finland**<sup>218</sup> and **Bulgaria**,<sup>219</sup> or on electronic supportive measures, as in **Poland**.<sup>220</sup>

The best practices appear to be in **Honduras**, where the Progressive Tax Rates Table for Personal Income Tax is published annually in order to guarantee the minimum necessary for living,<sup>221</sup> and **Canada**, where the Canada Revenue Agency collections branch began contacting individuals and businesses with a balance owing in order to discuss their financial situation and payment plans. The Canada Revenue Agency has paused collections and held

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authority is situated, the competent body of that Member State may refuse to grant the request to recover excise duties submitted by the competent authority of another Member State in respect of goods which irregularly departed from a suspension arrangement, for the purposes of Article 6(1) of Directive 92/12, where that request is based on the facts relating to the same export transactions which are already subject to excise duty recovery in the Member State in which the requested authority is situated". The decision is also available at <https://www.courthousenews.com/wp-content/uploads/2021/02/silcompa-ecj.pdf> (accessed 5 Mar. 2021).

<sup>211</sup> Baker & Pistone, *supra* n. 1, at sec. 5.1., p. 57.

<sup>212</sup> IN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 62.

<sup>213</sup> CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 62.

<sup>214</sup> BR: OPTR Report (Academia), Questionnaire 2, Question 62.

<sup>215</sup> R. Offermanns, [COVID-19 Pandemic: Emergency Tax Measures – Sterile Cotton Swabs for Medical Purposes Subject to 9% VAT Rate](#) (29 May 2020), News IBFD.

<sup>216</sup> N. Ovcar, [COVID-19 Pandemic: Slovenia Extends Relief from Import VAT and Customs Duties on Medical Supplies](#) (9 Nov. 2020), News IBFD.

<sup>217</sup> B. Rodriguez, [COVID-19 Pandemic: Portugal Extends VAT Exemption for Sanitary Products to 30 April 2021](#) (1 Dec. 2020), News IBFD.

<sup>218</sup> L. Ambagtsheer-Pakarinen, [COVID-19 Pandemic: Government Proposes To Temporarily Provide Zero VAT Rate for Testing and Prevention Tools](#) (9 June 2020), News IBFD.

<sup>219</sup> A. Sabev, [COVID-19 Pandemic: Bulgaria Proposes VAT Exemption for Supplies of Vaccines and Medical Products](#) (2 Dec. 2020), News IBFD.

<sup>220</sup> M. Olejnicka, [COVID-19 Pandemic: Emergency Tax Measures – Temporary 0% VAT on Laptops and Tablets](#) (01 May 2020), News IBFD.

<sup>221</sup> HN: OPTR Report (Tax Administration), Questionnaire 2, Question 62.

them in abeyance since March 2020.<sup>222</sup>

**Best practice:** Authorization by the judiciary should be required before seizing assets or banking accounts.

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

Brazil

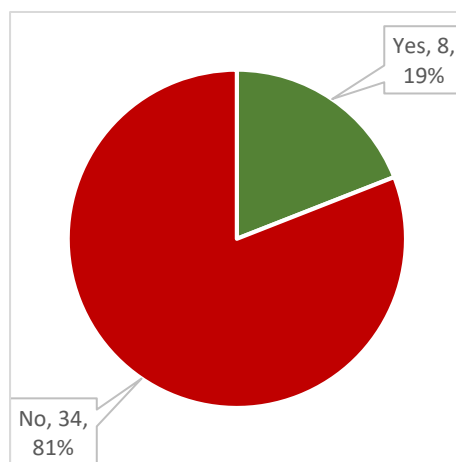
**Shifted away from the best practice:**

Colombia, Mexico, Panama

Court authorization for the seizure of bank accounts or other assets is currently considered a best practice and, ideally, it should develop into a minimum standard in the future. As this measure is very invasive towards the taxpayers, the tax administration’s discretionary powers in this area should be subject to judiciary control to ensure taxpayers’ rights. However, 83% of the surveyed jurisdictions report that a court order is unnecessary, as evidenced by Chart 59, a setback compared to 2019, where this number was 74%.

**Chart 59. Is a court order always necessary before the tax authorities can access a taxpayer’s bank account or other assets?**

50 responses



**Yes:** Austria, Brazil (2), Bulgaria (2), Chile, Cyprus (2), Guatemala, Luxembourg, Peru (1), Uruguay, Venezuela (1), Venezuela (2)

**No:** Australia, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Bulgaria (1), Canada, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Croatia, Cyprus (1), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Honduras, India, Italy, Japan, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Panama, Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States

**Reports with diverging opinions:** Brazil, Bulgaria, Cyprus, Peru

**Source:** OPTR: Questionnaire 1, Question 59

An example of this regrettable development is **Mexico**. There, an amendment to the Federal Tax Code in 2020 allowed tax authorities to seize property without judicial authorization from third parties related to the taxpayer.<sup>223</sup> On a positive note, the Supreme Court of **Brazil** has ruled that it is unconstitutional for tax authorities to freeze taxpayers’ assets without a judicial order.<sup>224</sup>

<sup>222</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 62.

<sup>223</sup> MX: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 63.

<sup>224</sup> BR: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 63.

**Minimum standard: Taxpayers should have the right to request delayed payment of arrears.**

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

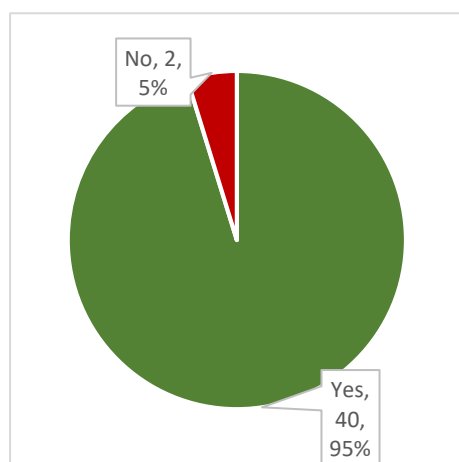
Belgium, Canada, China (People's Rep.), Colombia, Russia, Portugal, Serbia, Netherlands, United Kingdom, United States

**Shifted away from the minimum standard:**

Panama

**Chart 60. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?**

50 responses



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

**No:** Chile, Cyprus (2), Venezuela (2)

**Reports with diverging opinions:** Cyprus, Venezuela

Source: OPTR: Questionnaire 1, Question 60

As described at the beginning of this section, means have been scarce for several taxpayers in 2020 due to the pandemic and the economic crisis resulting from it. As a consequence, several countries have introduced COVID-specific measures in order to aid taxpayers, such as **Belgium**, **Canada**,<sup>225</sup> **China (People's Rep.)**,<sup>226</sup> **Colombia**,<sup>227</sup> **Peru**,<sup>228</sup> **Portugal**,<sup>229</sup> **Russia**,<sup>230</sup> **Serbia**,<sup>231</sup> the **Netherlands**,<sup>232</sup> the **United Kingdom**<sup>233</sup> and the **United States**,<sup>234</sup> including measures to defer payments in order to avoid bankruptcies as a consequence of the pandemic.

<sup>225</sup> CA: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

<sup>226</sup> CN: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

<sup>227</sup> CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 64.

<sup>228</sup> PE: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 64.

<sup>229</sup> PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

<sup>230</sup> RU: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

<sup>231</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 64.

<sup>232</sup> NL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

<sup>233</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

<sup>234</sup> US: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 64.

In this regard, in **Serbia**, the tax authorities were forbidden to cancel a decision granting the deferral of tax payments and initiate enforcement procedures if a taxpayer fails to service his tax debt in line with the tax administration's decision specifying deadlines for the payment of instalments.<sup>235</sup> In **Colombia**,<sup>236</sup> the requirements for granting payment extension for taxes generated during 2020 were relaxed. In effect, the taxpayer must only attach to his request a certification issued by the legal representative on the financial situation without providing a guarantee of compliance. In **Spain**, the Supreme Court upheld on 11 June 2020 that it is possible to request the return of undue income when it results from an audit, even after 4 years since the realization of said income.<sup>237</sup>

**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:**

Austria, Colombia, Serbia, United States

**Shifted away from the best practice:**

Panama

Prevention of economic hardship due to enforcement of taxes arising from the COVID-19 pandemic, as discussed earlier in this section, has produced developments in the treatment of taxpayer bankruptcy, in line with the best practice. In this regard, legislation in **Austria** attempted to prevent a wave of insolvencies by granting deferred payment systems for particular groups of taxpayers; legal transactions taken in order to cope with the COVID-19 crisis are exempted from fees and stamp duty; and the deadlines to file for insolvency have been extended or (partly) suspended, among other measures.<sup>238</sup> In addition, legislation in **Colombia** established specific measures to aid companies in restructuring processes to comply with their tax obligations during 2020. Thus, the withholding rate reduction was foreseen and the obligation to pay the advance payment of corporate income tax and to calculate presumptive taxes for income tax were redeemed.<sup>239</sup>

**Minimum standard: Temporary suspension of tax enforcement should follow natural disasters.**

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

Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, China (People's Rep.), Colombia, Denmark, Guatemala, Luxembourg, Mexico, New Zealand, Portugal, Russian Federation, Serbia, Spain, Sweden, Turkey, United Kingdom

**Shifted away from the minimum standard:**

Bulgaria, Panama

<sup>235</sup> RS: OPTR Report (Academia), Questionnaire 2, Question 64.

<sup>236</sup> CO: OPTR Report (Tax Ombudsperson), Questionnaire 2, Question 64.

<sup>237</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 64.

<sup>238</sup> AT: OPTR Report (Taxpayers/Tax Practitioners, Tax Administration, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 65.

<sup>239</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 66.

Natural disasters are extraordinary situations calling for superior protection of citizens, including flexibility in tax payments. The COVID-19 pandemic has been a truly unique situation, as all countries have suffered from the global pandemic. Whether or not this is defined as a “natural disaster” in the respective jurisdictions, it is clear that the situation has prompted states to promptly relieve their citizens of their tax and reporting obligations, as reported earlier in this section.

In this regard, countries such as **Bulgaria** reported issues concerning these extraordinary measures, as they have resulted in the suspension of all recovery proceedings against individuals. The tax agency was also given the right to carry out enforcement measures if the public interest was somehow compromised or if there was a risk that the tax obligation would not be collected after the period.<sup>240</sup> Tax administrative measures were also suspended in **Serbia**.<sup>241</sup> In **Brazil**, the Federal Revenue Service and the Treasury Attorney’s office suspended, until 31 August 2020, some procedures for enforcement of tax debts as a result of the COVID-19 crisis, except if there was any statute of limitation-related risk.<sup>242</sup>

Likewise, legislation in **Portugal** suspended tax foreclosure proceedings due to the pandemic situation (for what was eventually approximately 6 months) and introduced an exceptional and temporary regime of flexibilization of compliance with tax and social security obligations, allowing individuals and companies (the latter, depending on certain conditions related to size, business sector and magnitude of the decrease in turnover) to opt for paying in 3 or 6 monthly instalments (i) corporate income tax withheld, (ii) personal income tax withheld and (iii) VAT, in all cases concerning the amounts due for payment in the second quarter of 2020. Irrespective of the instalment plan, no interest accrues on the tax payable, and taxpayers need not provide any guarantee or security. Also, in conjunction with a moratorium on the payment of various categories of commercial loans for both individuals and specific companies, the tax authorities clarified that such exceptional extension of the period of the loan (including capitalisation of interest) should not be construed as an extension for stamp tax purposes, thus avoiding an additional tax charge on borrowers.<sup>243</sup>

In the **United Kingdom**, Her Majesty’s Customs and Revenue very promptly set up several schemes whereby grants were available to employers who had to furlough staff and individual self-employed taxpayers whose businesses were in difficulty during the pandemic. A range of business loans and one-off payments were also made available (e.g. for self-isolation). Various rules on working hours required to qualify for tax credits (a welfare payment administered by the tax authorities) were relaxed in response to changes to working patterns brought about by the pandemic. Specific non-filing penalties were relaxed in 2020 and 2021, if taxpayers could not file their returns on time due to coronavirus.<sup>244</sup> The tax authority and the General Treasury of **Chile** established partial remission of interests and

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<sup>240</sup> BG: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (development form), Question 66.

<sup>241</sup> RS: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 66.

<sup>242</sup> BR: OPTR Report (Academia), Questionnaire 2 (Developments Form), Question 66.

<sup>243</sup> PT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (development form), Question 66.

<sup>244</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 66.

tax penalties, including VAT payment remission for small and medium taxpayers.<sup>245</sup>

There were also natural disasters other than the COVID-19 pandemic. Due to hurricane Iota's passage through the archipelago of San Andrés, Providencia and Santa Catalina in **Colombia**, the deadlines for filing and paying local tax returns were postponed (Act 11 of 2020), and tax reliefs were put in place.<sup>246</sup> As a result of both the bushfires that affected large portions of the Australian community between late 2019 and early 2020 and the COVID-19 pandemic, the **Australian** Taxation Office (ATO) has implemented arrangements to prioritize the issuing of tax refunds and to defer payment obligations and collection activity.<sup>247</sup>

## 9. Cross-Border Situations

Cross-border procedures are becoming increasingly common and, presumably, this trend will only continue to grow. As a result of this development, taxpayers' rights are weakened in practice, as they are generally not involved in the cross-border procedures carried out between states. This situation entails the risk of taxpayers not exercising and protecting their rights in the procedures effectively. It contrasts starkly to the simultaneous development in systems to ensure taxpayers' legal standing in terms of access to MAPs in article 16(1) of the MLI<sup>248</sup> and mandatory arbitration in article 19(1) of the MLI.

In the same vein, as discussed in section 3.14., rules regarding the mandatory disclosure of tax minimization arrangements have been introduced, broadly in order to grant the tax authorities early access to "timely, comprehensive and relevant information on aggressive tax planning strategies", so that they may "quickly respond to tax risks through informed risk assessments, audits, or changes to legislation or regulations".<sup>249</sup> Essentially, this measure serves an objective similar to other forms of information gathering and exchange of this information, namely to enable tax administrations to use the information for statistical purposes as an early warning system to highlight the issues they want to address. In practice, however, the facts reported will be subject to analysis and legal prequalification by the tax administration, from which indicia of a potential tax offence could be derived, providing the information with a probative value.<sup>250</sup> If the disclosed information may give rise to liability for the taxpayer or advisers under punitive law, this also raises questions about the right not to self-incriminate (*nemo tenetur se detegere*),<sup>251</sup> as described in section 5.2. of this yearbook.

The year 2020 has been an interesting one as regards cross-border procedures, as this has

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<sup>245</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 66.

<sup>246</sup> CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 66.

<sup>247</sup> AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2 (Developments Form), Question 66.

<sup>248</sup> OECD, [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#), (7 Jun. 2017), Treaties & Models IBFD.

<sup>249</sup> OECD/G20, *supra* n. 58.

<sup>250</sup> C.E. Weffe H., [Mandatory Disclosure Rules and Taxpayers' Rights: Where Do We Stand?](#), Intl. Tax Stud. 1 (2021), Journal Articles & Opinion Pieces IBFD.

<sup>251</sup> Id.

been the first year for reporting under some of these new measures. At the same time, it has been a particularly challenging year due to the pandemic. In terms of the first DAC6 reporting, numerous jurisdictions, including **Belgium**,<sup>252</sup> **Bulgaria**,<sup>253</sup> **Croatia**,<sup>254</sup> **Cyprus**,<sup>255</sup> **Czech Republic**,<sup>256</sup> **Denmark**,<sup>257</sup> **Italy**,<sup>258</sup> **Luxembourg**,<sup>259</sup> **Mauritius**,<sup>260</sup> **Poland**,<sup>261</sup> **Portugal**,<sup>262</sup> **Slovenia**<sup>263</sup> and **Sweden**<sup>264</sup> have postponed these initial reports. On related matters, the first referral on DAC6 to the ECJ was on 21 December 2020 by **Belgium** (Case C-694/20). The case deals with the Belgian implementation of DAC6 and its compatibility with the Charter of Fundamental Rights regarding fair trial and respect of private life. The heart of the matter is the intermediaries' reporting obligation, and the consequent shift to the taxpayer if there are no intermediaries or if they invoke professional secrecy. If such secrecy is invoked, the intermediary must inform the other intermediaries involved in writing and explain why the reporting obligation cannot be fulfilled. The question is whether this is practically possible without breaching professional secrecy.

This section will touch upon these recent developments in light of the minimum standards and best practices to ensure adequate protection of the taxpayers' rights in cross-border situations. The surveyed jurisdictions did not report many developments in 2020 regarding the exchange of information benchmarks monitored by the OPTR. However, some interesting developments have taken place at a global level: for example, in **Argentina**, where the tax authorities exceptionally interrupted the temporary cessation of activities established because of the COVID-19 pandemic in order to pursue a special investigation

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<sup>252</sup> R. Offermanns, [COVID-19 Pandemic: Reporting Deadlines under DAC6 Directive Extended](#) (8 June 2020), News IBFD.

<sup>253</sup> A. Sabev, [COVID-19 Pandemic: Bulgaria Announces Intention to Defer Exchange of Information Deadlines](#) (1 July 2020), News IBFD.

<sup>254</sup> I. van der Maas, [COVID-19 Pandemic: Extension of Reporting Deadlines under DAC6](#) (3 July 2020), News IBFD.

<sup>255</sup> R. Vlasceanu, [COVID-19 Pandemic: Tax Department Announces Extension of First Reporting Deadlines Under DAC6](#) (31 July 2020), News IBFD.

<sup>256</sup> [COVID-19: Implementation of DAC6 – Extension of Reporting Deadlines](#) (23 June 2020), News IBFD.

<sup>257</sup> J. Lammers, [COVID-19 Pandemic: Public Consultation on Postponing DAC6 Reporting Deadlines](#) (26 Aug. 2020), News IBFD.

<sup>258</sup> G. Gallo, [COVID-19 Pandemic: Italy Gazettes Ministerial Decree Extending Reporting Deadlines under DAC2 and FATCA](#) (17 Aug. 2020), News IBFD.

<sup>259</sup> R. Offermanns, [COVID-19 Pandemic: Luxembourg Gazettes Extension of Reporting Deadlines under DAC2, DAC6 and FATCA](#) (29 July 2020), News IBFD.

<sup>260</sup> G. Seeyave, [COVID-19 Pandemic: Mauritius Revenue Authority Extends Reporting Deadline for Country-by-Country Reporting](#) (30 June 2020), News IBFD.

<sup>261</sup> R. Offermanns, [COVID-19 Pandemic: Extension of Reporting Deadlines Under DAC 2, DAC 6 and FATCA](#) (10 July 2020), News IBFD.

<sup>262</sup> R. Botelho Moniz, [COVID-19 Pandemic: Government Extends the DAC6 Deadline of the First Notification from the Intermediary to the Relevant Taxpayer](#) (4 Dec. 2020), News IBFD.

<sup>263</sup> N. Ovcar, [COVID-19 Pandemic: Ministry of Finance Proposes Extension of Reporting Deadlines under DAC6](#) (2 July 2020), News IBFD.

<sup>264</sup> L. Ambagtsheer-Pakarinen, [COVID-19 Pandemic: Government Postpones DAC6 Reporting Deadlines](#) (10 July 2020), News IBFD.



into data provided by the OECD under the automatic exchange of information. Such an inquiry was justified by the institutional relevance of revenue collection under the current economic circumstances, linked to initiatives to increase taxation on foreign assets and income.<sup>265</sup>

## 9.1. Exchange of information

### 9.1.1. Exchange of information on request: The right of the taxpayer to be informed and to challenge exchange of information

**Minimum standard:** The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer, unless it has a reasoned request from the requesting state that the taxpayer should not be informed on the grounds that it would prejudice the investigation.

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

None

**Shifted away from the minimum standard:**

Panama

**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:**

Panama

**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:**

Panama

**Best practice:** Provisions should be included in tax treaties setting specific conditions for exchange of information.

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

None

**Shifted away from the best practice:**

Panama

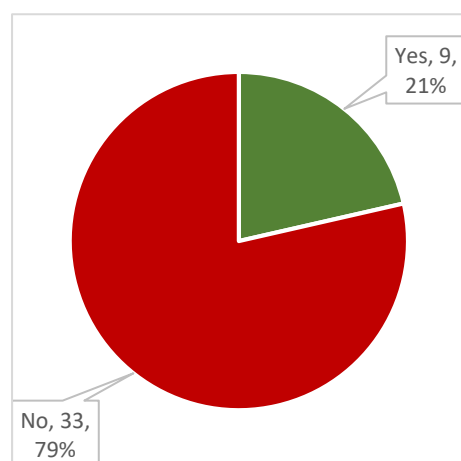
<sup>265</sup> E.O. Meloni, [Tax Authorities Establish Special Investigation on Automatic Exchange of Information Data](#) (4 May 2020), News IBFD.

As a holder of rights in a democratic state governed by the rule of law, taxpayers must be previously informed of any governmental attempt to exercise its public powers. In an ideal world, the fact that a taxable event comprises a cross-border element should strengthen the protection of taxpayers' rights corresponding to the situation. Best practice should include specific provisions regulating the time, form and conditions for the notification and allow the exchange of information also to be used as evidence to benefit the taxpayer.

Unfortunately, the trend seems to go against this notion, as 79% of the surveyed jurisdictions report that the taxpayers do not have the right to be informed before exchanging information, as illustrated by 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?**

50 responses



**Yes:** Bolivia, Bosnia and Herzegovina, China (People's Rep.) (1), China (People's Rep.) (2), Croatia, Cyprus (1), Denmark, Germany, Honduras, Panama, Venezuela (2)

**No:** Australia, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Cyprus (2), Czech Republic, Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1)

**Source:** OPTR: Questionnaire 1, Question 61

**Reports with diverging opinions:** Cyprus, Venezuela

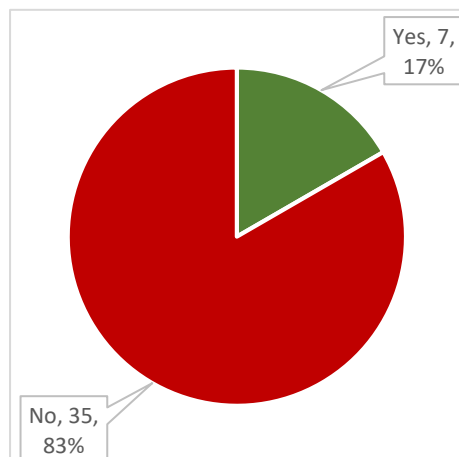
In terms of the exchange of information held by third parties, a few global developments are noteworthy. In **Australia**, the Australian Taxation Office (ATO) has registered a notice of data matching programme with the Department of Home Affairs under which the ATO will acquire data from the department. The acquired data will include all visa grants, contact history of visa applicants, sponsors, migration agents, all international movements undertaken by all visa holders during the period, et cetera. It is estimated that the data will relate to approximately 10 million individuals annually. The ATO noted that the data would be matched against other information held by the ATO to identify non-compliance with obligations under taxation and superannuation laws, including registration, lodgement, reporting and payment responsibilities.<sup>266</sup>

Not informing the taxpayer before the exchange is apparent for situations involving information from third parties. Chart 62 demonstrates that 82% of the surveyed jurisdictions do not provide for this protection.

<sup>266</sup> T. Toryanik, [Australian Taxation Office to Obtain Immigration Details for Data Matching](#) (3 Nov. 2020), News IBFD.

**Chart 62. Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for exchange of information?**

50 responses



**Yes:** Bosnia and Herzegovina, China (People's Rep.) (1), China (People's Rep.) (2), Germany, Honduras, Panama, United States, Venezuela (2)

**No:** Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Greece (1), Greece (2), Guatemala, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, Uruguay, Venezuela (1)

**Source:** OPTR: Questionnaire 1, Question 62

**Reports with diverging opinions:** Venezuela

### 9.1.2. A disturbing development: The removal of the taxpayer to be notified in certain states under international pressure

The OECD Forum on Transparency and Exchange of Information applied pressure on countries to repeal the taxpayer's right to be informed prior to the exchange of information already in 2015. This unfortunate development resulted in numerous countries removing this right. As evidenced by Chart 63, an extra 9% of surveyed jurisdictions reported their previous acknowledgement of the right to be informed, having been removed due to the pressure from the OECD Forum, which is a slight increase compared to 7% in 2019.

A specific example on the Forum's work is their peer review on Luxembourg, which produced a supplementary report in 2015, concluding that Luxembourg was "largely compliant, and essentially avoiding the eventually defensive measures suggested to be taken by G20 members against persistently non-compliant jurisdictions."<sup>267</sup> In the wake of this, several Luxembourg cases on data protection went before the ECJ, including the *Berlioz* case from 2017,<sup>268</sup> and subsequently also joined cases *Luxembourg v. B & Luxembourg v. B, C, D, F.C.*,<sup>269</sup> regarding two requests for information sent by the Spanish tax authorities to the Luxembourg tax authorities on 18 October 2016 and on 16 March 2017. In the latter two cases, Advocate General Kokott had opined that the right of the affected person to protect data before information is exchanged should be stated, and that the person required to give information, the taxpayer and affected third parties should be given access to a legal remedy before information is exchanged. However, the ECJ did not follow

<sup>267</sup> OECD, Global Forum Peer Review: Luxembourg – Phase 2 Supplementary Report pp. 58-62 (OECD 2015), at: <https://www.oecd.org/tax/transparency/luxembourg-supplementary.pdf> (accessed 8 Mar. 2021).

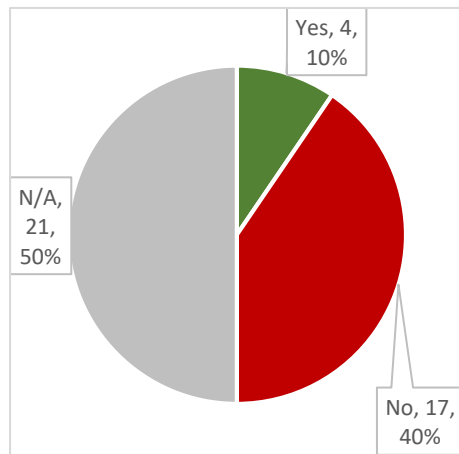
<sup>268</sup> LU: ECJ, 16 May 2017, Case C-682/15, *Berlioz Investment Fund SA v. Directeur de l'administration des Contributions directes*, Case Law IBFD (accessed 9 Mar. 2021).

<sup>269</sup> LU: ECJ, 6 Oct. 2020, Case C-245/19, *State of the Grand Duchy of Luxembourg v. B*, Case Law IBFD (accessed 9 Mar. 2021).

this route as it only granted legal protection to the addressee of the information order.<sup>270</sup>

**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?**

50 responses



**Yes:** Luxembourg, Netherlands, Uruguay, Venezuela (2)

**No:** Belgium, Brazil (1), Bulgaria (1), Bulgaria (2), Canada, Chile, Colombia, Cyprus (2), Czech Republic, Denmark, Greece (1), Guatemala, Japan, Panama, Peru (2), Poland, Portugal, Russia, Sweden, United States

**Not applicable:** Australia, Austria, Bolivia, Bosnia and Herzegovina, Brazil (2), China (People’s Rep.) (1), China (People’s Rep.) (2), Croatia, Cyprus (1), Greece (2), Finland, Germany, Honduras, India, Italy, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (1), Serbia, South Africa, Spain, Turkey, United Kingdom, Venezuela (1)

**Reports with diverging opinions:** Brazil, Cyprus, Greece, Peru, Venezuela

**Source:** OPTR: Questionnaire 1, Question 63

### 9.1.3. Additional safeguards in connection with EoIR

**Minimum standard:** If information is sought from third parties, judicial authorization should be necessary.

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

China (People’s Rep.)

**Shifted away from the minimum standard:**

Panama

**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:**

Panama

**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:**

Panama

<sup>270</sup> LU: Opinion of Advocate General Kokott, 2 July 2020, Case C-245/19, [State of the Grand Duchy of Luxembourg v. B](#), Case Law IBFD (accessed 9 Mar. 2021).

**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:**

Panama

**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:**

Peru

**Shifted away from the minimum standard:**

Panama

## 2020 Relevant Case Law – European Court of Justice

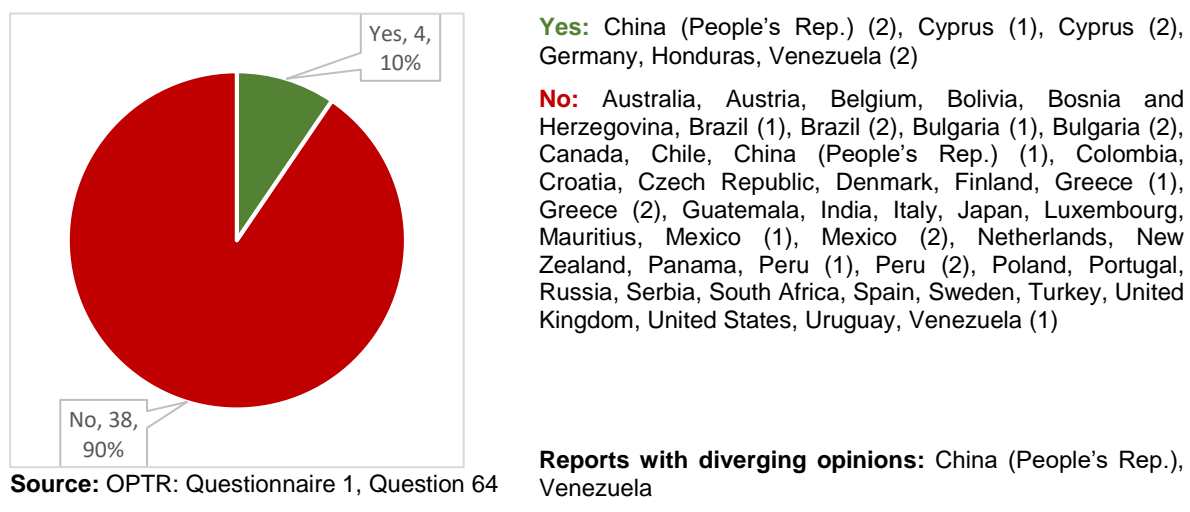
<b>Case</b>	Joined cases C-245/19 and C-246/19 Luxembourg v. B & Luxembourg v. B, C, D, F.C.	
<b>Date</b>	6 October 2020	
<b>EU Charter Articles</b>	47	
<b>Facts</b>	<b>Decision</b>	<b>Comments</b>
Following a request of information from the Spanish tax authorities, the Luxembourg tax authorities ordered company B to provide information concerning various economic and financial transactions of the taxpayer as well as details of the bank accounts and financial institutions in which cash is deposited. The question that arose was whether B, as a third party from which information on the taxpayer is sought, has the right to challenge the decision ordering it to provide the taxpayer related information. The same issue arose with the Bank, to which the Luxembourg tax authorities also issued a decision ordering it to provide information on the same taxpayer but also on other persons that are authorized to carry out transactions on specific bank accounts, etc. the question that arose was whether the taxpayer himself as well as any other affected third party may challenge such decision ordering a bank to provide information to the	In the context of Directive 2011/16, article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with articles 7 and 8 and article 52(1) thereof, must be interpreted as: - precluding legislation which prevents a person holding information from bringing an action against a decision by which the competent authority of that Member State orders that person to provide it with that information, and as - not precluding such legislation from preventing the taxpayer concerned, in that other Member State, by the investigation giving rise to that request for exchange of information and the third parties concerned by the information in question from bringing actions against that decision.	

(requested) tax authorities with a view to exchange them with another (the requesting) tax authority in the context of Directive 2011/16.		
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As presented in section 4.1, the exchange of information may lead to a tax assessment. If that is the case, all fundamental principles of proportionality, *ne bis in idem* (prohibition of double jeopardy), *audi alteram partem* (the right to be heard before any decision is taken) and *nemo tenetur se ipsum accusare* (the principle against self-incrimination) apply.

**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?**

51 responses



Although essential, this does not provide the taxpayer with adequate protection if these principles are not implemented in practice since the taxpayer is not informed, as described in section 9.1.2. With this in mind, it is hardly surprising that the majority of the surveyed jurisdictions do not acknowledge (i) the taxpayer's right to be heard at all times; (ii) limit the right to see the evidence gathered; and (iii) limit the right to challenge the gathered evidence before the judiciary.

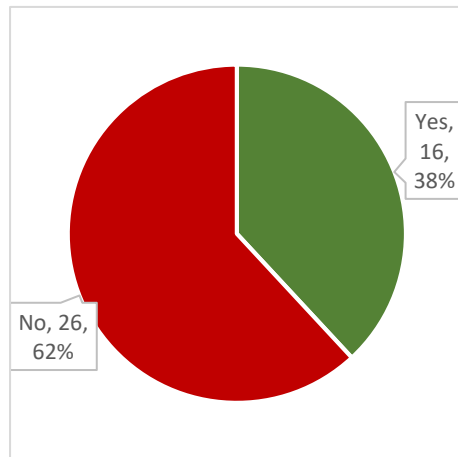
The right to be heard before the exchange of information takes place is not granted in 89% of the surveyed jurisdictions, as illustrated by Chart 64. The right to challenge before the judiciary follows the same trend, with 61% of the surveyed jurisdictions not acknowledging this right, as evidenced by Chart 65.

As discussed earlier in section 5.3., the state's invasive evidence gathering on a taxpayer should be governed by judiciary control, especially when it involves the right to confidentiality, as discussed in section 3.1. As illustrated by Chart 66, this is the case in nearly half of the surveyed jurisdictions.<sup>271</sup>

<sup>271</sup> Against this background, the European Court of Auditors has affirmed recently that EU Member States only make limited use of the information exchanged automatically, by either (i) weaknesses related to the timeliness, the accuracy and the completeness of AEOI; (ii) DAC2 information exchange functions generally on time, but still lacks in data quality and completeness; (iii) Member States receive huge volumes of information, with information generally underused; (iv) DAC1 and DAC2 information is not rigorously

**Chart 65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country?**

50 responses



**Yes:** Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Canada, China (People’s Rep.) (2), Cyprus (1), Cyprus (2), Denmark, Germany, Greece (2), Mexico (1), New Zealand, Panama, Portugal, Serbia, South Africa, Spain, Venezuela (2)

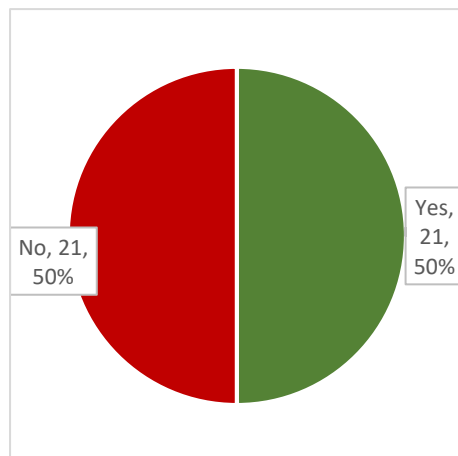
**No:** Australia, Austria, Bulgaria (1), Bulgaria (2), Chile, China (People’s Rep.) (1), Colombia, Croatia, Czech Republic, Finland, Greece (1), Guatemala, Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (2), Netherlands, Peru (1), Peru (2), Poland, Russia, Sweden, Turkey, United Kingdom, United States, Uruguay, Venezuela (1)

**Reports with diverging opinions:** China (People’s Rep.), Greece, Mexico, Venezuela

**Source:** OPTR: Questionnaire 1, Question 65

**Chart 66. Does the taxpayer have the right to see any information received from another country that relates to him?**

50 responses



**Yes:** Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Czech Republic, Denmark, China (People’s Rep.) (2), Germany, Greece (1), Greece (2), India, Netherlands, Panama, Peru (1), Poland, Russia, Serbia, Spain, Sweden, Uruguay, Venezuela (2)

**No:** Australia, Brazil (1), Chile, China (People’s Rep.) (1), Colombia, Croatia, Cyprus (1), Cyprus (2), Finland, Guatemala, Honduras, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (2), Portugal, South Africa, Turkey, United Kingdom, United States, Venezuela (1)

**Reports with diverging opinions:** Brazil, China (People’s Rep.), Peru, Venezuela

**Source:** OPTR: Questionnaire 1, Question 66

**China (People’s Rep.)** has reported a shift towards the minimum standard in terms of

exploited; or (v) exchanges of information have increased but some information is still not reported, among other reasons. As a result, less than a third of the items of information received under DAC1 and DAC2, for example, resulted in further tax-related actions. See European Court of Auditors, *Exchanging tax information in the EU: solid foundation, cracks in the implementation* (2021), at [https://www.eca.europa.eu/lists/ecadocuments/sr21\\_03/sr\\_exchange\\_tax\\_inform\\_en.pdf](https://www.eca.europa.eu/lists/ecadocuments/sr21_03/sr_exchange_tax_inform_en.pdf) (accessed 5 Mar. 2021).

exchange of information obtained from third parties, as it is now a requirement for the Chinese tax authority to issue a notice of tax matters to the holder of the information, including the name of the notified party, the tax matter, the legal grounds and the details.<sup>272</sup> **Peru** recently passed the evaluation of information security and confidentiality standard required by the OECD for the automatic exchange of information. Going forward, this will allow the tax authorities (*Superintendencia Nacional de Aduanas y de Administración Tributaria*, SUNAT) to take part in reciprocal exchanges of information with foreign tax administrations.<sup>273</sup>

#### 9.1.4. AEOI: The different issues of taxpayer protection

**Best practice:** For automatic exchange of financial information (AEOI), the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.

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

None

**Shifted away from the best practice:**

Panama

The tax audits' fundamental principles include the taxpayer's right to be informed as a minimum standard, as discussed in section 4.1. of this yearbook. Access to all documents and information which may concern the parties to a dispute is an integral part of the right to a fair trial, and it is an essential condition for the effective exercise of the rights to defence in tax proceedings. Therefore, this right applies earlier than other procedural rights.<sup>274</sup>

#### 9.2. Mutual agreement procedure

**Minimum standard:** Taxpayers should have a right to request initiation of mutual agreement procedure.

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

Greece, Mauritius, Russia

**Shifted away from the minimum standard:**

Panama

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

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

Greece, Mauritius, Russia

**Shifted away from the best practice:**

Panama

In brighter news for taxpayers' rights, the widespread ratification of the MLI furthers their protection in cross-border situations by MAP and mandatory binding arbitration. In the same

<sup>272</sup> CH: OPTR Report (Tax Administration), Questionnaire 2, Question 70.

<sup>273</sup> PE: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 70.

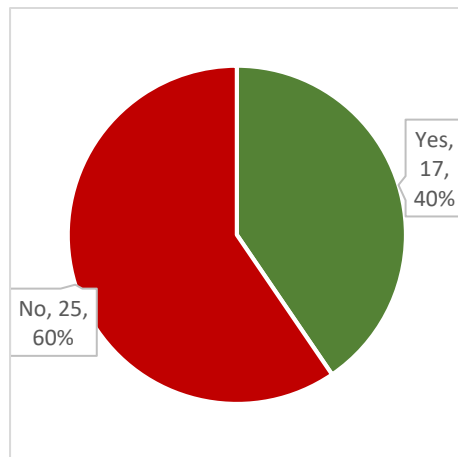
<sup>274</sup> ILA, *supra* n. 2.



vein, the EU Tax Dispute Resolution Mechanisms<sup>275</sup> also provides better taxpayer protection in this regard at an EU level.

**Chart 67. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?**

50 responses



**Yes:** Austria, Bolivia, Brazil (1), China (People's Rep.) (2), Colombia, Cyprus (1), Cyprus (2), Greece (1), India, Italy, Luxembourg, Mauritius, Panama, Poland, Russia, Serbia, South Africa, Sweden, Turkey, Venezuela (2)

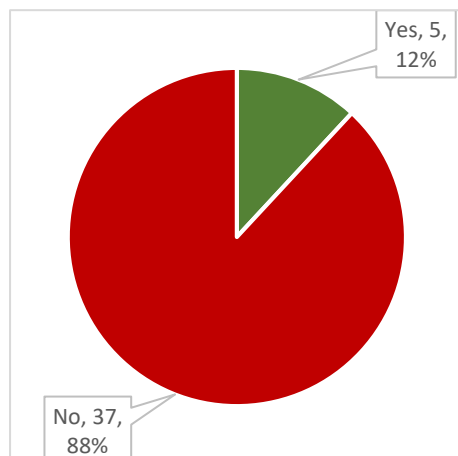
**No:** Australia, Belgium, Bosnia and Herzegovina, Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (1), Croatia, Czech Republic, Denmark, Finland, Germany, Greece (2), Guatemala, Honduras, Japan, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Portugal, Spain, United Kingdom, United States, Uruguay, Venezuela (1)

**Reports with diverging opinions:** Brazil, China (People's Rep.), Greece, Venezuela

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?**

50 responses



**Yes:** Czech Republic, Denmark, Mexico (1), Panama, Sweden, Venezuela (2)

**No:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Croatia, Cyprus (1), Cyprus (2), Finland, Germany, Greece (1), Greece (2), Guatemala, Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Turkey, United Kingdom, United States, Uruguay, Venezuela (1)

**Reports with diverging opinions:** Mexico, Venezuela

Source: OPTR: Questionnaire 1, Question 68

While there is still room for improvement in this area, some positive developments have been recorded in 2020, for example, in the bilateral tax treaty between **Belgium** and the

<sup>275</sup> EU: Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

**United Kingdom**, as the State Council (*Raad van State*) decided<sup>276</sup> that the grounds and motives of the refusal to grant a taxpayer access to MAP documents are incompatible with article 32 of the Belgian Constitution.<sup>277</sup>

On a positive note, **Colombia** reported that the National Tax Authority (DIAN) issued rules for obtaining assistance from Colombia's competent authority (ACC) to initiate a MAP. Taxpayers may request assistance from the ACC regarding taxation not in accordance with a tax treaty, including cases on double tax residence, limitation of treaty benefits, transfer pricing adjustments, withholding tax, attribution of income to permanent establishments and application of anti-abuse provisions.<sup>278</sup>

There is also room for development regarding the taxpayer's right to initiate and participate in mutual agreement procedures. 40% of the surveyed jurisdictions have acknowledged the taxpayer's right to request the initiation of a mutual agreement procedure, as illustrated by Chart 67. Also, only 12% of the reports provided for the taxpayer's right to access the communication exchanged in the procedure's context, as evidenced by Chart 68. The latter is a significant setback compared to 2019, where 23% of the surveyed jurisdictions provided such a right.

## 10. Legislation

### 10.1. The general framework

Fundamentally, taxes must always be the outcome of the citizens' consent. In a democratic state, taxes must be based on a legal source, which results from the will of the people expressed through its political representation in the legislature.

In a democratic state, it is not sufficient for tax law to formally comply with the issuing state's legal order to safeguard taxpayers' rights in practice comprehensively. Ideally, taxpayers should be involved in shaping the legislation via public consultation that is both adequate in communication, accessibility and duration for the deadline to reply. In addition, tax legislation should solely regulate taxable events *ex nunc* (i.e. from the moment of its enactment on).

In practice, a fair amount of tax legislation will be enacted to prevent certain taxpayer behaviours, e.g. to close loopholes in the legislation. To do so without providing taxpayers opportunities to rearrange their affairs, legislators sometimes deem it necessary to enact the amendments retroactively. This behaviour should be a last resort and done only exceptionally through explicitly stated exceptions, narrowly drafted and interpreted.

As this section will demonstrate, that is not always the case.

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<sup>276</sup> BE: *X. v. the Belgian State* (Case 247.694), 2 June 2020.

<sup>277</sup> R. Offermans, *Treaty between Belgium and the United Kingdom: Taxpayer Entitled to Inspect MAP Documents* (12 June 2020), News IBFD.

<sup>278</sup> M. Bocachica, *National Tax Authority Issues Rules for Applying Mutual Agreement Procedure* (1 Oct. 2020), News IBFD.

## 10.2. Constitutional limits on tax legislation: Retroactive legislation

**Minimum standard:** Retrospective tax legislation should only be permitted in limited circumstances, which are spelt out in detail.

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

Belgium, Bosnia and Herzegovina

**Shifted away from the minimum standard:**

Canada, Mexico, United Kingdom

**Best practice:** Retrospective tax legislation should ideally be banned completely.

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

None

**Shifted away from the best practice:**

Peru

### 2020 Relevant Case Law – European Court of Human Rights

Case	<i>Vegotex International S.A. v. Belgium</i> , no. 49812/09	
Date	10 November 2020	
ECHR Articles	Article 6 § 1	
Facts	Decision	Comments
<p>The case concerned tax-assessment proceedings in which the applicant company had been ordered to pay approximately EUR 298,813 together with a 10% surcharge.</p> <p>In 1995 the tax authorities corrected the company's tax return and applied a 10% penalty on the amount due. The company first appealed to the head of the regional tax office (1996-2000) and then in 2000 to the court. In October 2000 the tax authorities issued it with a summons to pay, expressly stating that the purpose of the summons was to interrupt the period before the tax debt became time-barred.</p> <p>In a judgment of 10 October 2002 – while the company's case was pending at first instance – the Court of Cassation adopted new case law to the effect that this type of summons did not interrupt the limitation period in such cases. As a result, the recovery of tax debt had been time-barred since 15 February 2001 (a date prior to the actual emergence of this case law).</p> <p>The applicant company first</p>	<p><b>Article 6 § 1:</b> the applicant company complained about the legislator's intervention during the proceedings. It argued that if the new law had not been applied retrospectively to its case, its tax debt would have become time-barred in accordance with the case-law of the Court of Cassation as established in a judgment of 10 October 2002.</p> <p><u>Applicability of article 6:</u> tax assessment proceedings did not fall within the scope of article 6 but the imposition of the surcharge was to be considered as "criminal charge". Article 6 therefore applied. At the same time, the tax surcharge had a close link with the tax debt; it thus differed from the hard core of criminal law. The criminal-head guarantees do not necessarily apply with their full stringency in such cases (<i>Jussila v. Finland</i> [GC], no. 73053/01, § 43, ECHR 2006-XIV).</p> <p><u>On the merits:</u></p> <p>(1) As a result of the impugned law, the applicant's debt had ultimately not been considered time-barred. The intervention of</p>	<p>In the assessment of justification for the retrospective application of law the Court gave no assessment of the fact that taxpayers could have legitimately expected the application of the new, favourable to them case law of the Court of Cassation. Indeed, the Court was reluctant to justify the retrospective application of new law by the need of safeguarding financial interests of the state. However, it cannot be said that the Court fully took into account the need of taxpayers' rights protection in that case. It had found that domestic proceedings had been excessively long with no fault on the part of the taxpayer. If the final decision would have been made before the entry into force of the new law in 2004, the applicant company would have benefited from the favourable change in the administrative practice. The Court did not pay attention to the fact that there might have been other taxpayers which had indeed benefited from that change because their proceedings were concluded in due course, before summer 2004. That creates "arbitrary</p>

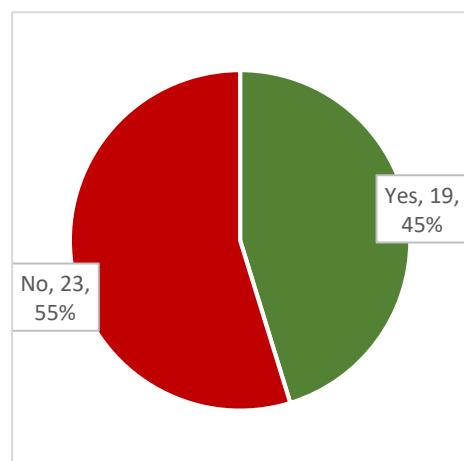
<p>referred to this case law in April 2004 before the Court of Appeal. However, in July 2004, the legislature intervened to reverse this development and to restore the previous administrative practice by means of a law that was immediately applicable to pending proceedings. This legislation was applied to the applicant's case by the Court of Cassation, which consequently dismissed its appeal on points of law in 2009.</p>	<p>the legislature had decisively influenced the judicial outcome of the dispute to which the state was a party.</p> <p>(2) The retrospective law had sought to neutralize the effect of the case law introduced by the Court of Cassation, which itself had been retrospective (it had undermined legal certainty). The retrospective application of that law cannot be justified by the need of safeguarding the financial interests of the state. The Court accepted – in the circumstances of the case - that the law sought to re-establish legal certainty and to confirm the legality of previous administrative practice. It had not therefore been unforeseeable. The legislature's intervention had also sought to ensure that taxes were paid by those who were liable for them and thus to avoid arbitrary discrimination between different taxpayers.</p> <p>(3) The Court concluded that the impugned measure had been driven by a compelling reason of a general interest. That was to restore the interruption of the limitation period by payment orders that had been served well before the Court of Cassation's 2002 judgment, thus enabling the resolution of disputes pending before the courts and without affecting the rights of taxpayers.</p> <p><b>No violation.</b></p> <p><b>Article 6 § 1:</b> the applicant company alleged a breach of its right to adversarial proceedings before the Court of Cassation. It claimed that the court substituted the grounds of appeal of its own motion.</p> <p>The Court found <b>no violation</b> of that right since the applicant company had been afforded the opportunity to respond to the submissions of the public prosecutor who had called for that substitution.</p> <p><b>Article 6 § 1:</b> length of proceedings (calculated from 1995 when the applicant company had been informed of the tax authority's intention to rectify its tax return and to impose a penalty, until 2009 when the</p>	<p>discrimination between different taxpayers" that the impugned law meant to avoid, in the Court's view.</p> <p>As to length of proceedings, the applicant company first had to file an appeal with the head of the regional tax office, which was pending for 4 years. Once this appeal had been dismissed, the company had recourse to judicial review proceedings which lasted 9 years. No reasons can justify such an extremely long duration of the examination of the tax case.</p>
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	<p>Court of Cassation delivered final judgment).</p> <p><b>Violation:</b> 13 years and 6 months.</p> <p><b>Article 41</b> (non-pecuniary): finding of a violation constitutes sufficient just satisfaction.</p>	
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In **Bosnia and Herzegovina**, new legislation has been introduced that stipulates for the first time that retrospective tax legislation should be only permitted in limited circumstances, based on the Constitution or specific law provisions.<sup>279</sup> This is a positive development, as the country reported a shift away from the minimum standard in 2019,<sup>280</sup> in the same path of very recent developments in **Luxembourg**.<sup>281</sup>

**Chart 69. Is there a prohibition on retrospective tax legislation in your country?**

50 responses



**Yes:** Bolivia, Brazil (1), Brazil (2), Bulgaria (2), Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Guatemala, Honduras, Italy, Mexico (1), Mexico (2), Panama, Peru (1), Peru (2), Poland, Russia, Sweden, Uruguay, Venezuela (1), Venezuela (2)

**No:** Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Canada, China (People's Rep.) (1), China (People's Rep.) (2), Denmark, Finland, Germany, Greece (1), Greece (2), India, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Portugal, Serbia, South Africa, Spain, Turkey, United Kingdom, United States

Source: OPTR: Questionnaire 1, Question 69

Reports with diverging opinions: Bulgaria

General Anti-Avoidance Rules (GAARs) seem to have provided opportunities for retroactivity in 2020. The **Mexico** tax reform increased the tax authorities' enforcement powers significantly by introducing the first-ever GAAR in Mexico, which may be applied to prior years before its enactment.<sup>282</sup> Likewise, the **Belgium** tax authorities upheld that the GAAR,

<sup>279</sup> BA: OPTR Report (Tax (Ombudsperson)), Questionnaire 2, Question 78.

<sup>280</sup> OPTR 2019 Annual Report, Section 10.2.

<sup>281</sup> The **Luxembourg** Constitutional Court upheld new standards in favour of taxpayers. According to the Court, the principle of legal certainty precludes a legislative or regulatory provision from being applied retroactively. A retroactive application is possible only in exceptional cases, where the aim to be achieved requires it in the general interest and where the legitimate expectations of the persons concerned are duly respected. Also, the Court ruled that the principle of legal certainty and its expressions of protection of legitimate expectations and non-retroactivity of laws are general legal principles that are linked to the constitutional principle of the rule of law. LU: Cour constitutionnelle, Case 00152 (22 Jan. 2021), at <http://legilux.public.lu/eli/etat/leg/acc/2021/01/22/a72/jo> (accessed 5 Mar. 2021).

<sup>282</sup> MX: OPTR Report (Tax (Ombudsperson)), Questionnaire 2, Question 78.

introduced since the taxable year 2012, could be applied even if only the last legal act took place after it entered into force, although the judiciary has rejected such an interpretation.<sup>283</sup>

#### Chart 70. If no, are there restrictions on the adoption of retrospective tax legislation in your country?

50 responses

**Source:** OPTR: Questionnaire 1, Question 70

**Yes:** Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), China (People's Rep.) (1), China (People's Rep.) (2), Denmark, Germany, Greece (1), Greece (2), Japan, Mauritius, Netherlands, New Zealand, Portugal, Serbia, Spain, United Kingdom, Venezuela (2)

**No:** Australia, Canada, Finland, Luxembourg, South Africa, Turkey, United States

**Not applicable:** Bolivia, Brazil (1), Brazil (2), Bulgaria (2), Chile, Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Guatemala, Honduras, India, Italy, Mexico (1), Mexico (2), Panama, Peru (1), Peru (2), Poland, Russia, Sweden, Uruguay, Venezuela (1)

**Reports with diverging opinions:** Bulgaria, Venezuela

In the **United Kingdom**, the retrospectivity of the loan charge (a tax charge levied on employees remunerated via loans that were still outstanding on 5 April 2019) was ameliorated in 2020. Instead of applying for loans made to employees since 6 April 1999 (20 years retrospectively), it was modified to apply only to loans made since 9 December 2010 (approx. 10 years retrospectively), which is less –but still –retrospective. A further move away from the principle occurs in section 24 of the 2020 Finance Act, which changes the law on relief from capital gains tax for periods when the taxpayer's principal private residence has been let, now providing that it is applicable only when part of a residence is let, and the taxpayer is residing in the other part. If a private residence is sold or otherwise disposed of on or after the date of the entry into force of section 24, the whole period of ownership both before and after that date is subject to the new relief (i.e. only on part-lettings), even if the taxpayer had previously planned their lettings based on the law then in force (i.e. relief for letting the whole or part of the dwelling).<sup>284</sup>

Finally, the Constitutional Court of **Peru** upheld article 44 of the Peruvian Tax Code's retroactivity via Legislative Decree 1113 of July 2012.<sup>285</sup>

<sup>283</sup> BE: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

<sup>284</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 78.

<sup>285</sup> PE: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 78.

### 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:**

Belgium, Bosnia and Herzegovina, China (People's Rep.), United Kingdom

**Shifted away from the best practice:**

Colombia, Panama, Venezuela

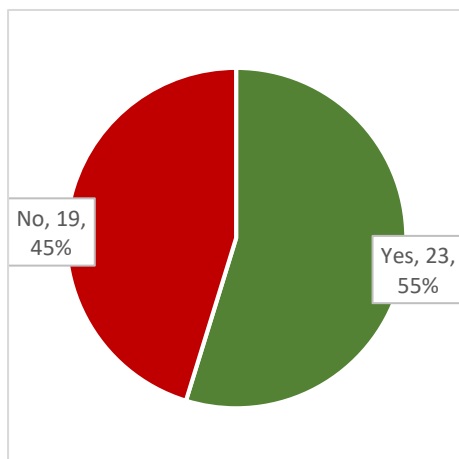
Effectively protecting taxpayers' rights from a legislative perspective entails public participation in the legislative process to ensure the no-taxation-without-representation principle, as mentioned in section 10.1. It also involves the constitution's integrity as tax codes may be ruled to contradict general codes and violate taxpayers' rights.

The majority of surveyed jurisdictions provide public consultation (54%), as evidenced by Chart 71, just as the majority state that judicial review is part of their constitutional systems, as shown in Chart 72.

A few jurisdictions have reported a shift away from the best practice, including **Colombia**, where the declared state of emergency due to the pandemic allowed the issuance of numerous decrees without prior public consultation.<sup>286</sup> **Venezuela** reported that the National Constituent Assembly (ANC) approved a partial reform of the tax code through a decree, which is believed to be unconstitutional by the reporters, but which is also applied by the authorities as the Venezuelan Supreme Court of Justice has authorized the application of other laws and decisions by the ANC in several decisions.<sup>287</sup>

**Chart 71. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?**

50 responses



**Yes:** Austria, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (1), China (People's Rep.) (2), Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), India, Netherlands, New Zealand, Panama, Poland, Russia, Serbia, South Africa, Spain, Sweden, United Kingdom

**No:** Australia, Belgium, Bolivia, Brazil (1), Brazil (2), Colombia, Finland, Greece (2), Guatemala, Honduras, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Portugal, Turkey, United States, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** Greece

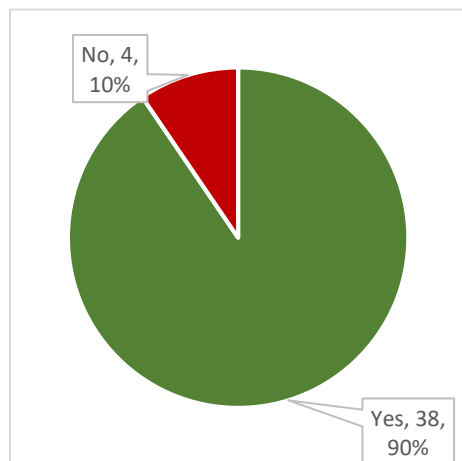
**Source:** OPTR: Questionnaire 1, Question 71

<sup>286</sup> CO: OPTR Report (Tax (Ombudsperson)), Questionnaire 2, Question 79.

<sup>287</sup> VE: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 79.

**Chart 72. Is tax legislation subject to constitutional review that can strike down unconstitutional laws?**

50 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People's Rep.) (2), Colombia, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Germany, Greece (1), Greece (2), Guatemala, Honduras, India, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, Panama, Peru (1), Peru (2), Poland, Portugal, Russia, Serbia, South Africa, Spain, Turkey, United States, Uruguay, Venezuela (1), Venezuela (2)

**No:** China (People's Rep.) (1), Finland, New Zealand, Sweden, United Kingdom

Source: OPTR: Questionnaire 1, Question 72

Reports with diverging opinions: China (People's Rep.)

On the positive side, the new tax procedures act introduced by **Bosnia and Herzegovina** has been drafted with active participation by the Chamber of Employers, which serves as an excellent example of protecting taxpayers in practice via public consultation.<sup>288</sup> Likewise, Her Majesty's Revenue and Customs' consultation in the **United Kingdom** during 2020 on its Charter's redraft and the response to that consultation felt to the reporter more collaborative than some others.<sup>289</sup> **Belgium**<sup>290</sup> and **China (People's Rep.)**<sup>291</sup> organized public consultations on tax legislation throughout the year. The Constitutional Court of **Spain** ruled out the Decree-Law's use for modifying the corporate income tax to regulate partial payments because it affects the rule of law.<sup>292</sup>

## 11. Revenue Practice and Guidance

### 11.1. The general framework

To abide by the law and comply with their tax obligations, taxpayers must not merely comprehend the objects of the law but also be aware of it. This awareness of the legal materials is a cornerstone of legal certainty and, therefore, for protecting taxpayer's rights. From a practical point of view, the taxpayer must be able to access the relevant legal

<sup>288</sup> BA: OPTR Report (Academia), Questionnaire 2, Question 79.

<sup>289</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 79.

<sup>290</sup> BE: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 79.

<sup>291</sup> CN: OPTR Report (Tax Administration), Questionnaire 2, Question 79.

<sup>292</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Developments Form, Question 79.



materials and to be able to rely on any binding guidance provided by the tax authorities.<sup>293</sup> While the tax authorities may be reluctant to publish guidance, thereby committing themselves to specific interpretations or applications of the legal materials, these measures provide additional certainty for taxpayers.

## 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:**

Colombia

**Shifted away from the minimum standard:**

Panama, United Kingdom

**Minimum standard:** Where legal material is available primarily on the Internet, arrangements should be made to provide it to those who do not have access to the Internet.

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

None

**Shifted away from the minimum standard:**

Panama, United Kingdom

Notably, in 2020, guidelines on the tax measures have been of immense importance, considering the vast number of unprecedented specialized tax rules implemented due to the COVID-19 pandemic. Numerous jurisdictions, including **Russia**,<sup>294</sup> have reported news on specific guidelines intended to facilitate their citizens' understanding of the tax measures.

As evidenced by Chart 73, the vast majority of the surveyed jurisdictions publish general tax guidelines, which has also been a general trend throughout the last 5 years. Tax authorities have been working towards improving awareness of the tax law and administrative and court rulings in several ways, and a lot of them have been very positive over the years. On the other hand, these new inventions may also hamper the intended effects, as reported by the **United Kingdom**, where the tax administration has been replacing generic written guidance with interactive tools. While these tools can be useful, they can be misleading if no comprehensive written guidance accompanies them. It is also unclear whether taxpayers may rely on the interactive tools' answers on their own. Despite the commendable response by Her Majesty's Revenue and Customs to the pandemic, an inevitable consequence is that during 2020 more and more material has been disseminated online and less and less by alternative means such as hard copy. This includes applying for grants, loans, easements and deferments, which are now almost exclusively online.<sup>295</sup>

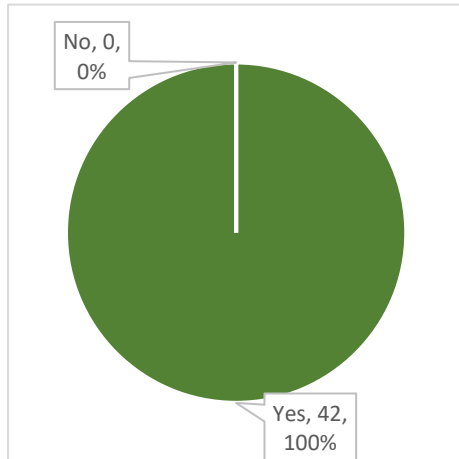
<sup>293</sup> P. Baker & P. Pistone, *supra* n. 1, at sec. 11.1, p. 68.

<sup>294</sup> K. Trough, *COVID-19 Pandemic: Government Launches Online Service to Inform Taxpayers About COVID-19-related Tax Measures* (11 May 2020), News IBFD.

<sup>295</sup> UK: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Questions 80 and 81.

**Chart 73. Does the tax authority in your country publish guidance (revenue manuals, circulars, etc.) as to how it applies your tax law?**

50 responses



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

**No:** None

Source: OPTR: Questionnaire 1, Question 73

In terms of publishing the relevant legal materials, positive developments have been reported in **Colombia**<sup>296</sup>, **Chile**<sup>297</sup> and **Poland**, where binding VAT rate information ("WIS") has been introduced, allowing taxpayers to receive guidance on which VAT rate applies to a particular category of goods and services. In contrast, the role of tax rulings has been further limited.<sup>298</sup>

### 11.3. Binding rulings

**Minimum standard:** Binding rulings should only be published in anonymized form.

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

None

**Shifted away from the minimum standard:**

Panama

The vast majority of the surveyed jurisdictions (75%) report that their country has a general system of advanced rulings available to taxpayers, as demonstrated by Chart 74. In 61% of the cases, these advanced rulings are also legally binding, as evidenced by Chart 75. In case of a refusal to provide a binding ruling, the taxpayer has the right to appeal in almost half the cases, as illustrated by Chart 76.

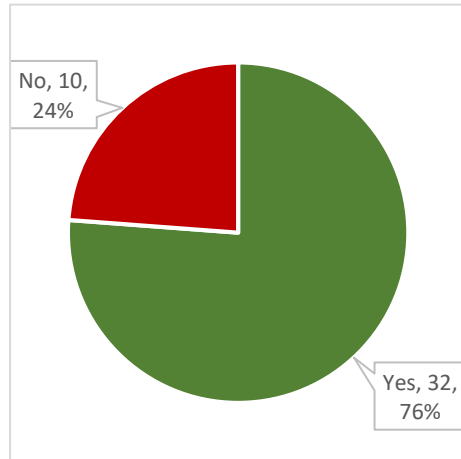
<sup>296</sup> CO: OPTR Report (Ombudsperson), Questionnaire 2 (Development Survey), Question 80.

<sup>297</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 80.

<sup>298</sup> PL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 80.

**Chart 74. Does your country have a generalized system of advance rulings available to taxpayers?**

50 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (2), Canada, Chile, Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Guatemala, India, Italy, Japan, Luxembourg, Mauritius, Mexico (2), Netherlands, New Zealand, Panama, Peru (2), Poland, Portugal, South Africa, Spain, Sweden, Turkey, United States, Uruguay, Venezuela (1), Venezuela (2)

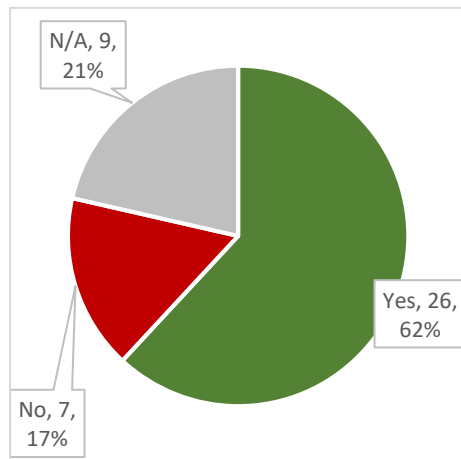
**No:** Brazil (1), Bulgaria (1), Bulgaria (2), China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Greece (1), Greece (2), Honduras, Mexico (1), Peru (1), Russia, Serbia, United Kingdom

**Reports with diverging opinions:** Brazil, Mexico, Peru

**Source:** OPTR: Questionnaire 1, Question 74

**Chart 75. If yes, is it legally binding?**

50 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (2), Croatia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Guatemala, India, Japan, Luxembourg, Mauritius, Mexico (2), Netherlands, New Zealand, Panama, Peru (2), Portugal, Spain, Sweden, United States, Uruguay, Venezuela (2)

**No:** Canada, Chile, Italy, Poland, South Africa, Turkey, Venezuela (1)

**Not applicable:** Brazil (1), Bulgaria (1), Bulgaria (2), China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Greece (1), Greece (2), Honduras, Mexico (1), Peru (1), Russia, Serbia, United Kingdom

**Reports with diverging opinions:** Brazil, Mexico, Peru, Venezuela

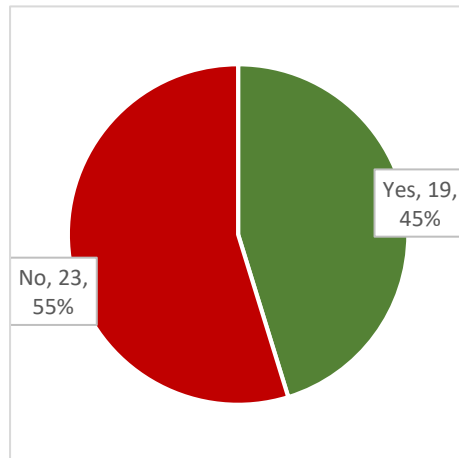
**Source:** OPTR: Questionnaire 1, Question 75

Only **Poland** reported developments in this area in 2020, according to which the role of tax rulings has been further limited.<sup>299</sup>

<sup>299</sup> PL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 80.

**Chart 76. If a binding ruling is refused, does the taxpayer have a right to appeal?**

50 responses



**Yes:** Austria, Belgium, Brazil (1), Brazil (2), China (People's Rep.) (1), China (People's Rep.) (2), Colombia, Cyprus (2), Denmark, Finland, Germany, Honduras, India, Italy, Mexico (1), Mexico (2), Panama, Peru (1), Poland, Portugal, Russia, Uruguay, Venezuela (1), Venezuela (2)

**No:** Australia, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Canada, Chile, Croatia, Cyprus (1), Czech Republic, Greece (1), Greece (2), Guatemala, Japan, Luxembourg, Mauritius, Netherlands, New Zealand, Peru (2), Serbia, South Africa, Spain, Sweden, Turkey, United Kingdom, United States

**Reports with diverging opinions:** Cyprus, Peru

Source: OPTR: Questionnaire 1, Question 76

### 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:**

None

**Shifted away from the minimum standard:**

Panama

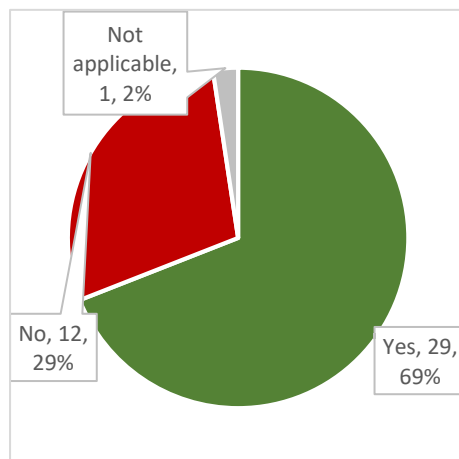
The principle of good faith is a cornerstone in all legal relations, so with regard to taxpayers they derive the right to rely on the guidance provided by the tax authorities from this principle as legitimate expectations. This is part of legal certainty, and as a minimum standard, taxpayers' legitimate expectations require that inaccuracies in advanced rulings provided by the tax administration should only apply prospectively.

As demonstrated by Chart 77, the vast majority (69%) of the surveyed jurisdictions acknowledge the protection of the taxpayer's legitimate expectations in terms of published guidelines.

In this regard, only **Australia** reported that the tax authorities provide a large volume of information, including guidance materials and legally binding advice products, to help taxpayers understand their rights, entitlements and obligations.<sup>300</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)?**

50 responses



**Yes:** Australia, Austria, Brazil (1), Brazil (2), Bulgaria (1), Chile, China (People’s Rep.) (1), China (People’s Rep.) (2), Colombia, Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Guatemala, Honduras, India, Italy, Japan, Mexico (1), Mexico (2), Netherlands, Panama, Peru (1), Poland, Portugal, Russia, Spain, Turkey, United Kingdom, Uruguay, Venezuela (1), Venezuela (2)

**No:** Belgium, Bolivia, Bosnia and Herzegovina, Canada, Croatia, Luxembourg, Mauritius, New Zealand, Peru (2), Serbia, Sweden, United States

**Not applicable:** Bulgaria (2), South Africa

Source: OPTR: Questionnaire 1, Question 77

Reports with diverging opinions: Bulgaria, Peru

## 12. Institutional Framework for Protecting Taxpayers’ Rights

### 12.1. The general framework

In enacting its power towards the taxpayers, the state must adhere to legality, which entails a particular structure that comprises both these powers and obligations. In essence, this requires a specific institutional framework to be enforced in practice, which can take several shapes to ensure adequate taxpayers’ rights protection.

### 12.2. Statements of taxpayers’ rights: Charters, service charters and taxpayers’ bills of rights

**Minimum standard:** Adoption of a charter or statement of taxpayers’ rights should be a minimum standard.

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

Chile

**Shifted away from the minimum standard:**

Panama

**Best practice:** A separate statement of taxpayers’ rights under audit should be provided

<sup>300</sup> AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 83.

to taxpayers who are audited.

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

Chile

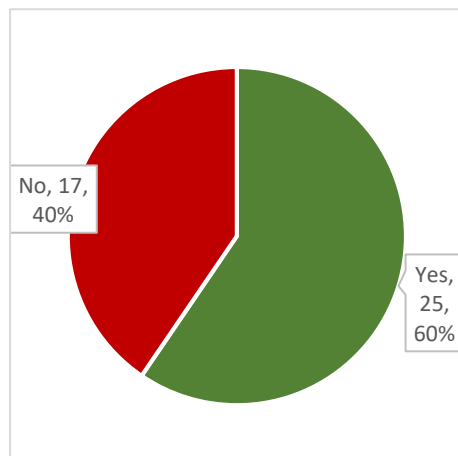
**Shifted away from the minimum standard:**

Panama

Enacting a set of rules identifying taxpayers’ rights can take various forms, such as a taxpayers’ bill of rights or taxpayers’ charters. These different types of rules provide an institutional framework of certainty regarding the content and scope of the taxpayers’ rights and the tax authority’s obligations, which can also be defined through service charters. As illustrated by Chart 78, 58% of the surveyed jurisdictions have taxpayers’ charters or bills of rights. However, 53% of the surveyed jurisdictions have reported that these provisions are not legally effective, as illustrated by Chart 79.

**Chart 78. Is there a taxpayers’ charter or taxpayers’ bill of rights in your country?**

51 responses



**Yes:** Australia, Austria, Belgium, Bolivia, Brazil (1), Bulgaria (1), Bulgaria (2), Canada, Chile, China (People’s Rep.) (2), Colombia, Croatia, Guatemala, Honduras, India, Italy, Mauritius, Mexico (1), Mexico (2), New Zealand, Panama, Peru (1), Serbia, South Africa, Spain, Turkey, United Kingdom, United States

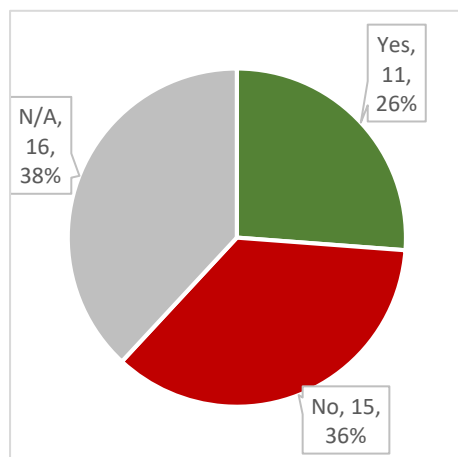
**No:** Bosnia and Herzegovina, Brazil (2), China (People’s Rep.) (1), Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Japan, Luxembourg, Netherlands, Peru (2), Poland, Portugal, Russia, Sweden, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** Brazil, China (People’s Rep.), Peru

Source: OPTR: Questionnaire 1, Question 78

**Chart 79. If yes, are its provisions legally effective?**

50 responses



**Yes:** Belgium, Bolivia, Brazil (1), Bulgaria (1), Chile, China (People’s Rep.) (2), Honduras, Italy, Mexico (1), Panama, Peru (1), Spain, United States

**No:** Australia, Austria, Bulgaria (2), Canada, Colombia, Croatia, Guatemala, India, Mauritius, Mexico (2), Netherlands, New Zealand, Serbia, South Africa, Turkey, United Kingdom

**Not applicable:** Bosnia and Herzegovina, Brazil (2), China (People’s Rep.) (1), Cyprus (1), Cyprus (2), Czech Republic, Denmark, Finland, Germany, Greece (1), Greece (2), Japan, Luxembourg, Peru (2), Poland, Portugal, Russia, Sweden, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** Brazil, Bulgaria, China

**Source:** OPTR: Questionnaire 1, Question 79 (People's Rep.), Mexico, Peru

In **Chile**, a new charter for taxpayers' rights was introduced in 2020, shifting the country towards the minimum standard.<sup>301</sup> This amendment also obliges the tax authority to inform the taxpayers of their rights whenever they are audited.<sup>302</sup>

An interesting judicial debate has arisen in the **United States'** forum regarding the enforceability of the US federal charter of taxpayers' rights, as regards the possibility of directly invoking the charter as a basis for challenging acts of the tax administration, without linkage to specific rules of the US Internal Revenue Code. Since 2016, the judiciary has consistently *denied* such a possibility, with the *Shnier* case of 17 November 2020 being the latest in this stream of decisions.<sup>303</sup> A path very different from that taken by **Canada**, where the judiciary has expressly upheld the enforceability of the Taxpayers' Charter in the context of a criminal trial for tax evasion.<sup>304</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:**

Chile, Spain

**Shifted away from the minimum standard:**

Mexico, Panama

**Best practice:** The organizational structure for the protection of taxpayers' rights should operate at a local level as well as nationally.

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

None

**Shifted away from the minimum standard:**

Panama

One way for the state to further fulfil its obligations to protect taxpayers' rights is through a specialized body, preferably independent from the tax authorities. The idea is to have an institution bestowed with the power to ensure the conditions for the highest protection of the taxpayers, which is also the rationale behind a taxpayer advocate or an ombudsman. As

<sup>301</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 84..

<sup>302</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Form), Question 84.

<sup>303</sup> US: *Shnier et al v. USA*, US Federal Claims Court (1:2018cv01257), at <https://docs.justia.com/cases/federal/district-courts/federal-claims/cofce/1:2018cv01257/37390/42> (accessed 1 Mar. 2021).

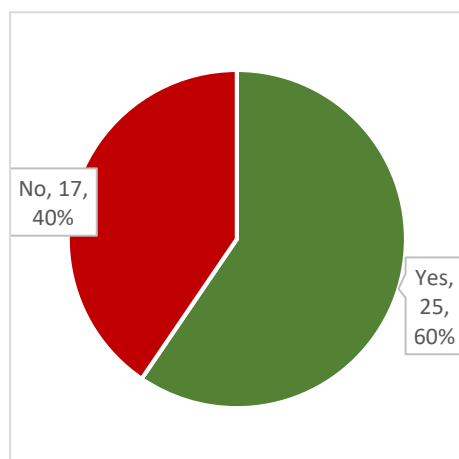
<sup>304</sup> CA: *R. c. Goldberg* (Court of Quebec Criminal & Penal Division, case 500-73-004592-180, 14 Oct. 2020), at <https://www.canlii.org/en/qc/qccq/doc/2020/2020qccq4548/2020qccq4548.html?resultIndex=1> (accessed 5 Mar. 2021).

illustrated by Chart 80, 58% of the surveyed jurisdictions have such an institution. As depicted by Chart 81, 35% of these are empowered to intervene in ongoing disputes between tax authorities and taxpayers (30% in 2019). As illustrated by Chart 82, 42% of the ombudspersons are independent.

In 2020, **Chile**<sup>305</sup> introduced a new tax ombudsman who shall provide legal assistance to taxpayers who cannot afford it; however, the institution has not yet been implemented. In **Mexico**<sup>306</sup>, the appointment of a new ombudsman has not been carried out, and due to the COVID-19 pandemic, the ombudsman's budget was reduced by 75%, forcing the institution to close 16 offices throughout the country.

**Chart 80. Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?**

50 responses



**Yes:** Australia, Austria, Belgium, Bulgaria (1), Canada, Colombia, Cyprus (2), Czech Republic, Denmark, Finland, Greece (1), Greece (2), Honduras, Italy, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland, South Africa, Spain, Turkey, United Kingdom, United States

**No:** Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (2), Chile, China (People's Rep.) (1), China (People's Rep.) (2), Croatia, Cyprus (1), Germany, Guatemala, India, Panama, Portugal, Russia, Serbia, Sweden, Uruguay, Venezuela (1), Venezuela (2)

**Reports with diverging opinions:** Bulgaria, Cyprus

Source: OPTR: Questionnaire 1, Question 80

**Chart 81. If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?**

50 responses

**Yes:** Australia, Belgium, Colombia, Cyprus (2), Denmark, Greece (1), Greece (2), Honduras, Italy, Luxembourg, Mauritius, Mexico (1), Mexico (2), Poland, South Africa, Spain, Turkey, United States

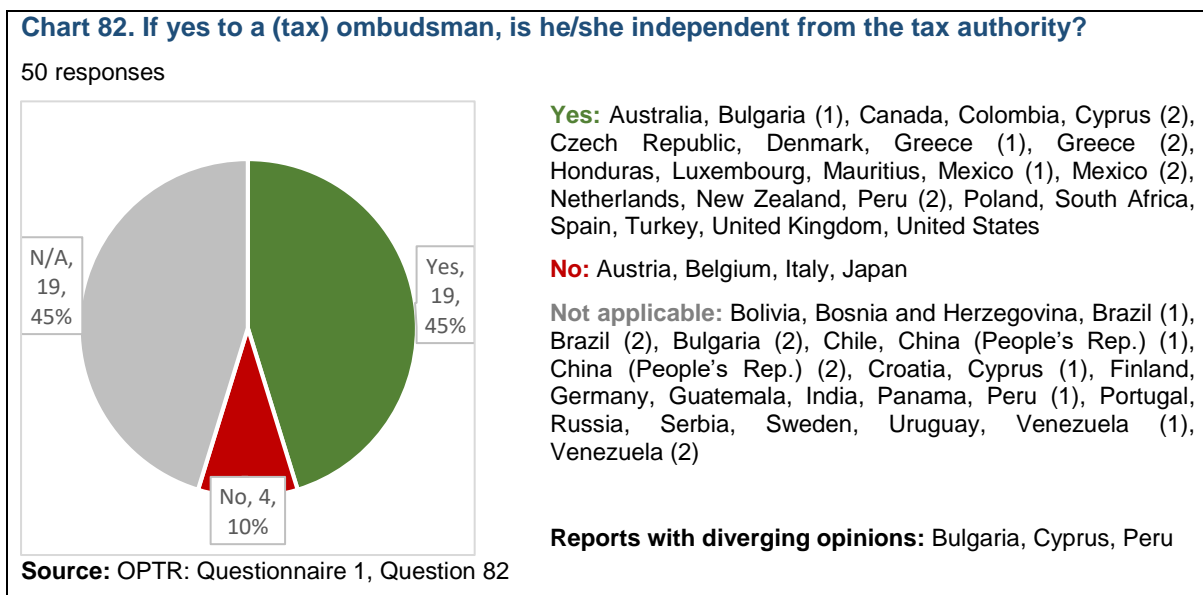
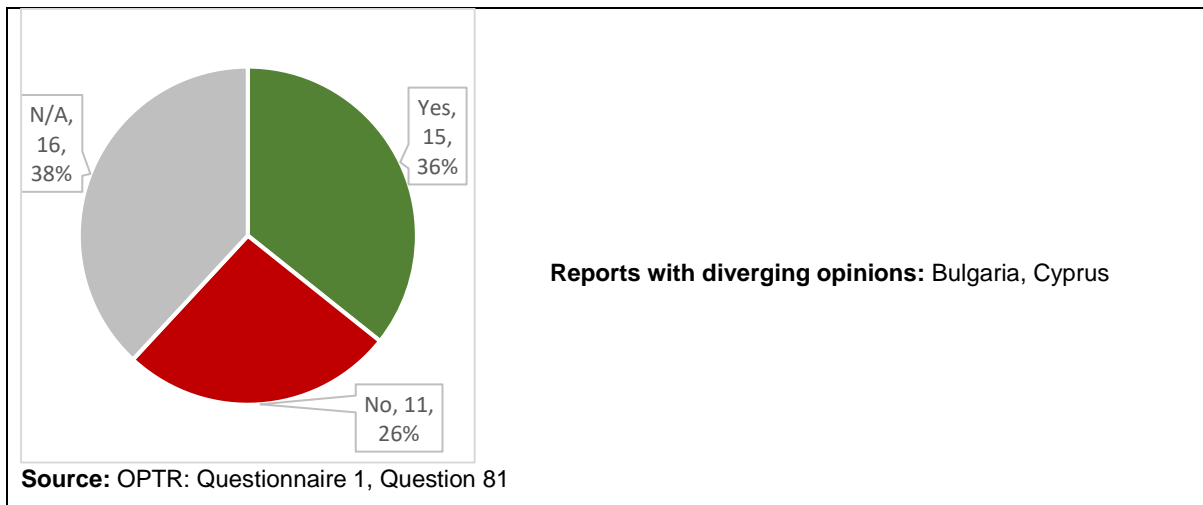
**No:** Austria, Bulgaria (1), Canada, Czech Republic, Finland, Japan, Netherlands, New Zealand, Panama, Peru (1), Peru (2), United Kingdom

**Not applicable:** Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (2), Chile, China (People's Rep.) (1), China (People's Rep.) (2), Croatia, Cyprus (1), Germany, Guatemala, India, Portugal, Russia, Serbia, Sweden, Uruguay, Venezuela (1), Venezuela (2)

<sup>305</sup> CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 85.

<sup>306</sup> MX: OPTR Report (Academia), Questionnaire 2, Question 85.





Finally, **Spain** reports that information on the tax ombudsman's existence and functions needs to be disseminated among taxpayers and tax practitioners to ensure its services are used more.<sup>307</sup>

<sup>307</sup> ES: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 85.

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# Appendices





### Appendix A: 2020 Topical Highlights

The following is a summary of the contents explained in detail in the main text of the 2020 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> Systems to safeguard the integrity of taxpayers' data, including a process to verify a taxpayer's identity before they can access their tax data online, in person or over the phone.</li> <li>• <b>India:</b> A system has been put in place to prevent impersonation and duplication when issuing identification numbers, and for income tax purposes, a Permanent Account Number (PAN) is used, linked to its Biometric Adhaar number. Further, a faceless e-assessment scheme includes appellate proceedings before the first appellate authority (namely Commissioner of Income Tax Appeals), so all communication with taxpayers is conducted electronically.</li> <li>• <b>Japan:</b> An identification number card was introduced in 2016. The dissemination of this card has increased from 15.0% in January 2020 to 24.2% in January 2021, partly because it makes it possible to request COVID-19 subsidies online as early as possible</li> <li>• <b>United States:</b> The Internal Revenue Service (IRS) has expanded its Identity Protection Personal Identification Number (IP PIN) programme. The IRS assigns an IP PIN to victims of tax-related identity theft. Also, taxpayers in some states may request an IP PIN. The IRS expanded this option to ten additional states in spring 2020, and to all taxpayers for 2021</li> </ul>	

Taxpayers' right	Shift towards	Shift away
<p>Information supplied by third parties and withholding obligations</p>		<ul style="list-style-type: none"> <li>• <b>Mexico:</b> The tax authorities now require the disclosure of "reportable transactions", which usually involve a transaction that renders a tax benefit in Mexico. The tax adviser shall report these transactions or the taxpayer that implements them in his absence. In any event, according to Mexican law, disclosure of these transactions no longer constitutes a breach of professional secrecy.</li> <li>• <b>United Kingdom:</b> HMRC was charged with delivering support to businesses that were struggling owing to the pandemic with commendable speed. One group that was eligible for support under the "self-employed income support scheme" or SEISS was subcontractors in the construction industry.</li> </ul>
<p>The right to access (and correct) information held by tax authorities</p>	<ul style="list-style-type: none"> <li>• <b>Australia:</b> The Australian Taxation Office (ATO) pre-populates individuals' returns with third-party data, such as interest, dividends, salary and private health insurance details. Individuals are encouraged to check and, where need be, edit this information before lodging their return.</li> <li>• <b>Chile:</b> During 2020, as a consequence of the COVID-19 pandemic, the Chilean IRS initiated a campaign to instruct taxpayers on how to access their website not only to submit their tax returns, but to access their information and as well as correct any inaccuracies.</li> <li>• <b>Colombia:</b> Has implemented a system in which taxpayers can modify the prefilled tax returns containing the information from third parties to reflect their economic reality. In practice, tax authorities share with taxpayers guidelines on consulting their information reported by third parties via email.</li> <li>• <b>Cyprus:</b> Has introduced a new electronic taxation service known as the "Tax Gateway", accessible with the same login as the one used for the general tax system. The new Gateway provides a central point of information. All citizens, businesses and representatives can gain information about debts owed and payments made to the department, register self-assessed, temporary and withholding taxes, and make electronic payments through online banking</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<ul style="list-style-type: none"> <li>• <b>Greece:</b> A Supreme Administrative Court held in a decision from 2020 that taxpayers must be given access to the electronic file that the tax administration holds about them. Among the information that the taxpayer should be given access to is information concerning any unauthorized access by third persons to the data. Following this ruling, a guideline has been published on taxpayers' rights to access information and correct inaccuracies</li> <li>• <b>United States:</b> Taxpayers have the right to request information about themselves under the Freedom of Information Act (FOIA), 5 USC § 522 et seq. The IRS website now links to an electronic portal for submission of requests. Also, the IRS made additional (though still limited) information available via taxpayer online accounts.</li> </ul>	
Communication with taxpayers	<ul style="list-style-type: none"> <li>• <b>Australia:</b> New COVID-19-related measures.</li> <li>• <b>Colombia:</b> The DIAN mobile app now includes a module for consulting the veracity of emails.</li> <li>• <b>Cyprus:</b> New COVID-19-related measures.</li> <li>• <b>Denmark:</b> New COVID-19-related measures.</li> <li>• <b>Honduras:</b> New cooperative compliance pilot project with the University of Vienna. This project seeks to promote bilateral agreements between the taxpayers and the tax administration under a voluntary, cooperative tax compliance system.</li> <li>• <b>India:</b> New COVID-19-related measures.</li> <li>• <b>Mexico:</b> New electronic measures (the "SAT ID") have been implemented to renew electronic signatures required to submit tax returns or e-filings. This system allows taxpayers to renew their signatures electronically if they have expired less than a year ago. It requires ID identification and also introduces a video identity verification procedure to prevent impersonation.</li> <li>• <b>United States:</b> New COVID-19-related measures.</li> </ul>	
Cooperative compliance	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> New special tax disputes settlement procedure for</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<p>2020, with highly detailed criteria regarding the taxpayer's capacity to comply with their obligations.</p> <ul style="list-style-type: none"> <li>• <b>China:</b> Signed more cooperative compliance agreements with large, highly compliant taxpayers compared to 2019.</li> <li>• <b>Honduras:</b> A new cooperative compliance pilot project with the University of Vienna. This project seeks to promote bilateral agreements between the taxpayers and the tax administration under a voluntary, cooperative tax compliance system.</li> <li>• <b>Poland:</b> A new correct settlement programme based on close cooperation between the largest taxpayers and the tax administration.</li> <li>• <b>United States:</b> The IRS published criteria for 2021 Compliance Assurance Process applications, with slightly expanded eligibility.</li> </ul>	
Assistance with compliance obligations	<ul style="list-style-type: none"> <li>• <b>Australia:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> <li>• <b>Belgium:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> <li>• <b>Brazil:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> <li>• <b>Canada:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> <li>• <b>Chile:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> <li>• <b>Colombia:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> <li>• <b>Netherlands:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> <li>• <b>United Kingdom:</b> New COVID-19-related measures for aiding</li> </ul>	<ul style="list-style-type: none"> <li>• <b>United States:</b> In-person assistance from the IRS and most non-profits had shut down, and IRS telephone helplines and TACs were closed, including the Taxpayer Advocate Service.</li> </ul>

Taxpayers' right	Shift towards	Shift away
	taxpayers in filing tax returns and general compliance. <ul style="list-style-type: none"> <li>• <b>United States:</b> New COVID-19-related measures for aiding taxpayers in filing tax returns and general compliance.</li> </ul>	
<b>2. The issuance of a tax assessment</b>		
	<ul style="list-style-type: none"> <li>• <b>Australia:</b> Specific measures to assist taxpayers impacted by the 2019/2020 bushfires and help them comply with their tax obligations, and similar assistance has been offered during and because of the pandemic.</li> <li>• <b>Belgium:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>Brazil:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>Chile:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>Colombia:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>Greece:</b> Decision by the Supreme Administrative Court, which states that tax authorities must grant the taxpayer access to the electronic file held about him, including any information about unauthorised access by third persons</li> <li>• <b>Guatemala:</b> Implementing virtual meetings due to COVID-19</li> <li>• <b>Mauritius:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>Netherlands:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>Peru:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>Poland:</b> Implementing virtual meetings due to COVID-19</li> <li>• <b>Sweden:</b> Implementing virtual meetings due to COVID-19</li> <li>• <b>Turkey:</b> Implementing virtual meetings due to COVID-19.</li> <li>• <b>United States:</b> E-filing for amended individual income tax</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Serbia:</b> Scarce staffing resources and consequent issues for communication with taxpayers due to COVID-19.</li> <li>• <b>United Kingdom:</b> Confusion about which groups were eligible for support under the "self-employed income support scheme" or SEISS, namely subcontractors in the construction industry.</li> <li>• <b>United States:</b> Scarce staffing resources and consequent issues for communication with taxpayers due to COVID-19.</li> </ul>

Taxpayers' right	Shift towards	Shift away
	returns through commercial software.	
<b>3. Confidentiality</b>		
Guarantees of privacy in the law	<ul style="list-style-type: none"> <li>• <b>Bolivia:</b> New high-net-worth tax act stating that tax officials and former tax officials may not disclose, assign or communicate the information obtained because of their position.</li> <li>• <b>Chile:</b> New Tax Code to enshrine the Chilean Internal Revenue Service (IRS) obligation to guarantee taxpayer information confidentiality.</li> <li>• <b>Netherlands:</b> Videoconference confidentiality between tax authorities and taxpayers was secured by special software.</li> <li>• <b>Portugal:</b> Specific rules allowing for the encryption of information for standard audits (the "standard audit file for tax").</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Canada:</b> New searchable registry of companies that have availed themselves of the Canada Emergency Wage Subsidy. The list details all of the companies that have received the subsidy, or will soon receive it, but it does not detail how much each company or group received.</li> </ul>
Encryption – Control of access	<ul style="list-style-type: none"> <li>• <b>Peru:</b> Obtained the certification of its security and confidentiality standards by the OECD.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Canada:</b> Responded to "credential surfing" attacks targeting the Canada Revenue Agency (CRA) accounts and GCKey services. Fraudsters used usernames and passwords of 9 million users of the approximately 12 million active GCKey accounts to attempt to access government services.</li> </ul>
Administrative measures to ensure confidentiality		
Exceptions to confidentiality	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> The Ghent Court of Appeal ruled about tax officials wearing bodycams during a tax audit in a taxpayer's business premises. The cameras were allegedly used to ensure the tax officials' safety while the filmed footage of the inspection was actually broadcast on television as part of a television show called "De Fiscus". The taxpayer agreed with the tax authorities on the taxes due but challenged this agreement in court. According to the Court, the tax authorities violated their professional secrecy by filming a tax inspection and allowing</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<p>its broadcast on television, but this did not lead to the tax assessment's nullity.</p> <ul style="list-style-type: none"> <li>• <b>Colombia:</b> The tax authorities compiled, in an internal circular, guidance for the tax officials on transparency and confidentiality, which serves as a practical example of enhancing taxpayers' rights in this area.</li> <li>• <b>Hungary:</b> The ECtHR, in <i>L.B. v. Hungary</i>, is set to rule on the legitimate aim of naming and shaming to protect a country's economic well-being, and determine whether it strikes a fair balance between the taxpayer's right to privacy and the interest of the community in the case at hand.</li> <li>• <b>South Africa:</b> A ruling of the Gauteng Division of the High Court of South Africa denied the Public Prosecutor access to taxpayer information, held by the South African Revenue Service (SARS), about the country's former president. The parties disputed over the Public Prosecutor's possibility to subpoena tax authority officials to disclose taxpayer information, legally deemed confidential, without being previously authorized by a court of law. The Court ruled that "the powers given the Public Protector to subpoena a witness to give evidence or to produce a document may not be invoked to coerce that witness to violate the law under which such a witness operates", granting the tax authorities relief against the Public Prosecutor's request, on the grounds of taxpayer information confidentiality.</li> </ul>	
The interplay between taxpayer confidentiality and freedom of information legislation	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> New legislation on personal data protection has entered into force, restricting third parties' access to data in electronic invoices.</li> <li>• <b>Finland:</b> The tax administration interpreted the EU General Data Protection Regulation (GDPR) so that taxpayers whose annual income is at least EUR 100,000 may opt not to be included in the list of wealthy persons concerning the previous fiscal year's assessment.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> Increase in cases with taxpayers not being allowed to access information about them.</li> </ul>
Anonymized		<ul style="list-style-type: none"> <li>• <b>Guatemala:</b> Tax judgments, published in all cases, are not</li> </ul>

Taxpayers' right	Shift towards	Shift away
judgments and rulings		anonymized.
Legal professional privilege		<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> The legal professions are excluded from the primary reporting obligation arising from DAC6 due to the attorney-client privilege, but attorneys are obliged to report the client's identity who is obliged to disclose the details of the cross-border arrangement.</li> <li>• <b>Mexico:</b> The Federal Fiscal Code was amended to incorporate mandatory disclosure rules. It has raised significant doubts on their constitutionality, particularly regarding the preservation of professional secrecy.</li> <li>• <b>Netherlands:</b> Public consultation for a legislative proposal to limit legal professional privilege for lawyers and notaries.</li> <li>• <b>Portugal:</b> The implementation of DAC6 has left significant doubts as to the compatibility with the Portuguese Constitution, as the disclosure prevails even over the legal privilege applicable to lawyers.</li> </ul>
<b>4. Normal audits</b>		
<i>Ne bis in idem</i>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> All "non-essential or less urgent" inspections at taxpayers' premises will be postponed as of 18 March. Only those inspections necessary to protect the financial interests of the state were maintained.</li> <li>• <b>Mauritius:</b> Amendments brought on by the Anti-Money Laundering and Combatting the Financing of Terrorism Act 2020 have introduced an improvement on the principle of proportionality. Previously, a taxpayer could be assessed for income tax while simultaneously facing criminal charges for offences that were not compounded.</li> <li>• <b>Spain:</b> The Supreme Court expands the scope of taxpayers' protection by establishing the nullity and, consequently, the non-interruption of the limitation period when misusing a</li> </ul>	



Taxpayers' right	Shift towards	Shift away
	<p>verification procedure.</p> <ul style="list-style-type: none"> <li>• <b>Uruguay:</b> Reassessment of real estate property taxes constitutes an infringement of legal certainty and security standards. The High Administrative Court ruled that a reassessment of these taxes could constitute a violation of <i>ne bis in idem</i> in terms of tax settlements and therefore pose a risk to the stability of legal relationships between the taxpayers and the tax authorities.</li> </ul>	
Principle of proportionality	<ul style="list-style-type: none"> <li>• <b>Chile:</b> Tax reform, which establishes taxpayers' rights, including an article that explicitly states that the taxpayer has the right to be exempt from contributing information that is not strictly needed and that the tax authority's acts must not disturb the normal operations of taxpayers.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> Reports a growing trend of tax authorities to require information not directly connected to tax assessments, such as internal decision-making records, names of managers involved in decisions and market-sensitive information.</li> <li>• <b>Guatemala:</b> Updates to the taxpayer register now require companies to reveal information about the companies' shareholders, even though it is not public information and considered irrelevant to the tax obligations.</li> </ul>
<i>Audi alteram partem</i>	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> A decree provides for the virtual realization of accounting and tax inspections, as well as inspection, surveillance and control visits by the tax authority. In this way, it has been possible to continue carrying out audits and guarantee the assistance of taxpayers and their advisers.</li> <li>• <b>Denmark:</b> Communication between tax officials and taxpayers through videoconferencing, although limited. For instance, meetings cannot be recorded and the chat function can only be used to share and comment on non-confidential materials and information outside the scope of GDPR, due to the risk of insufficient protection.</li> <li>• <b>Uruguay:</b> The High Administrative Court upheld the taxpayers' right to present their views, including those opposed to those of the tax authorities, before the decisions of the latter become final. According to the Court, the principle applies even to "implied/tacit decisions" (i.e. those communicated to taxpayers only by invoices and not through formal resolutions).</li> </ul>	

Taxpayers' right	Shift towards	Shift away
<i>Nemo tenetur se detegere</i>		
The structure and content of tax audits	<ul style="list-style-type: none"> <li>• <b>Spain:</b> The Supreme Court ruled that the authorization of entry and registration addressed to the taxpayer does not imply the beginning of an audit, since a previous formal report to the taxpayer is required.</li> </ul>	
Time limits for tax audits	<ul style="list-style-type: none"> <li>• <b>Uruguay:</b> The High Administrative Court (<i>Tribunal de lo Contencioso Administrativo</i>) has stressed that the number of surcharges to be assessed over unpaid taxes should be diminished whenever there are delays experienced during the audits conducted by the tax authorities, resulting from the lack of speed and efficiency of the same authorities. This positive development may serve to discourage the tax authorities' delays indirectly.</li> </ul>	
Tax audit report		
<b>5. More intensive audits</b>		
The general framework	<ul style="list-style-type: none"> <li>• <b>Russia:</b> Most control measures have been suspended, due to the outbreak of the COVID-19 pandemic, meaning that no more intensive tax audits between related parties were scheduled in the first semester, and ongoing inspections were suspended.</li> </ul>	
Court authorization or notification	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Tax authorities have the legal possibility to consult a register at the Belgian National Bank that holds information on the existence of bank accounts for each taxpayer. If the tax authorities wish to consult this register, they must comply with certain legal conditions, one of those being that the inquiring tax official must have a specific rank. There should be no entry authorization for prospective, statistical or indefinite purposes (i.e., a "fishing expedition"), without precisely identifying what specific information is to be obtained.</li> <li>• <b>Uruguay:</b> Case law providing relevant guidelines for the proper issuance of judicial authorizations.</li> </ul>	

Taxpayers' right	Shift towards	Shift away
<b>6. Reviews and appeals</b>		
The remedies and their function	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> A regulation on the electronic submission of applications, appeals and other documents has been drafted and presented for public consultation.</li> <li>• <b>Cyprus:</b> Introducing their "Tax Gateway".</li> </ul>	
Length of the procedure	<ul style="list-style-type: none"> <li>• <b>Brazil:</b> Proposal to create a special tax arbitration aimed at preventing future lawsuits by resolving disputes involving factual issues.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Denmark:</b> Backlog of the court and administration due to COVID-19.</li> <li>• <b>Poland:</b> Delay due to COVID-19.</li> </ul>
<i>Audi alteram partem</i> and the right to a fair trial	<ul style="list-style-type: none"> <li>• <b>Spain:</b> The Supreme Court ruled that expert evidence proposed by the administration in the so-called abbreviated appeal should grant the taxpayer the possibility of controlling such evidence by presenting allegations and adducing counterproof.</li> <li>• <b>United States:</b> The Office of Appeals has begun providing taxpayers with the non-privileged information in their case files no later than 10 days before the appeals conference. Here the principle of <i>audi alteram partem</i> generally applies; 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> </ul>	
<i>Solve et repete</i>	<ul style="list-style-type: none"> <li>• <b>Uruguay:</b> The Supreme Court had recently allowed taxpayers to collect interest from the actual day of payment of the undue taxes instead of before this date, as was the practice until the ruling.</li> <li>• <b>Spain:</b> The Supreme Court ruled that an enforcement order ("<i>providencia de apremio</i>") was not required, pending the administrative appeal outcome,<sup>1</sup> and Courts of India have held</li> </ul>	

<sup>1</sup> ES: OPTR Report (Taxpayers/Tax Practitioners, Judiciary, (Tax) Ombudsperson, Academia), Questionnaire 2 (Development Survey), Question 53.

Taxpayers' right	Shift towards	Shift away
	<p>that any appellate forum has the inherent power to grant a stay in appropriate cases. However, there is no legal provision for it.</p>	
<p>Cost of proceedings</p>	<ul style="list-style-type: none"> <li>• <b>Chile:</b> A tax reform has introduced a tax ombudsman, who can provide legal assistance to every taxpayer, including assistance in a judicial appeal. Unfortunately, the new tax ombudsman institution has not yet been implemented.</li> <li>• <b>United States:</b> The Tax Court has expanded its rule to permit limited entries of appearance in additional circumstances. This may expand the availability of legal services to taxpayers, and in addition, the IRS Office of Chief Counsel worked with non-profit programmes to hold pro bono settlement days nationwide.</li> </ul>	
<p>Public hearing</p>	<ul style="list-style-type: none"> <li>• <b>Mexico:</b> Hearings are now private, compared to a shift away from the minimum standard in 2019, where such a hearing was reported to be impossible.</li> </ul>	
<p>Publication of judgments and privacy</p>	<ul style="list-style-type: none"> <li>• <b>Chile:</b> Has amended its tax code. It now establishes that all final tax court judgments should be published.</li> </ul>	
<p><b>7. Criminal and administrative sanctions</b></p>		
<p>The general framework</p>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> Inspired by the <i>A and B v. Norway</i> ruling from the ECtHR has introduced a new "<i>una via</i>" (one-way) system for sanctioning tax offences by integrating the administrative tax procedure the prosecution of tax offences before a criminal court.</li> <li>• <b>Greece:</b> The Supreme Court has harmonized its case law, overruling its previous approach. Following this development, the Greek Tax Code has been amended to reflect the <i>ne bis in idem</i> requirements.</li> <li>• <b>Mauritius:</b> Positive development due to amendments brought on by the Anti-Money Laundering and Combatting the</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Mexico:</b> The tax administration's threat of criminal sanctions in cooperation with the Attorney General to collect tax assessments, which were being challenged in court, from large taxpayers. The threat was that if the taxpayers pursued litigation, the Attorney General's Office would initiate criminal actions against the company's board of directors.</li> <li>• <b>Turkey:</b> The Constitutional Court has decided in an individual case that the application of both administrative and criminal sanctions does not violate the <i>ne bis in idem</i> principle, since both sanctions seek different goals and legal benefits.</li> <li>• <b>United Kingdom:</b> Cases of disproportionate penalties between 150% and 200% of the potential lost revenue in</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<p>Financing of Terrorism Act.</p> <ul style="list-style-type: none"> <li>• <b>Spain:</b> The Supreme Court stated that a taxpayer sanctioned for non-compliance with his documentation obligations by issuing false invoices or documents could not be declared jointly liable in the payment of the penalty imposed on the recipient of the invoice. Separate sanctions for conduct that has already served to grade other conduct or qualify the latter as very serious is tantamount to double jeopardy.</li> </ul>	<p>cases not concerning deliberate tax evasion but merely those of ordinary pensioners making a mistake in their tax returns due to ignorance of the terms of double tax treaties regarding foreign pension income.</p>
Voluntary disclosure		<ul style="list-style-type: none"> <li>• <b>Netherlands:</b> New legislation states that voluntarily filed tax returns ("<i>spontane aangiften</i>") are treated as a tax return for which the taxpayer has received an invitation to file a tax return.</li> </ul>
<b>8. Enforcement of taxes</b>		
	<ul style="list-style-type: none"> <li>• <b>Australia:</b> The ATO has implemented arrangements to prioritize the issuing of tax refunds and deferring payment obligations and collection activity.</li> <li>• <b>Austria:</b> Attempted to prevent a wave of insolvencies by granting deferred payment systems for particular groups of taxpayers' legal transactions taken in order to cope with the COVID-19 crisis.</li> <li>• <b>Brazil:</b> The Supreme Court has ruled that it is unconstitutional for tax authorities to freeze taxpayers' assets without a judicial order.</li> <li>• <b>Colombia:</b> Specific measures to facilitate companies in restructuring processes to comply with their tax obligations during 2020.</li> <li>• <b>Serbia:</b> The tax authorities were not allowed to cancel a decision granting the deferral of tax payments and initiate enforcement procedures if the taxpayer fails to service his tax debt in line with the tax administration's decision specifying</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Bulgaria:</b> Issues concerning these extraordinary measures as they have resulted in the suspension of all execution proceedings against individuals.</li> <li>• <b>Mexico:</b> Amendment to the Federal Tax Code in 2020 allowed tax authorities to seize property from third parties related to the taxpayer without judicial authorization.</li> </ul>

Taxpayers' right	Shift towards	Shift away
	<p>deadlines for the payment of instalments.</p> <ul style="list-style-type: none"> <li>• <b>Spain:</b> The Supreme Court upheld that it is possible to request the return of undue income when it results from an audit, even after 4 years since the realization of income.</li> </ul>	
<b>9. Cross-border procedures</b>		
EoIR: The right of the taxpayer to be informed of and to challenge EoI	<ul style="list-style-type: none"> <li>• <b>Australia:</b> The ATO has registered a notice of data matching programme with the Department of Home Affairs under which the ATO will acquire data from the department. It is estimated that the data will relate to approximately 10 million individuals annually. The ATO noted that the data would be matched against other information held by the ATO to identify non-compliance with obligations under taxation and superannuation laws, including registration, lodgement, reporting and payment responsibilities.</li> </ul>	
Additional safeguards in connection with EoIR	<ul style="list-style-type: none"> <li>• <b>China:</b> It is now a requirement for the Chinese tax authority to issue a notice of tax matters to the holder of the information, including the name of the notified party, the tax matter, the legal grounds and the details.</li> <li>• <b>Peru:</b> Passed the evaluation of information security and confidentiality standard required by the OECD for the automatic exchange of information. This will allow the tax authorities to take part in reciprocal exchanges of information with foreign tax administrations.</li> </ul>	
AEoI: The different issues of taxpayer protection		
Mutual agreement procedure	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> The State Council (<i>Raad van State</i>) decided that in the tax treaty between Belgium and the United Kingdom, the grounds and motives of the refusal to grant a taxpayer access to MAP documents are incompatible with the Belgian Constitution.</li> <li>• <b>Colombia:</b> The tax authorities issued rules for obtaining</li> </ul>	

Taxpayers' right	Shift towards	Shift away
	<p>assistance from Colombia's competent authority (ACC) to initiate a MAP. Taxpayers may request assistance from the ACC regarding taxation not in accordance with a tax treaty, including cases on double tax residence, limitation of treaty benefits, transfer pricing adjustments, withholding tax, attribution of income to permanent establishments and application of anti-abuse provisions.</p>	
<p><b>10. Legislation</b></p>		
<p>Constitutional limits to tax legislation: Retrospective laws</p>	<ul style="list-style-type: none"> <li>• <b>Bosnia and Herzegovina:</b> New legislation has been introduced that stipulates for the first time that retrospective tax legislation should be only permitted in limited circumstances, based on the Constitution or specific law provisions.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Belgium:</b> The tax authorities upheld that the GAAR, introduced since the taxable year 2012, could be applied even if only the last legal act took place after it entered into force, although the judiciary has rejected such an interpretation.</li> <li>• <b>Mexico:</b> Tax reform increased the tax authorities' enforcement powers significantly by introducing the first-ever GAAR in Mexico, which may be applied to prior years before its enactment.</li> <li>• <b>United Kingdom:</b> The retrospectivity of the loan charge was ameliorated in 2020. Instead of applying for loans made to employees since 6 April 1999 (20 years retrospectively), it was modified to apply only to loans made since 9 December 2010 (approximately 10 years retrospectively), less – but still – retrospective. A further move away from the principle occurs in changes to the law on relief from capital gains tax for periods when the taxpayer's principal private residence has been let, now providing that it is applicable only when part of a residence is let, and the taxpayer is residing in the other part.</li> </ul>
<p>Public consultation and involvement in the making of tax policy and law</p>	<ul style="list-style-type: none"> <li>• <b>Bosnia and Herzegovina:</b> A new tax procedures act has been drafted with active participation by the Chamber of Employers, which serves as an excellent example of protecting taxpayers in practice via public consultation.</li> <li>• <b>Spain:</b> The Constitutional Court ruled out the that a decree can be used for modifying the corporate income tax to regulate</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Colombia:</b> The declared state of emergency due to the pandemic allowed the issuance of numerous decrees without prior public consultation.</li> <li>• <b>Venezuela:</b> The National Constituent Assembly (ANC) approved a partial reform of the tax code through a decree, which is believed to be unconstitutional by the reporters, but</li> </ul>

Taxpayers' right	Shift towards	Shift away
	partial payments because it affects the rule of law.	which is also applied by the authorities as the Venezuelan Supreme Court of Justice has authorized the application of other laws and decisions by the ANC in several decisions.
<b>11. Revenue practice and guidance</b>		
	<ul style="list-style-type: none"> <li>• <b>Australia:</b> The tax authorities provide a large volume of information, including guidance materials and legally binding advice products, to help taxpayers understand their rights, entitlements and obligations.</li> <li>• <b>Poland:</b> Binding VAT rate information (WIS) has been introduced, allowing taxpayers to receive guidance on which VAT rate applies to a particular category of goods and services.</li> <li>• <b>Russia:</b> Specific guidelines intended to facilitate its citizens' understanding of the tax measures.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>United Kingdom:</b> The tax administration has been replacing generic written guidance with interactive tools. While these tools can be useful, they can be misleading if no comprehensive written guidance accompanies them.</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>Chile:</b> A new charter for taxpayers' rights was introduced in 2020, shifting the country towards the minimum standard. This amendment also obliges the tax authority to inform the taxpayers of their rights whenever they are audited.</li> <li>• <b>Canada:</b> Criminal court upheld the possibility of directly invoking the taxpayers' charter as a basis for protecting taxpayers' rights in the context of criminal prosecution for tax fraud.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>United States:</b> Debates regarding the enforceability of the US taxpayers' bill of rights, as regards the possibility of directly invoking the charter as a basis for challenging acts of the tax administration, without linkage to specific rules of the US Internal Revenue Code.</li> </ul>
Organizational structures for protecting taxpayers' rights	<ul style="list-style-type: none"> <li>• <b>Chile:</b> New Tax Code introduced a new tax ombudsman who shall provide legal assistance to taxpayers who cannot afford it.</li> <li>• <b>Spain:</b> Information on the tax ombudsman's existence and functions needs to be disseminated among taxpayers and tax</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Mexico:</b> The appointment of a new ombudsman has not been carried out, and due to the COVID-19 pandemic, the ombudsman's budget was reduced by 75%, forcing the institution to close 16 offices throughout the country.</li> </ul>





Taxpayers' right	Shift towards	Shift away
	practitioners to ensure its services are used more.	

## Appendix B: The Protection of Taxpayers' Rights per Country (2020)

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. Australia-Czech Republic

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
<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	No	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	In your country, is there a system of "cooperative compliance"/"enhanced relationship" which applies to some taxpayers only?	Yes	Yes	Yes	No	No	Yes	No	No	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No
6	If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-	No	Yes	No	No	N/A	Yes	Yes	N/A	N/A	No	N/A	Yes	Yes	Yes	Yes	N/A	N/A	N/A

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	preferential/non-discriminatory/non-arbitrary basis?																		
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?	Yes	Yes	Yes	No	No	No	No	Yes	No	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes
<b>2. The issuance of a tax assessment</b>																			
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
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 wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No
10	If yes, can the taxpayer request a meeting with the tax officer?	N/A	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A	N/A
<b>3. Confidentiality</b>																			
11	Is information held by your tax authority automatically encrypted?	No	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	Yes	Yes

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
13	If yes, must the tax official(s) identify themselves before accessing information held about a specific taxpayer?	N/A	Yes	Yes	N/A	N/A	Yes	No	Yes	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	Yes	Yes
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	Yes	Yes	No	No	No	Yes	No	Yes	No	Yes	No	No	Yes	No	No	No	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	No	No	No	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	No
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	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)?	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	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	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	No	No	No	No	No	No	N/A	No	No	No	No	Yes	No	Yes	No	N/A	No	Yes
<b>4. Normal audits</b>																			
21	Does the principle <i>ne bis in idem</i> apply to	No	Yes	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?																		
22	If yes, does this mean only one audit per tax per year?	N/A	Yes	N/A	No	Yes	N/A	N/A	No	No	N/A	No	Yes	Yes	Yes	N/A	Yes	N/A	No
23	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	No	Yes	No	No	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No
25	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	No	No	No	Yes	No	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No	Yes
26	If yes, what is the normal limit in months?	No limit	No limit	No limit	10-12	No limit	No limit	No limit	4-6	4-6	No limit	7-9	1-3	1-3	>24	No limit	No limit	No limit	>24
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes
30	Are there limits to the frequency of audits	No	No	No	No	Yes	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	of the same taxpayer (e.g. in respect to different periods or different taxes)?																		
<b>5. More intensive audits</b>																			
31	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	No	Yes	No	Yes	Yes
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	N/A	Yes	No	No	No	N/A	No	No	Yes	N/A	N/A	Yes	N/A	No	N/A	Yes	Yes
33	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	N/A	No	No	No	N/A	No	Yes	Yes	N/A	N/A	No	N/A	Yes	N/A	No	Yes
34	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognized?	No	Yes	No	Yes	No	No	No	No	No	Yes	No	No	Yes	No	No	No	Yes	No
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	N/A	Yes	N/A	No	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A	No	N/A	N/A	N/A	Yes	N/A
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	Yes	Yes	Yes	No
37	May the tax authority enter and search the dwelling places of individuals?	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No	No
38	Is a court order required before the tax	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?																		
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	Yes	Yes	No	No	No	No	No	No	No	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes
<b>6. Reviews and appeals</b>																			
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
43	Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing?	No	Yes	No	No	Yes	No	No	Yes	Yes	No	No	No	Yes	No	Yes	No	Yes	Yes
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	No	No	No	No	No	No	No	Yes	Yes	No	Yes	No	No	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	>24	No limit	No limit	No limit	No limit	No limit	No limit	No limit	1-3	4-6	No limit	>24	No limit	No limit	No limit
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	Yes	No	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No	Yes	No	No
47	Is there a system for the simplified	Yes	No	No	No	No	No	No	No	No	Yes	No	Yes	Yes	Yes	No	No	Yes	No

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	resolution of tax disputes (e.g. by a determination on the file, or by e-filing)?																		
48	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	No	Yes	No	Yes	Yes	No	No	No	No	No	No	Yes	Yes	No	No	Yes	Yes	No
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	N/A	Yes	N/A	Yes	Yes	N/A	N/A	Yes	N/A	N/A	N/A	No	Yes	N/A	N/A	Yes	No	N/A
51	Does the loser have to pay the costs of a tax appeal?	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No
52	If yes, are there situations recognized in which the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	Yes	N/A	Yes	N/A	No	Yes	N/A	Yes	No	Yes	Yes	No	N/A	N/A	N/A	No	Yes	N/A
53	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	Yes	Yes	Yes	No	No	No	No	Yes	No	Yes	No	Yes	Yes	Yes	No	No	Yes	No
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	No	No	N/A	No	No	Yes	Yes	No	No	Yes	No	No	N/A	No	Yes	Yes
<b>7. Criminal and administrative sanctions</b>																			
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the	No	B	C	B	C	No	B	A	B	C	B	B	B+C	B	B+C	B	B+C	B



#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic	
	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)?	N/A	No	No	Yes	No	N/A	Yes	No	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	
58	If the taxpayer gives voluntary disclosure of a tax liability, can this result in a reduced or zero penalty?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	
<b>8. Enforcement of taxes</b>																				
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	Yes	No	No	No	No	Yes	No	Yes	No	Yes	No	No	No	No	No	No	Yes	No
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	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	Yes	Yes	No	No	No	No	No	No	Yes	Yes	No	Yes	Yes	No	No	
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific	No	No	No	No	Yes	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No	

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	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?	N/A	N/A	No	N/A	N/A	No	N/A	No	No	No	No	N/A	N/A	No	N/A	N/A	No	No
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	Yes	No	No	No	Yes	Yes	No
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to him with another country?	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	No	Yes	Yes	No
66	Does the taxpayer have the right to see any information relating to him that is received from another country?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No	No	No	No	Yes
67	Does the taxpayer have the right, in all cases, to require that the mutual agreement procedure is initiated?	No	Yes	No	Yes	No	Yes	No	No	No	No	No	Yes	No	Yes	No	Yes	Yes	No
68	Does the taxpayer have the right to see the communication exchanged in the context of the mutual agreement procedure?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes
<b>10. Legislation</b>																			
69	Is there a prohibition on retrospective tax legislation in your country?	No	No	No	Yes	No	Yes	Yes	No	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes
70	If no, are there restrictions on the adoption	No	Yes	Yes	N/A	Yes	N/A	N/A	Yes	N/A	No	N/A	Yes	Yes	N/A	N/A	N/A	N/A	N/A

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	of retrospective tax legislation in your country?																		
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>11. Revenue practice and guidance</b>																			
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	Does your country have a generalized system of advance rulings available to taxpayers?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes
75	If yes, is it legally binding?	Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	N/A	No	No	N/A	N/A	N/A	Yes	Yes	Yes	Yes
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	No	Yes	Yes	No	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	No	Yes	No
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	Yes	No	No	No	Yes	Yes	Yes	N/A	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
<b>12. Institutional framework for protecting taxpayers' rights</b>																			
78	Is there a taxpayers' charter or taxpayers'	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	No

#	Question	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Canada	Chile	China (1)	China (2)	Colombia	Croatia	Cyprus (1)	Cyprus (2)	Czech Republic
	bill of rights in your country?																		
79	If yes, are its provisions legally effective?	No	No	Yes	Yes	N/A	Yes	N/A	Yes	No	Yes	Yes	Yes	N/A	No	No	N/A	N/A	N/A
80	Is there a (tax) ombudsman/taxpayers' advocate or equivalent position in your country?	Yes	Yes	Yes	No	No	No	No	Yes	No	No	No	No	No	Yes	No	No	Yes	Yes
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	Yes	No	Yes	N/A	N/A	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A	Yes	No
82	If yes to a (tax) ombudsman, is this person independent from the tax authority?	Yes	No	No	N/A	N/A	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A	Yes	Yes

## B.2. Denmark-Peru (1)

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
<b>1. Identifying taxpayers, issuing tax returns and communicating with taxpayers</b>																			
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	N/A	Yes	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
5	In your country, is there a system of “cooperative compliance”/“enhanced relationship” which applies to some taxpayers only?	Yes	Yes	No	No	No	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No
6	If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?	No	No	N/A	N/A	N/A	Yes	N/A	N/A	Yes	No	N/A	Yes	N/A	Yes	Yes	No	Yes	N/A
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No
<b>2. The issuance of a tax assessment</b>																			
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	Yes	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No
9	If a systematic error in the assessment of	Yes	No	Yes	No	No	No	No	No	Yes	Yes	No	No	No	Yes	No	No	Yes	No

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
	tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?	Yes	No	Yes	No	No	No	No	No	Yes	Yes	No	No	No	Yes	No	No	Yes	No
10	If yes, can the taxpayer request a meeting with the tax officer?	Yes	N/A	No	N/A	N/A	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A	Yes	Yes	N/A	Yes	N/A
<b>3. Confidentiality</b>																			
11	Is information held by your tax authority automatically encrypted?	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	No	No
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	No	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	No	No	Yes	No	Yes
13	If yes, must the tax official(s) identify themselves before accessing information held about a specific taxpayer?	N/A	N/A	Yes	Yes	Yes	N/A	Yes	Yes	N/A	Yes	N/A	Yes	Yes	No	No	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 information?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	No	Yes	Yes	No	No	No	Yes	No	No	No	Yes	No	No	No	No	Yes	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No	Yes	No

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)	
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	No	No	Yes	No	
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. <i>habeas data</i> or freedom of information)?	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes	Yes	Yes	
19	Is there a system of protection of legally privileged communication between the taxpayer and its advisers?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	No	No	Yes	No	No	No	Yes	N/A	Yes	N/A	No	N/A	N/A	No	Yes	No	Yes	No	
<b>4. Normal audits</b>																				
21	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	No	No	No	Yes	Yes	No	Yes	No	No	Yes	Yes	No	Yes	No	No	No	No	Yes	Yes
22	If yes, does this mean only one audit per tax per year?	N/A	N/A	N/A	Yes	Yes	N/A	Yes	N/A	N/A	Yes	No	N/A	No	No	N/A	N/A	Yes	No	
23	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	Yes	No

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
	particular year)?																		
25	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	No	No	No	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	Yes	No	No	Yes	Yes
26	If yes, what is the normal limit in months?	No limit	No limit	No limit	19-21	19-21	No limit	7-9	19-21	No limit	No limit	No limit	No limit	10-12	10-12	No limit	No limit	1-3	10-12
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	No	No	Yes	Yes	No	No	No	No	No	Yes	No	No	No	No	No	Yes	No
<b>5. More intensive audits</b>																			
31	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	Yes	Yes	Yes	No	No	Yes	No	No	No	Yes	No	No	No	No	Yes	No	Yes	No
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	Yes	No	No	N/A	N/A	No	N/A	N/A	N/A	No	N/A	No	N/A	N/A	Yes	N/A	Yes	N/A
33	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to refuse to supply basic accounting information to the tax	No	N/A	Yes	N/A	N/A	No	N/A	N/A	N/A	No	N/A	No	N/A	N/A	No	N/A	No	N/A



#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
	authority?																		
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?	Yes	No	Yes	No	No	No	No	Yes	No	Yes	Yes	No	No	No	Yes	Yes	Yes	No
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	Yes	N/A	Yes	No	N/A	No	N/A	N/A	N/A	No	Yes	No	N/A	N/A	Yes	No	Yes	N/A
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	Yes	Yes	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No
37	May the tax authority enter and search the dwelling places of individuals?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	No
38	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	Yes	No	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes	Yes	No
<b>6. Reviews and appeals</b>																			
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No
43	Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	No limit	19-21	No limit	>24	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	1-3	No limit
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	No	No	No	No	No	No	No	Yes	No	No	Yes	Yes	No	Yes	No	Yes	No
47	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e-filing)?	Yes	No	Yes	No	No	No	Yes	No	Yes	No	No	No	No	Yes	No	No	No	No
48	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	No	No	Yes	No	No	No
50	If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes	Yes	N/A	Yes	Yes	N/A	N/A	Yes	N/A	N/A	N/A

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
51	Does the loser have to pay the costs of a tax appeal?	No	No	Yes	Yes	Yes	Yes	No	No	Yes	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	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes	N/A	Yes	Yes	N/A	N/A	N/A	N/A	N/A	N/A
53	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes	No	No	No	No	Yes	No
54	Are judgments of tax tribunals published?	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	N/A	Yes	Yes	Yes	No	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>7. Criminal and administrative sanctions</b>																			
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	No	C	No	C	C	B+C	B+C	No	B+C	B	B+C	No	B	B	B+C	C	B	B
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	N/A	No	N/A	Yes	Yes	Yes	Yes	No	No	No	No	N/A	No	Yes	Yes	Yes	Yes	No
58	If the taxpayer gives voluntary disclosure	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
	of a tax liability, can this result in a reduced or zero penalty?																		
<b>8. Enforcement of taxes</b>																			
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	No	Yes	No	No	No	No	Yes	No	No	No	No	No	No	Yes
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	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?	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	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	N/A	No	N/A	N/A	N/A	No	Yes	N/A	N/A	N/A	Yes	N/A	No	N/A
64	Does the taxpayer have the right to be heard by the tax authority before the	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
	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?	Yes	No	Yes	No	Yes	No	No	No	No	No	No	No	Yes	No	No	Yes	Yes	No
66	Does the taxpayer have the right to see any information relating to him that is received from another country?	Yes	No	Yes	Yes	Yes	No	No	Yes	No	No	No	No	No	No	Yes	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	No	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	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	No	No	No	No	No	Yes	No	No	No	Yes	No
<b>10. Legislation</b>																			
69	Is there a prohibition on retrospective tax legislation in your country?	No	No	No	No	No	Yes	Yes	No	Yes	No	No	No	Yes	Yes	No	No	Yes	Yes
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	Yes	No	Yes	Yes	Yes	N/A	N/A	N/A	N/A	Yes	No	Yes	N/A	N/A	Yes	Yes	N/A	N/A
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	Yes	No	Yes	Yes	No	No	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
<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	Yes
74	Does your country have a generalized system of advance rulings available to taxpayers?	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No
75	If yes, is it legally binding?	Yes	Yes	Yes	N/A	N/A	Yes	N/A	Yes	No	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	N/A
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	No	Yes	Yes	No	No	Yes	Yes
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes
<b>12. Institutional framework for protecting taxpayers' rights</b>																			
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	No	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes
79	If yes, are its provisions legally effective?	N/A	N/A	N/A	N/A	N/A	No	Yes	No	Yes	N/A	N/A	No	Yes	No	No	No	Yes	Yes
80	Is there a (tax) ombudsman/taxpayers' advocate or equivalent position in your country?	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
81	If yes, can the ombudsman intervene in an	Yes	No	N/A	Yes	Yes	N/A	Yes	N/A	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No

#	Question	Denmark	Finland	Germany	Greece (1)	Greece (2)	Guatemala	Honduras	India	Italy	Japan	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Panama	Peru (1)
	ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	Yes	No	N/A	Yes	Yes	N/A	Yes	N/A	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No
82	If yes to a (tax) ombudsman, is this person independent from the tax authority?	Yes	N/A	N/A	Yes	Yes	N/A	Yes	N/A	No	No	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A

### B.3. Peru (2)-Venezuela

#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	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	N/A	No	Yes	Yes	Yes	Yes	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	In your country, is there a system of “cooperative compliance”/“enhanced relationship” which applies to some taxpayers only?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
6	If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis?	N/A	Yes	Yes	No	N/A	Yes	Yes	No	N/A	No	Yes	N/A	Yes	Yes
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?	No	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No
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?	No	No	Yes	No	No	No	Yes	No	Yes	Yes	Yes	Yes	No	No
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 wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to	No	No	No	No	Yes	Yes	No	No	No	Yes	No	No	No	No



#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
	them?														
10	If yes, can the taxpayer request a meeting with the tax officer?	N/A	N/A	Yes	N/A	N/A	Yes	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A
11	Is information held by your tax authority automatically encrypted?	No	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	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	No	No	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes
13	If yes, must the tax official(s) identify themselves before accessing information held about a specific taxpayer?	N/A	N/A	N/A	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	Yes
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	No	No
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	No	No	No	No	No	No	No	Yes	No	Yes	Yes	No	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	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	Yes	Yes	No	No	No	No	No	Yes	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	Yes	Yes	Yes	Yes	Yes	No	No
20	If yes, does this extend to advisers other than those who are	N/A	No	No	N/A	N/A	No	Yes	No	No	No	Yes	Yes	N/A	N/A

#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
	legally qualified (e.g. accountants or tax advisers)?														
21	Does the principle <i>ne bis in idem</i> apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	Yes	No	Yes
22	If yes, does this mean only one audit per tax per year?	No	Yes	Yes	No	Yes	N/A	N/A	N/A	N/A	N/A	N/A	No	N/A	Yes
23	Does the principle <i>audi alteram partem</i> apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	No	No	Yes	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes
25	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	Yes	No	Yes	Yes
26	If yes, what is the normal limit in months?	10-12	1-3	4-6	1-3	No limit	No limit	16-18	No limit	10-12	No limit	>24	No limit	1-3	>24
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	Yes	No	Yes	No	No	No	No	No	No	No	No	No	No
31	Is the principle <i>nemo tenetur</i> applied in tax investigations (i.e. the principle against self-incrimination)?	No	Yes	Yes	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	No	Yes	No	N/A	Yes	N/A	N/A	N/A	No	No	No	No	No
33	If yes to <i>nemo tenetur</i> , can the taxpayer raise this principle to	N/A	No	No	No	N/A	No	N/A	N/A	N/A	No	No	Yes	N/A	No

#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
	refuse to supply basic accounting information to the tax authority?														
34	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognized?	No	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	N/A	Yes	N/A	N/A	Yes	No	N/A	Yes	N/A	Yes	Yes	Yes	N/A	N/A
36	Is authorization by a court always needed before the tax authority may enter and search premises?	Yes	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No	No
37	May the tax authority enter and search the dwelling places of individuals?	No	Yes	No	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
38	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes
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	No	Yes	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	No	No	Yes	No	Yes	No	No	No	No
43	Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing?	Yes	Yes	No	No	No	No	Yes	No	Yes	No	No	No	No	Yes
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	Yes	Yes	No	No	No	No	No	No	No	No	Yes

#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	>24	1-3	1-3	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	>24
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	Yes	No	No	No	Yes	No	No	No	Yes	Yes	No	Yes	No
47	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e-filing)?	No	Yes	No	No	No	Yes	No	No	Yes	Yes	Yes	No	No	No
48	Is the principle <i>audi alteram partem</i> (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all of the tax before an appeal can be made (i.e. <i>solve et repete</i> )?	No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	No	No	No	No
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	N/A	Yes	Yes	N/A	Yes	Yes	Yes	N/A	N/A	Yes	N/A	N/A	N/A	N/A
51	Does the loser have to pay the costs of a tax appeal?	No	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No	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)?	N/A	N/A	Yes	No	Yes	N/A	Yes	N/A	No	Yes	N/A	N/A	No	No
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?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	Yes	No	N/A	Yes	Yes	No	N/A	Yes	No	No	N/A	No
56	Does the principle <i>ne bis in idem</i> apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	B	B+C	B	B	B+C	No	B+C	No	No	B+C	No	No	B	A+B+C
57	If <i>ne bis in idem</i> is recognized, does this prevent two parallel sets of court proceedings arising from the same factual	No	No	No	No	No	N/A	Yes	Yes	N/A	Yes	N/A	N/A	Yes	Yes

#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
	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	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	No	No	No	No	No	No	No	Yes	Yes	Yes
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
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	No	No	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	No	No	No	No	No	No	No	No	No	Yes	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	No	No	No	N/A	N/A	N/A	No	N/A	N/A	No	Yes	N/A	Yes
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	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	Yes	No	Yes	Yes	Yes	No	No	No	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	Yes	No	Yes	Yes	No	Yes	Yes	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	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes
68	Does the taxpayer have the right to see the communication exchanged in the context of the mutual agreement procedure?	No	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes

#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
69	Is there a prohibition on retrospective tax legislation in your country?	Yes	Yes	No	Yes	No	No	No	Yes	No	No	No	Yes	Yes	Yes
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	N/A	Yes	N/A	Yes	No	Yes	N/A	No	Yes	No	N/A	N/A	Yes
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	No
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes
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
74	Does your country have a generalized system of advance rulings available to taxpayers?	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
75	If yes, is it legally binding?	Yes	No	Yes	N/A	N/A	No	Yes	Yes	No	N/A	Yes	Yes	No	Yes
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	No	Yes	Yes	Yes	No	No	No	No	No	No	No	Yes	Yes	Yes
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	No	Yes	Yes	Yes	No	N/A	Yes	No	Yes	Yes	No	Yes	Yes	Yes
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No
79	If yes, are its provisions legally effective?	N/A	N/A	N/A	N/A	No	No	Yes	N/A	No	No	Yes	N/A	N/A	N/A
80	Is there a (tax) ombudsman/taxpayers' advocate or equivalent position in your country?	Yes	Yes	No	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to	No	Yes	N/A	N/A	N/A	Yes	Yes	N/A	Yes	No	Yes	N/A	N/A	N/A

#	Question	Peru (2)	Poland	Portugal	Russia	Serbia	South Africa	Spain	Sweden	Turkey	United Kingdom	United States	Uruguay	Venezuela (1)	Venezuela (2)
	court)?														
82	If yes to a (tax) ombudsman, is this person independent from the tax authority?	Yes	Yes	N/A	N/A	N/A	Yes	Yes	N/A	Yes	Yes	Yes	N/A	N/A	N/A