

TOWARDS GREATER FAIRNESS
IN TAXATION
A MODEL TAXPAYER CHARTER

PRELIMINARY REPORT JANUARY 2013

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AOTCA



CFE



STEP



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F-1 Foreword – Asia-Oceania Tax Consultants Association (AOTCA)

In the latter half of 2009 there commenced a series of conference calls between office bearers of three bodies. Two of those bodies represent the interests of tax professionals and their clients in Europe through the Confédération Fiscale Européenne (CFE) and in Asia-Oceania through the Asia Oceania Tax Consultants Association (AOTCA). The third participant was the Society of Trust and Estate Practitioners (STEP) representing those practitioners worldwide.

These calls were prompted by Michael Cadesky, a Vice President of STEP Worldwide. This started with a broad canvas of enhancing the level of co-operation between the three bodies in light of the increasing level of global co-operation between revenue authorities via the sharing of information, technology and best practice through mediums such as the OECD's Forum on Tax Administration, membership of the Joint International Tax Shelter Information Centre (JITSIC) and the proliferation in recent times of exchange of information agreements between various jurisdictions.

In this context the topic of taxpayer rights emerged as one that, given the coverage the three bodies, might be possible by way of a detailed survey of existing Taxpayer Charters and the like in various jurisdictions, to produce something akin to a "Model Charter" detailing taxpayer rights and obligations. Such a document might prove useful for governments, the OECD and taxpayers generally as a template for best practice in the area of taxpayer rights and obligations.

The debate focused on the imperative of achieving a fair balance between the ever increasing powers of the revenue authorities and the rights of taxpayers generally, both represented and unrepresented.

One of the imperatives of such a Charter would be, as far as possible, to strive to ensure that the powers granted to revenue authorities worldwide are exercised in such a way that is fair and complies with the rules of natural justice. This imperative emerges from evidence of a growing tendency for revenue authorities to seek more power when there is a perceived threat to the revenue without clearly demonstrating why existing powers are inadequate or inappropriate. The growing use of general anti avoidance rules and their revision (in one case effectively retrospectively by announcement without detail) are cases in point.

Accordingly the coming together of the three bodies in this way and the development of a detailed survey and from that a "Model Charter" will go some way to providing both Taxpayers and their advisers with a basis for a reasoned and intellectual response to actions by a government or revenue authority that impinge upon the rights articulated in the "Model Charter".

In the absence of an appropriate balance between the ever increasing powers of the revenue authorities and the protection of the taxpayer the essential trust required for efficient administration of the tax laws will continue to be eroded.

From an AOTCA perspective the development of the "Model Charter" is of particular importance in light of the many jurisdictions within our geographical purview that have in recent times adopted a comprehensive tax system. Since the breakup of the Soviet Union and the dramatic economic and political reform in many emerging economies in the Asia-Oceania region the development of a tax system and the emergence of a tax profession is a relatively new phenomenon in much of our area.

Reference to a document that speaks with the authority of one voice from a large majority of the tax profession around the world will be of great assistance as these economies grow in importance.

One distinctive perspective which AOTCA can bring to considerations of an appropriate framework within which the tax system should operate is its members' experience of jurisdictions which actively embrace better tax design as an important element in building their economies. In this context, the search for best practice becomes encouraged, rather than reluctantly adopted, in the formulation of tax policy.

The members of AOTCA are proud to have been a part of this process and are indebted to both our sister body CFE (the constitution of which formed the template for the formation of AOTCA in 1992) and the driving of this project by STEP.

| We now look forward to the role this "Model Charter-" might play in the design and administration of tax systems in the future

Gil Levy

President – AOTCA

October 2012

Foreward – Confédération Fiscale Européene (CFE)

This initiative arose initially in response to a number of events. Historically Tax Advisor professional bodies, in their lobby and representations to administrations, have focussed on tax technical issues rather than wider issues of conduct. Taxpayer Charters came and went in Europe but the introduction of the money laundering rules made the CFE realise that we needed to focus more on the regulation of the profession and the relationship between Tax Advisors, taxpayers and Tax Administrations. As a result in 2006 the CFE adopted its manifesto which states

“Tax Advisors play a collaborative part of unique experts in the field of taxation, law and practice. They bring an exclusive combination of practical expertise, understanding of the climate of taxation and of the issues facing their clients’ business to these processes...

The Tax Advisors will fulfil an important role in safeguarding the legal rights of their clients by representing them before and outside tax courts”.

Accordingly under the Presidency of Paul Morton, the Professional Affairs Committee of the CFE was established.

Other issues which influenced this were the establishment of JITSIC (*Joint International Tax Shelter Information Centre*) in 2004, and further European Union Regulations on mutual assistance in 2003, 2004 and 2008. No sooner had the Professional Affairs Committee been established, the OECD Forum of Tax Administration issued its Seoul Declaration (September 2006), and announced that a study into the role of tax intermediaries (advisors) was to be conducted. The Professional Affairs Committee of CFE took it upon itself to coordinate the European response to this and AOTCA did the same in respect of the Asian Pacific response.

Having identified that there is indeed a role for the profession in policing the relationship between Tax Administrations, Tax Advisors and taxpayers, the Seoul Declaration study also highlighted that there is no mechanism for a global response to be made on behalf of Tax Advisors or their clients. CFE is well established, as is AOTCA, and there are nascent bodies in other parts of the world, but there is still a long way to go before we are able to produce a proper coordinated global response.

It was against this background that the collaboration with STEP arose and when considering how best to test that collaboration and see if tax advisors from different countries could find common ground, it was decided that the three bodies should build on the work done in 2009-10 by the CFE in its 50th anniversary publication on Taxpayer Charters around Europe. This gave us at least a head start and the book itself is one of the few works that looks at this area on an international and comparative basis.

The CFE is almost entirely dependent on voluntary resource given by those on the CFE board and members of its various member organisations throughout Europe. The undertaking has been significant with 21 of the European Union countries being represented together with Croatia and Switzerland.

It is hoped not only that this will be a living work to be refreshed and updated periodically but also that it will contribute to wider learning of the relationship between taxpayers and Tax Administrations. We intend that it will also be used by all those interested in this area in applying pressure on all governments to improve their behaviours and the quality of service they offer their taxpayers.

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Taxation may be the price you pay for democracy but a tax system which is arbitrary and capricious undermines the democracy which legitimises it and only encourages non compliant behaviour.

Stephen Coleclough

President – CFE

October 2012

Foreward – Society of Trust and Estate Practitioners (STEP)

Over the past two decades tax authorities around the world have worked tirelessly to improve the gathering of tax information. The period has been marked by a series of both multilateral initiatives, such as the work of the OECD Global Forum, and unilateral initiatives, such as the US FATCA legislation. The focus throughout has been largely on tackling the issue of tax evasion by taxpayers who hide funds from tax authorities.

This work on greater transparency continues, but in a range of major jurisdictions the issue of tackling what is seen as unacceptable tax avoidance has also become a major focus of debate. At the heart of this debate are questions about fairness in the sharing of national tax burdens and concerns over the funding of budget deficits.

STEP recognises that a fair tax system must include effective measures to counteract abuse. Equally, however, there must also be a clear balance between taxpayer obligations and taxpayer rights. Much of the current debate about abusive tax avoidance in essence focuses on moves not just to ensure that the obligations on taxpayers are more rigorously enforced, but also to increase, at times significantly, the compliance burdens on taxpayers. It is unfortunate that the issue of how to preserve a balance with taxpayer rights – such as the right to certainty in tax laws – has received relatively little attention from those campaigning against tax abuse.

To assist the debate and help develop a more consistent international approach, the Society of Trust and Estate Practitioners (STEP) has been delighted to work with Confédération Fiscale Européenne (CFE) and Asia-Oceania Tax Consultants Association (AOTCA) to develop, for the first time, a survey of Taxpayers' rights and obligations in a broad range of jurisdictions. What has emerged from this work is that there is an international consensus on what is fair and reasonable in terms of both the protections to give taxpayers and the obligations on taxpayers. The ultimate aim of our collective work in this area is therefore to synthesise this consensus into a model 'Taxpayer Charter' that reflects current international best practice.

International professional bodies such as STEP and our colleagues in CFE and AOTCA have a key role in promoting an informed debate and developing a consistent approach internationally to what is a complex topic. Most professional advisors would agree that a level playing field should be an important goal of the various multilateral initiatives on tax practice that are starting to take shape. The professional bodies can play a key role in helping to develop a co-operative rather than combative approach. To facilitate a similar co-operative approach in respect of tax planning, it is important that professional advisors are engaged at an early stage in the developing debate at both a national and international level.

STEP strongly supports initiatives which help ensure tax systems around the world work fairly and predictably and which fight abuse. What must be avoided at all costs are measures designed to tackle the few who abuse the system through a significant additional cost for the great majority of ordinary taxpayers or approaches which undermine certainty and confidence in tax systems. As a professional body we share with tax authorities the common goal of tackling unreasonable abuse of tax systems around the world. STEP looks forward to helping the work of governments in this area in any way we can.

Michael Young, FCA, TEP

Chairman

STEP Worldwide

October 2012

About the Contributing Organizations

AOTCA

The formation of AOTCA in 1992 can largely be attributed to the existence of its sister body the Confédération Fiscale Européenne (CFE) formed in 1959 as a body representing the interests of Tax Advisors in the European Communities.

Over the years tax professionals doing business in the Asia Oceania regions became increasingly conscious of the necessity of establishing a similar body to CFE in the region. The impetus to establish such an organisation was provided by Japan Federation of Certified Public Tax Accountant's Associations (JFCPTAA). The first meeting was held in Tokyo in November 1992 attended by the following foundation members:

JFCPTAA, Pakistan Tax Bar Association (PTBA), Hong Kong Institute of Certified Public Accountants (HKICPA), Institute of Chartered Accountants in Australia (ICAA), Korean Association of Certified Public Tax Accountants (KACPTA), Chartered Tax Institute of Malaysia (CTIM), Tax - Accountancy Association Union of Chinese Taipei (TAAUCT), The Tax Institute (Australia - TTI), Tax Management Association of the Philippines (TMAP), and Certified Practicing Accountants Australia (CPAA).

Since then the Association has grown with the admission of the following members:-

All India Federation of Tax Practitioners (AIFTP)

Chinese Certified Tax Agents Association (CCTAA)

Institute of Certified Public Accountants Singapore (ICPAS)

Indonesian Tax Consultants Association (ITCA)

Japan Tax Research Institute (JTRI)

Institute of Public Accountants –Australia (IPA)

Taxation Institute of Hong Kong (TIHK)

Vietnam Tax Consultants Association (VTCA)

Mongolian Certified Public Tax Accountants and Consultants Association (MCPTACA)

Bekas Pegawai HASIL (BPH-an association of ex - revenue officers in Malaysia)

Singapore Institute of Accredited Tax Professionals (SIATP)

In all AOTCA represents over 330,000 tax professionals in the region.

Annually the members of AOTCA meet in member states on a rotation basis to discuss matters of mutual interest combined with presentations in a seminar format from international tax experts on selected topics.

In addition in 2002, 2007 and 2012 AOTCA has held International Tax Conventions in Kyoto (Japan), Kuala Lumpur (Malaysia) and Seoul (Korea) involving speakers from all over the world covering topics of current interest.

AOTCA is also an invited observer at annual meetings of the Study Group on Asian Taxation and Research (SGATAR), a body representative of the various tax administrations in the region.

Through continuing and increasing representation by AOTCA officials at SGATAR and CFE meetings, the publication of papers from our seminars, the provision of original articles and access to the Asia Pacific Journal of Taxation and closer communication with the OECD, AOTCA will continue to enhance the recognition and significance of the increasingly important role of tax professionals in the region

The Confédération Fiscal Européene - CFE

CFE represents 32 national professional organisations from 24 European countries¹ 21 of which are EU Member States, embracing more than 180,000 individual Tax Advisors. It is an international non-profit organisation established under Belgian law, based in Brussels, with a General Secretariat in Berlin.

In undertaking its work the primary functions of CFE are

- to safeguard the professional interests of tax advisers and to assure the quality of tax services provided by tax advisers;
- to exchange information about national tax laws and to contribute to co-ordination of tax law in Europe;
- to maintain relations with fiscal authorities at national and international levels, and in particular to bring to the authorities of the European Union the experience of practitioners of all areas of taxation and professional law;
- to promote the co-ordination of national laws governing the profession, and in particular to achieve the protection of each national Tax Advisor's title in Europe and to act for the recognition of Tax Advisor's right to represent their clients on tax matters before financial and judicial authorities as well as before other national, international and supranational authorities;
- to inform the public about the services that Tax Advisors provide;
- to seek to provide the best possible conditions for tax advisers to carry out their profession;
- to facilitate co-operation in all areas which are of common interest to tax advisers in Europe, both inside and outside the borders of the European Union.

The technical work of the CFE is dealt with by the *Fiscal Committee* and the *Professional Affairs Committee* (PAC) which meet regularly each year. The Fiscal Committee has two Sub-Committees dealing with Direct and Indirect Taxes whilst the PAC deals with professional and regulatory matters, such as professional qualifications, cross-border services, anti money laundering and the relationship between tax advisers and tax authorities.

Member and observer organisations send delegates to both technical committees. Further technical work is dealt with by ad-hoc task forces set up by these committees, e.g. on the OECD and UN activities in taxation and on the European Court of Justice, and CFE regularly host technical conferences, in particular the annual CFE spring Tax Forum in Brussels and the PAC Conference in autumn.

CFE first endorsed the idea of a Taxpayer Charter in 2008, choosing this topic for the CFE spring Tax Forum. An overview of the subject and an analysis of existing European Taxpayer Charters and other legal statutes from which taxpayer rights can be derived was considered a fitting subject to be included in the CFE's 50th Anniversary book published in September 2009.

¹ Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Switzerland and the United Kingdom.

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A-3 STEP

STEP is the worldwide professional association for practitioners dealing with family inheritance and succession planning, estate planning and related taxation matters. STEP helps to improve public understanding of the issues families face in this area and promotes education and high professional standards among its members.

STEP has 18,000 members across 80 jurisdictions from a broad range of professional backgrounds, including lawyers, accountants, trust specialists and other practitioners. Taxation is a central interest to most STEP members. STEP members help families plan for their futures, specialising in a wide range of activities, from drafting a relatively simple will to more complex issues surrounding international families, protection of the vulnerable, family businesses and philanthropic giving.

STEP's primary focus is on professional development for practitioners in the fields of family inheritance and succession. STEP offers a number of formal qualifications ranging from entry-level programmes to advanced certificates and diplomas. These formal qualifications are supplemented by resources designed to provide continuing professional development and forums for knowledge sharing.

Full members of STEP are recognised by the TEP designation. All STEP members are subject to an extensive Code of Professional Conduct, requiring members at all times to act with integrity and in a manner that inspires the confidence, respect and trust of clients and the wider community. STEP members are also required to keep up to date with the latest legal, technical and regulatory developments.

STEP members spend their professional lives working with families and tackling real problems. Common issues for members to advise on are: providing for a husband or wife after the death of a spouse while protecting the interests of any children; ensuring that a family business will pass safely from one generation to another; care and support for elderly or vulnerable relatives; ensuring that families with interests and family members spread across differing countries are compliant with the laws and tax rules of different jurisdictions; and helping donors support philanthropic causes in an effective way.

STEP takes a leading role in communicating the practical viewpoint and expertise of members to governments, tax authorities, regulators and the public around the world. STEP helps governments and regulatory authorities examine the likely impact of any proposed changes by responding to consultations and providing technical advice and support where appropriate.

STEP has a centralized secretariat located in London England with approximately 30 full time staff.

About the Authors



Michael Cadesky, FCA, FTIHK, CTA, TEP

Michael Cadesky is a Chartered Accountant based in Toronto, Canada, and is the Managing Partner of Cadesky and Associates LLP, Canadian, US and International Tax Specialists. Michael has practiced tax for over 30 years, specializing in Canadian and international income tax

matters.

Michael has been actively involved with STEP since 1998, and has served in many capacities including Chair of STEP Canada, and Chair of STEP Worldwide. He currently serves as a Vice-President.

During his 30 years of practice, Michael has been involved in consultations to the Canadian Government on tax policy and tax administration, and served on the Personal Advisory Committee to the Minister of National Revenue. He has also assisted in consultations on tax policy and tax administration to several foreign governments.

Michael has authored or co-authored several books on taxation matters, numerous papers, and is a regular speaker at conferences.

Currently Michael is Chair of the Tax Specialist Group (“TSG”), a network of tax specialist firms in Canada, and the International Tax Specialist Group (“ITSG”) a network of tax specialist firms around the world. He is also a member of the Canadian Tax Foundation and served as a Governor. He currently sits on the Board of AOTCA as an Advisor. Other memberships include the Taxation Institute of Hong Kong, the International Fiscal Association, the Institute of Chartered Accountants of Ontario, and the Canadian Institute of Chartered Accountants.



Ian Edward Hayes, FCA, CTA, FIIT

Ian Hayes is a chartered accountant and a chartered Tax Advisor. In 1974 he joined the corporate tax department of Deloitte Haskins and Sells. In 1980 he became eastern hemisphere Tax Advisor for Texaco and in 1982 joined Armitage and Norton as national tax partner.

In 1984, the Keith Committee made it clear that VAT was to play a far larger part in UK tax raising, that penalties and enforcement were to be introduced in the UK in respect of VAT and that the European dimension of indirect taxation introduced a new, exciting and dynamic area for tax practice. The decision to concentrate on indirect taxation as a result was not difficult and he has been an indirect tax adviser ever since.

In 1986, together with Robert Cawley, he set up Fiscal Solutions, a specialised indirect tax consultancy advising other professionals and clients directly.

In 2005 Ian retired from the partnership to concentrate on the public policy side of his interests. He still acts in a consultant adviser role to select clients and professionals but the bulk of his time is taken up with applied tax issues

He was a specialist adviser to HM Treasury and the Minister responsible for indirect taxation and from 2003 has been a member of the VAT Forum established by HM Treasury and HM Revenue and Customs to deal with practical issues associated with the administration of VAT.

As Chair of the Professional Affairs Committee of CFE he is working to develop the professional capacity of indirect tax practitioners throughout the EU in relation to ethics and compliance with EU professional and service directives, and working with member state revenue administrations to make compliance simpler and more effective.



David Russell, AM, RFD, QC, CTA, TEP

David Russell AM RFD QC was admitted as a solicitor in 1974, and was called to the Bar in 1977. He is admitted to practise in Australia, Papua New Guinea, New Zealand and the Courts of the Dubai International Financial Centre. He was first appointed Queen's Counsel in 1986.

David was President of the Taxation Institute of Australia from 1993 to 1995, and of the Asia Oceania Tax Consultants Association (AOTCA) from 1996 to 2000. He is a member of the Law Council of Australia Business Law Section Taxation Committee. He served as a member of the Ministerial Consultative Committee for the Tax Law Improvement Project from 1994 to 1997 and as a member of the Steering Committee for the National Review of Standards for the Tax Profession in 1993 and 1994. From 1991 to 1995 he was a member of the National Tax Liaison Group.

David is Chairman of STEP Australia, and of the STEP New South Wales Branch and a member of the STEP Worldwide Council and Member Services and Public Policy Committees, a co-chair of the Australian Chapter of the International Section of the New York State Bar Association, and a member of the Executive Committee of the Section, an Academician of The International Academy of Estate and Trust Law, an Honorary Member of the Taxation Institute of Hong Kong and a Fellow Member of the Chartered Institute of Taxation (UK). He is the Australian correspondent for Trusts and Trustees.

David is listed in the Taxation Category in the Australian Financial Review/Best Lawyers review of the Australian Legal Profession in 2008 and all later years. In 2010 he was awarded the Order of the Rising Sun with Gold Rays and Neck Ribbon for services to Australia Japan relations. In 2012, he was made a Member of the Order of Australia for, amongst other things, "service ... to taxation law and legal education".

1-1 Summary

Like it or not, a tax system is vital to any modern nation. It is a fundamental cornerstone of the nation's economic engine. It is the ability to raise tax revenue which underwrites the nation's credit, its ability to borrow and its currency. A well functioning and efficient tax system promotes economic stability and prosperity, while a poorly functioning tax system can lead to bankruptcy and economic ruin.

So we are concerned, particularly in these economic times, with the health and well being of the world's tax systems.

Most fundamentally, this work is devoted to laying out what a good tax system should contain. It must have the support of its taxpayers and the Tax Advisors who assist them. Without this support, widespread voluntary compliance is hard to achieve. And to get this support, a balance is needed between Taxpayer Rights and Taxpayer Responsibilities as our work demonstrates.

In today's economic climate, many countries are introducing so-called austerity measures. These measures focus fundamentally on two things, cutting expenditures and raising taxes. This is generally expressed as an effort to right the economic wrongs of the past, and put a country back on a sound economic footing.

The austerity measures have proved very unpopular, as one would predict. Such policies have placed an increasing strain on the relationship between taxpayers and the Tax Administration, with taxpayers being reluctant to pay more tax, particularly when earning less. For a Tax Administration, the task of enforcing unpopular tax increases in a recessionary economic environment makes what is a difficult job in the best of times a far more challenging and sometimes close to impossible undertaking. At the same time, Tax Administrations are typically requesting increased cooperation from Taxpayers, sometimes putting forward a theory that a "partnership" exists between the Tax Administration and the taxpayer, where the taxpayer, tasked with being a good partner in the system, should be expected to willingly comply and readily shoulder the appropriate portion of the tax burden.

Within this partnership, tax professionals (referred to in this report as Tax Advisors) play an important role in the influence they wield to encourage taxpayer compliance.

There are many philosophical issues with this "good partner" approach, but of fundamental importance is whether taxpayers and Tax Advisors believe that the tax system is, broadly speaking, fair. This is what lies at the heart of this work.

Our work does not comment on the political aspects of taxation, such as what the appropriate tax rate should be, how the tax burden should be distributed across society, or how money entrusted to the government should be spent. Taxpayers will of course have views on these issues, but the forum for expressing these views is the political arena.

The underlying fairness of a tax system manifests in many ways, which go far beyond the political philosophies of designing any particular tax system. They apply in any tax system and thus in all tax systems. Fairness considerations manifest in the day-to-day operations of the tax system, the design and implementation of tax legislation, the rights of appeal, and many other aspects. It is to these points that our study is devoted.

We acknowledge that taxpayers have responsibilities under the tax system, and rightly so. A tax system which has no effective enforcement is a tax system in danger of collapse. History is full of examples of countries which have lost control of their tax systems, and the graphic consequences which result.

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Our experience, confirmed by our survey results, is that penalties alone are not sufficient to achieve a high level of taxpayer compliance. Faced with a tax system which is believed to be fundamentally unfair, taxpayers feel empowered to cheat the system and justified in doing so, and the more unfair the system, the more they will do so.

Even in an ideal tax system, there will always be taxpayers who will not comply fully with their responsibilities. But that is not the issue. Instead, the challenge is to get greater compliance, accepting that 100% compliance is not achievable in practical terms. Again this is where the concept of fairness arises.

Over the past several decades, the responsibilities placed on taxpayers have increased continuously, through ever more complex tax systems, anti-avoidance rules, increased disclosures, and an environment in tax legislation where constant change seems to be the norm. More is expected of taxpayers today than ever before. Taxpayer Responsibilities have increased while taxpayer rights have at best stood still. It can be argued that there are many instances where taxpayer rights have been watered down or ignored. Those responsible for drafting tax legislation have not seen a benefit to recognising additional rights of taxpayers. Quite the reverse seems to be true. This undermines the “good partner” approach to Tax Administration, and it has caused taxpayers and Tax Advisors alike to be cynical of this philosophy.

In our view, what is required is to bring Taxpayer Rights and Taxpayer Responsibilities to the forefront through a bold initiative to create a model Taxpayer Charter. This Taxpayer Charter which we have drafted for consideration and comment, is reproduced in this report in Chapter 2. It is, in our view, a balanced document in that it covers both Taxpayer Rights and Taxpayer Responsibilities. It is comprehensive in nature, dealing with all of the issues we believe to be relevant in a modern tax system. It is, in our view, capable of being adopted into domestic law, although the exact process for this may vary from country to country.

The provisions in the Model Taxpayer Charter were derived from a survey of Taxpayer Rights and Responsibilities in 37 countries, representing over 73% of world GDP. While the survey was not exhaustive, it was very comprehensive and the survey results, reproduced in Chapter 3, are indicative of the general state of Taxpayer Rights and Taxpayer Responsibilities around the world.

The Model Taxpayer Charter seeks to lay out Taxpayer Rights and Taxpayer Responsibilities in, broadly speaking, 20 different areas. Many of the provisions are already laid down in laws in certain of the countries which were surveyed, such as the right to appeal a tax assessment. However, certain of the provisions are more novel, and some are far reaching, and intentionally so.

Before designing the Model Taxpayer Charter, we considered whether existing Taxpayer Charters, or the rights granted to taxpayers under existing legislation, would be sufficient. If so, then why bother to create a Model Taxpayer Charter? We found that Taxpayer Rights, whether included in a Taxpayer Charter in place in a particular country, or ~~granted recognised under-by~~ legislation, had one or more of the following shortcomings:

- the Taxpayer Rights are not comprehensive in scope
- the Taxpayer Rights outlined in a Taxpayer Charter are not legally binding and, as a result, are largely ignored by taxpayers, Tax Advisors, and the Tax Administration alike
- where Taxpayer Rights are recognised, they do not go far enough, are listed in very general terms, and are not generally capable of enforcement
- the Taxpayer Charter is largely a policy statement issued by the Tax Administration which is focused mainly on enforcement, is self-serving, and not useful

- there is no attempt to hold the Tax Administration accountable to taxpayers
- there are no provisions dealing with drafting standards for tax legislation or a consultative process on amendments to tax laws

We are concerned that the initial reaction of Tax Administrations and governments to a comprehensive Taxpayer Charter may be negative. There will be concerns that the problems it will create for the further development and administration of the tax system will be considerable, and will outweigh any benefits to be derived. To this we would say that these concerns are overstated and moreover that this is not a short term fix and it will require effort and resource. But for countries prepared to take a bold step, the benefits over the longer term will be considerable in terms of improvement in compliance and acceptance of a balanced and equitable tax system.

We tested the provisions in the Model Taxpayer Charter against our survey results, to determine, broadly speaking, whether a particular country would support or not support each substantive provision. Not all provisions in the Model Taxpayer Charter were suitable for this analysis. The results are contained in the chart reproduced in Chapter 3 of this report. Looking horizontally across the chart shows the support or lack of support within the 37 countries surveyed for a particular provision in the Charter. Looking vertically down the chart gives a general overall impression of the situation of Taxpayer Rights and Taxpayer Responsibilities in a particular country.

It is important to note that every provision in the Model Taxpayer Charter has support in one or more countries surveyed. Therefore we conclude that none of the provisions in the Model Taxpayer Charter are radical and beyond the realm of reasonableness.

Our intent is to seek and collect input on the Model Taxpayer Charter, through an extensive worldwide consultation process, in order to refine it and produce a final product which reflects a global consensus.

Copies of the preliminary report have been sent to Ministers and Deputy Ministers of Finance and Revenue of the countries who participated in the survey. Copies have also been sent to the Parliament of the European Union, the OECD, the United Nations Fiscal Affairs Committee, the World Bank, the IMF, and certain other interested stake holders.

Collectively the participating organizations, being AOTCA, CFE and STEP, have directly or indirectly over 500,000 members who are Tax Advisors located in over 80 countries around the world. While there was not universal agreement among all of the survey participants on all matters, there was an overwhelming consensus that a Model Taxpayer Charter with the force of law would be hugely beneficial to all stake holders, being taxpayers, Tax Advisors, and the Tax Administrations alike. Recognising and enshrining comprehensive Taxpayer Rights in legislation will contribute substantially to both the perception and reality of fairness in the tax system. Placing statements of Taxpayer Responsibilities in an over arching document reinforces the proposition that taxpayers while holding rights must also shoulder responsibilities and do so in good faith.

Such a document may actually bring about the partnership philosophy of the taxpayer, the Tax Advisor, and the Tax Administration operating together. Consider that Taxpayer Rights are responsibilities for the Tax Administration and Taxpayer Responsibilities are rights of the Tax Administration. This mirror image of rights and responsibilities, laid out and acted upon in a balanced and constructive way, should enhance the relationships between all stake holders.

The Model Taxpayer Charter aims to be a balanced document that is constructive for all parties. It focuses objectively on Taxpayer Rights and Responsibilities, without favouring one party over another, and certain provisions apply both to taxpayers and to Tax Administrations. The following general statements are important in establishing the overall tone of the document.

- This Charter sets out the rights of a taxpayer in connection with tax levied by the State and the obligations of a taxpayer to the State as set out by law.
- The overriding purposes of this Charter are to foster a relationship of mutual trust, respect and responsibilities of taxpayers for their obligations to the State, and on behalf of the State as to the rights of taxpayers, to codify certain duties of the Tax Administration, and through these means to reduce the costs of compliance, increase the quality and efficacy of willing compliance, and ensure that all taxpayers are treated equally and without bias or preference.

The Model Taxpayer Charter sets out a large number of rights and responsibilities of taxpayers, and also Tax Advisors, many of which will already be part of the tax legislation or judicial procedures of a country. Among these, the most important may be viewed to be the following:

	Responsibilities	Rights
Introduction and purpose, and general provisions	<ul style="list-style-type: none"> • This Charter recognises the sovereignty of the State to levy tax in accordance with its laws and to administer such laws. • A taxpayer shall not use this Charter for frivolous purposes to delay, obstruct, or otherwise interfere with the due process of the State in levying tax in accordance with its law or the duties of a tax officer pursuant thereto. • Ignorance of the law shall not be used as a basis for non-compliance, non-payment of tax, or defence of a penalty. 	<ul style="list-style-type: none"> • A taxpayer shall be presumed to be honest and truthful unless there is evidence to the contrary. • A taxpayer shall be responsible to pay only the proper amount of tax as required by law. • Legislation shall provide for the relief of interest and penalties, the extension of filing deadlines and the time for making elections, for reasonable cause. • Tax laws shall not be used in a manner that is discriminatory among individuals by virtue of race, religion or occupation without due process of law and just cause. • Tax laws shall not be used to punish or fine a particular industry, occupation or sector without due process and just cause.
Filing of tax and information returns	<ul style="list-style-type: none"> • A taxpayer shall make a tax filing by the due date and in such manner as provided by law. • A taxpayer is responsible for the correctness of a tax filing whether or not another person (a tax advisor) has been engaged to prepare the tax filing on the taxpayer's behalf. • A taxpayer shall keep sufficient records to enable the information provided in the tax filing to be verified to the extent reasonable in the circumstances. 	The tax administration shall provide taxpayers with sufficient forms, guides and related information to enable a taxpayer to comply with the requirements under tax legislation.
Audit process	A taxpayer shall treat tax officers with respect and courtesy and shall cooperate with them in pursuance of their duties.	<ul style="list-style-type: none"> • A tax officer, in the course of an audit or enquiry, shall request from taxpayer only information that is reasonably applicable to the matters under review, and reasonably necessary in the circumstances. • Punitive provisions including penalty provisions should not be used as a negotiating tactic by a tax officer. • Where questions are asked by a tax officer, the purpose of the questions should be clearly disclosed so that a taxpayer is not asked questions which are misleading, intended to be deceptive or are self-incriminating.

Appeals process	Neither the taxpayer nor the tax administration shall deliberately seek to delay the appeal process.	<ul style="list-style-type: none"> • A taxpayer shall be entitled to a claim of privilege in respect of communications with a duly appointed tax advisor concerning communications between them related to a tax appeal. • A tax officer adjudicating an appeal shall act impartially and independently and shall recognise, but not be bound by, the administrative practices and interpretations of the State. • The taxpayer shall not be required to make a payment of tax, interest or penalties in respect of a matter that is under appeal unless the appeal is frivolous and without merit, in which case the reasons for such findings shall be disclosed to the taxpayer by a tax officer.
Service standards		The tax administration shall define service standards for its dealings with taxpayers, publish such service standards, and periodically provide a report on actual performance relative to such service standards, which service standards shall include the processing of tax returns, processing of requests for information, technical interpretations and rulings, waivers and clearances, and the disposition of appeals.
Rulings and Interpretations		Published interpretations of tax matters shall be binding on the State unless and until withdrawn.
Confidentiality		The tax affairs of a taxpayer shall be confidential and private and shall not be disclosed outside of the tax officers who are charged with handling the affairs of the taxpayer.
Drafting standards for tax legislation		<ul style="list-style-type: none"> • Tax legislation shall be written in clear and unambiguous language such that a taxpayer without specialised professional knowledge shall be able to understand the tax law with reasonable time, effort and study except for areas that would reasonably require specialised knowledge. • Where tax legislation is to be interpreted in accordance with its underlying tax policy then that tax policy shall be written in clear and unambiguous language.
Retroactivity of legislation		Legislation shall not be retrospective unless it is relieving in nature.
Interest and penalties		<ul style="list-style-type: none"> • A taxpayer shall not be charged a penalty for an error or omission made in good faith provided the taxpayer has exercised due diligence. • The penalty shall be of an amount or nature that is proportionate in relation to the surrounding circumstances giving rise to the penalty.
Voluntary disclosure	Reasonable deadlines may be imposed by the State in respect of a voluntary disclosure such that the process is completed within a reasonable period of time.	A process shall exist whereby a taxpayer may come forward voluntarily to a tax officer to correct deficiencies in past tax filings, whether the deficiencies were deliberate, done in circumstances amounting to gross negligence, negligence, or carelessness or through inadvertence or otherwise.
Legislative process and consultation		The legislative process shall provide for the opportunity for interested and affected parties and subject matter experts to provide comment prior to its passage.
Matters concerning tax advisors	The State may define requirements and procedures for who may represent a taxpayer as a tax advisor.	A taxpayer shall have the right to be represented by a tax advisor.

Breach of Charter rights		A taxpayer shall have recourse to complain and plead for an appropriate remedy in the event that a taxpayer's rights are not adhered to as laid out in this Charter through a suitable mechanism established by the State in its legislation adopting this Charter.
Tax avoidance, tax evasion and dishonesty	Tax evasion, being dishonesty, is never acceptable and will be subject to penalties and possible prosecution.	Tax avoidance legislation shall be drafted with sufficient clarity that its scope can be readily understood and discretion shall not be granted to the State beyond the specific words of the tax avoidance legislation.
Special European Union provisions		Any Taxpayer's Charter entered into by a Member State of the European Union shall acknowledge the force and primacy of the four fundamental freedoms of the European Union and shall recite the rights of the taxpayer identified and derived therefrom from time to time and the Member State shall assert its support of those rights.

We have included in the survey results contained in Chapter 3 extensive comments received from the persons who completed the survey. These make interesting reading, although many of the comments are specific to the country concerned and need to be read as such.

The survey results show that Tax Administrations, generally speaking, perform their duties to a high standard, particularly in the areas of providing support to taxpayers and in having an independent appeal process. Criticisms tend to lie more in the areas where taxpayers do not have clearly defined rights, such as input into the legislative process, and the drafting of tax law, rather than day-to-day conduct of Tax Administrations. However the trends towards placing an increasing compliance burden on taxpayers, increased complexity, and broadly worded anti-avoidance rules that undermine certainty, have all been noted in the majority of countries surveyed.

Chapter 4 considers a series of topics about Taxpayer Rights and Responsibilities, the highlights of which are the following:

- Taxpayer Rights have a basis in human rights, and are an essential part of a tax system that cannot be removed.
- Taxpayer Responsibilities are fundamental to the functioning of the tax system, but must be balanced with Taxpayer Rights in an equitable and understandable way.
- Past studies into Taxpayer Rights and Responsibilities have been largely inconclusive, and have resulted in broad generalisations, which, as a practical matter, have done little to further the relationship between taxpayers, Tax Advisors, and the Tax Administration.
- Taxpayer Charters in the past have been largely non-binding statements of general principles issued by Tax Administrations, and have, for the most part, not been overly useful or well received. In many cases, these Taxpayer Charters are either ignored entirely, or not well known. They are not effective in enhancing the perception of fairness of the Tax Administration.
- Taxpayers should be entitled to reasonable certainty in respect of their tax matters, both as to the interpretation of the tax implications of transactions and arrangements carried out and to provide closure through a statute of limitations. This principle of certainty is being increasingly eroded in several ways, including general anti-avoidance rules that are difficult to interpret, and exceptions to statutes of limitations.
- There are no generally agreed standards for drafting tax legislation, and the complexity of modern day legislation is becoming an increasing burden for taxpayers, Tax Advisors, and Tax Administrations alike. If this trend continues, it may result in a situation where a tax system becomes incomprehensible to virtually all and as a result, collapses. This is particularly the case in the international tax area.

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- A tax ombudsman is not an effective mechanism to resolve disputes between taxpayers and Tax Advisors on the one hand and the Tax Administration of the other. Accordingly the office of a tax ombudsman is not an answer to the issue of Taxpayer Rights and Responsibilities.
- While retroactive legislation is not commonly used by Tax Administrations across the world, most countries do not provide limitations on its usage, potentially resulting at worst in a denial of fundamental Taxpayer Rights, at best, an uneasy feeling that a State may use it as a last resort - as India is doing as we write.
- Specific Taxpayer Rights are granted through the fundamental freedoms of the European Union Constitution, but that said, this is a continuing source of tax litigation, and countries in the European Union have often been slow and resistant to reflect such provisions within their domestic tax systems.

Chapter 5 looks at the issues involved in adopting a Taxpayer Charter, and concludes that a Taxpayer Charter should be comprehensive, detailed, and its provisions in some form must have the force of law in order to be effective.

Chapter 6 concerns the consultation process related to this work, which will be an open process of dialogue and discussion with all interested stakeholders before a final report is produced. The Model Tax Treaty produced by the OECD has gone through extensive consultation processes and revisions over time, and it is anticipated that the Model Taxpayer Charter produced in this preliminary report will go through a similar process. What is most important now is to begin this constructive dialogue.

1-2 Introduction to the Study

In today's world, nobody could credibly dispute the right of a sovereign nation to levy tax according to its laws, such as they may be, and to administer and enforce its tax system. Such is a hallmark of sovereignty – the right to tax. Taxpayers have an obligation to comply with the requirements of such a tax system. These obligations are well known and include such matters as providing true and complete information, filing tax returns on a timely basis, paying tax without protest or offset, co-operating with the tax authorities in the administration and enforcement of the tax system, and so forth. In this process, certain rights of taxpayers have traditionally been recognised such as the right to dispute a tax assessment believed to be incorrect through an appeal process. Other rights include the expectation that a Taxpayer's affairs will be kept private, that a taxpayer shall not be subject to unreasonable search and seizure, and that a taxpayer's assets shall not be confiscated, seized or encumbered without due process.

It is clear as to why taxpayers have obligations. But for what reasons are their rights recognised? There must be some purpose, some benefit to a country in legislating to record Taxpayer Rights. The answer lies in the concepts of fairness and efficiency and as a consequence of adherence to the Universal Declaration of Human Rights (if not to it specifically, then at least to certain of its principles).

It is appropriate that a balance exist between Taxpayer Responsibilities and Taxpayer Rights, with the overriding goal being that the tax system of a particular country, whatever that system may be, should – broadly speaking – be fair. It is unrealistic to think that the relationship between taxpayers and the Tax Administration will invariably be a harmonious one, without conflict or dispute. Taxpayers can be expected not to part with their money easily and not without an exploration of all reasonable and legal ways to minimize and defer the tax outflow. It is, however, vitally important that taxpayers comply willingly. The trend in taxation is increasingly towards self-assessment, and this requires more than the forced and reluctant co-operation of taxpayers; indeed taxpayers should comply willingly and deal honestly in their tax affairs.

While one tool to achieve this is obviously the threat of penalties and sanctions, the evidence suggests this alone is not sufficient to achieve a high rate of compliance. In surveys conducted across the world, Tax Authorities are repeatedly surprised that a large percentage of the population would readily cheat in some way on their taxes given the opportunity despite the possibility of penalties.

While much of tax evasion takes the form of petty infractions, such as paying a tradesperson in cash to avoid sales tax, it nevertheless shows the challenges which Tax Authorities around the world face daily. It is not unreasonable that Tax Authorities have a s-skepticism of taxpayers; indeed taxpayers have a skepticism of the Tax Authorities.

Over the past several decades, the obligations placed on taxpayers have increased considerably in most countries across the world, as witnessed by the complexity of tax legislation, and the burden of tax compliance. But in the area of Taxpayer Rights, arguably less progress has been made. There is certainly no agreed upon worldwide standard for the rights of taxpayers which should be recognised and there is considerable variation.

It is for these reasons, among others, that we (AOTCA, CFE and STEP) began a project to explore Taxpayer Rights across the world, and the attitude of taxpayers and Tax Advisors towards the subject to Taxpayer Rights. Fundamentally, it is our belief that if taxpayers (and their Tax Advisors) had greater faith in the fairness of tax systems (in the areas of both administration and policy including legislation), all stakeholders would benefit. In this connection, we identified three fundamental stakeholders who have an interest in the tax system.

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The first is, of course, governments (including the Tax Administration), the second is, of course, taxpayers, and the third is Tax Advisors. In this connection, Tax Advisors have an important role to play as representatives of taxpayers in their dealings with the revenue authorities. As the number of taxpayers around the world required to self-assess grows, and the complexities of tax systems increase, a greater and greater responsibility will be shouldered by Tax Advisors. These people are on the front lines of tax practice every day, assisting taxpayers in complying with their tax obligations (and quite often making sure that they do so) while at the same time advising taxpayers on ways in which their tax burden may be legitimately minimized.

The complexity of tax systems demands that taxpayers with any degree of sophistication in their financial affairs involve a Tax Advisor to assist them, in much the same way that a patient seeks a doctor rather than opting for a self-diagnosis and a home remedy. Indeed between AOTCA, CFE and STEP, there are an estimated 500,000 Tax Advisors in over 80 countries with a vast knowledge of taxpayers, tax systems and Tax Administrations. We have drawn upon their knowledge and experience.

It is our view, most fundamentally, that enhancing the fairness of the tax system benefits all stakeholders. This can be done in many ways but one way which is simple, cost effective, and appropriate is through a Taxpayer Charter enacted into domestic law to enhance fairness.

There are precedents in the field of taxation for adopting an international standard, a model document for worldwide use.

As international trade developed, particularly after the First World War, it was recognized that the world needed an international tax system. A panel of experts was charged with developing this system, which ultimately came under the mandate of the OECD who developed a model international tax treaty. Countries have developed their international tax systems in harmony with this international tax treaty model, although there are of course variations. Clearly though, some form of standardization was called for, and the success of the endeavour speaks for itself.

The concept of fairness in a tax system is, in conceptual terms, a universal one. While taxpayer culture and psychology may vary from one country to another, there are, arguably, more similarities than differences. Our survey results show this.

We have surveyed 37 countries on the topic of Taxpayer Rights and Taxpayer Responsibilities. The survey we used is reproduced in **Appendix 1**. The list of organizations which responded to the survey and/or are members of AOTCA, CFE or STEP is reproduced in **Appendix 2**. These organizations collectively represent over half a million Tax Advisors, and their countries account for over 73% of the world's GDP. As one might expect, there was not universal agreement among the 37 countries who participated, but there is a broad consensus on a great number of important points. These are summarized in our report in Chapter 3.

Based from the survey results, we prepared a standard model of a Taxpayer Charter for consideration. In most cases, the provisions which are outlined in the Model Taxpayer Charter are supported within the laws of one or more of the countries which were surveyed. Furthermore, many of the provisions are supported by practice statements of revenue authorities in non-binding Taxpayer Charters released by them. The Model Taxpayer Charter so derived is outlined in Chapter 2.

Chapter 3 contains a matrix which correlates the provisions of the Model Taxpayer Charter with our survey results. This shows graphically our evaluation of the support or lack thereof for each Charter provision across the 37 countries surveyed. It will be seen that each Charter provision has one or more countries which support it.

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Our work is a work in progress, and hence the purpose of this preliminary report: to obtain feedback from stakeholders and interested parties around the world. We will consider this feedback with great interest, and take these comments into account before releasing a final report in 2013.

Unlike the supra-national government bodies and agencies around the world (the OECD, the World Bank, the United Nations, the European Union, associations of Tax Administrations, etc.), the tax community is just beginning to find its feet on the world stage. This project was funded with a mere \$30,000US and several thousand hours of volunteer time. Our work regrettably but necessarily may have shortcomings. However, we are hopeful that we have made a good start – a step in the right direction with the thoughts which we offer in this report. It is our hope that this initiative will resound around the world, producing better tax systems and a positive outcome in time for all mankind.

1-3 Study Methodology

The project is a three-way co-operation between AOTCA, CFE and STEP. Each organization contributed equally in terms of funding and resources, and each owns an equal interest in the project and any derivative rights or works including all data.

Originally the project was conceptualized as a study into Taxpayer Rights. However several such studies have been done in the past which, while interesting, have not led to tangible and concrete outcomes. It was also determined that Taxpayer Responsibilities should be reviewed as well as Taxpayer Rights, as collectively these form a balanced package. However the project has been taken will beyond this.

The project goes where no others have dared to tread, producing a comprehensive model Taxpayer Charter for consideration.

At an early stage in the project, it was determined that one conclusion might be to suggest that a model Taxpayer Charter be developed. But rather than leave things there, we then went ahead and developed one. A first version of this Taxpayer Charter was not released. It was used internally as a guide for construction of the survey which derived information about taxation in the 37 countries which participated. The results of the survey gave further guidance into matters to be addressed in the model Taxpayer Charter included in this report and led to certain revisions.

A website was created for the organization of the project, which was available only to participants. The survey questionnaire, included in **Appendix 1**, was loaded onto the website and participants completed the survey (one for each country) online. The website also compiled the results of the survey in tabular form, and listed comments which were given.

With 37 countries participating, and some 164 questions to be answered, together with comments in many cases, there were over 6,000 items of data to analyse and consider.

The survey questionnaires were completed by members of the member organisations of AOTCA and CFE and local branches of STEP in the countries represented. Each country took it upon themselves to answer the questionnaire as they saw fit, and the survey results have not been independently verified. It is noted that many of the questions and also the selection of answers offer a degree of latitude in interpretation. For this reason, the aggregate results have been included in this preliminary report, as opposed to all of the raw data. It should also be noted that the answers given to particular questions do not necessarily represent the view in all cases of AOTCA, CFE, or STEP, or their local affiliate organizations.

The survey results reinforced the strong desire to have a uniform model of a Taxpayer Charter, which could be adopted around the world. There was overwhelming (but not universal) support for the concept. This encouraged those working closely on the project to continue with this work, and to prepare this preliminary report for comment by interested stakeholders.

1 – 4 Contributors

Each of the contributing organizations nominated 3 persons to the Editorial Advisory Board, whose task was to advise on the project and review the preliminary report.

From AOTCA, these persons were David Russell (Author), Gil Levy (then President of AOTCA) and Thomas Lee (then Vice-President and now President of AOTCA).

Ian Hayes (Author), Rudolf Reibel (Fiscal and Policy Affairs Officer) and Stephen Coleclough (then President) formed the representatives of the Editorial Advisory Board for CFE.

Michael Cadesky (Author), David Harvey (Chief Executive) and Michael Young (then Chairman) represented STEP.

This group spoke regularly by conference call and sub-groups met on occasion in person.

Stephen Eaton, then a law student and now a practicing lawyer in Canada, was hired for the summer of 2011 and part time thereafter to assist with the project. He made many valuable contributions, including assistance with developing the survey (see **Appendix 1**) and compiling the chart which correlates the survey results and the Taxpayer Charter provisions (see Chapter 3). In addition, he compiled valuable research on the topic of Taxpayer rights and obligations, reviewed the survey results, and assisted in many other aspects.

Stéphane Cossetini, an employee of Cadesky and Associates LLP in Toronto, developed the web based applications for the project, including the web site used as a resource by the Authors and Editorial Advisory Board, and the survey which was completed electronically over the web. He also compiled the results of the survey in electronic form and made many other valuable contributions.

Large portions of the report were typed by secretaries at Cadesky and Associates LLP, particularly Nancy Chan, Marion Sedore, Sherry Collins and Veronica Ramsay. Louise Polcaro of STEP Worldwide acted as Consulting Editor for the preliminary report, reading the manuscript in its entirety and making many valuable comments and stylistic changes which improved its readability.

George Hodgson, Director of Policy for STEP Worldwide, provided valuable advice on the project as it developed, drawing upon his expertise in public policy work.

STEP Worldwide, through its office in London, England, acted as the Secretariat for the project, coordinating many of the administrative aspects including commissioning a publisher for the manuscript.

Grace Chow CA, FTIHK, CTA, TEP, a STEP Worldwide Council Member assisted the team in many aspects, including reading and commenting on early drafts of the model Taxpayer Charter. Richard Pease, a Vice-President of STEP, assisted in a number of ways, particularly in suggesting a methodology for approaching the study.

The survey was completed by volunteers from AOTCA, CFE and STEP numbering well over 100 people in all. Except where indicated, all of this work was provided on a voluntary basis (i.e. free of charge).

2 A Model Taxpayer Charter

2-1 Introduction

The results of our survey of Tax Advisors in 37 countries has indicated strong support for a Model Taxpayer Charter. Having reviewed those Taxpayer Charters currently in place in the countries surveyed, most contain useful elements which should be included in a model to be adopted. However such Taxpayer Charters typically have one or more of the following shortcomings:

- not legally binding;
- not comprehensive in scope;
- while listing certain Taxpayer Rights, these do not go far enough;
- the document is no more than a policy notice of the Tax Administration which is mainly focussed on enforcement;
- tax matters dealing with tax legislation are not addressed;
- there is no attempt to hold the Tax Administration accountable to taxpayers.

These comments are echoed over and over in Chapter 3 which details the results of the 164 questions posed to tax professionals in 37 countries.

For these reasons and others, the authors, with input from many sources, took it upon themselves to draft a Model Taxpayer Charter which could be adapted for use universally.

Chapter 4 and 5 outline the theory for measures contained in the Model Taxpayer Charter.

2-2 Organization of Model Taxpayer Charter

Any Tax Advisor with a background in international tax will immediately notice that the Model Taxpayer Charter resembles a model International Tax Treaty in its drafting style. However, this is where the similarities end since the Model Taxpayer Charter is a unilateral declaration, not a bilateral agreement. That said, the Model Taxpayer Charter should be no less effective.

The Model Taxpayer Charter is divided into Articles and Paragraphs. Each Article deals with a subject area, while the Paragraphs contain the specific provisions. Under each Paragraph or sometimes under the Article heading, there are explanatory notes which convey the intent of the Paragraph as seen through the eyes of those who drafted it. This is to aid in understanding of the provision.

2-3 Table of Contents

The table of contents of the Model Taxpayer Charter is shown below.

Article 1. Introduction and Purpose

Article 2. Definitions

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Article 3. What is covered?

Article 4. Who is covered?

Article 5. General Provisions

Article 6. Filing of Tax and Information Returns

Article 7. Assessment Process

Article 8. Audit Process

Article 9. Appeals Process

Article 10. Taxpayer Assistance

Article 11. Service Standards

Article 12. Rulings and Interpretations

Article 13. Taxpayer Records

Article 14. Confidentiality

Article 15. Tax Administration Generally

Article 16. Burden of Proof

Article 17. Drafting Standards for Tax Legislation

Article 18. Retroactivity of Legislation

Article 19. Double Taxation and Relief

Article 20. Interest and Penalties

Article 21. Voluntary Disclosure

Article 22. Legislative Process and Consultation

Article 23. Tax Levied Only by Virtue of Law

Article 24. Equality of Taxpayers

Article 25. Matters Concerning Tax Advisors

Article 26. Breach of Charter Rights

Article 27. Enforcement and Collection of Tax, Interest and Penalties

Article 28. Tax Avoidance

Article 29. Tax Evasion and Dishonesty

Article 30. Special European Union Provisions

Article 31. Enabling Legislation

Article 32. Implementation and Transition Issues

Article 33. Amendments to Charter

Article 34. Concluding Matters

2-4 Text of Model Taxpayer Charter

Article 1. Introduction and Purpose

1. **This Charter of Taxpayer Rights and Responsibilities may be cited as the Taxpayer Charter and within its text is referred to as the Charter.**

The full name of this document is the Charter of Taxpayer Rights and Responsibilities, emphasizing a balance between Taxpayer Rights and Taxpayer Responsibilities. However, for brevity it is cited as the Taxpayer Charter and within the text it is referred to as the Charter. The name is not to imply that it is a document which applies only to taxpayers. It is also applicable for the Tax Administration in carrying out its roles of raising tax revenue and administering the tax system of the State and to the State itself as well as all applicable political subdivisions.

2. **Where defined, terms used in this Charter have the meanings ascribed to them in Article 2.**

Certain terms are defined in Article 2. Otherwise, the terms are to be given their everyday meaning in the context of the laws of the State.

3. **This Charter sets out the rights of a taxpayer in connection with Tax levied by the State and the obligations of a taxpayer to the State as set out by law.**

This paragraph acknowledges that the Charter has a dual purpose for taxpayers: to set out the rights of the taxpayer in connection with Tax levied by the State and to also codify in one place the responsibilities of a taxpayer to the State as set out by law. The Charter is not intended to diminish any Taxpayer rights which may be recognised by law or judicial tradition over and above the rights provided in this Charter. The rights of the State are provided under its domestic law. The responsibilities of the State to taxpayers may be expanded and/or clarified by this Charter.

4. **This Charter recognizes the sovereignty of the State to levy Tax in accordance with its laws and to administer such laws.**

The Charter necessarily recognizes the sovereignty of the State to levy Tax in accordance with its laws and to administer such Taxes. This is a fundamental right of the State and the levying of Tax is a fundamental hallmark of the right of sovereignty. A taxpayer is expected to acknowledge the right of the State to lawfully levy Tax and to administer the tax system.

5. **The rights of a taxpayer under this Charter and the obligations of a taxpayer are to be taken together with each given appropriate weight such that one does not override the other.**

The Charter taken as a whole sets out a balanced model and should not be regarded as favouring the taxpayer or favouring the State. The provisions are to be regarded collectively and read as a whole, such that one does not override the other. The selective implementation of individual elements of the Charter while ignoring others carries with it the risk that the outcome may be neither fair nor balanced, and could amount to an abuse of the purposes of the Charter.

- 6. The overriding purposes of this Charter are to foster a relationship of mutual trust, respect and responsibilities of Taxpayers for their obligations to the State, and on behalf of the State as to the rights of taxpayers, to codify the behaviour and duties of the Tax Administration, and through these means to reduce the costs of compliance, increase voluntary compliance, and ensure that all taxpayers are treated equally and without bias or preference.**

This paragraph broadly speaking outlines the overriding purposes of the Charter. It is anticipated that under the Charter there will be benefits for taxpayers and benefits for the State. By promoting a fair tax system, and one which is based on mutual trust, respect, and acknowledgement of responsibilities on both sides, benefits should result both for the State and for taxpayers. Complying with the laws of the State in connection with the raising of Taxes is a fundamental duty of taxpayers. It is clear that taxpayers will be more likely to comply voluntarily with a system which is believed to be fair and equitable and one which treats them with respect. This will reduce the costs of compliance, increase voluntary compliance, and assist the State in the raising of tax revenues. At the same time, it is important that all taxpayers are treated equally, and without bias or preference.

This does not negate the ability of the State to develop legislation which provides incentives for various sectors of the economy, or gives particular treatment to certain taxpayers through the due process of law. However, and most fundamentally, in like circumstances, taxpayers are to be treated equally.

Article 2. Definitions

The definitions contained below apply in the Charter, for purposes of clarity, and are used throughout. Where terms are not defined in the Charter, they are given their meaning under the laws of the State, but are to be interpreted within the context of the Charter itself. It is noted that in certain instances it may be necessary to add additional definitions or modify certain terms to conform to the legal traditions of a particular State.

- 1. State – A sovereignty jurisdiction, including a political subdivision such as a state, province, municipality, or other duly constituted body.**

A State is defined to be a sovereign country, and includes a political subdivision such as a state, province, municipality or other body which may levy Tax by the law of that State. It is broadly defined. It is noted that where a country has multiple levels of government it may be necessary for each such level to recognize this Charter.

- 2. Taxpayer – A person who under the laws of the State may be liable to pay Tax to the State whether or not actually liable to Tax, including a person who is required to file a reporting form or disclosure to the State pursuant to laws concerning Tax and includes for greater certainty an individual, corporation, company, association, trust, estate, or other form of entity, whether or not resident in or constituted under the laws of the State.**

A taxpayer is defined as an entity whether or not liable to Tax, and whether or not resident in or constituted under the laws of the State. Thus it includes a non-resident as well as a resident. It also

includes a person who must file an information return pursuant to a tax statute. Thus in the broadest sense, a Taxpayer is a person who has a connection with the State related to tax matters.

- 3. Tax – An amount required to be paid pursuant to the laws of the State, calculated based on income, capital, value, production and any other similar basis for which a taxpayer receives no direct benefit and includes fees and levies of a similar nature whether called a tax or otherwise.**

Tax is broadly defined to include taxes, and fees levied of any nature which are in substance a tax. In this context, Tax includes income tax, value added tax, sales tax, customs duty, net worth tax, inheritance tax, gift tax, succession duties, estate tax, municipal tax such as property tax, any tax which is based on production or usage, including royalties paid in connection with the exploitation of natural resources, and any other type of tax, whether referred to as a tax or otherwise. It does not, however, include a fee which would not be viewed as a tax, such as a licensing fee for which a Taxpayer obtains a direct benefit or privilege.

- 4. Tax Filing – A form or informational filing including supplementary information provided therewith filed pursuant to the laws of a State concerning Tax.**

A Tax Filing includes a tax return as well as information provided for the purposes of assessment. In a self-assessment context, the taxpayer will provide a tax return which operates as an assessment. However, in the case of assessment by the State (typical with respect to property taxes, for example), the taxpayer provides information and the assessment is provided by the State. Accordingly, a Tax Filing is defined to encompass both of these situations, by including within the definition Tax Filing a provision of information.

- 5. Tax Administration – A government body or agency whose purpose is to administer Tax of the State.**

Tax Administration is an organization or agency of the State (as defined) charged with the raising of revenues and the administration of the tax system. It is important for reasons of disclosure and privacy that the Tax Administration be defined to exclude other government bodies not charged with this function, which are not entitled to information concerning a taxpayer derived through the activities of the Tax Administration.

- 6. Tax Officer – A representative of the Tax Administration.**

Tax Officer is a representative of the Tax Administration whether an employee or agent. This recognizes that in certain countries, the Tax Administration may be constituted separate from certain related government agencies or ministries, who may become involved and work in connection with the Tax Administration or retain persons under contract. An example would be the Ministry of Justice responsible for dealing with tax litigation through the court system. Such persons are considered Tax Officers where they are engaged by the Tax Administration. If the legislative function is separate from the Tax Administration, persons so engaged may be considered Tax Officers, but only if their activities extend to responsibilities directly related to a taxpayer.

- 7. Tax Advisor – A duly appointed representative of a taxpayer recognized by the State to act on behalf of a Taxpayer in matters concerning Tax.**

A Tax Advisor is a representative of a taxpayer whose function is to deal with tax matters on behalf of the taxpayer. The term includes any person who is recognized by the State to be a representative of a taxpayer, whether specifically licensed or not.

Article 3. What is covered?

Article 3 makes it clear that this Charter applies to Tax Filings, Tax, interest and penalties, as well as taxpayer records.

1. **This Charter applies with respect to all Taxes whether self-assessed or otherwise, interest in respect of such taxes and penalties, if assessed, and all rights of objection and appeal as well as all taxpayer records and Tax Filings.**

Article 4. Who is covered?

Article 4 outlines who is covered by this Charter, and this is written in the broadest manner, such that all taxpayers are to be included, as well as duly appointed Tax Advisors. Specific terms apply concerning Tax Advisors, which are covered under Article 26. Necessarily that means the Charter applies to States, Tax Administrations and Tax Officers in their dealings with taxpayers and Tax Advisors.

1. **The persons covered by this Charter include all taxpayers and their duly appointed Tax Advisors and, in their dealings with taxpayers and Tax Advisors, all States, Tax Administrations and Tax Officers.**

Article 5. General Provisions

Article 5 outlines general provisions concerning the Charter.

1. **A taxpayer shall be presumed to be honest and truthful unless there is evidence to the contrary.**

A taxpayer is presumed to be honest and truthful, unless there is evidence to the contrary. Accordingly, information provided by a taxpayer, and Tax Filings, are generally presumed to be correct and complete with respect to factual information provided, unless there is reason to believe that the information is incomplete, inaccurate, or misleading. This presumption of honesty and truthfulness is important, and represents a privilege afforded to a taxpayer which can be denied in the event of evidence to the contrary.

2. **A taxpayer shall not use this Charter for frivolous purposes to delay, obstruct, or otherwise interfere with the due process of the State in levying Tax in accordance with its law or the duties of a Tax Officer pursuant thereto.**

The provisions of this Charter are not to be used frivolously, meaning without foundation, particularly for delaying or obstructing the due process of enforcement of tax legislation by a Tax Officer carrying out duties on behalf of the State. Such actions on behalf of a taxpayer constitute an abuse of rights which justifies their being withdrawn. This is an important and fundamental provision to make sure that taxpayers cannot abuse the ~~privileges provided~~ **rights recognised** in the Charter to avoid or delay payment of Tax, interest or penalties which may be rightfully owing. Such actions might involve, for example, the filing of an appeal without merit, with the main purpose being to delay the payment of Tax, interest or penalties.

3. A taxpayer shall be responsible to pay only the amount of Tax as required by law.

A taxpayer shall be responsible for paying only the amount of Tax as required by law. Accordingly, a Taxpayer may plan tax affairs within the law and if the arrangements result in less Tax than what might otherwise be paid, then so be it. This does not, however, allow a Taxpayer to ~~circumvent~~ disregard anti-avoidance legislation.

4. Ignorance of the law shall not be used as a basis for non-compliance, non-payment of Tax, or defence against a penalty.

Ignorance of the law may not be used as a basis for non-compliance, non-payment of Tax, or the defence on a penalty. Taxpayers are subject to, and required to comply with, the law as it is written. A taxpayer cannot argue as a basis for non-compliance that the law is complicated, that the taxpayer was unaware of legislative amendments, or that the taxpayer is uneducated or is not proficient in the language of the State. The taxpayer may request the assistance of the State in fulfilling Tax Filings and may engage a Tax Advisor for assistance.

5. Legislation shall provide for the relief of interest and penalties, the extension of filing deadlines and the time for making elections for reasonable cause.

Legislation shall provide for the waiver of interest, penalties, the extension of filing deadlines and the deadlines for making elections for reasonable cause. It is left to the legislation of the State to determine what constitutes reasonable cause, either by encoding a definition in the legislation or through administrative or judicial traditions. Since ignorance of the law is not a basis for this, then the circumstances under which a reasonable cause argument may be entered are limited. This is an intended result, because otherwise the Tax Administration of the State can be undermined.

6. Tax laws shall not be used in a manner which is discriminatory.

Tax laws shall not be discriminatory by reference to race or religion, subject to very limited exceptions such as special tax exemptions which might be given historically to aboriginal people.

7. Tax laws shall not be used to punish or fine a particular industry, occupation or sector without due process of law and just cause.

Tax laws shall not be used as a punishment or fine directed towards a particular industry, occupation or sector of the economy, without due process and just cause. Therefore Taxes should not be levied at any particular group arbitrarily or for non-tax reasons. This is not to say that the State cannot levy Taxes directed at conservation, such as Tax on greenhouse gas emissions, which would fall broadly on certain sectors of the economy. This type of Tax is broadly based, and would follow due process of law and just cause. Similarly, a capital tax on financial institutions directed towards establishing an insurance fund for depositors would also reasonably fit within this provision. However, a specific Tax on corporate bonuses levied only on certain types of corporations or a particular sector, and not generally on others, would be viewed as discriminatory, and in the nature of a punishment or fine for which the tax system should not be used.

Article 6. Filing of Tax and Information Returns

This Article deals with the filing of tax returns and information returns, collectively called Tax Filings.

1. A taxpayer shall make a Tax Filing by the due date and in such manner as provided by law.

A taxpayer shall make a Tax Filing as shall be required without notification and by the due date and in such manner as the law may provide. Taxpayers are subject to, and required to comply with, the law with respect to their Tax Filing obligations. This may require for example that Tax Filings be made electronically.

2. **In the case of self-assessment, the taxpayer may be required to certify that the Tax Filing is true, correct and complete.**

Where taxpayer is required to make a Tax Filing in a self-assessment, the taxpayer is responsible for the accuracy of the Tax Filing and may be required to certify that the Tax Filing, which includes all supplementary information, is true, correct and complete. By this, a taxpayer has a duty to ensure that the Tax Filing is accurate and that all required information is provided.

3. **In the case of assessment by the State, the taxpayer may be required to certify that the information given for the purposes of assessment is true, correct and complete.**

Where an assessment of Tax is provided by the State, as is typical in the case of, for example, property tax assessment, the taxpayer is required to provide certain information for the purposes of assessment. In this case, the taxpayer does not certify that the Tax as calculated is true, correct and complete but may be required to certify that the information given for the purposes of assessment is true, correct and complete.

4. **A taxpayer is responsible for the correctness of a Tax Filing whether or not another person (a Tax Advisor) has been engaged to prepare the Tax Filing on the Taxpayer's behalf.**

Where a Tax Advisor has prepared a Tax Filing or prepared information for purposes of assessment by the State, the taxpayer is nevertheless responsible for the accuracy of the Tax Filing or the provision of information as if the Taxpayer had done so. Accordingly, a taxpayer cannot be relieved of a penalty or other responsibility, simply because a Tax Advisor has acted on behalf of the taxpayer. Thus a taxpayer's responsibilities cannot be discharged simply by placing such responsibility in the hands of a Tax Advisor. Taxpayers are expected to review Tax Filings and other information provided by a Tax Advisor, as if the taxpayer had made the Tax Filing or furnished such information. However the retention by a taxpayer of a suitably qualified Tax Advisor, and provision to that Tax Advisor of all necessary information for the purpose of the Filing, would ordinarily constitute reasonable care for the purpose of determining any level of penalty applicable in the event of inaccuracy of factual material or error of law associated with the Filing.

5. **A taxpayer shall be required to make only one Tax Filing in each instance and to send the required information only once, unless the Tax Filing or accompanying information is amended or supplemented.**

A taxpayer shall be required to make only one Tax Filing, and to send the required information only once, unless the Tax Filing or accompanying information is amended or supplemented. Accordingly, the State is responsible for the receipt, storage and safe keeping of Tax Filings and other information, and may not call upon a taxpayer to make a duplicate filing.

6. **The State shall provide clear instructions, guides, forms and information to assist a taxpayer in a Tax Filing or in providing information for assessment.**

The State shall provide clear instructions, guides, forms and other information to assist a taxpayer in the making of a Tax Filing or in providing information for the purposes of assessment. This is an

important responsibility of the State to assist taxpayers in discharging their responsibilities. In drafting legislation, the State must ensure that it can comply with these requirements. For example, complex legislation which requires calculations to be done by a taxpayer must be clearly outlined in forms and guides, so that a taxpayer can responsibly comply with the requirements. Legislation should be drafted with these requirements in mind.

- 7. A taxpayer shall use the forms provided by the State and shall make the Tax Filing in accordance with the instructions on those forms and in any accompanying guides.**

A taxpayer shall use the forms provided by the State and make Tax Filings in accordance with the instructions on those forms and any accompanying guides, to facilitate the processing of Tax Filings. A taxpayer may, however, either upon request or voluntarily also submit supplementary information to explain the basis of a Tax Filing where appropriate.

- 8. Subject to a taxpayer's rights of appeal, a taxpayer shall make payment of all Taxes, interest and penalties which are rightfully owing in accordance with the requirements of the legislation by the due date for payment and without protest or offset.**

A taxpayer shall make a payment of all Taxes, interest and penalties which are rightfully owing in accordance with the requirements of legislation by the due date for payment and without protest or offset. A taxpayer may not, for example, deduct an amount from Tax, interest or penalties which are rightfully owing, by way of offset. For example, if a taxpayer anticipates a refund from a particular Tax Filing, and has a payment under other Tax Filing, it is not permissible for a taxpayer to offset one against the other, unless the law provides for such an offset.

- 9. The Tax Administration shall not apply a refund of a taxpayer against a liability of the taxpayer under a different statute without specific legislative provisions enabling the offset.**

The Tax Administration shall not apply a refund of a taxpayer against the liability of the taxpayer under a different statute, unless the legislation specifically provides for such an offset. Thus the State shall not arbitrarily retain a refund of a taxpayer because a taxpayer owes or might owe Tax under another statute.

Article 7. Assessment Process

This Article deals with the assessment process itself. It is important that the assessment of Tax by the State be accurate, timely, and contain appropriate information.

- 1. The State shall provide an assessment of Tax following receipt of a Tax Filing or information received for assessment within a reasonable period of time and without undue delay.**

The State shall provide an assessment of Tax with all reasonable dispatch, meaning that the State shall ensure that reasonable processes are in place to produce the assessment on a timely basis. The State shall not, in the absence of the taxpayer's consent, deliberately withhold an assessment of a taxpayer for any reason. For example, absent such consent the State shall not withhold an assessment because the law concerning a particular issue is undecided, or a taxpayer is appealing another assessment.

- 2. An assessment shall show the computation of the Tax and the basis on which it was levied in sufficient particulars as to enable the taxpayer to understand the computation.**

An assessment shall show the computation of the Tax and the basis on which it is levied with sufficient particulars to enable the taxpayer to reproduce the computation, in order to verify its

accuracy. This is a fundamental responsibility of the State, and the State must ensure that sufficient systems are in place for this purpose.

- 3. Where in a self-assessment, an assessment differs from that calculated by the taxpayer, the reasons for the difference shall be outlined in the assessment in sufficient particulars as to enable the Taxpayer to comprehend the difference.**

Where a taxpayer makes a calculation of Tax in a self-assessment, and the calculation of the State differs from that of the taxpayer, the State must provide sufficient particulars, as well as the basis in law for the difference, so that the taxpayer can readily understand the computation by the State and the reasons for the difference. General statements by the State, such as the correction of a computation error or that the assessment is based on the information which has been provided, are not sufficient to justify the basis of an assessment which differs from that of the taxpayer. Specific details are to be provided as to the difference in the basis of the computation or the difference in the information which is used for the assessment.

- 4. Where the assessment levies interest or a penalty, the assessment shall show the calculation of the interest or penalty as the case may be in sufficient particulars as to enable the taxpayer to verify the computation together with the basis therefor.**

Where an assessment levies interest or a penalty, the assessment must show a detailed calculation of the interest or penalty together with the basis for the computation.

- 5. The State shall provide with the assessment notice details of the Taxpayer's Rights to appeal the assessment with such particulars of the process and applicable deadlines as shall be reasonable to enable the Taxpayer to make such an appeal.**

An assessment shall include a notice of the Taxpayer's Rights to appeal the assessment with sufficient particulars as to the process and the applicable deadlines as may be reasonable to enable the taxpayer to file an appeal should the taxpayer choose to do so. This does not mean that the specific details of exactly how to file an appeal need to be included with the notice of assessment, but the taxpayer must be directed to a source which is reasonably accessible to enable the taxpayer to obtain this information. In addition, the due date for filing the appeal must be clearly disclosed.

Article 8. Audit Process

An important aspect of a tax system is the audit and verification of a taxpayer's affairs. Accordingly, while maintaining the fundamental premise that a taxpayer is honest and truthful, unless there is evidence of the contrary, it is still appropriate for the Tax Administration to carry out enquiries and audits as it may see fit to do. This is an important deterrent to taxpayers who may not otherwise be honest and truthful in their Tax Filings. Important checks and balances are required in this process, to ensure that the objectives of the State are met, but that a taxpayer's rights are protected.

- 1. Where a taxpayer is requested to provide information in the course of an enquiry or audit, the taxpayer shall cooperate in providing the information on a timely basis and shall provide complete information and answer questions of fact truthfully and fully.**

A taxpayer shall cooperate in providing information on a timely basis in the course of an enquiry or audit by the Tax Administration. The information provided shall be complete and accurate, and questions of fact shall be answered fully and truthfully. A taxpayer must cooperate in this process, and not obstruct the process by delay, providing incomplete or misleading information, or through any other means.

2. A taxpayer shall be required to answer only factual information.

In the course of an audit or enquiry, the taxpayer shall be required to answer only factual information. Thus the taxpayer shall not be required in the course of an audit examination to answer questions of law.

3. Before commencing an audit or enquiry, a Tax Officer shall notify the taxpayer of the scope of the audit or enquiry, the issues which are being considered and the implications of the issues, and advise the taxpayer of the rights which the taxpayer has under legislation and under this Charter.

Before commencing an audit or enquiry, a Tax Officer shall provide reasonable notice to the taxpayer. This notice shall outline the scope of the audit or enquiry, the issues which are being considered, and the implications of the issues. For example, if the audit is directed at particular issues, the taxpayer should be advised of these issues and their implications. The taxpayer should also be advised of rights under legislation and under this Charter including the right to be represented by a Tax Advisor.

4. A Tax Officer in the course of an audit or enquiry shall request from a taxpayer only information which is reasonably applicable to the matters under review, and reasonably necessary in the circumstances.

A Tax Officer should request only the information which is reasonably applicable to the matters under review, and only to the extent that it is reasonably necessary in the circumstances. This limits the scope of the audit or enquiry, within what has been outlined to the taxpayer. This does not prevent the Tax Officer from considering other matters, but these matters should be outlined in a supplementary communication to the taxpayer where the scope of the audit or enquiry is broadened.

A taxpayer shall not be required to disclose information which is not reasonably necessary to the resolution of matters at issue. This is to be understood in the context of an audit or enquiry outlining the issues which are to be reviewed. Accordingly, a Tax Officer cannot request the disclosure of information which is not relevant, but of general interest. However, this provision does not limit a Tax Officer where there is a reason to believe that a taxpayer has not been honest in Tax Filings. Information obtained by a Tax Officer in the course of an audit or enquiry shall be treated with the same level of confidentiality as is afforded Tax Filings.

5. Punitive provisions including penalty provisions should not be used as a negotiating tactic by a Tax Officer.

A Tax Officer shall apply the law, without bias or preference, and for this reason shall not use negotiating tactics, such as the prospect of levying of a penalty, as a basis for obtaining a taxpayer's concurrence to adjustments being proposed. In keeping with the principle that the law should be applied as it is written, a Tax Officer shall not attempt to use an alternate and more onerous basis of assessment or a trade-off of issues, as the basis for resolving matters in dispute.

6. Where questions are asked by a Tax Officer, the purpose of the questions should be clearly disclosed so that a taxpayer is not asked questions which are misleading, intended to be deceptive or the answers to which may be self-incriminating or disclose confidential communications between the taxpayer and his or her Tax Advisors and the taxpayer may refuse to answer such questions.

In the course of an audit or enquiry, frequently questions are posed to a taxpayer, and such questions should relate only to issues of fact. Specifically, questions taxpayer should not be

misleading or intended to be deceptive or the answers to which may be self-incriminating. In such cases, a taxpayer is entitled to refuse to answer such questions or disclose confidential communications between the taxpayer and his or her Tax Advisors. Furthermore, the basis and purpose of the questions should be disclosed to the taxpayer.

- 7. In the course of an audit or enquiry, a taxpayer may request that all communication be in writing and that a Tax Advisor be present at meetings and other proceedings.**

A taxpayer may request that communication with a Tax Officer in the course of an audit or enquiry be in writing and that a Tax Advisor be present at meetings and other proceedings. A taxpayer may consult with a Tax Advisor before answering such questions, and sufficient time should be given to enable a taxpayer or a Tax Advisor to answer such enquiries. This is, however, not to be used as a means of delaying or obstructing the orderly conduct of the audit or enquiry.

- 8. A Tax Officer shall summarize the results of the audit or enquiry and provide a reasonable length of time for the taxpayer or a Tax Advisor to respond.**

A Tax Officer shall summarize the results of an audit or enquiry and provide an opportunity for the taxpayer or a Tax Advisor if so engaged to respond to such matters within a reasonable length of time. In general, a 30-day period will be considered appropriate for such a response, unless the matters are sufficiently complex or the information required is not readily available, in which case a longer time may be appropriate.

- 9. A tax assessment must be clearly justified by the facts and circumstances, and have a basis in law unless a taxpayer has failed to provide information reasonably required.**

A tax assessment must have a basis in law, which should be adequately explained. It is not appropriate for the State to make general statements as a basis for a tax assessment or reassessment, without sufficient particulars. For example, it is not permissible for the State to disallow a deduction on the basis that an amount was not reasonable in the circumstances, without stating why, in its view, such amount was not reasonable and why that conclusion justifies disallowance of the deduction. As another example, it is not permissible for the State to use as a basis for reassessment an internal policy or interpretation without clearly identifying the basis for same. It is also not permissible for the State to adopt alternate interpretations which are inconsistent with one another and generate multiple assessments of the same income among related taxpayers. However, these requirements are waived if a taxpayer has failed to provide information which is reasonably required, whereupon the State may make assessments provided they are reasonable in the circumstance. The State should clearly indicate the information which was required and not provided.

- 10. Where in the course of an audit or enquiry a Tax Officer of the State considers the application of a penalty, this shall be disclosed at the time the Tax Officer becomes aware of the circumstances which might justify the penalty.**

If in the course of an audit or enquiry, an Officer of the State becomes aware that a penalty might be applied, this should be disclosed by the Tax Officer at the time of becoming aware of the circumstances which might justify the penalty. The taxpayer must be informed of the possibility of a penalty, so that the taxpayer can take appropriate steps to consider the matter and to retain the professional assistance of a Tax Advisor if the taxpayer chooses to do so.

- 11. A taxpayer shall treat Tax Officers with respect and courtesy and shall cooperate with them in pursuance of their duties.**

A taxpayer shall treat Tax Officers with respect and courtesy and shall cooperate with them in pursuance of their duties, and shall not be uncooperative or obstructive. This is of fundamental importance to the relationship between a Taxpayer and the Tax Administration. Other provisions of the Charter deal with the manner with which Tax Officers are to treat a taxpayer, and contain more specific matters.

Article 9. Appeals Process

An appeal process is a fundamental Taxpayer Right, and specific provisions apply to the conduct of the Tax Administration and the Taxpayer in pursuance of a tax appeal.

1. **A Taxpayer's Rights of appeal in connection with an audit or enquiry producing a reassessment should be explicitly provided for by law and clearly explained.**

A taxpayer who wishes to challenge the decisions of a Tax Administration should have a clearly defined right to do so before an independent Court or Tribunal enshrined in legislation. That right, however, may be subject to the taxpayer first requesting, and the Tax Administration providing, an internal review of such decisions.

Following an audit or an assessment, a taxpayer's rights of appeal should be clearly explained.

2. **The State shall not deny a taxpayer the right of appeal or further appeal as part of a settlement agreement of part of a matter in dispute.**

A taxpayer shall not be denied the rights of appeal or further appeal as part of a settlement agreement. Thus in the course of an appeal, a taxpayer shall not be prevented from further appeal on matters which are unresolved, as a basis for the Tax Administration accepting a negotiated settlement on other matters.

3. **The taxpayer shall be provided with all relevant information on a timely basis by the State supporting the findings of the audit or enquiry upon request by the taxpayer in connection with an appeal except where there is a valid reason to withhold certain information (such as confidential information obtained from third parties).**

All information in the possession of the Tax Administration, other than certain information (such as confidential information obtained from third parties), shall be provided to a taxpayer in the course of an appeal. The Tax Administration shall not withhold such information as may be reasonably applicable to the taxpayer without valid reason which shall be disclosed to the taxpayer. Information so withheld may not be relied upon by the Tax Administration in the making of assessments or in any appeal therefrom.

4. **The period for requesting an internal review or filing an appeal shall be held in abeyance during the period that the taxpayer has requested but not received information in the possession of the State relevant to the assessment in dispute.**

The period for requesting an internal review or filing an appeal shall be held in abeyance during any period that the taxpayer has requested but not received information in the possession of the State reasonably relevant to the assessment which the taxpayer is considering appealing.

5. **A taxpayer wishing self-representation in an internal review shall be given reasonable assistance but not counsel.**

A taxpayer should be able to carry out a simple internal review by self-representation. It is important that an internal review be possible at a reasonable cost, and that a taxpayer is not dissuaded from carrying out an internal review due to the costs or time delays inherent therein. In particular, a taxpayer shall not be disadvantaged in carrying out an internal review due to self-representation by lack of familiarity with procedural matters. The taxpayer is, however, expected to conduct the internal review in an appropriate and professional manner.

- 6. A taxpayer shall be entitled to a claim of privilege in respect of communications with a duly appointed Tax Advisor concerning communications between them related to technical issues of tax appeal.**

Communications between a taxpayer and a Tax Advisor, whether or not a practicing lawyer shall be subject to a claim of privilege. Thus communications between a taxpayer and a Tax Advisor, such as the formulation of technical arguments, are not subject to discovery by the State.

- 7. A taxpayer shall not be entitled to costs in respect of an internal review but may in the judicial process as may be reasonable given all relevant factors.**

A taxpayer shall not be entitled to an award of costs in carrying out an internal review but may if the matter proceeds to a Court or Tribunal.

- 8. An internal review shall be heard by a Tax Officer who is independent of the audit or enquiry.**

An internal review shall be heard by a Tax Officer who is independent of the audit or enquiry. However, the State may request further information from the original Tax Officer as may reasonably be necessary, or that additional steps and procedures be carried out, in order to assist with the review.

- 9. A Tax Officer adjudicating an internal review shall act impartially and independently and shall recognize but not be bound by the administrative practices and interpretations of the State.**

The Tax Officer shall be impartial and independent of the audit function, and shall not be bound by the administrative practices and interpretations of the State as a basis for rendering a decision, if in the opinion of the Tax Officer adjudicating the appeal such administrative practices or interpretations are incorrect or not applicable.

- 10. The taxpayer shall not be required to make a payment of tax, interest or penalties in respect of a matter which is under internal review or appeal unless the grounds relied upon are frivolous and without merit, or if recovery of the assessed tax is at risk, in which case the reasons for such findings shall be disclosed to the taxpayer by a Tax Officer.**

A taxpayer shall not be required to make a payment of tax, interest or penalties in a matter which is validly under internal review or appeal. However, this requirement is waived if the grounds relied upon are frivolous and without merit or if recovery of the assessed tax is at risk. In these circumstances, the reasons for such a finding shall be disclosed to the taxpayer who may contest such a conclusion through the judicial process.

- 11. A taxpayer shall not use the internal review or appeal process to delay the payment of tax, interest or penalties without a reasonable basis in law.**

A taxpayer shall not use the appeal process to delay the payment of tax, interest or penalties without a reasonable basis in law. This reasonable basis should be provided in documentation or other evidence furnished by the taxpayer or a Tax Advisor to the State as a basis for the appeal.

- 12. On an appeal to a court of first instance, a taxpayer shall be entitled to self-representation and to such reasonable assistance as may be required in the circumstances; in particular, the taxpayer shall not be disadvantaged in respect of procedural matters by reason of self-representation.**

A taxpayer shall be entitled to self-representation and to such reasonable assistance as may be required in the circumstances. It is important that a taxpayer be able to conduct an appeal to a court in circumstances where this is justified. For example, if the State chooses to take forward a test case, where the amounts of Tax in question would not normally warrant prosecution of this matter to the courts, a taxpayer may be entitled to costs on a party-and-party basis.

- 13. Where a test case is brought before the courts, a taxpayer may but is not obligated to be bound by the results of the test case.**

Where a test case is brought before the courts, a taxpayer may agree to be bound by the results of the test case but is not obligated to do so. This addresses a number of issues concerning test cases. One of such issues is to prevent the State from taking forward a test case with facts generally unfavourable to the taxpayer which may not necessarily be a fair hearing of this issue.

- 14. Neither the taxpayer nor the Tax Administration shall deliberately seek to delay the appeal process.**

The appeal process should proceed without undue or deliberate delays.

- 15. The taxpayer having filed a request for an internal review shall have a right to request a meeting with a Tax Officer charged with determining such matter at a time and place reasonable in the circumstances.**

This provision provides a taxpayer with a fundamental right which is the right to be heard.

Article 10. Taxpayer Assistance

A taxpayer shall have the right to request and receive reasonable assistance from the Tax Administration. The rights to such assistance are laid out in this Article 10.

- 1. A taxpayer shall have the right to be heard and responded to and to receive such assistance as may be reasonable to carry out a Tax Filing.**

The taxpayer shall have the right to be heard and responded to where a taxpayer makes to request for assistance in accordance with the procedures made available by the Tax Administration. A taxpayer's request cannot be ignored and must be responded to on a timely basis.

- 2. The Tax Administration shall be required to provide assistance as to the application and interpretation of tax laws but shall not be required to provide planning advice to a taxpayer.**

The Tax Administration shall provide up to date guides, forms, and other written materials to assist the taxpayer in compliance with Tax Filings. However, the Tax Administration is not required to initiate communication with taxpayers, provided such information is readily available in the public domain.

- 3. The Tax Administration shall provide taxpayers with sufficient forms, guides and related information to enable a Taxpayer to comply with the requirements under tax legislation.**

Given the complexity of modern tax law, it is a responsibility of the Tax Administration to help taxpayers and Tax Advisors comply with tax law through providing reasonable assistance in various ways.

4. **The Tax Administration shall keep such forms, guides and information, up-to-date and generally accessible to taxpayers.**

The Tax Administration is responsible for keeping forms, guides and instructions up to date and accessible to taxpayers.

5. **Tax Officers must know and apply the law as is applicable in pursuance of their duties.**

Tax Officers shall be familiar with the law in respect of the areas with which they are involved. They shall attend sufficient training programs such that they are knowledgeable in the relevant areas. Technical experts may be trained in particular areas involving more complex matters.

6. **A Taxpayer shall be entitled to reasonable information concerning past tax records in possession of the State.**

A taxpayer shall be entitled to records concerning past filings which shall be maintained by the State. This shall include such carryforward information as may be necessary and relevant to taxpayers.

Article 11. Service Standards

Reasonable standards of service should be defined and published by the Tax Administration in its dealings with taxpayers. Just as Taxpayers are accountable to the Tax Administration, so the Tax Administration must be accountable to the State and to the taxpayers to whom a service is provided. This Article seeks to define in general terms such service standards.

1. **The Tax Administration shall define service standards for its dealings with taxpayers, publish such service standards, and periodically provide a report on actual performance relative to such service standards which service standards shall include the processing of tax returns, processing of requests for information, technical interpretations and rulings, waivers and clearances, and the disposition of appeals.**

The Tax Administration shall define service standards for its dealings with taxpayers, shall publish such service standards, and shall periodically publish an evaluation of its actual performance relative to its service standards. These service standards shall be set out in sufficient detail to enable the general public to understand them, giving a breakdown by activity and location. Serious deficiencies in the actual realization of service standards should be published and investigated, outlining, where applicable, the causes for the deficiency and the remedial action being taken. Aspects of the Tax Administration which cannot provide adequate service over a sustained period of time should be changed. This may potentially require amendments to legislation.

Service standards should specifically deal with the time for processing of tax returns, requests for adjustment, requests for information, the processing of technical interpretations and rulings, the processing of waivers and clearances, and the disposition of tax appeals. This is not intended to be a complete list of what may potentially be relevant, which will vary from State to State, and the type of tax system which is applicable. As a fundamental and overwriting standard, delays on the part of the Tax Administration should not be allowed to interfere with the daily conduct of business.

2. **The Tax Administration shall publish the results of its audit programs including the number of taxpayers audited, the general nature of the taxpayer (i.e. individual, company, resident, non-**

resident etc.), the revenue raised, the duration of the audit program, and the approximate cost of each program annually.

The Tax Administration shall publish the results of its audit programs, giving details of the number of taxpayers audited, the general nature of the taxpayers, the revenue raised, the duration of the audit program if it is not ongoing, and the approximate cost of administration of each program. This information will be sufficiently general that it does not reveal the identities of taxpayers, or provide information which might be used by taxpayers to avoid being selected for audit. Fundamentally, it is to provide an accountability for the audit activities of the Tax Administration, which will be relevant for many purposes, including rationalization of the costs to taxpayers of compliance.

3. **The Tax Administration shall not be responsible for verbal information but shall put such advice in writing if requested in writing to do so in which case the Tax Administration is responsible for the accuracy of such information.**

The Tax Administration shall not be responsible for verbal advice, because such advice is easily misinterpreted, but shall be responsible for the accuracy of information put in writing. The Tax Administration must use due care in the information provided to taxpayers, particularly if this information could be relied on to a taxpayer's detriment. Further specific provisions are outlined later in the Charter dealing with Technical Interpretations and Rulings.

Article 12. Rulings and Interpretations

Rulings and interpretations of tax law provided by the Tax Administration are an important component of the tax system. Taxpayers seek clarity and certainty with respect to their transactions and arrangements. At the same time, a rulings and technical interpretations function can provide guidance to Tax Officers in carrying out their duties. Anti-avoidance legislation is often a reason for seeking a technical interpretation or ruling, because frequently the application of these provisions is judgemental, on the part of the Tax Administration. The provisions of this Article address rulings and technical interpretations.

1. **The Tax Administration shall not maintain secret positions on the interpretation of legislation, and where the Tax Administration adopts a position on the interpretation of legislation, it shall be published and made generally available to taxpayers and Tax Advisors.**

If the Tax Administration adopts a position on interpretation of legislation, it shall be published and generally available to taxpayers and Tax Advisors, and shall not be kept secret. The public interest is not served by maintaining secret positions on tax legislation.

2. **A taxpayer or a Tax Advisor may apply for a technical interpretation on a matter, and the Tax Administration shall normally respond within a reasonable period of time.**

A taxpayer or a Tax Advisor may apply for a technical interpretation on a matter, which shall be provided within a reasonable period of time. However, if the matter is under litigation, is the subject of a tax appeal which is ongoing, or is a matter upon which the Tax Administration has not adopted a position, it is permissible for the Tax Administration to respond without giving an interpretation. It will be unfair and prejudicial for the Tax Administration to be required to provide an analysis on a matter which is currently the subject of litigation, or for a taxpayer to request a technical interpretation on a matter which is currently under dispute with the Tax Administration.

3. **A rulings process shall be in place whereby a taxpayer or a Tax Advisor may apply to the Tax Administration for a ruling on the operation of the taxation law as it affects a taxpayer, and seek internal review of or appeal an unfavourable ruling.**

Comment [DR1]: Should we address also secret information, e.g. comparables in a transfer pricing dispute? Maybe in the appeals section rather than here.

Comment [I2]: I suggest we wait for the revision once we have heard views from Revenue authorities. I agree the use of comparables is a significant matter

A rulings process shall be in place whereby a taxpayer or a Tax Advisor may request a ruling with respect to a particular transaction or series of transactions. In contrast to a technical interpretation which is general in nature, a ruling is specific to the facts as presented. The Tax Administration shall be bound by the ruling which is given, unless the actual facts of the taxpayer are different to those stated in the ruling request, in such a way that the rulings given are affected.

The rights of a taxpayer to internal review of and appeal against an assessment should apply also to an unfavourable ruling given to a taxpayer.

4. **Such a ruling shall be binding on the Tax Administration to the extent of the specific rulings given or arising from internal review or appeal, unless the facts are subsequently found to be materially different in respect of the reasonable application of the positions in the ruling.**

5. **Published interpretations of tax matters shall be binding on the State unless and until withdrawn.**

Published interpretations shall be binding on the State and the State may not argue a contrary position in dealing with the affairs of a taxpayer, unless and until the published interpretation is withdrawn. This places a heavy onus on the Tax Administration to keep technical interpretations and published positions up to date which is as it should be.

Article 13. Taxpayer Records

A fundamental responsibility of a taxpayer is to keep appropriate records so that a taxpayer's financial affairs can be verified on audit. These records must be generally available to a Tax Officer in order for the Tax Officer to carry out duties on behalf of the Tax Administration. Failure to keep adequate books and records or to provide the required information to enable a taxpayer's income to be verified within any applicable limitation period should always be construed against the taxpayer. This overrides the general presumption of honesty of a Taxpayer.

1. **A taxpayer shall keep sufficient records to enable the information provided in the Tax Filing to be verified to the extent reasonable in the circumstances.**

A taxpayer shall keep sufficient records to enable the information provided in a Tax Filing to be verified and failure to do so may be relied upon the Tax Administration in support of an assessment. However, this is subject to materiality, as may be reasonable in the circumstances. This recognizes that there may be limitations on the extent to which detailed records may reasonably be kept, particularly in dealing with small business. No adverse conclusion should be drawn from the fact that a taxpayer has not retained records beyond any applicable limitation period ordinarily applicable to Taxpayers in the same class as the taxpayer.

2. **A taxpayer shall not be subject to unreasonable search and seizure without due process of law.**

A taxpayer shall not be subject to unreasonable search and seizure without due process of law, which will normally require a search warrant signed by a judge or a Justice of the Peace. This recognizes that search and seizure is an extreme sanction, and should only be carried out where there is evidence to suspect dishonesty.

3. **Where a taxpayer's records are seized by the State, a copy shall be made immediately to the extent that the seizure may impair the taxpayer's ability to carry on a business or occupation.**

Where a taxpayer's records are seized by the State, a copy is to be made or the records made available to the taxpayer, where failure to do so might impair the taxpayer's ability to carry on a

business or an occupation. This recognizes the importance of records to a taxpayer, and efforts must be made to enable the taxpayer to carry on the business or occupation in such circumstances.

Article 14. Confidentiality

Confidentiality is an important right of a taxpayer, and any Tax Filings are to be kept confidential by the Tax Administration. Failure to do so can have commercial as well as social and ethical consequences. Thus this is an important right of taxpayers and specific provisions are necessary to protect the confidentiality and privacy of taxpayers.

1. **The tax affairs of a taxpayer shall be confidential and private and shall not be disclosed outside of the Tax Officers who are charged with handling the affairs of the taxpayer.**

The tax affairs of a taxpayer are to be kept confidential and private. They are not to be disclosed outside of the Tax Officers who are charged with handling the affairs of the taxpayer. Only the Tax Officers who are charged with handling the affairs of the taxpayer are entitled to have access to a taxpayer's Tax Filings and related information. Thus Tax Officers in general are to be restricted in their access to a taxpayer's filings and other information. This prevents Tax Officers from viewing a taxpayer's information for curiosity. This is particularly important with respect to persons who may have a high public profile, celebrities, and persons of political sensitivity. This does not however prevent international information exchange.

2. **The affairs of the taxpayer shall not be assigned to Tax Officers who have a connection to the taxpayer or are specifically known to them outside of their dealings as a representative of the State.**

Tax Officers who have a connection to a taxpayer or are specifically known to such persons outside of their dealings as a representative of the State, should not have access to a taxpayer's confidential information, nor should such persons be assigned to any tasks associated with a taxpayer who is specifically known to them. This does not prevent carrying out audit activities with respect to persons who are generally known to Tax Officers by virtue of being public figures.

Article 15. Tax Administration Generally

The Tax Administration has the responsibility to enforce the tax laws of the State and to collect Taxes on behalf of the State, and must be unrestricted as far as possible in its ability to do so. Having said this, a balance is necessarily appropriate with respect to a taxpayer's rights, and Article 15 seeks to strike this important balance.

1. **The Tax Administration of the State has the responsibility to enforce the tax laws of the State and collect Tax on behalf of the State.**

This paragraph confirms that the Tax Administration has the responsibility to enforce the tax laws of the State and to collect Tax on behalf of the State in accordance with the laws of the State.

2. **The Tax Administration shall apply the tax laws of the State as they are written without bias or exception and shall have no ability to vary therefrom without a basis in law.**

The Tax Administration shall apply the laws of the State as they are written without bias or exception and shall have no ability to vary therefrom without a basis in law. Thus the Tax Administration cannot grant exemptions unless there is discretion to do so, nor can it levy additional Tax in any way, unless the basis is clearly identified in the law. This is important to maintain the integrity of the tax system.

Comment [I3]: Should we record that the Tax Administration may reach an agreement with a taxpayer for the settlement of the tax liability with a taxpayer provided such agreement meets pre-identified criteria and are capable of independent review/

Comment [DR4]: Inclined to agree, but why the requirement for independent review if the parties are in agreement?

- 3. The Tax Administration may carry out programs of audit and enquiry into particular industries, sectors of the economy, occupations or professions, and, generally speaking, using taxpayer profiles, but only for valid reasons related to the administration of the tax system.**

The Tax Administration may carry out audit programs, but may not target a particular taxpayer or group of taxpayers except for valid reasons relating to the administration of the tax system. Audit programs may be directed at particular industries, sectors of the economy, occupations or professions. The audit programs may also use taxpayer profiling (risk profiling), provided these programs are broadly based. Failure to recognize this principle may result in taxpayers being unreasonably targeted and even harassed.

- 4. The foregoing shall not prevent the Tax Administration from carrying out an audit or enquiry into a group of Taxpayers where there is reasonable justification.**

The Tax Administration shall not be prevented from carrying out audits and enquiries into a particular group of taxpayers where there is sufficient justification. For example, if it is known that a particular group of taxpayers have participated together in tax avoidance or tax evasion activities, the Tax Administration shall not be prevented from targeting such a group.

- 5. The Tax Administration shall respond to arguments put forward by a taxpayer with sufficient detail and reference to tax legislation as is reasonable in the circumstances including where appropriate a reasoned analysis of the taxpayer's facts and the interpretation of applicable legislation to the Taxpayer's circumstances.**

The Tax Administration shall respond to reasonable arguments put forward by a taxpayer and shall give sufficient details and references to tax legislation as may be reasonable in the circumstances. The Tax Administration shall give a reasoned and appropriate analysis of a taxpayer's facts, and the interpretation of legislation applicable to a taxpayer in its particular circumstances. It is important that the Tax Administration engage in meaningful discussions with a taxpayer, and not present arbitrary reasoning or interpretations as to the application of tax legislation. Failure to do so can result in a taxpayer being forced to proceed through the judicial system where not reasonably be necessary. It is also, at worst, an abuse of power.

- 6. The Tax Administration shall compile and publish statistics of reasonable detail with respect to the Tax levied under the tax legislation including the revenue raised and the Tax relieved by applicable deductions.**

The Tax Administration shall compile and publish statistics with reasonable detail as to the Tax levied under tax legislation including the revenues raised and the Tax relieved by applicable deductions, credits and so forth. These statistics shall be published in reasonable detail, as a matter of public interest. Systems shall be put in place to allow for the compilation of such information. Taxpayers in general have a right to know this information. This is also important in the formulation of tax legislation. Lastly, having such information available contributes to an overall sense of fairness and a respect for the tax system.

- 7. A taxpayer shall be entitled to have communication with the State in any official language which has the force of law in the State as applicable to the taxpayer at the taxpayer's choice but that choice of language shall not be altered by the taxpayer without reasonable cause.**

A taxpayer is entitled to a choice of official language for communication with the State where the State recognizes more than one official language. However, the taxpayer shall not arbitrarily change the choice of language, without reasonable cause, as such will contribute unnecessarily to the administrative burden placed on the Tax Administration and may result in unnecessary delays.

- 8. If a taxpayer is not proficient in an official language used by the State the taxpayer may employ the services of a Tax Advisor in respect of dealings with the State.**

A taxpayer who is not proficient in an official language of the State may employ the services of a Tax Advisor in respect of dealings with the State. A taxpayer shall not be discharged of responsibilities to the State by virtue of not being proficient in an official language. This results partially from the fundamental principle that ignorance of the law is no excuse. The law is written in an official language of the State, and while the choice of official language is a fundamental right of a taxpayer the right does not go beyond this.

Article 16. Burden of Proof

The burden of proof typically rests upon a taxpayer to prove the facts and the application of the law to the facts in question. This is generally applicable in tax systems because the taxpayer is in the best position to advance the facts, having access to the information. This presents a higher threshold to a taxpayer than to the Tax Administration, but for appropriate reasons. Having said this, there are exceptions, which must be recognized in particular circumstances, such as the levying of a penalty or the application of the statute of limitations. Also the State is in the best position to present the policy intent of legislation.

- 1. A statute of limitations on audit and reassessment shall be clearly stated, with the burden of proof on the State in any matters which result in the normal statute of limitations being extended.**

In matters concerning the statute of limitations, the burden of proof to assess beyond the normal statute shall be on the State. This recognizes that the normal statute of limitations is to be generally applicable to all taxpayers, with it being the exception that the period be extended, usually for reasons of a misrepresentation.

- 2. The burden of proof to demonstrate the applicability of anti-avoidance legislation shall be on the State.**

Tax avoidance legislation often makes reference to the policy intent of legislation or hypothetical alternative transactions into which a taxpayer may have entered. The burden of proof to clearly demonstrate the policy intent of legislation upon which the assessment of a tax avoidance provision may be based and of any factual matters relied upon in support of that provision (such as alternatives open to a taxpayer) shall rest on the State.

- 3. In any appeal of the penalty the burden of proof to justify the penalty rests on the State and in particular the State is required to prove the facts for the justification of the penalty.**

A penalty is a sanction which is levied in addition to the Tax which would normally be due. Because of the nature of a penalty, the burden of proof to justify a penalty rests on the State.

Article 17. Drafting Standards for Tax Legislation

In many States, there are no specific standards for the drafting of tax legislation. The State is free to draft whatever legislation it sees fit and in whatever way it is traditionally done. This, however, can undermine the fairness of the tax system, and the respect that taxpayers and Tax Advisors have for the system. Accordingly, certain minimum standards should be applicable to the drafting of tax legislation. Article 17 lays out these standards.

- 1. Tax legislation shall be written in clear and unambiguous language such that a taxpayer without specialized profession knowledge shall be able to understand the general provisions of the tax law**

with reasonable time, effort and study except for areas that would reasonably require specialized knowledge.

Tax legislation shall be written in clear and unambiguous language. The standard is to be that a taxpayer without specialized professional knowledge shall be able to understand the law provided the taxpayer spends reasonable time, effort and study in this endeavour. This is an overriding principle, which should be enforced, and may require that certain tax legislation be rewritten. Extensive cross-referencing, use of double negatives, exceptions to exceptions, and legislation which is scattered throughout the statute all contribute to the complexity of the legislation, leading to the inability of taxpayers to understand the legislation. The use of forms, guides, interpretations and other resources provided by the Tax Administration are useful, but are not sufficient as a substitute for legislation which is written clearly and unambiguously. However, this does not apply as a standard for specialized areas, such as corporate reorganizations, or specialized industries, such as banking or mining.

2. **Legislation shall not permit interest or a penalty to be levied if it is not reasonably possible for a Taxpayer acting diligently to comply with the legislation without incurring interest or a penalty.**

Taxpayers should be reasonably able to comply with legislation without incurring interest or a penalty, because otherwise the fairness of the tax system is undermined. If it is not reasonably possible for a taxpayer to comply without incurring interest or a penalty, then the legislation is badly conceived. This puts a high onus on the State in the drafting of legislation which is appropriate. With the sovereign right to levy tax comes the responsibility to do it properly.

3. **Legislation shall be introduced only through the due process of law, and shall not be effective until the legislation is enacted into law.**

Legislation shall be introduced only through the due process of law, and shall not be effective until the legislation is enacted into law. Because of this, legislation shall not be applied until it is passed into law. Thus administrative announcements by the Tax Administration about purposed law cannot carry the force of law and are of no legal effect. Further provisions apply under Article 18 with respect to retroactivity of legislation.

4. **If the legislation has the effect of levying additional Tax through an increase in the base for taxation, an increase in the tax rate, or the reduction or denial of deductions the revenue projected to be raised shall be disclosed with the legislation.**

When new legislation is introduced, a reasonable estimate shall be given of the additional tax revenue to be raised or the revenue to be relieved from the legislation. It is the responsibility of the State to provide an estimate of tax revenues along with the legislation which is to be enacted.

5. **Where tax legislation makes reference to other laws, those laws shall be referred to in the tax legislation with sufficient particulars to enable an understanding to the law and not merely incorporated by cross-reference.**

Where legislation makes reference to other laws, those laws shall be summarized in the tax legislation. They shall not be incorporated, merely by cross-reference. Otherwise, it becomes difficult for a taxpayer to understand the tax legislation without extensive research into these other laws. While this may contribute to the length of the tax legislation, this is viewed as being worthwhile when compared to the alternatives.

6. **Where tax legislation is to be interpreted in accordance with its underlying tax policy then that tax policy shall be written in the tax legislation in clear and unambiguous language.**

Where tax legislation is to be interpreted in accordance with its underlying tax policy, that tax policy shall be written in clear and unambiguous language in the legislation itself. It shall not be reproduced in notes, committee discussions, interpretations which may accompany the tax legislation, or headings. Tax legislation is often changed as it works its way through the legislative process, and accordingly the underlying tax policy may be altered from what was originally intended. Reference shall especially be made in tax avoidance legislation to the underlying tax policy. It is of benefit both to the State and to taxpayers for the tax policy to be clearly understood in the context especially of tax avoidance. Note that the burden of proof for interpreting tax legislation should rest upon the State with respect to anti-avoidance legislation where a taxpayer is considered to have entered into an avoidance type transaction which is contrary to the policy of the legislation and thus may have it re-characterized.

7. Provisions of tax law which are no longer of relevance shall be removed from the tax legislation.

Tax laws which are no longer of relevance shall be removed from the tax legislation. These are generally referred to as “deadwood provisions”. This enhances the readability of the tax legislation, and shortens the legislation itself. It reduces complexity in the legislation.

8. Tax legislation shall be ordered in the tax legislation in an organized and logical manner, such that a subject may be viewed in a readily accessible way and to the extent that other provisions are applicable, these shall be cross-referenced to aid in understanding the legislation.

Tax legislation shall be drafted in an organized manner. Laws which deal with a particular matter shall be contained in the same general area of the tax legislation. Where this is not practical, there should be cross-referencing to aid in the understanding of the legislation. Otherwise, the taxpayer reading the legislation may be unaware of a provision which may be applicable in a different area of the legislation and, taken to an extreme, it would be necessary to read the entire taxing statute before a taxpayer could completely understand the provisions which are applicable.

Article 18. Retroactivity of Legislation

It is generally inappropriate for tax legislation to be retroactive. This breaches a fundamental right of a taxpayer to organize the taxpayer’s affairs, and undermines the fairness of the tax system. Accordingly, limits should be placed on retroactive legislation.

Retroactivity in tax terms takes two forms, changes which apply prospectively but to arrangements completed in the past, and changes which apply retrospectively which alter the tax liability which attached to the completed arrangement prior to the legislation coming into effect.

1. Legislation shall not be retrospective unless it is relieving in nature.

Legislation shall not be retrospective, unless the legislation is relieving in nature. Accordingly, a State may pass retrospective legislation which is generally a benefit to taxpayers, but not if it is detrimental. Legislation is considered retrospective if it applies prior to its enactment. It may, however, apply to arrangements entered into after it is announced but before the legislation has been enacted, provided the revenue to be raised is prospective and the announcement is fairly reflected in subsequent legislation.

2. Where legislation has the effect of causing something to be subject to Tax which was not previously so subject or change the tax consequences flowing from completed transactions, transitional rules should be provided to enable a fair and reasonable transition.

Reasonable transitional rules shall be provided where legislation has the effect of causing something to become subject to Tax or change the tax consequences flowing from completed transactions, in order to allow taxpayers to reorganize their affairs appropriately. For example, if a State did not previously tax an item of capital gains, transitional rules may provide for an adjustment to the cost of property equal to fair market value at the date the legislation became applicable.

Article 19. Double Taxation and Relief

Double taxation is widely considered unfair and prejudicial to taxpayers and often one of the most unpopular aspects of the tax system. Accordingly, methods should provide for the elimination of double taxation as far as possible. This may be done through an exemption system, a tax credit system, or a system of tax deductions. All of these systems will potentially work to relieve double taxation if drafted appropriately. The method by which double taxation is relieved is not, in itself, of consequence, provided the end result is that double taxation is eliminated or taken into consideration appropriately in the tax system.

Double taxation can arise in many ways. The following are examples:

- Tax is levied on a corporation, and again on the distribution of profits or on the liquidation of the corporation at the shareholder level without any appropriate mechanism to mitigate double taxation.
 - Tax is levied on more than one taxpayer in respect of the same component of income, or in respect of capital gains, possibly through the denial of appropriate adjustments to the cost base of assets.
 - Income is taxed in a foreign country and also domestically, without relief being given for the foreign tax which is paid.
1. **Legislation shall provide for relief of double taxation, through an exemption or tax credit mechanism or as may be suitable in the circumstances.**

Article 20. Interest and Penalties

Interest and penalties are sanctions applied against a taxpayer for failure to make payments when due, or for conduct which fails to comply with tax legislation. Because the payment of interest and penalties are sanctions in addition to the Tax which is normally levied, particular provisions should apply to interest and penalties to ensure that a taxpayer is treated fairly.

1. **The taxpayer shall pay interest as may be calculated and such penalties as may be duly levied in accordance with the law of the State.**

A taxpayer shall pay interest as may be calculated and such penalties as may be levied in accordance with the laws of the State, meaning that there is no prohibition, as such, on the right of the State to assess interest or levy penalties. However, such matters should comply with the further rules outlined below.

- 2. The State may charge interest on late payments of Tax, and the State shall pay interest on overpayments of Tax with the rate of interest and the calculation basis being the same whether the amount is owing to or from the State.**

The rate of interest charged on late payments of Tax should not exceed the rate of interest paid on overpayments of Tax, and the calculation basis should be the same. Failure to do so results in a bias in favour of the State. This is inappropriate and unfair. One justification for this by the State is the fact that the State incurs bad debts, and the credit worthiness, in general, of taxpayers is less than that of the State. However, this results in a majority of taxpayers paying for the delinquency of a few. Also, the uneven playing field is commonly made worse because interest paid on taxes owing is not deductible to the taxpayer but interest is taxable. This is also unfair but might be justified somewhat on the basis that taxpayers need some deterrent to encourage timely payment of tax.

- 3. Where a penalty is assessed, the basis of the penalty must be clear and unambiguous in legislation and the basis for the justification of the penalty must be disclosed by the State.**

Where a penalty is assessed, the basis of the penalty must be clear and unambiguous in the legislation. In the event of doubt, the penalty should not be assessed or should be reversed. The basis for the justification of the penalty must be disclosed by the State with sufficient particulars. Note also that the burden of proof to justify a penalty rests with the State.

- 4. A taxpayer shall not be charged a penalty for an error or omission made in good faith provided the Taxpayer has exercised due diligence.**

Penalties are increasingly becoming commonplace in the tax system. This is inappropriate, because a penalty is an additional sanction levied on top of the Tax which is lawfully due. Accordingly, a penalty shall not be applied where a taxpayer has acted in good faith and exercised due diligence. This shall apply to all manner of penalties.

- 5. The State shall have the ability to mitigate or waive a penalty in appropriate cases.**

Legislation shall provide that the State have the ability to mitigate or waive a penalty where, for example, a taxpayer has acted diligently and reasonably. Put another way, a taxpayer should not be levied a penalty without reasonable cause.

- 6. Where a penalty results by virtue of a taxpayer not reasonably being able to comply with a requirement under legislation, then provided the taxpayer can substantiate with reasonable detail the reasons for this, then the penalty shall be waived.**

Where a taxpayer is reasonably unable to comply with the requirements of legislation, then if the taxpayer can substantiate this with reasonable detail, any penalty levied shall be waived. If, for example, a taxpayer does not have information reasonably necessary to report a component of income, because such income is unavailable by the due date for filing a tax return, and subsequently the information becomes available, no penalty should result. This is beyond the taxpayer's ability to comply. Another example may be where third party tax information is provided to a taxpayer which is subsequently amended, resulting in an understatement of the taxpayer's tax liability.

- 7. The penalty shall be of an amount or nature which is reasonable to the circumstances giving rise to the penalty and where a penalty is of a level to be considered appropriate to a criminal action, the State shall demonstrate that all the rights of the taxpayer have been protected and due process has been followed.**

A penalty shall not be of an amount or nature which is patently unreasonable in relation to all of the surrounding circumstances which have given rise to the penalty. It is therefore not appropriate for a penalty of a large amount (say 20% of assets, for example) to be levied for failure to file an information return, especially where the failure was due to inadvertence. While a penalty is to act as a deterrent and also a punishment, the punishment must be appropriate to the circumstances. In addition, only one penalty should apply per infraction. Failure to do so violates the principles of fundamental justice.

8. **No penalty shall be levied where the circumstances surrounding the penalty do not involve fault, recognizing that a penalty is a sanction applied in addition to the Tax lawfully due.**

A penalty shall only be levied where it involves fault. No penalty shall be applied where a taxpayer is not at fault.

9. **Interest payable to the State by a taxpayer, and interest owing by the State to the taxpayer, may be offset against one another by the State.**

Typically interest payable to the State by a taxpayer is not deductible for tax purposes, but interest owing by the State and paid to the taxpayer is taxable. This introduces an undue bias into the tax system, and an offset mechanism should be provided to prevent the State from receiving an undue windfall in tax revenue.

Article 21. Voluntary Disclosure

A voluntary disclosure process is of considerable importance in the administration of a tax system to enable a taxpayer to correct past filings and deficiencies. Failure to provide for such an approach to the Tax Administration may often perpetuate a taxpayer's deficiencies, and encourage the taxpayer to continue with this course of conduct. The process must be accessible, well-known, and free of recrimination. At the same time, the process should not be viewed as a tax amnesty, or enable a taxpayer to obtain a materially better result than might have been the case had the taxpayer been compliant. Thus, a delicate balance is necessary to ensure that the tax system is fair, encourage and increase voluntary compliance, but make sure that a taxpayer cannot unduly obtain a benefit from non-compliance.

1. **A process shall exist whereby a taxpayer may come forward voluntarily to a Tax Officer to correct deficiencies in past Tax Filings, whether the deficiencies were deliberate, done in circumstances amounting to gross negligence, negligence, or carelessness or through inadvertence or otherwise.**

A voluntary disclosure type of process shall exist whereby a taxpayer may come forward voluntarily to correct deficiencies in past filings. This shall apply whether the deficiencies are deliberate or not, done in circumstances amounting to gross negligence, negligence, or carelessness or through inadvertence. When using the voluntary disclosure process, a taxpayer shall not be required to detail the circumstances for the deficiency, except to factually present the items of deficiency in past Tax Filings, and to correct them. The background as to why the deficiencies occurred is not relevant.

2. **Where a taxpayer comes forward with a voluntary disclosure, it shall be complete in all material respects failing which it shall be invalid.**

A taxpayer choosing to use the voluntary disclosure process shall make a disclosure which is complete in all material respects, failing which the disclosure shall be invalid. Thus, if a taxpayer does not make a complete and truthful disclosure, and it is determined that the disclosure is

incomplete, the entire voluntary disclosure shall be disregarded and the taxpayer may be subject to penalties and prosecution as provided by law.

- 3. Under a voluntary disclosure, a taxpayer shall be able to make such elections and designations as would have been available had the taxpayer made these on a timely basis but not so as to allow retroactive tax planning.**

A taxpayer shall be entitled to make such reasonable elections and designations as would have been available had the taxpayer filed on a timely basis. However, this does not allow retroactive tax planning, which must be defined according to the circumstances. The taxpayer may make such elections and designations as would reasonably have been made had the Tax Filings been made on a timely basis containing all of the required information.

- 4. Under a voluntary disclosure, penalties for under-reporting income may be mitigated or waived.**

Under a voluntary disclosure, penalties for under-reporting of income or claiming of excessive deductions may be mitigated or waived but interest may still be charged on the Tax which is owing.

- 5. Reasonable deadlines may be imposed by the State in respect of a voluntary disclosure such that the process is completed within a reasonable period of time.**

A taxpayer shall proceed forthwith with completing a voluntary disclosure and provide all required information within a reasonable time as may be specified by the State. The failure to provide this information and proceed diligently shall render the voluntary disclosure void, and the taxpayer may be liable to prosecution in the normal course.

Article 22. Legislative Process and Consultation

Persons who draft tax legislation may benefit from the advice and experience of others. Furthermore, by allowing interested parties and subject matter experts to have input into the legislative process, it is likely that a better overall result will be obtained. Certainly, it will be perceived that the process is fairer than if consultation was not permitted. This is not to say that the State must accept the advice and recommendations it hears, and it is recognized that certain representations may be self-serving (from lobby groups, trade associations, etc.). Also, it should be recognized that not all persons will necessarily agree with legislation, particularly if it narrows deductions, closes tax loopholes, introduces tax avoidance legislation, or raises tax rates.

- 1. The legislative process shall provide for the opportunity for interested and affected parties and subject matter experts to provide comment prior to its passage.**

The legislative process shall permit opportunity for interested parties and subject matter experts to be consulted and provide input. Such persons would act in an advisory capacity only, with no authority to influence the legislation. It is important that the process be an open one, which is perceived as being fair and reasonable. The period for consultation should be sufficient to enable meaningful input. Adequate time and attention should be given to submissions, which should be in writing, published and widely accessible.

- 2. Legislation which is not passed in a timely manner shall be reintroduced into the legislative process, modified or abandoned, as best suits the circumstances and the tax policy objectives of the State.**

Legislation which is not passed in a timely manner should be abandoned and modified or reintroduced, as fitting in the circumstances. It is not appropriate for legislation to be pending for a lengthy period of time, which introduces confusion and uncertainty.

Article 23. Tax Levied Only by Virtue of Law

Tax, along with interest and penalties, shall only be levied by due process of law. Thus, Tax may not be levied based on pending legislation, or by regulations which have not been enacted by the legislative process of the State. The Tax levied also have a basis in law and should not be arbitrary or determined by discretion of a Tax Officer.

1. **Tax shall be levied only by virtue of law.**

Article 24. Equality of Taxpayers

1. **All taxpayers shall be equal before the law.**

It is important and fundamental that all taxpayers be treated equally before the law. Accordingly, no bias or prejudice is to be shown to any taxpayer over another, regardless of the taxpayer's size, status, worth, importance to society, political or social standing or other criteria. The State may, however, grant exemptions to certain taxpayers, such as non-profit organizations or religious orders, charities, pension funds, government agencies, schools, hospitals, etc., and this does not violate the principle of equality. The principle is, however, violated if taxpayers of the same basic category (for example, individuals or profit-making corporations) are treated fundamentally differently without just cause and due process of law.

Article 25. Matters Concerning Tax Advisors

Tax Advisors play an important role in assisting taxpayers with Tax Filing requirements, interpretation of legislation, resolution of tax disputes, and other related matters. Because of the significance of this role, special provisions apply with respect to Tax Advisors. The term "Tax Advisors" is defined, and reference should be made to that definition. A Tax Advisor does not include an employee of a taxpayer when acting in that capacity.

1. **A taxpayer shall have the right to be represented by a Tax Advisor.**

A taxpayer shall have a right to be represented by a Tax Advisor in dealings with the Tax Administration. A Tax Officer shall respect this right, and direct correspondence and communications to the Tax Advisor, along with the taxpayer, upon request.

2. **The State may define requirements and procedures for who may represent a taxpayer as a Tax Advisor.**

The State may define licensing requirements for recognition of a Tax Advisor. Many States have seen fit to do so, because of the privileges afforded a Tax Advisor, and to make sure that the Tax Advisor is suitably qualified to represent the taxpayer. Acting as a Tax Advisor involves certain responsibilities, including a thorough knowledge of the areas of tax law concerning which the Tax Advisor will advise the taxpayer. Accordingly, it is reasonable for the State to consider reasonable licensing requirements for who may serve a taxpayer as a Tax Advisor. Note also that a taxpayer is ultimately responsible for the actions of a Tax Advisor, and protection of the public interest requires that a Tax Advisor practise to a high standard.

3. **A taxpayer shall have the right to be represented by a Tax Advisor, except that in judicial proceedings the Tax Advisor shall be a lawyer where the judicial system requires this.**
4. **A Tax Advisor shall have authority to certify tax returns and information filings on behalf of a taxpayer and negotiate arrangements on behalf of the taxpayer if specifically authorized to do so, and in such a case, this authorization is binding on the taxpayer, and the Tax Advisor shall be treated as if it and the taxpayer were one and the same.**

A Tax Advisor may be given the authority to certify Tax Filings on behalf of a taxpayer. The Tax Advisor shall be treated as if it was the taxpayer who certified the Tax Filing. Accordingly, a Tax Advisor may be charged a penalty in certain situations, but only to the extent that the Tax Advisor knew or should reasonably have known (after making such enquiries as would be reasonable in the circumstances) of materially incomplete or incorrect facts or has made a gross error in law. A Tax Advisor may also be charged a penalty for mistakes resulting from culpable conduct.

Article 26. Breach of Charter Rights

1. **A taxpayer shall have recourse to complain and plead for an appropriate remedy in the event that a taxpayer's rights are not adhered to as laid out in this Charter through a suitable mechanism established by the State in its legislation implementing this Charter.**

Because of the diversity of legal traditions in countries across the world, it is not appropriate for the Charter to specify how a taxpayer may enforce Charter rights. What is important is that there be a reliable and accessible route open to a taxpayer to pursue. If the Charter is doing its job, these situations should be quite rare.

Article 27. Enforcement and Collection of Tax, Interest and Penalties

1. **A Taxpayer shall be able to present for consideration a payment arrangement with respect to unpaid Taxes, interest and penalties in circumstances of financial hardship.**

Little is to be gained by bankrupting a taxpayer due to a tax debt where a payment arrangement might be satisfactory to all. Therefore the taxpayer has a right to present a payment arrangement in circumstances of financial hardship which the Tax Administration should consider but is not obliged necessarily to accept.

Article 28. Tax Avoidance

1. **Legislative measures directed to denying tax effectiveness to otherwise legal transactions whose purpose is principally directed to the reduction of taxation liabilities of particular taxpayers and which are artificial, blatant and contrived are appropriate measures to maintain the integrity of the taxation system.**

This provision affirms that tax avoidance legislation whether specific or general is a valid approach to counter artificial, blatant and contrived tax reduction arrangements. However, a reasonable balance is needed that the paragraphs below seek to achieve.

2. **Such measures need to recognise both the purpose of many provisions of taxation law which afford taxation relief to taxpayers who enter into transactions as an incentive for them to do so, and also the legitimacy, within clearly defined limits, of taxpayer choice of the form of transactions and business structures which the taxpayer will adopt.**

Tax avoidance legislation should not deny a taxpayer the benefit derived from incentives provided in the legislation or the benefit of reasonable choices among alternative transactions or business structures. The applicable doctrine of when a general anti-avoidance rule will become actionable will vary from country to country. However, the threshold should be a high one since the taxpayer has otherwise complied with all requirements of the tax legislation.

3. **Tax avoidance legislation shall be drafted with sufficient clarity that its scope can be readily understood and discretion shall not be granted to Taxation Officers beyond the specific words of the tax avoidance legislation.**

What is most important in practical terms concerning tax avoidance laws is that they be clear, well known, and not open to the discretion of the Tax Administration or, worse yet, particular Tax Officers. Taxpayers are entitled to reasonable certainty in their tax affairs. Broadly worded tax avoidance legislation which give wide discretion in interpretation is unfair.

Article 29. Tax Evasion and Dishonesty

1. **Tax evasion being dishonesty is never acceptable and will be subject to penalties and possible prosecution.**

Tax evasion is fundamentally a crime against the State. However, the term needs clarity because it is easy to blur the line between tax planning, tax avoidance and tax evasion. Thus aggressive but honest tax planning may be tax avoidance but as long as appropriate disclosure is made, it is not tax evasion.

Article 30. Special European Union Provisions

Any Taxpayer Charter entered into by a Member State of the European Union shall acknowledge the force and primacy of the four fundamental freedoms of the European Union and shall recite the rights of the Taxpayer identified and derived therefrom from time to time and the Member State shall assert its support of those rights.

Member States of the European Union are committed to four freedoms enshrined in the treaties of accession and of the European Union. The four freedoms are the right to free movement of goods, people, services and capital. Within the European Union, litigation before the Court of Justice of the European Union has and is defining exactly what these freedoms mean for taxpayers within Member States.

As a result some of the provisions within this model Taxpayer Charter are already established rights for EU Taxpayers and deal not just with the relationship between the taxpayer and the Member State of residence, incorporation or belonging but also with any relationship with any other Member State or States and with issues associated with operations cross border within the EU.

Whilst these rights already exist and therefore are not derived from a Charter, the recital of the rights and the stated acceptance of the primacy of the fundamental freedoms within the Charter will mean that there is no confusion or doubt that the Member State willingly and positively upholds the pre-existing rights and any that should subsequently be determined by the CJEU.

Article 31. Enabling Legislation

[Depending on how the Charter is implemented, there may be a need for enabling type legislation to be contained within the Charter so that it can easily be integrated with domestic law.]

Article 32. Implementation and Transition Issues

[Where the Charter is to be adopted, there will be an implementation period, which may take several years for the State to comply with all of the requirements. There will be issues of matters which are in process, and systems which will require changing. In certain cases, parts of legislation may need to be rewritten. All of this will require time, and therefore the provisions of the Charter may be introduced in stages.]

Article 33. Amendments to Charter

[It will be easy for the State to amend the Charter or revoke it entirely. Some provisions need to be inserted to prevent easily watering down the terms of the Charter. Since it is normally not possible to bind the legislative process, nor is it likely that a State would agree to be so bound, probably the best that can be expected is a statement about notice, intent, public discussion etc. and due process if amendments to the Charter are being considered.]

Article 34. Concluding Matters

[This Article is reserved for any other matters which may be particular to a certain State, and not dealt with in other terms of the Charter.]

3 Taxpayer Charter Survey

3-1 Introduction

At the heart of our study into Taxpayer rights and obligations is the survey which was conducted of 37 countries, the largest study of its kind, we believe, ever carried out. The data from this survey remain the property of AOTCA, CFE and STEP. This chapter provides a summary of those results. Reference can also be made to the questionnaire in *Appendix 1*. Note that not all countries answered every question, for various reasons.

3-2 Correlating Survey Results and Charter Provisions

The colourful mosaic chart containing over 3,200 squares depicts our evaluation of how nations might currently treat the provisions of our Model Taxpayer Charter. Based on the answers to the questionnaire that tax professionals from 37 different countries gave, we were able to identify in broad terms which provisions would currently be followed (and which provisions would not).

Creating a useful chart required that answers be simplified for quick visual comprehension. Often users had the opportunity to give qualified responses such as “Somewhat Yes” and “Somewhat No.” For the sake of simplicity these were omitted from the chart and converted into their unqualified form. When a professional responded with “Somewhat Yes,” the chart depicts them as “Yes,” and the same is true for the “No” responses.

We used Green to represent when a country currently operates under an identified charter provision. Red represents when the country would not support the provision. Yellow means that we were unable to form a view or the question was not applicable and white means that no response was provided to the question.

The Taxpayer Charter includes both Rights and Responsibilities, and to separate Rights from Responsibilities we simply bolded on the left the Charter provisions that are rights, and left untouched the responsibilities.

Countries are represented by their country codes as indicated in the legend.

This chart is intended to be indicative only, and should not be viewed as empirical evidence which has been verified. Judgment was exercised in determining the classifications and a closer examination of each matter in depth might lead to different answers.

Viewed horizontally the chart shows the overall views of 37 countries about a particular Charter provision (the more green, the more widely followed). Viewed vertically, it shows the position of a country on all the Charter provisions listed (the more green, the more the country would likely follow the provisions).

In this chapter we have reproduced certain comments made but have not reproduced all comments given, for reasons of length.

A. This question addresses the Nature of Taxpayer Rights.

1. How are Taxpayer Rights set out?

16 countries indicated that Taxpayer Rights are set out to some extent in constitutional law. Interestingly, with the exceptions of Hong Kong and Russia, all of these countries are in the European Union.

12 countries indicated that Taxpayer Rights are included in general (i.e. non-tax) legislation of the country. Also, virtually every country has certain Taxpayer rights contained in tax legislation. One would expect this result, since legislation dealing with the appeal of tax assessments and tax reassessments, for example, would be laid out in tax legislation.

23 countries indicated that Taxpayer Rights are also addressed in a non-binding statement of principles issued either by the tax authority or through some other document. The following quotations are noteworthy.

Poland "The Constitution states that any tax imposition has to have a legal basis in the statutory law (nullum tributum sine lege). Some Taxpayer rights are also derived from the constitutional principle of democratic state of law. However, the Taxpayer rights are set out mainly in the tax legislation, and in particular in the Tax Code. Besides, also non-tax legislation (The Act on Freedom of Economic Activity) grants certain rights to the Taxpayers."

United Kingdom "There are various rights set out in Statute and the tax law also requires the tax authority to develop and publish a Charter, though the Charter itself is not in statute."

Australia "We have a non binding Taxpayer's Charter in Australia however Taxpayers rights of objection and appeal are set out in legislation. Where the law is not working as intended the ATO will issue Practice Statements setting out administrative policy."

B. These questions deal with Taxpayer Charters.

2. Is there an explicit Taxpayer Charter in your country?

13 countries indicated that there was an explicit Taxpayer Charter. Certain countries which answer "No" to this question stated that certain Taxpayer Rights are included in the tax code itself. Certain countries indicated that their domestic law did at one point contain a Taxpayer Charter, but this was replaced by a practice statement.

Belgium	"Although there has been a so-called "Taxpayer Charter" enacted by the law of 4 August 1986, one cannot consider that there is a Taxpayer Charter in Belgium at present because most of the provisions of that law have been superseded by more recent legislation and/or have been incorporated in other tax laws. Therefore, there is no "Taxpayer Charter" as such, but the rights of Taxpayers are enacted in legislation and in regulatory provisions."
Germany	"Some say the tax code could be regarded as a German Taxpayer Charter since it contains fundamental rights of tax such as the right to confidentiality and secrecy (example: §§ 30a, 31,31 b)."
Finland	"No explicit Taxpayer Charter exists but certain principles laid down in relation to certain (substance) topics."
Vietnam	"Regulations on Taxpayers are stipulated generally in the Law on Tax Administration and other related tax regulations."
Poland	"The Declaration of Taxpayer Rights is an informal document, signed on 18 May 2011 by judges of administration courts, tax law professors, tax experts and the President of our Association (KIDP). Signatures are collected for it and it is planned to submit it to the Parliament as a draft law."
Japan	"The government proposed to set out the Taxpayer Charter grounded on tax legislation. The legislation is under deliberation."
Spain	"There was Act 1/1998 of Taxpayers' Rights and Guarantees. It was abrogated as its text was included in the General Taxation Act 58/2003 currently in force."
Austria	"We do not have a Taxpayer Charter but legal procedure is regulated by law, including Taxpayer protection and remedies."

Ireland

"We previously had a Taxpayers' Charter of Rights, which was replaced by a "Customer Service Charter" in 2004. In our view, the Customer Service Charter lacks a number of key components which are essential elements of a Taxpayers' Charter, i.e. commitments to specified levels of customer service, certainty in the tax system insofar as is reasonable and privacy (specifically, only make enquiries when required to check compliance with tax obligations and only seek access to information relevant to Revenue enquiries)."

3. What form does the Taxpayer Charter take?

Where a Taxpayer Charter exists, in the majority of circumstances, it is a document authored by the tax authorities. As such, it is non-binding.

Australia "The Taxpayer's Charter is a non-binding aspirational document."

4. Is the Taxpayer Charter legally binding?

7 countries indicated that the Taxpayer Charter was legally binding, at least in part.

United Kingdom "The legislation lays down some features of the Charter and that an annual report on how HMRC has adhered to the Charter (be presented) but its provisions are not all legally binding."

France "There are two Taxpayer Charters; a general Taxpayer Charter including general statements and a Taxpayer Charter in case of tax audit which can legally be opposed to the Tax Authority."

5. Is the Taxpayer Charter followed by the Tax Authority?

Of the 17 countries that answered affirmatively to having a Taxpayer Charter, only 3 countries were able to say categorically that the Taxpayer Charter was always followed. 8 countries felt that it was somewhat followed by the tax authorities, and 6 countries responded that the Charter was often not followed, or were unable to confirm that its provisions were generally followed. In some countries, since the Taxpayer Charter was relatively new, it was not possible to indicate an answer as this remains to be seen.

Poland "As The Declaration of Taxpayer Rights is an informal document, and signed only several months ago, it is more just to say that the rights set out in it are respected (if at all) as resulting from the binding laws."

Australia "ATO practice, particularly at the audit level often ignores the Taxpayer's Charter."

Malta "Due to its recent introduction and lack of public information about this subject, it is not possible to provide an adequate reply."

Canada "Many principles are followed. Whether the employees (of the revenue authority) are aware that they follow a principle because it is in the charter is not obvious. The right to confidentiality is also in the tax statute. If it is not respect by an employee, he or she would be in breach of the law and employment contract. Whether a taxpayer gets complete, accurate, clear, and timely information varies from auditor to auditor."

United Kingdom "The Tax Authority is making commendable strides to make sure the Charter is followed by its staff but this is not yet fully established."

6. Do tax professionals use the Taxpayer Charter in dealing with the Tax Authority?

Only 5 countries indicated that the Taxpayer Charter is relied upon by tax professionals in dealing with the Tax Authority. In addition, 5 countries indicated that it was somewhat used. Some countries suggested that it was too early to tell whether the Taxpayer Charter would be used extensively by tax professionals as the introduction of the Charter was new.

United Kingdom "It is not yet frequently used – as the Charter was only launched under two years ago it is only beginning to be used."

Canada "There is usually no need to refer to the Charter but professionals rely on certain principles of it."

7. What are the main aspects of how the Taxpayer Charter is used by professionals?

Where a response was given, most countries indicated that the main use of the Taxpayer Charter was in dealing with taxpayer audits or the abatement of penalties. Also, it was used as a basis for obtaining information from the tax authorities generally involving a tax dispute.

Israel "The Taxpayer Charter is not binding. Therefore, the Charter is rarely used by tax professionals."

Australia "At the Audit level where the ATO has failed to follow recommended procedure."

Hong Kong "Tax Administration, tax compliance."

Canada "The receipt of all the information concerning a tax matter involving their clients."

France "The TPC in case of tax audit is the only one to be used. It mainly consists in obtaining meeting with tax auditor hierarchy."

United Kingdom "To challenge certain behaviours demonstrated by the tax authority."

Italy "To try to apply the "good faith principle" in tax matter to reduce penalties or to have enough time to propose defence items."

8. How is the Taxpayer Charter seen by tax professionals in general?

14 countries provided comments to this question, and there were a wide range of answers. Some saw the Taxpayer Charter as being useful, while others did not.

Hong Kong	"As reference for practice."
France	"As useful."
Austria	"In general, there is a sufficient legal protection system which is subject to review by court of appeal (Independent Fiscal Court, Unabhängiger Finanzsenat) and the Supreme Administrative Court and the Constitutional Court. Tax advisors are a regulated profession. Specific rights (e.g. obligation to secrecy) are granted to tax professionals in order to practice for the good of the Taxpayer. The rights of licensed tax advisors are similar to those of attorneys (e.g. client-attorney privilege)."
Romania	"It is likely that not all tax professionals are aware of the Taxpayer Charter, and the ones who know it don't think it useful in the current form."
Australia	"It serves as a useful reference point for professionals when dealing with the ATO outside the self assessment system."
Italy	"It's a good tool, but not enough respected by tax authorities."
United States	"Many professionals don't particularly focus on it. For those that do, it provides some guidance as to how to approach a problem."
Canada	"Not useful."
Bulgaria	"The Taxpayer Charter is not a popular document among the professionals."
Malta	"Useful and a step in the right direction."
United Kingdom	"Useful, but most see it as something to help the unrepresented taxpayer rather than professional agents at the moment."

9. How is the Taxpayer Charter seen by taxpayers?

Most countries which provided comments to this question stated that there was a low level of awareness of the Taxpayer Charter among taxpayers in general, particularly those who are not represented by a professional Tax Advisor.

Hong Kong	"As general reference/guide."
France	"As useful."
United Kingdom	"Awareness level is low: we are trying to raise awareness and understanding of it."

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Romania	"Awareness level it's very low, however in the current form it will be of little use for them."
Bulgaria	"It appears it is not a popular document among the taxpayers."
Italy	"It's not well-known and there's the sensation that is not really effective against the Tax Authorities."
Canada	"Not useful."
United States	"Taxpayers who can afford assistance from tax professionals probably don't focus on it."
Australia	"Taxpayers who do not retain the services of a professional advisor would be unaware of its existence."

C. The next series of questions deals with issues of Tax Administration.

10. Do taxpayers have a right to be presumed to be honest by the Tax Authority, unless there is evidence to the contrary?

11 countries answered that taxpayers do have the right to be presumed honest. In addition, 19 countries answered that the answer was "Somewhat Yes". Only 6 countries that answered this question were unable to confirm that taxpayers have a right to generally be presumed to be honest at least to some extent.

Portugal	"According to the law the acts of the taxpayers are presumed to be in good faith. Similarly the law also establishes that the tax declarations made by the taxpayers according to the law are presumed to be true and in good-faith, as well as the data available in the taxpayer accounts and registries, when they are organized according to the Commercial and Tax Law. The right to be presumed honest is not always respected by the Tax Authority."
Croatia	"Actually not, generally tax authorities do not act presuming the taxpayers are honest."
Greece	"Although officially the law presumes innocence for the taxpayer, the taxpayer is in many cases treated with suspicion."
Israel	"An Assessing Officer has the authority to assess the taxpayer's income based on his best judgement if he has reasonable reasons to believe that the tax return filed by the taxpayer is incorrect."
Netherlands	"As a general principle, it is assumed that taxpayers are honest; this is respected by the Dutch tax authorities."
Malaysia	"If there is evidence to the contrary, the onus of proof lies with the taxpayer to defend himself."
Belgium	"In criminal law, a person is presumed innocent until he/she has been condemned as guilty by a court. For income tax law purposes, the data provided by a taxpayer to the Tax Authorities are presumed to be correct unless the tax authorities prove that they are false or incorrect, provided however, that such data have been submitted to the tax authorities through a tax return validly completed and filed in time. If those conditions are not met, there is a reversal of the burden of proof and the tax authorities can consider that the data submitted are not correct and it is then up to the taxpayer to prove that they are correct. For other taxes,

the foregoing is not necessarily formulated in the same manner but can be considered as a similar underlying principle."

Australia	"One of the fundamental principles set out in the Charter is the presumption of honesty, unless the ATO has reason to believe otherwise. This is generally respected by the ATO."
Slovakia	"The burden of proof lays on taxpayer, which is sometimes applied by tax authorities quite extensively, to the detriment of the taxpayer."
Ireland	"The Customer Service Charter states: You can expect to be treated as honest in your dealings with Revenue unless there is clear reason to believe otherwise and subject to Revenue's responsibility for ensuring compliance with tax and customs law."
Canada	"The provincial administration in Québec is different than the federal. Taxpayers and advisors do get the feeling that they assumed of bad faith. At the federal level, it varies depending as with whom the Taxpayers or professionals are dealing."
Bulgaria	"There is legislation on the burden of proof which generally requires that where the revenue office claims a fraud or irregularity that this authority must prove its allegations. However, this legislation is not always respected by the revenue authorities. Moreover, the discussed legislation is not consistently applied by courts."
Czech Republic	"There is no presumption in respect of taxpayer's honesty in the tax law. The Tax Authorities can perform audits to review accuracy of Taxpayers' statements, burden of prove is with taxpayer but the Tax Authorities shall generally give reasons for their conclusions."
United Kingdom	"They respect the right in theory but there is insufficient evidence to show whether they do or do not in practice."
Poland	"Though not expressly stated, this right is commonly derived from the tax law provisions as well as general principles of law. In practice it is quite often neglected by the Tax Administration who places the burden of proof on taxpayers."
Austria	"Yes, as stipulated by law, but in practice some exceptions occur."

11. Can taxpayers use Taxpayer Rights to delay payment of tax or delay disclosure (of information relevant to a calculation) of tax?
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13 countries indicated that a taxpayer can make reference to Taxpayer Rights as a basis for delaying payment of tax or delay disclosure. 23 countries, however, indicated that this was not permissible.

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Austria	"Absolutely Yes for delay of payment absolutely no for disclosure of tax."
Germany	"An appeal against the tax assessment has generally no suspensive effect (367 I). There are some exceptions from this rule. Under certain circumstances the tax authority can defer the payment (§ 222 AO). The taxpayer can extend the period of finding by the employment of a Tax Advisor."
Portugal	"In practice there are situations in which the payment of the tax ends to be delayed, as is the case with the payment on instalments or when the legality of the tax assessment is challenged and the taxpayer presents a guarantee."
Belgium	"In principle taxpayers cannot delay payment of taxes except if they file an appeal against the tax assessment in due time. When they file such an appeal they can ask to delay the payment of the disputed taxes. If the Tax Administration wins the tax appeal the taxpayer will have to pay the taxes after the procedure is finalized, increased with interest."
Australia	"Notwithstanding the fact that tax is payable upon receipt of an assessment or deemed assessment there is a administrative practice to defer 50% of the tax owing where there is an objection or appeal on foot. There is no right to defer lodgement of a tax return however penalties for late lodgement are nominal but a high rate of interest is charged on any tax owing from the original due date for lodgement."
Canada	"Taxpayers have statutory rights to delay payment when tax is assessed and it is disputed administratively by an objection or in court. These rights vary depending whether the taxpayer is an individual or a corporation, small or large."
Malaysia	"The laws require taxpayers to pay the tax assessed within the stipulated time irrespective of whether an appeal has been made. Instalments payment may be obtained upon application with valid reasons."
Italy	"There are specific rules to delay tax payments."

12. Are taxpayers entitled to use reasonable tax planning to pay the minimum amount of tax possible?
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All countries indicated that reasonable tax planning was permissible to reduce tax, but this principle is limited often by anti-avoidance rules. Also, aggressive tax planning (however that may be defined) may be required to be specifically disclosed to the Tax Authorities.

Japan	"(1) With respect to the principle 'Taxation under law', taxpayers are entitled to use any legitimate tax planning without limitation. (2) Tax planning with illegal means can absolutely not be used."
Portugal	"Aggressive tax planning has to be disclosed to the tax authorities."
Czech Republic	"If the planning does not circumvent or abuse law."
Israel	"The Israeli Tax Ordinance includes a general anti-avoidance provision that permits an Assessing Officer to disregard a transaction that is artificial or fictitious, or if one of its principal purposes is an improper tax avoidance."
Poland	"The right to choose 'the way of least taxation' is confirmed in some administrative courts' rulings. Nonetheless, in practice it tends to be overbalanced by tax avoidance concerns. When and if reasonable tax planning is successfully implemented, it is typically not officially welcome by Tax Administration. It is rather reluctantly accepted for the lack of legal instruments to challenge it."
Croatia	"Theoretically Yes."
Bulgaria	"There is no formal right of the taxpayer to plan his/her activities in the most efficient way, moreover there is no concept of what is the border between the legitimate tax planning and tax avoidance. There are some concerning indications in the judicial practice, particularly with respect to international tax planning, where courts assume that the mere fact of reducing the overall tax liability should be treated as tax avoidance."
Australia	"We have a general anti avoidance provision that the Courts have given a broad interpretation such that it may apply to what would normally be seen as commercial transactions. The essence of our general anti-avoidance provision is the existence of a scheme the dominant purpose of which is to obtain a tax benefit being the exclusion of income or the obtaining of a deduction."

13. Are there limitations on Taxpayer Rights where their use is to obstruct or delay actions of the Tax Authority without a reasonable basis?

The question here is directed towards frivolous claims by taxpayers on the basis of Taxpayer Rights where the underlying purpose is to delay payment of tax or obstruct the reasonable actions of the tax authorities. A careful balance is called for such that taxpayers do not use Taxpayer Rights for purposes which are abusive.

Most countries had limitations to prevent such action by taxpayers, with 24 countries replying in the affirmative.

Vietnam	"Depending on circumstances which normally apply in past-tax audit/investigation, the tax authorities have the rights to coerce taxpayers to pay outstanding tax liabilities. Otherwise, bank account of taxpayer would be blocked or their assets would be disposed to collect money to pay for the outstanding tax liabilities."
Belgium	"For example, with respect to income tax law, section 344 of the Belgian Income Tax Code (BITC) provides for the right for the tax authorities to disregard the legal qualification given by taxpayers to transactions, if the tax authorities consider that such qualification is aiming at avoiding tax, unless the Taxpayer proves that such qualification meets legitimate financial or economic purposes."
Bulgaria	"In some cases of the taxpayers not submitting documents the revenue office may determine the assessment on the basis of estimate objective values; non-cooperating of the taxpayer may also result in shifting the burden of proof in the appeal procedures from the Tax Administration to the taxpayer."
Japan	"Where the Tax Authority has a reasonable cause in accordance with law, Taxpayer Rights and others may be limited."

The next series of questions deal with whether the tax authorities can relieve interest, or extend deadlines for reasonable cause.

14. Where there is reasonable cause, are there provisions for the relief of interest at the Tax Authority's discretion?

51% of the country surveyed indicated that there was discretion on the part of the tax authorities to relieve interest in certain circumstances. However, a disturbing 49% of the countries surveyed indicated that there was not.

Netherlands	"As a general rule the Tax Authority do not give relief of interest because of a reasonable cause. However, there are some specific situations mentioned in a decree from the Tax Authority."
Czech Republic	"But in very limited cases."
Belgium	"For example, with respect to income tax law, section 417 of BITC provides that in special cases, the tax authorities (at a certain level in the hierarchy) may, at the conditions that they determine, grant partial or total exemption from interest for late payment of income tax."
Austria	"There is small scope of discretion granted to the Tax Authority by law (Nachsicht; § 236 BAO)."

15. Where there is reasonable cause, are there provisions for the relief of penalties at the Tax Authority's discretion?

75% of countries responding indicated that the Tax Authority had discretion to relieve penalties.

Indonesia "Taxpayer has to seek for the approval but it is unlikely to be approved."

Australia "Yes if the taxpayer has a reasonably arguable position or has followed ATO practice and there has been a change in interpretation of the law."

16. Where there is reasonable cause, are there provisions for an extension of deadlines at the Tax Authority's discretion?

70% of countries responding indicated that there was discretion for reasonable cause to extend deadlines.

Poland "A reservation: it is not at the discretion of the tax authority to extend deadlines during the tax proceedings."

Spain "Regulations provide for a procedure to apply for extensions in payment deadlines. Taxpayer must apply for it and TA must consider the reasons alleged to grant or deny the extension."

Canada "The relief is limited to elections and filings that are prescribed by regulations. Certain filing deadlines cannot be extended. By way of example, the filing deadline for claiming SR&ED cannot be extended."

Hong Kong "There is no provision in the tax law that allows for an extension of deadlines at the Tax Authority's discretion. However, in practice, the Tax Authority may grant an extension at their discretion."

17. What constitutes "reasonable cause"?

34 countries provided answers to this question. Reading the answers, it is very disturbing that there is no common standard to be applied in this matter. A wide range of factors were noted, such as financial hardship, bereavement, force majeure, military service, absence from the country, and so forth. Many countries indicated that this was a question of fact, and depended on the circumstances. Incorrect information supplied by the tax authorities was cited as another reason. It was also pointed out that an affected taxpayer is expected to act in good faith.

Italy	"As said, for example when a law has been differently interpreted by different tax authorities or the interpretation has changed time to time."
Canada	"Canada Revenue Agency has established criteria as per the following publication: http://www.cra-arc.gc.ca/E/pub/tp/ic07-1/ic07-1-e.html . However, there are numerous court cases that go beyond the above publication. The Federal Court controls the Tax Administration (in this aspect). It will not substitute its discretion but will ensure that the Tax Administration exercises its discretion fairly."
Finland	"Depending on a situation at hand, not possible to provide references."
Austria	"Depending on the individual case."
Mongolia	"Depends on the taxpayer."
India	"Financial Difficulties, Search & Seizure action."
Portugal	"For instance, the complexity of information required within an audit procedure may extend deadlines for delivering documents."
Indonesia	"Force majeure."
France	"Good faith is the key criterion."
Germany	"In cases where the tax payments would lead to an extraordinary difficult situation."
Israel	"In general, the Tax Authority should grant a relief of interest and penalties if the taxpayer had objective reasons, which did not depend on the taxpayer's actions, not to pay the tax on time. In this regard, the Tax Authority will regularly grant extension of deadline, as long as the taxpayer will timely pay a reasonable estimate of his final tax liability."
Czech Republic	"In respect of penalties serious events like natural disasters etc, in the case of interest and deadlines (serious) economic reasons of the taxpayer. Moreover, specific tax acts contain few specific rules. Section 259 of the Tax Code (1) If, according to law, a public authority is empowered to waive tax or other tax-related penalties or charges in whole or in part, it can be done on the basis of a request by the taxable person or ex officio. (2) Waiver of tax and other tax-related penalties or charges may be granted from the moment the tax liability arises until the expiration of the time limit for tax payment, even if it has already been paid. Section 260 of the Tax Code (1) As far as taxes administered by the administrative bodies supervised by the Minister of Finance are concerned, the Minister of Finance may waive tax or other

tax-related penalties or charges in whole or in part by virtue of his office a) as a result of discrepancies arising from the application of tax laws, or b) in the case of extraordinary events, in particular natural disasters."

Vietnam	"It's difficult to explain and very much depending on technical explanation and supplemental documents provided by taxpayers. Other than this, the law allows some cases which constitute "reasonable causes" for taxpayers, including: 1.1. They suffer from material loss caused by natural disasters, fires or unexpected accidents that render them unable to pay taxes within the set time limit; 1.2. They relocate their places of business at the request of competent state agencies, thus leading to the cessation or downscaling of their production or business activities or increased investment expenses at new places of production or business; 1.3. There is a state policy change that directly affects their production or business results; 1.4. They encounter other exceptional difficulties. In this case, extension of the payment time limit shall be decided by the Prime Minister at the proposal of the Minister of Finance."
Spain	"Only proving that taxpayer is not able to make a payment but may guarantee the debt with goods or a bank guarantee. In an audit procedure, deadlines may be extended by claiming difficulties in preparing specific documentation or information requested."
Slovakia	"Reasonable causes are defined for individual cases. It comprises mainly cases when the nutrition of person or family members are threatened, or in threat of bankruptcy or cases of incorrect application of law."
Switzerland	"Reasonable causes range from illness to military service or absence from the country according to Art. 133 Par. 3 DBG."
Korea	"Taxpayers are in mourning, have severe difficulties in business, have severe damage in business."
Belgium	"There is no specific definition of "reasonable cause" and this is left to the appreciation of the tax authorities: generally the latter will look in this respect, namely, for legitimate and "bona fide" reasons or for circumstances that can qualify as exceptional or as circumstances beyond one's control."
United States	"Varies depending on facts and circumstances as well as tax involved. Experience informs that the cleaner the taxpayers' record concerning compliance the easier it is to abate penalties for reasonable cause. Taxpayers health is also a factor."
Hong Kong	"While there is no statutory definition, an example would be due to sickness of a sole proprietor."

Japan "Wrong instruction by Tax Authority. Decisions by court and administrative decisions by Tax Tribunals. Unavoidable circumstances such as disaster, calamity."

18. Is discretion routinely used by the Tax Authority?

48% of the countries surveyed indicated that discretion was routinely used, and the main areas seem to be in settling a tax audit or a dispute as to transfer pricing or valuation. This question may also be used in the imposition of penalties.

Canada "A Taxpayer ought to request a relief (see the link for the non mandatory form RC4288). The Tax Administration will grant relief on its own without a proper request. <http://www.cra-arc.gc.ca/E/pbg/tf/rc4288/rc4288-fill-11e.pdf>."

Israel "As noted above, the Tax Authority routinely grant relief of interest and penalties and grant extension of deadlines."

Netherlands "Discretion is used in many areas of the tax law. As an example: with regard to penalties, the Decree Administrative Penalties Tax Authorities ('Besluit Bestuurlijke Boeten Belastingdienst') sets out when and under what circumstances penalties may be reduced."

Malaysia "Discretions are exercised in the areas of settlement of audit and investigation cases, extension of time to file return, extension of time for appeal and for submission of information requested, etc."

Italy "Essentially in "transfer price policy" and in case of buildings trading price valuation."

Germany "Extension of deadlines to file the tax returns."

United Kingdom "Generally the authority applies the law as laid down in statute; there is very little scope (confirmed in case law) for tax charges to be varied by discretion."

Greece "Only for example in the procedure of imposing fines."

19. Is the authority to exercise discretion granted by legislation?

89% of countries responded that there was discretion by legislation. Germany and Switzerland have specific legislation which was cited in support of this. Canada also has specific provisions for applying discretion to relieve penalties, waive interest, and extend deadlines.

Germany	"§ 222, 227 AO; § 109 AO."
Switzerland	"Art. 130 DBG."
Poland	"The authority to exercise discretion is uncontroversially granted by legislation for the cases of relief in payment of outstanding tax liabilities/interest etc., discussed above."

D. The next section of questions deals with Discrimination among taxpayers.

20. In your country, are all Taxpayers within a broad definition (e.g. individual/corporation) treated basically the same?

Virtually all countries replied that taxpayers were treated equally, without discrimination.

21. Is there a precedent for the tax system being used to tax more heavily a specific sector (i.e. Speculation Tax on real estate, Tax on Bankers Bonuses)?

Interestingly, 37% of countries responded affirmatively to this question.

The examples which were cited included special taxes on the resource sector, taxes on gambling, taxes related to real estate speculation, and, in the case of the U.K., a special tax on bonuses paid by banks. It is well established around the world that certain industries and certain types of business endeavours may bear a greater tax, and this is typically justified on tax policy or economic grounds. But there should be protection for taxpayers against discriminatory practices without sound justification.

22. In what other ways is the tax system used that could be considered discriminatory?

Most examples that were cited relate to "positive discrimination", being special incentives given to certain sectors. Research and development activities were cited in particular. The agricultural sector was also cited as being granted tax incentives. Other examples included, however, discrimination against taxpayers based on them being foreign rather than residents or nationals.

E. The next section deals with Tax Filings and related matters.

23. Does the Tax Authority provide clear instructions, forms, guides and information to assist the Taxpayer in making a tax filing?

Virtually all countries responded positively in this area.

Germany	"Due to the complexity of the tax law, additional advice is often needed."
United States	"For the most part."
Croatia	"Guidelines issued by the tax authorities are not always clear, the answer is in between."
Slovenia	"Not always: Well done: In cases that the situation is completely clear but not in some marginal cases or where certain new circumstances appear; poorly done: The assistance of Tax Advisors (recognition of the real amount of such expenses), Tax deductibility of all business expenses."
Canada	"Sometimes no guidance is provided when draft legislation has been proposed for many years without being enacted or some technical tax concepts: FAPI, safe income calculations, etc."
Israel	"The Tax Authority provides guidance regarding the taxpayers' filing obligation, however, more guidance is needed."

24. Which aspects of the instructions provided by the Tax Authority are well done?

32 countries answered this question. Many cited the Tax Authority's website as being well done and helpful. Others cited forms, guides and instructions. However, this was not always the case.

Austria	"As regards personal income tax files are well explained, comprehensive and understandable; also instructions for VAT files."
United States	"Basic instructions to various tax returns."
Malta	"Generally, instructions regarding the computation of tax are clear."
Germany	"Guidelines of the tax authority give usually a systematic overview."
United Kingdom	"Individual tax return forms are accompanied by copious notes which are helpful."
France	"Information notes are systematically provided with tax forms. They are generally clear and exhaustive."
Mongolia	"Instructions are fully well provided by the Tax Authority."
Czech Republic	"Instructions related to formal aspects of tax filings are clear and publicly available. On the other hand, Czech tax law is complex,

subject to frequent changes; taxpayers have to face a lack of clear and stable interpretations."

Australia	"Instructions for e-filing are reasonably clear and easily accessed."
Netherlands	"On the whole, the instructions on completing a tax return are clear."
Spain	"The effort made by the Spanish Tax Administration in providing assistance, information and guidance is really remarkable. Information technologies are used to provide these services and to ease the filing of returns."
Switzerland	"The Tax Authority provides clear instructions in their up to date information sheets."
Israel	"The Tax Authority provides extensive guidance in respect of technical issues relating to the maintenance of books and accounts and the filing of tax returns."
Canada	"The technical interpretation letters. The taxpayer and his advisors were relying on interpretation bulletins and information circular to understand the position of the tax authority. These documents have not been updated for a long time. It is in a process of doing that. These documents are non-binding and the tax authority is allowed to assess contrary to a stated position."
Poland	"We have a well-developed and broadly used tax rulings system, as well as a quite efficient call-center of the National Tax Information (they provide telephone answers to the full range of tax questions, concerning mostly common day-to-day tax issues). Also, the Tax Administration usually provides clear technical instructions as to how to complete the tax forms."
India	"Website."
Japan	"Website, brochures, leaflets, tax consultation services provided by telephones or interviews."

25. Which aspects of the instructions provided by the Tax Authority are poorly done?

A number of examples were given, citing that guides are not always kept up-to-date, and there can be lengthy delays when new legislation is released. Also, the suggestion was made that the general public should be educated on tax matters from an early age. The complexity of forms and the time required to complete them was cited as an area requiring improvement.

Canada	"As mentioned, the interpretation bulletins need to be updated to reflect the current administrative position of the tax authority."
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Portugal	"As the Portuguese Tax Law often changes, the forms and instructions are not always up to date quickly enough. Moreover, in borderline or complex situations the instructions generally do not provide any help."
Germany	"Certain guidelines are incomplete. Administrative interpretation of new legislation is often provided too late."
Japan	"Education on taxation for school children as well as junior- high, high school and college students."
Malta	"Generally, instructions and guidelines on personal taxation are clear and useful. Guidelines and instructions on corporate taxation and VAT are generally poorly drafted."
United States	"Instructions suggest an inordinate amount of time to complete a tax return. These hour requirements may be geared to the non-professionals. However, in being so disproportionately high, they are meaningless to taxpayers and suggest that the service believes that more time needs to be spent and that a professional obtain necessary knowledge to complete returns."
Czech Republic	"Late reactions in case of law changes (instructions often published at the last moment)."
Romania	"Often instructions are not very clear and no sufficient details are provided."
Italy	"Sometimes there's a delay between a new tax law and its application rules."
Finland	"Tax Authorities' interpretations are not in all cases clear based on their instructions."
United Kingdom	"The complexity of the system and the sheer volume of the forms and notes can be daunting to many people. In particular, simple forms & guidance for the less able are often lacking."
Israel	"The guidance regarding substantive issues is not as extensive as the guidance relating to technical issues."
Malaysia	"The instructions relating to guidance on assessment are relatively few and do not generally reflect a balanced view."
Latvia	"They are too formal. They literally quote legislation standards."
Ireland	"While we would not characterize this as "poorly done", we consider that some improvements may be made in the area of advising Taxpayers of common errors made in completing forms."

26. Is there a statutory requirement that the Tax Authority provide clear instructions, forms, guides and information?

Approximately half the countries responded that there was a statutory requirement that the Tax Authority provide clear instructions, forms, guides and other information. However, in most cases it seems that, at best, this may be implied in the legislation that there is not a specific requirement in most cases. Based on the comments made in question 25, it seems that certain countries may be in default of their statutory requirements in this area.

Given the complexity of modern tax legislation, it is arguably incumbent on the Tax Authority to give guidance to a high standard on a timely basis.

Czech Republic	"According to the Tax Administration Act. Section 6 paragraphs 3 and 4 of the Tax Code (3) The Tax Administrator will enable the persons involved in the administration of taxes to exercise their rights and will reasonably advise them, in connection with its action, on their rights and obligations, if necessary with regard to the nature of the action or if provided by law. (4) The tax administrator will comply with the requirements of the persons involved in the administration of taxes, as far as possible. Public officers shall be obliged to avoid impolite behaviour when exercising their duties relating to the administration of taxes. "
Poland	"Generally, and apart from the tax rulings system, there is no such requirement. The exception is the obligation of a tax authority to provide a Taxpayer with all necessary information during the tax proceedings. This obligation is in practice construed as limited to the information concerning the tax litigation procedure."
Netherlands	"Instructions, forms, guides and information ultimately are based on instructive rules in the tax law."
Malaysia	"It is implied in the law. Section 138B of the Income Tax Act 1967 further provides the facility of advance ruling."
Germany	"The fiscal code gives the taxpayer the right to get assistance and advice, § 89AO"
Belgium	"The principle of "good administration" has been applied by the courts in a much more acute manner vis-à-vis the tax authorities over say the last 15 years. However, one cannot quote a specific legal requirement in the tax legislation stating explicitly that the tax authorities are required to provide clear instructions, forms, guides and information."
Ireland	"There is a statutory onus on Revenue for the care and management of the tax system but not specifically to provide clear instructions, forms, etc."

Bulgaria	"There is a statutory requirement that the Tax Authorities provide forms of declarations and statements and instructions on their filling-up; however, there is no statutory requirement that the revenue office provide clear instructions, guides and information on matters other than the simple technical filling-up of the declaration."
Finland	"Yes and No. Certain tax laws include statutory requirement for further instructions, forms etc. No general statutory requirement exists."

27. Can the Tax Authority apply refunds due to a taxpayer against other liabilities owed by the Taxpayer?

Almost all countries responded that the Tax Authority can offset refunds due to a taxpayer against liabilities owed by the Taxpayer.

Vietnam	"Normally for on-going business, Tax Authorities would recommend taxpayers to offset tax refund with future tax liabilities."
United Kingdom	"Refunds for a specific period can be offset against liabilities of different years."
Slovenia	"Tax Authority must notify the taxpayer about set-off."
Australia	"Yes the ATO runs a "running Balance Account "

28. Is there specific legislation permitting the Tax Authority to apply refunds due to a Taxpayer against other liabilities owed by the taxpayer? If yes, please add citation in textbox.

75% of countries responded that there was specific legislation permitting an offset of refunds due to a taxpayer against liabilities owed by the taxpayer.

Canada	"Refunds can be applied to other federal or provincial debts of any kind: see 164(2). They can be withheld from taxpayers who have outstanding unpaid assessments under objection or appeal, due to the repeal of 225.1(1)(e). Refunds are not paid to a taxpayer who has any overdue income tax or GST returns: see 164(2.01). "
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Switzerland

"The Tax Authority can apply refunds due to a taxpayer against other liabilities owed by the taxpayer according to OR 125. However, the taxpayer has no right to offset his tax debt."

29. Can the Tax Authority apply refunds that are due to the taxpayer to the liabilities owed by a related taxpayer (i.e. A husband or wife, related corporation...etc)?

Nine countries responded that a tax refund of a taxpayer could be applied against taxes owing of another taxpayer. In most cases, the answer seems to be no, but those countries who answered in the affirmative indicated that this was done between spouses where a joint tax return was filed, or between related corporations in the case of VAT.

Romania

"However, a fiscal unity regime is applicable for VAT purposes. This regime can be applied under certain conditions for a group of taxable entities established in Romania, entities /that have a close organizational, financial and economic relation."

Portugal

"In principle no, except in cases where the law establishes a joint and several liability as is the case with related parties that are being taxed according with a special regime for groups of companies."

Ireland

"This can be done where a married couple is jointly assessed (i.e. one spouse is assessed in the name of both), or for related corporations by agreement with Revenue."

30. Can the Tax Authority apply refunds of a year against the tax liability of another year where that year is under appeal?

70% of the countries responded that the Tax Authorities could contra the refund against a tax liability. The answer to this question should be referenced against question 60 which dealt with where a taxpayer is required to pay tax which is validly under appeal. The denying of a tax refund and applying it to tax which is under dispute fundamentally undermines a taxpayers right not to pay tax which is under dispute, which is dealt with in question 60. It is therefore necessary to delve more deeply into this question.

F. The next series of questions deal with Assessments.

31. When a taxpayer files a tax return is an assessment always provided?

64% of countries responded that an assessment is always provided for an individual, and surprisingly only 59% of countries responded that an assessment is always provided for a corporation. The question

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also asked whether an assessment is always provided for a trust, but since many countries do not have trusts as a matter of domestic law, this question was not pursued.

It is surprising that assessments are not universally provided for taxpayers when a tax return is filed. One would think this fundamental in a self-assessment system.

Belgium	"An assessment is often provided but, for example, in the case of payment of withholding tax on dividends or interest or royalties, the taxpayer (individual or corporation) must file a tax return and pay the tax due and there is no assessment if the withholding tax is paid in time. The same applies for withholding tax on salaries. An assessment is only issued if the tax is not paid in time. For VAT, the taxpayer is paying the VAT without receiving an assessment."
Latavia	"Assessment is not provided."
Canada	"CRA is statutorily obliged to examine all tax returns filed and to issue an assessment - see ss. 152(1) and (2) - applicable to all Taxpayers."
Australia	"Full self assessment system applies for companies i.e. an assessment is deemed upon lodgement of the return. Individuals still receive assessments. Trusts are generally only taxed on accumulations on an assessment basis otherwise that are flow through vehicles."
Slovenia	"In most cases for all taxpayers."
Japan	"In our Nation Self Assessment is applied to National Income Tax for Individual, Corporation and Trust. Therefore, Tax Authority, in principle does not provide Tax Assessment to taxpayers. But, Local Government apply Administrative Assessment to some Local Taxes."
France	"individual: yes but only for Income Tax corporation: Yes but only for business Tax."
Indonesia	"No."
Slovakia	"No assessments are issued by Tax Authorities."
Spain	"None."
Bulgaria	"None. There is no general assessment procedure in the law; most of the taxes are generally self-assessed and the revenue office has the right to a subsequent tax audit of the self-assessment within the period of the statute of limitation. The revenue office issues a provisional assessment only in case of apparent technical mistakes in the declaration."
Israel	"Not always."

Italy	"Not always. Especially on VAT returns matter."
United Kingdom	"Not necessarily immediately."
Poland	"Our system is in general based on the principle of self-assessment. Only in rare cases the Tax Authority is obliged to provide assessment of a return filed by a taxpayer (e.g., this is the case with the real estate tax for individuals). Generally, the tax authorities are free to choose if and when they will verify the regularity of self-assessment made by a taxpayer, and as a consequence, either confirm it or challenge/correct it."
Czech Republic	"The assessment is delivered to a taxpayer only if the tax assessed differs from the tax stated by the taxpayer. Otherwise, the tax assessment is placed in the Tax Authorities' files only; the taxpayer can require a copy."
Malaysia	"Under self-assessment regime, a duly completed, signed and filed tax return itself shall be deemed to be a notice of assessment. No further notice of assessment is required unless there is an additional or reduced assessment. In the case of losses, there will be no Notice of Assessment. "

32. Is it clearly set out in law that the Tax Authority shall provide an assessment?

82% of countries indicated that it was clearly laid out or somewhat laid out in law that the Tax Authority shall provide an assessment. However in reading the comments which were provided to this question, it seems that there are certain qualifications. For example, in Japan, assessments are provided only for local taxes. In other countries, an assessment is provided only where it is applicable, generally meaning that the Tax Authorities provide an assessment only when there is a change to the tax assessed by the taxpayer.

33. Can the Tax Authority delay an assessment if they choose to? (e.g. If an important case is pending in the courts?)

This question was only relevant for countries which do provide an assessment in the first place. Having said this, 35 countries answered this question and a disturbing 63% of countries responded that the Tax Authorities can delay an assessment. Certain countries responded that the delay cannot extend beyond a statute of limitations, which was often cited as 4 years or 5 years. Even so, this is a very long time to hold a tax return in abeyance.

A fundamental right of taxpayers is to have certainty with respect to their tax matters. Considerable uncertainty can arise when a tax return is filed but it is not assessed. Certain countries will delay an assessment, sometimes for years, in a number of circumstances. These may include uncertainty with respect to tax laws, based on a pending court case or statutory amendments, or where a taxpayer has engaged in what the Tax Authorities consider to be aggressive tax planning. It is arguable that deliberately delaying an assessment is an abuse of process.

Malta	"As long as the assessment is issued within the statutory deadlines."
Luxembourg	"But status of limitation: 5 years, beyond taxpayer has to waive."
Czech Republic	"Generally, there is no time frame for the Tax Authorities to perform an assessment (except for few exemptions) but the tax is assessed as at the day stated by the tax law (e.g. as at the filing deadline). Unsubstantiated delays can be subject to complaints."
Vietnam	"Statute limitation for tax assessment is 5 years. Therefore, tax authorities may flexibly choose to do tax assessment on annual basis or up to 5 years back in a row, but not longer than that."
Belgium	"The Tax Authorities cannot delay an assessment beyond the statutes of limitations set by law."
Ireland	"There is a 4 year time limit for Revenue to issue an assessment. Within that period, Revenue can issue the assessment at their discretion."
Portugal	"Within the statute of limitation which is 4 years for most taxes."

34. Under what circumstances would the Tax Authority delay assessment?

A number of reasons were given such as an audit being conducted, a pending court case, or heavy work load of the Tax Authorities.

Netherlands	"Assessments can be delayed due to a tax audit, heavy workload of the tax authorities etc."
Austria	"E.g. in case of pending case at Constitutional Court or European Court of Justice on the subject."
Portugal	"For instance, in the context of an audit procedure."
Germany	"Heavy workload."
Malta	"I think that assessments would be delayed if the preliminary investigations/verification processes take long or in the case of backlogs."
Ireland	"In the context of an audit settlement possibly."
Romania	"It can happen that tax authorities delay an assessment if they are waiting for a decision from the Fiscal Commission."
Mongolia	"It is not regulated by legislation and it depends on Tax Authority's own concern."

Australia	"Possibly if they were waiting on a statement of interpretation of the law from a Court."
Hong Kong	"When a decision is pending before the Board of Review or courts."

35. Can the Taxpayer compel assessment from the Tax Authority?

A large number of countries answered no to this question, which is somewhat surprising and disappointing. It means that a taxpayer may be left with considerable uncertainty without any recourse.

Canada	"Not under the ITA. However, if a taxpayer feels there is undue delay, it may be able to apply to the Federal Court for judicial review. In practice, it is very unusual for CRA to delay an assessment."
Malaysia	"Under self-assessment regime, a duly completed, signed and filed tax return itself shall be deemed to be a notice of assessment. There is no clear provision in the legislation to compel assessment from the Tax Authority."
Ireland	"Where the taxpayer has made return, they may, by notice in writing, require the Inspector to make an assessment for the period, and the Inspector shall make the assessment forthwith."
Portugal	"Yes, the taxpayer may ask to the court to compel the Tax Authority to make an assessment that is legally due."
United States	"Yes."

36. Are the assessments delivered by the Tax Authority clear and show the computation of tax and the basis upon which is was levied?

80% of countries responding indicated that the assessments which were issued were clear, and only 3 countries indicated that assessments were not clear, perhaps because assessments were not routinely issued.

Canada	"in complicated audits, CRA will typically issue a proposal letter outlining all its issues and the rationale for its assessment (including penalties). The final assessment will typically refer to this proposal letter, but will otherwise provide few details for the basis for the assessment."
Malaysia	"The IRB generally will normally attach a tax computation indicating how the assessment is arrived at. However, in the case

of Stamp Duty, a detailed basis of valuation for the instrument submitted for stamping is not generally provided."

Poland

"Under the law they should; the practice varies."

37. When assessments from the Tax Authority differ from the taxpayer's calculation, are the reasons clearly explained?

Nine countries responded absolutely yes to this question, and 18 responded somewhat yes. Five countries responded somewhat No.

Spain

"Somewhat Yes, but often not clearly. Standard sentences are used such as "Income on salaries declared differ from information obtained by Tax Administration". It does not specify the amount of the difference, thus compelling the Taxpayer to deliver the proof of any salary income obtained, so that the Tax Administration may verify the amounts."

United Kingdom "The Tax Authority will try to explain but the explanations are sometimes difficult to follow for low income taxpayers."

38. When interest is levied, is the cause clearly explained, as well as the methods of calculation?

25 countries replied yes or somewhat yes, with 8 replying somewhat no or absolutely no.

Australia

"As previously interest is sometimes hard to reconcile."

Netherlands

"The method of calculation is based on the law, but the calculation itself is not explained fully in the assessment form. The percentage and calculation period are not mentioned."

39. When a penalty is levied, is the cause clearly explained, as well as the methods of calculation?

31 countries responded that the basis of penalties was clearly described, but this was not always the case. Further questions concerning penalties are addressed later.

Spain

"Depending on the type of tax infringement. Penalties are not always correctly motivated. Often courts reject the penalties levied due to lack of motivation."

Belgium

"The cause can be found by the Taxpayer in the law. The method of calculation is not always clearly explained. For income tax purposes, if penalties regarding fraud are applied, the Tax Authorities must notify to the taxpayer beforehand the elements

they take into account in order to consider that fraud has been committed."

40. Is the taxpayer notified of their right to appeal when an assessment is received?

In almost all cases, a taxpayer is notified of appeal rights when an assessment or reassessment is issued.

41. Is the taxpayer provided with reasonable deadlines for appeal that are clearly outlined?

In most all countries responded positively to this question indicating that the deadlines for an appeal are clearly outlined. However, in many cases, the time frame seemed unusually short and might be considered unreasonable given the complexities which may be involved in lodging a tax appeal.

Bulgaria	"In case of provisional assessment to correct mistakes the term to appeal is 14 days."
United Kingdom	"Deadlines are normally as laid down in statute - typically 30 days - sometimes postal delays can cause problems."
Poland	"It is 14 days for the internal appeal within the Tax Administration and 30 days for the complaint to the administrative court."
Romania	"Usually 30 days."
Austria	"Usually one month."

G. The next series of questions deal with Audits.

42. What information is a taxpayer required to provide during the course of an audit?

This question allowed for four possible answers, being:

- i) Any and all information as requested.
- ii) All information except what is covered by privilege (such as solicitor\client privilege).
- iii) Only information reasonably relevant to the matter under audit.
- iv) Other (please describe).

The results of this question are very interesting, in that countries appear to be evenly divided between the requirement to provide all information as requested (17 countries) and on the other hand only the information reasonably required for the matter under Audit (18 countries). Curiously only 8 countries indicated that information could be withheld on the basis of solicitor\client privilege.

Spain	"Information is requested directly to taxpayer, thus is not protected by privilege. Taxpayer may deny certain information by claiming that it is not relevant to the matter but this would cause conflicts with the Tax Administration, and may cause an adjustment that would have to be solved in courts."
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Australia "The ATO is limited to requesting information relevant to the Income Tax Assessment Act he can't generally seek information for other purposes but his "fishing expedition" powers are very wide (Smorgon and ors v F.C.of T. and ors 85 ATC 4474)."

43. Does your country limit evidence that can be admitted in a criminal matter when it was procured using broader audit powers?

The basis of this question is that sometimes auditors will use the normal powers of investigation under a tax statute to compel a taxpayer to provide information, where such rights would not necessarily be allowed in a criminal investigation. For example, there is often a requirement to notify the person being investigated of the possibility of criminal charges. Only 8 countries had provisions limiting the admissibility of evidence gathered during an audit for a criminal prosecution. The majority of countries did not.

Portugal "Once there is suspicion of a criminal matter, a specific criminal file has to be opened and evidence must be collected, according to criminal procedure rules."

Austria "Sufficient protection by law and juridical review, but no general prohibition of use of evidence for a subsequent criminal procedure exemption: prohibition to use evidence that was enforced, § 98 (4) FinStrG taxpayer's general obligation to cooperate does not apply in the criminal procedure."

Poland "The problem is rather that the evidence from criminal investigation may be included in the evidence of the tax proceedings."

44. Is the taxpayer required to answer questions regarding intent?

The majority of countries, 23 in all, responded that a taxpayer is required to provide information concerning intent.

Australia "A taxpayer is only required to provide books and records upon oral request (s263 of the 1936 Act. However under s264 of the 1936 Act a taxpayer may be required in writing to attend the ATO and answer any questions relevant to the Act."

Austria "General obligation to disclose all facts and circumstances relevant to taxation (§ 143 BAO) but there is no general obligation to substantiate the economic relevance of a transaction; in some cases it might be an advantage for the taxpayer to provide some background; it is recommended provide information to the extent that is necessary to disprove misuse and suspicion."

Spain "However, the taxpayer will answer such questions, otherwise the Tax Auditor will reach his own conclusions which may be harmful for the taxpayer."

Czech Republic	"If it is reasonably relevant to the tax audit matter."
Malta	"In criminal proceedings, the answer is yes to the extent that it is relevant. In tax investigations or audits, there is no obligation to answer questions regarding intent but the failure to reply or to provide adequate replies may lead the tax authorities to draw inferences."
	Germany "Not in general, but for example if it is questionable if the taxpayer has the interest to gain profit, he has to give evidence about this question."
	Portugal "The cooperation principle implies that the taxpayer shall answer all the Tax Authority's questions."
Ireland	"The Tax Authorities' inspector is entitled to "make such enquiries or take such action within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of any return, list, statement or particulars prepared and delivered under a specified provision. There are safeguards contained elsewhere in the legislation, for example, in relation to professional advice of a confidential nature."
Belgium	"The Tax Authorities must apply the law but cannot mix themselves in the management of the taxpayers' affairs."
Malaysia	"There is no specific provision in the tax law. However, Tax Authority has wide powers to call for information. Refusing to provide an answer may be construed as obstruction to the revenue officer in carry out his duties under the law."
Netherlands	"Under Dutch tax law, the taxpayer is obliged to elaborate on facts. It is arguable whether intent relates to facts. Only in cases of possible abuse of law will the taxpayer's intentions be relevant, and in that case the taxpayer must answer questions on intent."
United Kingdom	"Where this is relevant to the matter in hand, the taxpayer may be asked for the reasons/intent."
Greece	"You are not required, but if you don't give answers you will be treated even more suspiciously."

45. Prior to carrying out a routine audit or enquiry, are Tax Officials required to notify the taxpayer of the audit or enquiry?
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30 countries responded that there was either an absolute requirement or some requirement to provide the taxpayer with notice of an audit or enquiry. Only 3 countries indicated that there was no requirement.

Poland "As a rule, a 7-day notification is required. There are exceptions to this rule, e.g. for tax audits concerning VAT refunds,

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the unregistered business activity, where there is a suspicion of a criminal offence etc."

Portugal	"As a rule, Yes. However, in some cases the Tax Authority is dispensed of such notification."
Austria	"Audit has to be notified one week in advance unless purpose of audit might be frustrated, § 148 (5) BAO."
Malaysia	"Based on the Tax Audit Framework, the IRB will notify the taxpayer prior to field audit. However, there is no statutory requirement to do that."
Czech Republic	"But the Tax Authorities can perform general investigation in respect of taxpayers and their duties without notification."
Ireland	"If it is an "audit", Revenue will generally notify the taxpayer of the audit. For other non-audit enquiries, Revenue can carry them out without notifying the taxpayer in advance."
Netherlands	"In case the taxpayer is expected to obscure information, no notification will be send."
Belgium	"In some instances, this is not compulsory (for example, for excise duties, VAT, etc.)."
Greece	"It depends if it is a regular audit (where taxpayer is notified) or extraordinary one (where taxpayers are naturally not notified)."
United Kingdom	"Normally they will notify in advance but they have powers to arrive at the premises."
Spain	"They have to clearly inform of the range of the investigation. Notification usually gives a ten-day period to prepare the initial information or documentation required."

46. Are Tax Officials conducting an audit only permitted to request information that is applicable to the matters under review and reasonably necessary in the circumstances?

31 countries responded positively to this question, although it was pointed out that in practice this may not always be the case.

Spain "Nevertheless, if other information is requested and denied by the taxpayer, it may be considered as an excuse to refuse. This will cause conflict with the Tax Administration which most probably have to be solved in courts."

Australia "There is no statutory limit however the ATO usually limits audits to the specific issues under review but reserves the right to expand if thought necessary."

Malaysia	"This is very much depends on officials. The situation is only true for specific audit, such as transfer pricing audit, withholding tax audit, Schedular Tax Deduction audit, etc. Generally the audit officer can assess all types of information that he believes may affect the tax liability of the Taxpayer."
Ireland	"Where a taxpayer has engaged in deliberate behaviour (not defined in legislation but generally involves intent, or a breach that cannot be explained solely by carelessness), the Taxpayer's disclosure (in order to be classified as qualifying) must include all liabilities to tax and interest in respect of all taxheads and periods, not just those taxheads and periods covered by the audit."

47. Are Tax Officials permitted to use penalty provisions as negotiating tactic?
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In some countries, it has become common practice for Tax Officials to threaten the imposition of a penalty as a negotiating tactic to conclude a tax audit with the taxpayer's concurrence. The answers to this question are very interesting, with the countries being approximately equally divided on this point. 5 countries responded that Tax Officials can absolutely use penalties as a negotiating tactic, and 10 countries said that tax officials are somewhat permitted to do so. On the other hand, 19 countries indicated that tax auditors were generally not allowed to use the threat of penalties as a negotiating tactic, with 14 countries responding absolutely no. There also seems to be a difference between what is allowed by law and what may actually happen in practice.

It can be argued that forcing a taxpayer to agree to adjustments at the audit stage by threatening the application of penalties is an abuse of process. The practice should be banned.

Belgium	"Although this is not provided by law, in practice, it happens that the tax inspectors use such arguments during a tax audit."
France	"In practice Yes."
Austria	"It is not permitted, however in practice situations occur from time to time."
Slovenia	"Just in practice, nevertheless that the Tax Law does not allow such tactics."
Spain	"Not provided for in legislation, but yes in practice."
United Kingdom	"The level of penalties may be used as part of negotiating."
Australia	"The penalty regime is clearly set out however the ATO auditor may agree to exercise a discretion to not impose or to reduce penalties as part of a settlement."
Ireland	"There is scope within the legislation and within the Code of Practice for Revenue Audit to negotiate a penalty."
Poland	"They are not permitted to, though the practice may differ from the law."

48. Do Tax Officials ask questions of Taxpayers without necessarily disclosing the intent and implications of the questions?

This question is directed toward practices where tax officials can mislead taxpayers into answering questions without them having an understanding of the implications of the answers. This can lead to inappropriate answers, which may not even be correct. This may be very prejudicial to a taxpayer. Answering questions without understanding the ramifications of the questions and thus the answers can deny a taxpayer a fair and just hearing and can be used as evidence against the taxpayer at a later date.

28 countries replied that this was common practice, and that tax officials did not necessarily disclose the intent and implications of the questions which were being asked. Interestingly, in the case of France, there was a requirement that the questions be explained. This is a reason why a qualified Tax Advisor should assist a taxpayer in an audit.

Canada	"CRA routinely issues "questionnaires" to taxpayers when special issues are under review (for instance tax shelters). However, such questionnaires are very biased in favour of CRA - so taxpayers should not answer them without advice. Most questionnaires produce misleading answers."
France	"Implications of the questions must be explained."
Malaysia	"It depends on the audit official although there is no prohibition in law preventing from doing that."
Netherlands	"The taxpayer can ask what the intent of the questions is. The tax authorities are bound by law to motivate their intent and other decisions."
Poland	"This happens quite often. That is why the assistance of a tax advisor is valuable from the early stage of the tax audit."

49. If the Taxpayer requests all communication be in writing, is the Tax Authority obligated to comply?

8 countries replied that there was an absolute requirement that the tax authority put communications in writing if the taxpayer requested same. 11 countries required that this was somewhat a requirement. However, 12 countries indicated that there was no such obligation on the part of the tax authority.

Bulgaria	"The communication between the tax authority and the taxpayer has to be in writing only."
Spain	"All communications are in writing. Even the meetings held in the course of an audit end with a written act in which all facts, questions and answers are detailed, as well as all the information and documentation requested and delivered. This act must be signed by the auditor and the taxpayer."
Vietnam	"Formal request and communications must be documented in writing for legal execution purpose."

Poland

"In principle, the communication is in writing. Still, tax authorities may require evidence that is oral by its very nature (e.g., a hearing of a witness) and only recorded in a written protocol."

50. Does a Taxpayer have a right to have a Tax Advisor (which may include legal counsel) present at all meetings and other interactions? (e.g. during an audit)

31 countries stated that a taxpayer has a right to have a tax advisor present in all meetings and interactions with the Tax Authority. 4 countries indicated somewhat yes and one country responded no.

51. Are preliminary audit results or conclusions given informally to the taxpayer or Tax Advisor with reasonable time to respond so there can be dialogue before a final audit position is reached?

This practice seems to be almost universally accepted.

52. When the imposition of a penalty is considered by the Tax Authority, is this disclosed to the taxpayer at the time the Tax Authority becomes aware of the circumstances which might justify the penalty?

10 countries responded absolutely yes and 14 somewhat yes. 6 responded somewhat no and 2 responded absolutely no.

H. The next series of questions deal with Appeals.

53. Is there an internal appeals process if the Tax Authority makes decisions with which the taxpayer disagrees?

Almost all countries indicated that they had an internal administrative appeals procedure where an appeal could be launched to the revenue authorities. However, not all countries had a comprehensive appeals procedure, meaning that the only recourse of a taxpayer could be court action. The main reason for an administrative appeal process is to reduce the instances of cases going to court which is costly and time consuming. In a way, the process is akin to alternative dispute resolution.

Spain

"Internal appeal before the Tax Administration. Appeal before the economic-administrative courts (which are a kind of experts committee depending on the Ministry of Finance). Appeals before the economic-administrative courts are compulsory before appealing before the ordinary courts (justice)."

Ireland

"The internal appeals process deals with Revenue behaviour and situations where Revenue are clearly in error on a technical matter."

54. Is the process mandated in law which is binding on the Tax Authority?

29 countries indicated that the appeals procedure is specified in the tax law, and the process is binding on the Tax Administration. However, this was not universally the case, and in some countries the appeal process was administrative as opposed to a process mandated by law.

United Kingdom "The internal HMRC review is an HMRC procedure, but widely welcomed and used."

55. Can the Tax Authority require the taxpayer's waive rights of appeal as a condition of settlement agreement, before the expiration of the time to file an appeal as part of a negotiated settlement?

Approximately half of the countries surveyed indicated that the Tax Authority cannot require a taxpayer to waive rights of appeal as a condition of settling a matter at the audit level. However, a considerable number of countries had legislation whereby a taxpayer would irrevocably waive any rights of appeal, and this strategy was frequently used by the Tax Authorities in settling tax audits.

It is difficult to determine whether this is, in general, a good thing or a bad thing, because so much depends on how the practice is used. On the one hand, requiring a taxpayer to waive rights of appeal as a condition to a negotiated settlement at the audit stage can be productive and fruitful to all parties. On the other hand, the Tax Authorities could use this power coercively as a negotiating tool, to force a taxpayer to settle all matters and waive rights of appeal giving in on issues where the taxpayer might be right. In theoretical terms, it would seem difficult to justify why a taxpayer should be required to waive rights of appeal as a condition of an agreement at the audit stage. On the other hand, if a taxpayer has been granted certain administrative concessions in a negotiated agreement at the audit stage, it would be inappropriate for the taxpayer to later go back on the agreement by exercising the statutory right to appeal a decision of the audit group to which the taxpayer has agreed. It seems on balance that some safeguards should be introduced to make sure taxpayers are not disenfranchised of their rights.

United Kingdom "In cases the authority will want to reach a negotiated settlement that the taxpayer will not try to overturn so to that extent the taxpayer will be asked to agree not to appeal further. But their general rights of appeal are always there, i.e. they are able to refuse a negotiation and follow their appeal rights."

Austria "Taxpayer's waiver to file an appeal is possible (§ 255 BAO) and occurs in practice; legally the Tax Authority cannot request a waiver to appeal as part of a negotiated settlement."

Poland "The law does not provide for such a possibility. Any arrangements of this kind may only be based on gentlemen's agreement."

56. Can a taxpayer withdraw from an appeal without consent of authority?

Virtually all countries allowed a taxpayer to withdraw from an appeal should the taxpayer choose to do so.

57. Do taxpayers have the right to all relevant information pertaining to an audit in a timely manner upon request to the Tax Authority (except information obtained from a third party and certain other information which may be properly withheld)?

There was a wide range of answers given to this question. 14 countries answered that the taxpayer had an absolute right to information gathered in the course of an audit, while 12 countries indicated that the taxpayer was generally able to obtain this information but did not have an absolute right to it. Only 5 countries indicated that the taxpayer did not have any rights in this regard.

Netherlands "For instance: Taxpayers are entitled to review their own file at the tax inspectorate."

Spain "Furthermore, before signing the final assessment, the whole file used by the Tax Administration must be disclosed to the taxpayer, even information obtained from third parties, so that taxpayer may understand the adjustments to be made and may exercise his own defence. Time periods for signing the final assessment or appealing commence once the file has been disclosed to the taxpayer."

Ireland "There is some information which the Tax Authorities would not provide, for example the risk rating of the taxpayer in question or information relating to other taxpayers."

Australia "Under the Freedom of Information Act the taxpayer can obtain all relevant documents subject to some exceptions where disclosure would be a breach of privacy or would hinder proper administration of the law e.g. a criminal investigation."

58. Is the period for filing an appeal held in abeyance during the time that the taxpayer has requested, but not received information in the possession of the Tax Authority relevant to the audit or inquiry which the taxpayer has a right to receive?

Only 2 countries had a specific provision allowing the period for filing a tax appeal to be held in advance while the taxpayer has requested but has not received information from the Tax Authority relevant to the audit. 7 countries indicated that the taxpayer would have some ability to delay the filing deadline for an appeal, generally based on obtaining the consent of the Tax Authority to do so. However, the majority of countries indicated that the taxpayer had no rights in this regard. Accordingly, if the Tax Authorities do not provide the required information on a timely basis, the taxpayer nevertheless must file an appeal within the timeframe which is prescribed. This may be unfair to the taxpayer in certain instances.

Portugal "If the taxpayer finds that a received notification does not have all the informative and mandatory elements defined by law (such as adequate reasoning, ways of appeal, etc) he may ask the tax authorities to provide that information. The deadline for appeal will only start when the reasoning is notified to the taxpayer."

Belgium "In such a case, the taxpayer would have to file the appeal in order to avoid the expiration of the delay set by law to do so and

the discussion would continue in the framework of the investigation of the appeal."

Croatia	"Not applicable, the procedure is regulated, the deadline for filing the appeal starts once the assessment/resolution is issued by the tax authorities on the basis of all facts determined by the tax authorities."
Spain	"See previous answer. Even in case of appeal before courts, taxpayer has the right to examine again the file that has been submitted by the Tax Administration to the court, in order to be able to prepare his defence adequately."
Finland	"The period for filing an appeal is calculated from receiving the respective decision."
Australia	"These would be circumstances where an extension of time to lodge an appeal might be granted."
Austria	"Upon the taxpayer's request – while he is expecting the information necessary to understand the appeal."

59. Are Tax Officials conducting an appeal able to exercise independent and objective decision making and not be bound by decisions by the administration (i.e. Head Office Policy)?

The countries surveyed were roughly evenly divided as to whether tax officials in the appeals area are able to exercise independent and objective decision making which is not bound by the decisions and administrative practices of the Tax Authority. This clearly compromises the independence of the appeal process. But at the same time it provides for a degree of consistency in the way taxpayers are treated. It is arguable that an appeals process cannot be viewed as being independent if the decision makers cannot make independent and unbiased decisions, and are bound by a head office policy of some sort. If the process is not independent, this should be disclosed to taxpayers.

Poland	"In practice, tax officials often automatically follow the Ministry of Finance guidelines/directives."
Ireland	"Key policy decisions would be taken by an internal committee."
Australia	"Objections are dealt with by officers not connected with the case and are supposedly independent. But an objection after an audit is rarely if ever allowed."
United Kingdom	"Policy will be laid down so that there is a measure of consistency but they do have scope for some discretion."
Belgium	"Whilst they have authority to examine the arguments and data submitted by taxpayers and to exercise some judgement, they are bound, for some issues, by decisions taken by the administration."

60. Are taxpayers required to make any payments of tax, interest or penalties in respect of a matter which is under appeal?

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20 countries responded that a taxpayer is required to make a payment of tax, interest or penalties in respect of a matter which is under appeal. Only 7 countries indicated that a taxpayer is absolutely not required to make any such payment. In some cases, a partial payment must be made. In other cases, a guarantee may be lodged for the payment instead of a payment itself. In some cases, the issue depends on the type of tax involved. For example, VAT in dispute may nevertheless be required to be paid.

Also, the Tax Authority may withhold refunds against taxes in dispute (see question 30) which is a back-door way of making a Taxpayer pay taxes in dispute.

Czech Republic	"If the tax assessed by the Tax Authorities is higher than stated by the taxpayer it is due only after the appeal proceedings are finished (i.e. the assessment is in legal force)."
Greece	"It was 20% and now it will be changed to 50% deposit of the fine to be paid out before the appeal is presented to court."
Spain	"Taxpayer must pay the tax and interests or apply for abeyance. In such case debt must be guaranteed by a bank warranty, a deposit, mortgage etc. Penalties may be suspended without guarantee."
Ireland	"Taxpayers are required to pay the tax and interest (but not the penalty) before making an appeal."
Bulgaria	"The taxpayer must pay all taxes and interest whether he/she appeals or not; penalties however are payable after the end of the appeal procedures if the penalty act is finally confirmed by the respective court."
United Kingdom	"Varies - VAT generally has to be paid before the matter can be appealed; direct tax under appeal can usually be left pending (though interest will run if the tax is found to be payable)."

61. Can a taxpayer use the appeals process to delay the payment of tax, interest, or penalties without a valid reason (i.e. a frivolous appeal)?

9 countries indicated that a taxpayer can use the appeals process to delay the payment of tax, interest or penalties even if the appeal is basically without merit. This is of course one of the by-products of allowing a taxpayer who files an appeal to have a stay of payment of tax, interest and penalties. How does one then decide if an appeal is without merit, until the appeal is actually dealt with? This allows a taxpayer to potentially delay payment of tax deliberately by filing an appeal, with the full knowledge that the taxpayer will most likely lose the appeal. Imposing a sanction against a taxpayer for a frivolous appeal has the danger of dissuading taxpayers from launching appeals that are bona fide (or genuinely believed to be).

Belgium	"As such an instance is not explicitly dealt with in the law, it would in principle be possible to do so, but interest is running and it is therefore not advisable to take this course of action."
Canada	"CRA may seek jeopardy collection order in such cases. interest will continue to accrue to all amounts assessed."

United Kingdom	"Generally No."
Portugal	"In case of internal appeals the tax authorities may charge up to 5% of the amount being appealed in case there is no reasonable grounds for the appeal."
Slovakia	"This is possible only for a limited time period because the appeal should be reasoned."
Switzerland	"Yes, but he would have to pay the cost of the process afterwards to the de facto result would even be more negative."

62. Is a taxpayer entitled to self-representation at an appeal of first instance?

Virtually all countries allow the taxpayer to be self-represented at an appeal of the first instance.

Bulgaria	"The taxpayer is not required to retain a lawyer or tax advisor to represent him/her during the appeal process."
Italy	"But only if the tax amount under filing is less than € 2.500."
Portugal	"In cases in which the amount is lower than € 12.500. If an appeal of first instance has to be lodged in a higher court (marginal cases) the Taxpayer has always to be represented by counsel."
Canada	"ITA silent on who may represent a Taxpayer - an agent or representative must be authorized by Taxpayer."

63. Is a taxpayer entitled to a claim of privilege (so that information does not have to be revealed) in respect of communication with a duly appointed Tax Advisor concerning a tax appeal?
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Where a Tax Advisor is appointed by a taxpayer to assist in handling an appeal, it could be very damaging if the Tax Authority could require copies of communications between the taxpayer and the Tax Advisor. So the question is whether the Tax Authorities cannot compel release of communications between the taxpayer and the Tax Advisor concerning a tax appeal.

15 countries granted this right to the relationship between taxpayers and Tax Advisors whether or not the Tax Advisor was a lawyer. A further 11 countries granted the right of privilege but only if the tax advisor was a lawyer. 6 countries stated that there is no claim of privilege regardless of who the tax advisor is.

Netherlands	"According to Dutch Supreme Court case law, tax advice received from third parties, such as Tax Advisors, that relates to the analysis of the taxpayer's tax position and advising the taxpayer thereon, does not have to be disclosed to the tax authorities."
United States	"Accountants have limited privilege."
Switzerland	"All information - even if protected as it is client-lawyer or client-Tax Advisor communication - has to be revealed by the client himself."

Spain	"Only if the Tax Advisor is a Lawyer."
Ireland	"There is a general statutory exemption for "professional advice of a confidential nature given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose)."
Belgium	"Yes, a tax consultant member of the Institute of Tax Consultants has a professional secrecy duty. In addition, in criminal law, the Taxpayer has the right to remain silent."
Austria	"Yes, but only with a lawyer § 91 WTBG (Beraterprivileg)."

64. Is a taxpayer entitled to costs in respect of an appeal, when justified?
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19 countries indicated that a taxpayer is entitled to costs in respect of an appeal, while 12 countries indicated that the taxpayer was not.

Bulgaria	"The taxpayer is entitled to the costs incurred in the judicial appeal procedures; these costs are awarded by the court on taxpayer's request subject to some considerations on the reasonableness of the awarded amounts. However, the costs incurred during the administrative appeal phase of the procedure are not awarded. The taxpayer should file a separate lawsuit in order to claim such costs."
United Kingdom	"At the first level of appeal only if the tax authority has been found to have acted unreasonably."
Australia	"Costs are not awarded in an appeal at first instance to the Administrative Appeals Tribunal (AAT). Cost can be awarded against the losing side in an appeal to a court."
Canada	"General rule is that the successful litigant may apply to court to recover costs - but tariff under tax court rules is laughably low and is not close to actual out of pocket costs. No costs at objection level. All costs deductible in computing Taxpayer's income - para 60(o) ITA."
Germany	"The opposition procedure is free of charge. Each side has to bear its own costs. (§ 347 AO – Commentary.)"
Switzerland	"The party losing the appeal has to come up for the cost of the process."
Belgium	"When a taxpayer appeals before court against taxation, the court will grant the taxpayer some cost if he wins the appeal. The idea of the law is that these costs should enable the taxpayer to pay his lawyer."

65. On what basis are costs awarded?

There is a considerable range of practices when it comes to the basis on which costs are awarded. Firstly, as might be expected, costs are generally only awarded to the winner, and not the loser. Often the costs which are awarded are far less than the actual costs which the taxpayer has incurred.

Bulgaria	"The legal costs in judicial procedures are awarded on the basis of the costs actually and effectively paid as of the end of the last court hearing session. Success fees paid after the end of this session are not awarded. Where the paid legal fees are found by the court to be excessive, the court may award a reduced amount."
Slovakia	"A decision of appropriate authority or court is required. Reimbursement of costs may be granted only up to the value of actual costs, regarded as damage to the taxpayer, as mentioned before."
Romania	"Actual costs of the appeal (e.g. lawyer's fee)."
Australia	"Awarded to the winner but only "taxed costs" of solicitor and barrister. Taxed meaning costs at prescribed rates set by the law society."
Ireland	"Costs are not awarded in an appeal at the first instance."
Canada	"court awards costs - based largely on success and complexity."
Portugal	"Court expenses, other expenses and fees of the counsel (limited to 50% of the court expenses paid by the parties) on the proportion of the amount won in court."
Spain	"Discretionally by the court."
Croatia	"Have to be substantiated with evidences, would be awarded if the tax case was resolved in favour of a taxpayer."
Latvia	"It is possible in business area."
Greece	"It is up to the judge to interpret the law."
Hong Kong	"Judgement and merit of the case."
United States	"Lack of substantial justification for IRS position."
Netherlands	"On the basis of a fixed amount, which substantially reduces the costs. In few cases full compensation of costs is possible."
Italy	"Ordinary legal costs."

Germany	"See above 12."
Belgium	"This is left to a certain degree of discretion of the judge but based upon the principles laid down in law."
France	"Upon Court decision which defines the amount of costs granted."

I. The questions below focus on Assistance provided by the Tax Authority.

66. Does the taxpayer have the legal right to be heard and responded to and to receive reasonable assistance from the Tax Administration?

32 countries indicated that a taxpayer has the legal right to be heard and responded to and to receive reasonable assistance from the Tax Administration. Curiously 2 countries being France and India, responded that the taxpayer has no such right. In some cases this right is contained in the legislation itself (approximately 19 countries) while in other cases it is a right given to the taxpayer by administrative practice (possibly in a Taxpayer Charter).

Germany	"According to § 89 AO the Tax Authority shall grant information and advice."
Slovakia	"Assistance entails providing information, guidance, but not tax advising."
Australia	"Covered in the Taxpayer's Charter."
Spain	"Taxpayers have the right to be informed and assisted by Tax Administration about the exercise of his rights and the fulfilment of his tax duties by law."
Netherlands	"The answer is only applicable to the right to be heard by the tax authorities."
Malta	"This right is set in the Taxpayers' charter."

67. Does the Tax Authority provide assistance as to the application and interpretation of tax laws (but not of course planning advice)?

Almost all countries indicated that the Tax Authorities provide assistance as to the application and interpretation of tax laws. Curiously it was stated that the Tax Authority in India does not provide this assistance.

Australia	"An online enquiry service is provided for all taxpayers. Tax Agents can access areas of expertise through a dedicated Tax Agents Portal."
Poland	"As explained above, it is done mainly through the individual tax rulings system, and the call-center of the National Tax

Information; another useful tool consists in concluding an advance pricing arrangement."

Czech Republic

"But mostly related to filing matters rather than interpretation of law."

Canada

"The Tax Authority attempts to do this but the legislation (actual and proposed) has become so complex that providing assistance with interpretation has become virtually impossible. We see this with "Explanatory Notes" that accompany draft legislation. In many cases the Explanatory Notes simply copy the draft legislation text."

68. Does the Tax Authority provide tax legislation, regulations, forms, guides and information to Taxpayers in an accessible manner?

The Tax Authorities do provide tax legislation, regulations, forms, guides and other information to Taxpayers in an accessible manner. No countries stated a contrary view.

Spain

"Complete information about legislation, regulations, forms and guides is made available in Tax Administration web site."

Slovakia

"Some guidelines addressed to tax officers are not made public and cannot be provided to taxpayers, although local tax authorities are obliged to follow them."

69. Are the forms and guides kept up-to-date?

In virtually all cases, the forms and guides are kept up to date by the Tax Authorities.

United Kingdom

"Inevitably many guides become out of date but generally HMRC try hard to keep things up to date."

Malaysia

"Most of the forms and guides are kept up to date."

Belgium

"Sometimes they are only kept up-to-date a long time after the law or case law has changed."

Canada

"There is not nearly enough "Forms and Guides" published by the Tax Authority and the ones that do exist are not sufficiently kept up to date."

70. Is this information available for free?

Information is generally available to taxpayers without charge, but there were some qualified answers.

Canada	"Although free from the perspective of not having to pay the Tax Authority for it, the information is very difficult to obtain as a layperson. In most cases, the layperson will require professional assistance for advice and interpretation of the otherwise free information."
Belgium	"Not always: if a taxpayer wants to obtain some forms on paper, some costs could be incurred."
Portugal	"Some extensive guides are not available for free."

71. Are Tax Officials expected to be thoroughly familiar with the law as it is applicable to their duties?

In virtually all countries surveyed, Tax Officials are expected to be thoroughly familiar with the law as applicable to their duties (i.e. the areas of tax in which they are involved).

Croatia	"However, the facts may differ in practice."
Malta	"In practice, only high ranking officials are familiar with the law."
Malaysia	"It must be noted that the scope of taxation is very wide and is difficult for anyone to master in all aspects of the law."

72. Are Tax Officials knowledgeable and adequately trained?

When asked whether tax officials are knowledgeable and adequately trained, 27 countries responded positively, 5 countries responded somewhat negatively, and many stated that the situation was steadily improving. This is good to hear.

United Kingdom	"Many taxpayers deal with helpline staff who operate to a script with only limited knowledge of wider tax matters."
Belgium	"The situation has significantly improved over say the last 10 years, but in some instances, some deficiencies are still noted."
Croatia	"The situation is improving every day."

73. Is the taxpayer entitled to information concerning past tax records in possession of the Tax Authority?

In almost all cases, a taxpayer is entitled to information concerning past tax filings in the possession of the Tax Authority.

J. The next series of questions deal with Service Standards.

74. Does the Tax Authority define services standards for its dealings with taxpayers?

29 countries had service standards which they have defined for dealings between the Tax Authority and taxpayers. Only 6 do not have any service standards.

Belgium	"Although the approach of Tax Authorities in their relationship with taxpayers has evolved towards a 'service' approach, there are no publicized 'service standards' in that respect. However, various measures are taken at internal level."
Czech Republic	"In some but very limited cases the time frames are done by the law (e.g. in case of rulings). There are also internal guidelines of the Tax Authorities that may be considered as a common practice (but difficult to be enforced; subject to court interpretations)."
Latvia	"It exists on paper, but in real life it is not completely realized."
Finland	"Tax assessment time frame is legally regulated. In addition, tax authorities have internal timelines for certain tasks for administrative purposes only."
Malaysia	"These are included in the Client Charter and some of the Operational Guidelines."
Poland	"Time frames for tax proceedings etc. are set out directly in the tax law. However, deadlines are easily extended. Most probably the tax authorities independently set service standards for internal purposes but as a rule, they are not made public and do not serve as a significant point of reference for taxpayers. Please note, however, that the tax audit programs and tax audit reports are publicly known."
Australia	"Under the Taxpayer's Charter."
Slovenia	"Yes, but not satisfactorily."

When asked for more particulars concerning the service standards, countries responded as follows:

75. Do the service standards include...	Countries
processing a tax return	23
processing a request for information	21
technical interpretations or rulings	16
tax waivers and clearances	14
disposition of tax appeals	20

It is perhaps disappointing that more countries do not define service standards for these various matters, particularly with respect to tax waivers and clearances. Without a deadline, the Tax Authorities can take an unreasonable length of time which can interfere with the orderly conduct of business.

Australia	"Covered by both the Charter and regular Administrative Practice Statements."
Romania	"Generally 45 days."
United Kingdom	"Targets are set for: Post turnaround times, contact centre waiting times, repayment standards, complaints handling."
Austria	"The Austrian system knows Guidelines (Richtlinien) and Technical interpretations (Erlässe)."
Malaysia	"The Guidelines on Advance Rulings stipulate that advance ruling will be issued within 60 days from the day a complete application is submitted."
Belgium	"The timing for processing tax returns and requests for information is based upon the law. In relation to rulings there is a kind of service standard in relation to the timing, but it is not binding for the Ruling Commission. For technical interpretations it depends on the legislation and the scope of the provisions to be interpreted."

76. Are the Service Standards legally binding, administrative or both?

Where a country had service standards, they are usually of an administrative nature, rather than being legally binding. 23 countries indicated that they were administrative in nature. 9 countries indicated that they were either legally binding or a combination.

77. Does the Tax Authority investigate and measure actual performance against these service standards?

15 countries responded that the Tax Authority does investigate and measure actual performance against service standards. However, 17 countries indicated that either the Tax Authority does not investigate and measure actual performance against service standards or that they were unaware of whether or not such was done.

Canada	"CRA measures performance against its service standards and publishes these results in the CRA Annual Report that is tabled in Parliament every year."
Malaysia	"The IRB publishes monthly report of achievement based on Client Charter target and posts on its website."

78. Are these service standards published?

17 countries publish service standards in one form or another, while 14 countries do not.

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Poland	"The Ministry of Finance announces the tax audits programs and tax audit reports."
Bulgaria	"Those of the standards that are part of the law are officially published. Other service standards published on the web-site of the tax authority do not contain details."

79. Are the results of performance of service standards published?

When asked whether the results of the service standards were published (i.e. a measurement as to whether the Tax Authority achieves the service standards they defined), only 10 countries responded positively. Thus of the 17 countries who responded that there are published service standards, 7 of these countries do not provide any evaluation as to whether the Tax Authorities meet or fail to meet these service standards.

80. Does the Tax Authority publish the results of its audit programs?

19 countries responded that the Tax Authority does publish the results of its audit programs, while 13 countries responded that it does not.

Mongolia	"In general."
Spain	"In general terms they publish aggregated statistical information."
Australia	"In the Annual Report."
Slovakia	"Not on regular basis and with limited, general information."
Switzerland	"Only the result of the audit of the Tax Authority itself is published under http://www.efk.admin.ch/index.php?option=com_content&view=article&id=183&Itemid=178&lang=en "
Malaysia	"Some statistics of tax audits were published in the Inland Revenue Board annual report."
Luxembourg	"Statistical records are available."

When asked for more details concerning the type of information which was published, the following was indicated.

81. Do the publications include...

Countries

Number of Taxpayers audited

20

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Categories of Taxpayers audited	19
Revenue raised	21
Duration of audit program	7
Cost of audit program	3
Objectives of audit program	13
Conclusions of audit program	9

82. Is the Tax Authority responsible for information it puts into writing so that a taxpayer may rely on it?

A majority of countries indicated that the Tax Authority was responsible for information it puts in writing, with 22 countries responding absolutely "Yes" or "Somewhat Yes". 10 countries responded "Somewhat No" or "Absolutely No". Further questions probe into these matters in more detail.

Australia	"Public and Binding Private Rulings can be relied upon by a Taxpayer."
Ireland	"Yes, if it relates to the circumstances of a specific taxpayer. General guidance notices cannot be relied upon on appeal."

83. Is the information the Tax Authority puts into writing legally binding?

12 countries indicated that information put in writing by the Tax Authority is legally binding on the Tax Authority while 14 indicated that it was not. In many cases, it depended on the nature of the information.

Canada	"An advance income tax ruling is regarded as binding upon the CRA, subject to any qualifications stated in the ruling and the comments. Transactions on which an advance income tax ruling was issued are subject to review by the CRA tax services offices during the course of any subsequent audit." (But it is not legally binding.)
Austria	"Depending on qualification of information"
Switzerland	"Depends on the kind of information put into writing by the Tax Authority. In all cases, the information put into writing justifies good faith of the taxpayer and thus creates some sort of legal certainty."

Portugal	"It is binding for the Tax Authority but not for Courts and the taxpayers."
Malaysia	"It is legally binding to the extent that the information are not against the law."
Belgium	"Not in all cases. In cases of official rulings, yes. But, in case of informal request for information, the tax authorities would always indicate that they cannot be bound by the information they provide."
United Kingdom	"Not necessarily - depends on context."
Malta	"Written communication will usually create legitimate expectations on the part of the Taxpayers."
Australia	"Yes but subject to a Court finding to the contrary. Usually however the ATO will grandfather receipts of rulings prior to the change in interpretation."
Germany	"Yes, if they issued a specified legally binding ruling."

84. If the information put into writing by the Tax Authority later proves to be wrong but was in the Taxpayers' favour, can the Taxpayer rely on the error?

There were a wide range of answers to this question, with many countries of course replying that the Tax Authority was not responsible for information put in writing at all (see questions 82 and 83). One would expect the Tax Authority to use the same standard of care that it demands of taxpayers. Thus these errors should be infrequent. The answers given are interesting.

Italy	"As said, if it concerns a different tax law interpretation, taxpayers can be entitled to not pay penalties."
Bulgaria	"Generally no, though in some circumstances the taxpayer may be relieved from the interest liability, but not from the payment of the respective tax."
Switzerland	"If he had good faith and was allowed to believe in the information put into writing (if it was not obviously wrong)."
Malaysia	"If the error is against the provisions of tax law, then the error has to be rectified. However, the taxpayer can rely on the error made by the Tax Authority to avoid imposition of penalty arising from the rectification of the error. Where the error is not against the provisions of tax law, then the taxpayer can rely on the error."
Belgium	"In principle not. Taking into account that the tax law is of public order, the Taxpayer should respect the law. Only if the taxpayer can invoke that he could reasonably not know that the information of the Tax Authorities could not be relied upon, the courts may rule in favour of the taxpayer."

Czech Republic	"In some but very limited cases the time frames are done by the law (e.g. in case of rulings). There are also internal guidelines of the Tax Authorities that may be considered as a common practice (but difficult to be enforced; subject to court interpretations)."
Poland	"It depends on the legal form of the information."
Greece	"It may be taken into consideration as a mitigation factor to soften the result, but the law will be followed as should."
France	"N/A."
Japan	"No."
Romania	"No."
United States	"No except possibly to reduce penalties."
Mongolia	"No, the taxpayer cannot rely on the error."
Hong Kong	"No, the taxpayer cannot."
Slovakia	"No."
Spain	"No. It can be used to avoid penalties."
Vietnam	"No. Later ruling will prevail."
United Kingdom	"Normally Yes."
Ireland	"Not if the information was part of published guidance notes."
Malta	"Not if the taxpayer failed to disclose all material facts in the course of requesting the authorities to issue the required information/ruling."
Germany	"Only in case of a specified legally binding ruling."
Latvia	"Rather no. But it can be used as a proof later in court."
Indonesia	"Sometimes it happens that an information was wrong and not corrected and the Taxpayer rely on the error."
Russia	"Tax Code Article 111. Circumstances Ruling Out the Guilt of a Person in Committing a Tax Offense 1. The following circumstances shall rule out the guilt of a person in committing a tax offense:<...>3) the taxpayer or tax agent was acting on the strength of written explanations on questions of the application of the legislation on taxes and fees given by a tax authority or another authorized government agency or officials thereof within the scope of their authority (said circumstances shall be

established, given appropriate documents of these bodies, which by their meaning and content relate to tax periods in which a tax offence was committed, regardless of the date of publication of these documents).<...> "

Finland	"Taxpayer can in some cases effectively rely on the guidance even though it had not been correct."
Portugal	"The taxpayer may only rely on the fact that the Tax Authority is binded to its interpretation and cannot act adversely. Courts would also make a case-by-case analysis, since the taxpayer acted regarding Tax Authorities instructions."
India	"Yes."
Canada	"Yes."
Austria	"Yes as long as it is within scope of law (principle of equity and good faith)."
Luxembourg	"Yes, Art. 222 AO, Art. 224 AO."
Netherlands	"Yes, based on the principle of legitimate expectations."
Slovenia	"Yes, it could rely, but he has to demand in written form."
Australia	"Yes, refer to answer to previous question."

K. The next series of questions address Rulings and Interpretations.

85. Does your Tax Authority have a mechanism for issuing rulings and technical interpretations?

The vast majority of countries have a mechanism for issuing rulings and technical interpretations. Only 5 countries indicated that they did not have such a facility.

86. When the Tax Authority adopts a position on legislation, does the Tax Authority publish this position and make it available to taxpayers?

32 countries out of 37 countries responding indicated that when the Tax Authority adopts a position on legislation, it puts this position in writing and makes it generally available to Taxpayers.

Malaysia

"With the introduction of self-assessment, the Tax Authority has slowly issued public rulings to inform the public of their position on various issues."

87. Does the Tax Authority publish the adopted position and make it available to taxpayers with respect to valuation issues?

19 countries have published positions on valuation issues, but usually these take the form of guidelines or statements of principle, rather than a valuation database.

88. Does the Tax Authority publish the adopted position and make it available to taxpayers with respect to pricing data?

14 countries have published positions which have been made available to taxpayers with respect to transfer pricing data. However, this does not generally extend to access of a database which is used by the Tax Authorities. Thus a taxpayer may be at a disadvantage in having information which is less complete than that of the Tax Authority, and would not necessarily have access to such data ("secret comparables"). Thus a taxpayer would have to rely on commercially available databases, and on surveys and research to determine appropriate benchmarks.

Belgium

"The database of the Tax Authorities is not readily available for consultation by taxpayers but if taxpayers ask for a ruling, the tax authorities will use data from their database in the discussion with the taxpayers."

89. Can a taxpayer require that the Tax Authority provide an interpretation of the law?

10 countries indicated that a taxpayer can require the Tax Authority to provide an interpretation of law. 11 countries indicated that the taxpayer can somewhat require this. However, 13 countries indicated that the Tax Authorities cannot be required to provide an interpretation if they choose not to do so.

Australia

"At no cost to the taxpayer a Private Binding Ruling can be sought."

Poland

"At present a taxpayer can apply for an individual tax ruling (and also for an advance pricing arrangement). Also, starting from 2012 taxpayers will be entitled to require the Ministry of Finance to issue general tax ruling provided that they show the discrepancies (inconsistency in technical position taken) within individual tax rulings."

France

"There is no obligation for the TA to reply."

90. Can a taxpayer require the Tax Authority to provide a ruling on a tax matter?

The results of this question were very similar to the previous question, with a slightly more positive response. 16 countries indicated that a taxpayer can require the Tax Authority to provide a ruling on a tax matter. 11 countries indicated that the Tax Authorities can somewhat be required to provide a

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ruling. Only 6 countries indicated that the Tax Authorities cannot be required to provide a ruling, presuming they choose not to do so.

Austria	"Advanced ruling, enacted 2011, as regards transfer pricing, group taxation, fiscal transformation (Umgründung), § 118 BAO."
Czech Republic	"Based on the law, the Tax Authorities are required to provide rulings in very few areas e.g. R& D tax credit, TP methodology (APA)."
Germany	"It is foreseen in the law, that the Tax Authorities may provide a ruling, but there is no right of the taxpayer"
Croatia	"The taxpayer is eligible to request the opinion, the tax authority is not obliged to issue the opinion upon request."
Hong Kong	"The taxpayer may request the tax authority to provide a ruling on a tax matter but the Tax Authority may decline the request."

91. Are Tax Rulings binding?

27 countries which had a rulings process indicated that the results of a ruling were binding on the Tax Authority. 4 countries indicated that the ruling was not necessarily binding.

United Kingdom	"Not all are but there are certain procedures for taxpayers to create a binding agreement with the Tax Authorities e.g. ATCO."
Portugal	"Tax rulings are binding for Tax Authority but not for Courts or Taxpayers."

92. Are published interpretations binding on the Tax Authority?

This question gave a range of responses, which is curious. 10 countries indicated that published interpretations are binding on the Tax Authorities, while 15 countries indicated that they were somewhat binding. 9 countries indicated that such published interpretations were not binding.

Bulgaria	"Certain interpretations issued by the executive director of the National Revenue Agency or the Minister of Finance are generally binding."
Czech Republic	"Generally, the Tax Authorities should respect interpretation of a superior body but the interpretations are not binding."
Poland	"Technically, they are not binding on the Tax Authority. However, a taxpayer who relied on an official interpretation afterwards disregarded by the Tax Administration is not liable to pay interest or penalties. Additionally, if a taxpayer performed an activity with disputable tax implications after having received an individual tax ruling/after a general tax ruling had been published, his/her/its obligation to pay tax is also waived."

Belgium "The published rulings are not binding nor for the taxpayer nor for the Tax Administration. However, they give an interpretation of the tax law and can sometimes be used as argument in a dispute with the Tax Administration. It is part of the "good administration" for the Tax Administration to take them into account when dealing with taxpayers."

93. Does the Tax Authority adhere to their past rulings and technical interpretations, and keep them up to date?

Virtually all countries indicated that the Tax Authorities do adhere to their past rulings and technical interpretations and generally keep them up-to-date, but there are exceptions.

Ireland "For example, the published position on temporary assignees is not adhered to and is not updated."

Czech Republic "In very few cases only."

United Kingdom "they are of course able to change their interpretations/rulings and do so at times."

Germany "Updating takes sometimes a long time."

L. The next series of questions concern Taxpayer Records.

94. Do taxpayers have an obligation to maintain accurate records in order to verify their tax filings?

All countries require taxpayers to maintain accurate records.

95. Are taxpayers protected from unreasonable search and seizure without due process?

32 countries indicated that taxpayers are protected from unreasonable search and seizure without due process, while 4 countries indicated that there was no such protection.

Canada "Unreasonable is a subjective concept. With respect to a search, the ITA [231.1(3)] contemplates an ex parte application by the Minister to a judge who, if satisfied that administration of tax laws require it, may order entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act. With respect to seizure, a judge may, on ex parte application by the Minister, issue a warrant in writing authorizing any person named therein to enter and search any building, receptacle or place for any document or thing that may afford evidence as to the commission of an offence under this Act and to seize the document or thing and, as soon as practicable, bring it before, or make a report in respect of it to, the judge or, where the judge is unable to act, another judge of the same court to be dealt with by the judge in accordance with this section. [231.3]."

Japan	"The tax laws stipulate that taxpayers are subject to tax audits, however, their human rights are protected in case of voluntary audits. In the process of illegal tax audits which are against human rights, the evidences collected for tax purpose are regarded invalid."
Ireland	"There are safeguards in the legislation which limit Revenue powers in certain circumstances."

96. When taxpayer's records are seized, is a copy of materials provided to the taxpayer so that their business is not impaired?

24 countries indicated that when a taxpayer's records are seized, a copy is provided to the taxpayer upon request.

Canada	"A taxpayer whose documents have been seized may make application to a judge for return of those documents [231.3(7)]. The taxpayer is entitled to make copies for his use at the Minister's expense. [231.3(8)]."
Germany	"According to the prevailing opinion the taxpayer has such a right. In practice the Tax Authorities mostly provide copies upon request. However, the taxpayer is charged with high costs."
Greece	"Only a list of the records seized (no details)."

97. Where the taxpayer's records are inadequate, can the Tax Authority penalize the Taxpayer?

33 countries said that a penalty can be levied on a taxpayer for inadequate records.

United Kingdom	"What is 'inadequate' is a live issue at present in the UK."
Canada	"Yes, the taxpayer can be subject to a penalty [163(2)]."

98. Where the taxpayer's records are inadequate, can the Tax Authority deny deductibles or add additional income as may be appropriate?

As expected, poor taxpayer records can result in deductions being denied or income being added as may be appropriate. Virtually all countries responded positively to this question.

Japan	"Basically an appropriate tax is levied based on the taxpayer's records. When there are no taxpayer's records or other cases, an estimate of tax is performed under a certain circumstances. There are also some cases where taxpayers file corrections, or tax authorities dispose corrections or determinations."
United Kingdom	"If the evidence is not there to support the claim, Yes."

Australia	"The ATO can issue a default assessment under s167 of the 1936 Act assuming income and deductions."
Slovakia	"unless the appropriate of deductibles or income proved otherwise."
Canada	"Yes, the Minister may assess as he sees fit if he thinks inadequate records have resulted in reporting which is incomplete or misleading [152(7)]."

99. If a taxpayer is otherwise presumed to be honest, does the lack of appropriate records call their honesty into doubt?

30 countries responded positively that the lack of appropriate records can call a taxpayer's honesty into question.

Canada	"Yes, the Minister may draw such an inference in applying "criminal" sanctions under the ITA [239(1)(c)]."
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M. This next series of questions deals with Confidentiality.

100. Are the affairs of the taxpayer kept confidential by the Tax Officials who are charged with handling the affairs of the taxpayer in question?

Virtually all countries responded that a taxpayer's affairs are to be kept confidential by Tax Officials. Many countries responded that this is guaranteed in the law.

101. Are Tax Officials who have a personal relationship with the taxpayers not to be involved with the taxpayers' dealings with the Tax Authority?

The majority of countries (27 in all) indicated that tax officials who have a personal relationship with a taxpayer are not to be involved in dealings with a taxpayer on behalf of the Tax Authority. In some cases, this was a legal requirement, but it seems that in the majority of cases this is done by administrative practice.

Japan	"For the purpose of securing fairness and impartiality of taxation, tax officials who have a personal relationship with the taxpayers are not to be involved with the tax audit of that taxpayer. Actually when I used to serve as Tax Official, I proposed my superior not to include (me in) the staff of audit to the company run by the parents of my friend."
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102. Do taxpayers have the right to refuse to disclose information that is clearly unrelated to the issue being dealt with by the Tax Authority?

31 countries responded that a taxpayer has a right to refuse to disclose information which is clearly unrelated to the issue being dealt with by the Tax Authorities. However, the onus to demonstrate that the information is not relevant may rest with the taxpayer. In the case of Australia, it seems that the tax officer must demonstrate how the information is relevant, and thus the onus is on the Tax Authority. 5 countries responded that the taxpayer does not have a right to refuse to disclose information, whether it is relevant or not.

Canada	"No [231.2(1)]."
Slovakia	"Taxpayers are obliged to provide any information required by Tax Authority. Tax Authority should however require only information related to issues it is dealing with."
Malaysia	"The power to call for information under Section 81 of the Malaysian Income Tax Act 1967 is very wide."
Australia	"Yes the Taxation Officer must demonstrate how the information is pertinent to the Act."

103. Can the Tax Authority obtain information from third parties about large groups of Taxpayers (e.g. require centralized data from banks)?

Most countries will allow the Tax Authority to obtain information from third parties on large groups of taxpayers, with 30 countries responding positively. 4 countries, being Belgium, Hong Kong, Luxembourg and Switzerland responded that the Tax Authority cannot obtain such information (for example from centralized data in the possession of banks).

Belgium	"Such procedures are regulated by law and must be done by complying with various requirements, namely requesting such information on an individual basis."
Australia	"The major banks provide interest details to the ATO which is used to pre fill individual tax returns."

N. This series of questions deals with the Authority of the Tax Administration in various capacities.

104. Does the Tax Authority have broad powers to interpret the laws passed by the State?

The vast majority of countries (32 in all) responded that the Tax Authority does have broad powers to interpret tax legislation. Certain countries commented that the ultimate power to interpret legislation rests with the courts, but that the Tax Authority can nevertheless assess as they see fit, subject to a taxpayer's right to contest the assessment.

105. Does the Tax Authority interpret the laws passed by the state without bias towards the taxpayer or the State?

This question produced a very interesting series of responses. 7 countries responded that the Tax Authority interprets tax laws without bias towards the taxpayer or the State. 11 countries responded that this is somewhat the case. However, 12 countries responded "Somewhat No" or "Absolutely No" to this question, indicating that there was a bias towards interpreting legislation which favoured the position of the State as opposed to the taxpayer. This would seem unfair and inappropriate and is a disappointing statistic. It is however not unexpected.

Malaysia	"It is often bias towards the State."
Japan	"Tax Officials as national public servant are subject to interpreting laws without bias. The Tax Administration is carried out to avoid arbitrary interpretation of laws. Tax Authority secures fairness and impartiality such as by assigning special personnel in charge of interpreting laws other than staff in charge of examination and audits."
Canada	"The CRA's job is to enforce the law as drafted by Parliament and interpreted by the Courts. However, few Canadian tax practitioners would assert that the CRA is unbiased in its approach to its job. Most would agree that the CRA presumes non-compliance and "guilt", requiring taxpayers to go to extraordinary lengths to secure fair and equitable treatment."
Slovakia	"The interpretation usually favors State as one of the principles of tax proceeding is guarding the interests of the State."
Australia	"There is always a natural bias towards revenue collection in rulings."

106. Can the Tax Authority conduct broad audits which target for example specific industries, sectors of the economy or professions?

The vast majority of countries (31 in all of those who responded) indicated that the Tax Authority can conduct broad audits which target specific industries, sectors of the economy or particular professions. Only one country, Switzerland, indicated that the Tax Authority is not able to conduct such broad and targeted audits. Increasingly, Tax Authorities are using a risk profiling model to target audits to Taxpayers which have a higher risk of perceived non-compliance. Thus the answer to this question is not surprising.

Canada	"Yes and it is CRA policy to do so. Note the comments in paragraph 16. of IC 71-14R3: (a) Audit projects - Frequently, the compliance of a particular group of taxpayers is tested. If the test results indicate that there is significant non-compliance within the group, its members may come under audit on a project basis which may have local, regional or national application."
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107. Will the Tax Authority respond to arguments put forward by taxpayers with sufficient detail and reference to legislation in regards to a taxpayer's specific situation?

The majority of countries who responded to this question indicated that the Tax Authority will respond to arguments put forward by a taxpayer with sufficient detail and references to legislation. 5 countries

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responded negatively to this question, which seemed to be unfortunate. The comments below are interesting to note. It should arguably be a fundamental right of a taxpayer that an assessment is based on law, and that the basis of assessment should be clearly communicated. If this was not a requirement, then a taxpayer could be subjected to an arbitrary assessment without a basis in law, and then be required to appeal the assessment. This would be fundamentally unfair, and would contribute considerably to ill will between taxpayers, Tax Advisors, and the Tax Authority.

Canada	"At the audit level - frequently not. At the appeals level - usually."
Czech Republic	"Generally, this is a Tax Authorities' obligation based on the law."
Poland	"Though it is legally required to do so, the practice in this respect varies."

108. Does the Tax Authority publish statistics of reasonable detail with respect to the Tax levied under the tax legislation?

13 countries responded that the Tax Authority does publish statistics with a reasonable level of detail with respect to the tax levied under tax legislation. 14 countries responded somewhat "Yes" to this question. 5 countries responded "Somewhat No" or "Absolutely No" to this question, which is disappointing. Arguably Taxpayers have a right to understand the tax which is levied, for reasons which should be self-evident. Since tax revenue is a fundamental way in which a country finances its expenditures, this should be available for review.

109. Does this include tax relieved by deductions?

Only half of the countries responding to this question indicated that the tax relieved by deductions is published in statistics and other data. 13 countries responded that this information was not published, which is unfortunate because it makes the operation of the tax system opaque.

United Kingdom	"Statistics are included on the cost of the main tax reliefs."
Japan	"The website of National Tax Agency provides statistics of tax revenue and other data."

110. Do taxpayers have the right to communicate with the Tax Authority in any official language of the State?

This question was only relevant in countries which had more than one official language. Where applicable, taxpayers generally had the right to communicate with the Tax Authority in an official language of their choice.

111. Can this choice of language be altered by the taxpayer without reasonable case?

From the comments given to this question, it seems that most countries will attempt to communicate with taxpayers in a language which is suitable in the circumstances, and certain countries cited English as being a language which could be used unofficially if the circumstances justify it as a default.

O. The next series of questions deal with the Onus of Proof in tax matters.

112. In general, is the burden of proof on the Taxpayer?

24 countries of the 35 who responded to this question indicated that the burden of proof in tax matters rests generally with the taxpayer. The argument for this is that the taxpayer is generally in possession of all of the facts and is in the best position to provide the required information. As a result, the taxpayer has the burden of proof. However, 11 countries responded that the burden of proof may rest on the Tax Authority, or may be a shared responsibility. In some cases, the answer depended on who made an assertion of fact (the taxpayer or the Tax Authority) with that person having the initial burden of proof.

Australia	"Absolutely."
Japan	"Basically, it is thought that the burden of proof is on the tax authority."
Finland	"Both."
Austria	"Both parties have to proof conditions in their favor."
Romania	"Both, in equal manner."
Croatia	"By the law the burden of proof is with the tax authorities for the additional taxes charged, and with the taxpayer for the tax to be recovered from the tax authorities."
Netherlands	"In general, the principle of freedom of evidence applies in the Netherlands. According to this principle, the court may divide the burden of proof between the taxpayer and the tax authorities. Case law shows that in situations where tax is increased, such as profit adjustments, the Tax Authorities must make a prima facie case for this increase; in case of circumstances in which tax is decreased, for example, exemptions or deductions, the taxpayer has to make a prima facie. Tax law also contains a provision that makes the burden of proof obligatory on the taxpayer if it files an incorrect tax return, does not provide the information requested by the Tax Authorities, or if the taxpayer's records are incomplete." "
Belgium	"In general, the Tax Authority has to prove that a tax is due or that the taxpayer has an obligation based upon the law. If the data provided by the taxpayer to the Tax Authorities are correct, complete and included in a tax return validly completed and filed in time, the burden of proof that the information is not correct is on the Tax Authorities. If a tax return is not filed within the legal timeframe, there is a reversal of the burden of proof on the taxpayer."

Ireland	"Ireland operates a self-assessment system. Therefore, the burden is broadly on the Taxpayer."
Luxembourg	"Relating to the facts which provides for a lower tax basis."
Switzerland	"The burden of proof concerning facts constituting a tax claim is on the Tax Authority, the burden of proof concerning facts reducing a tax claim is on the taxpayer."
Portugal	"The burden of proof is on the taxpayer or on the Tax Authority depending on who invokes the right under appeal."
Czech Republic	"The Tax Authority's burden of proof is limited to several areas specifically listed in the legislation (such as the delivery of papers to the taxpayers, applicability of presumptions and legal fictions, facts for the justifications of a penalty etc.)."
Canada	"Yes, because generally, the taxpayer has the burden of responding to assessments by the Tax Authority. In certain circumstances (e.g. 245(4)) the onus shifts to the Tax Authority."

113. Is the burden of proof where it involves the imposition of a penalty on the taxpayer?

The answer varied when the matter involved the imposition of a penalty, with more countries responding that the Tax Authorities had the burden of proof. However, in over half of the countries surveyed, the burden of proof to refute a penalty rested on the taxpayer. This question, however, should be viewed in light of question 114 below, which gave a different answer which may in fact be more representative.

Hong Kong	"Except in prosecution cases."
Portugal	"No. The Tax Authority needs to demonstrate that the taxpayer committed an infringement."
United Kingdom	"The authority needs to have reason to impose a penalty; the Taxpayer then has to prove reasonable excuse to avoid it."

114. Is the State required to prove the facts for the justification of a penalty?

31 countries out of 36 who responded indicated that the State is required to prove the facts relied upon for the justification of a penalty. Only 5 countries indicated that the burden of proof for the factual basis of a penalty rested on the taxpayer, whose obligation it was to disprove the facts.

Canada	"Some penalties (e.g. ss. 162 penalties) do not require proof by the State (merely the assertion of non-compliance) while others (e.g. ss. 163 penalties) do."
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115. Is the burden of proof to demonstrate the policy intent of legislation on the State?

Anti-avoidance legislation is often interpreted by reference to the underlying policy intent of legislation. Accordingly, it has become more important in recent years to understand and interpret the policy intent of legislation, to determine whether or not a taxpayer's conduct could be viewed as contravening the policy intent of the legislation. Most importantly, this applies where a country has a general anti-avoidance rule.

Of the 30 countries who responded to this question, 15 indicated that the burden rested on the State while 15 indicated that the burden of proof rested on the taxpayer.

In keeping with a basic principle that the burden of proof should initially rest on the party in the best position to adduce the evidence, there is an argument that the burden of proof in interpreting the policy intent of legislation should rest on the State. It is the State that has introduced, written and enacted the legislation in the first place, and who has (or should have) an in-depth understanding of the intent of the legislation. Accordingly, the answer is disappointing and this topic should be reviewed in greater detail. It is often difficult to interpret the policy intent of legislation, and it can, on occasion, be ambiguous. Thus one would expect that in general terms where an argument of the policy intent of legislation is advanced to set aside a tax result which is clearly contemplated by the letter of the legislation, that the burden of proof should rest on the State to demonstrate that the tax result is contrary to the legislative intent. Asking a taxpayer to defend a transaction or series of transactions on the basis that it does not contravene the policy intent of legislation, by deducing the policy intent, is an unreasonably heavy burden to place on a taxpayer.

Belgium	"In some cases but not necessarily : if the tax law is clear it must be applied as such, even if it does not tie in with the policy intent of legislation."
Canada	"Interesting question, the answer to which varies depending upon the provision involved. I would submit that provisions relying on "main purpose" or "may reasonably be considered to..." do require some effort on the part of the Crown (Tax Authority) to demonstrate policy. Clearly, there a burden of proof in 245(4) (general anti-avoidance rule) arguments to demonstrate policy. However, most assessments would not require any assertions of tax policy."
Poland	"It needs to be added that typically it is the wording of the tax law and not its underlying policy intent that is considered crucial for establishing its legal meaning."
Portugal	"The burden of proof is on whoever claims to have a certain right, which means that if the taxpayer's right is based on the said policy intent, he shall prove it."
Australia	"The law is interpreted as written. If the interpretation is not clear on the words the recourse may be had to the Explanatory Memorandum or other extraneous material (s15a and AA of the Act Interpretation Act)."
Netherlands	"The policy intent of the legislation is formed in the legislative history of the law and is used by the courts for interpretation of tax law."

116. Is there a statute of limitations on when the Tax Authority can reassess or audit a taxpayer?

26 countries indicated that there was a specific statute of limitations beyond which a Tax Authority could not reassess or audit a taxpayer. 4 countries responded that there was somewhat of a limitation, but not an absolute limitation. 5 countries responded "Somewhat No" or "Absolutely No", meaning that a taxpayer's affairs could be called into question without any statute of limitations. It was noted, however, that the statute of limitations may be suspended in the case of fraud, wilful default, or negligence on the part of the taxpayer. Having a clearly defined statute of limitations, it is important to the objective of providing taxpayers with some ultimate certainty as to their tax affairs.

117. Is the statute of limitations on audit and reassessment clearly stated in legislation?

29 countries responded that there is a statute of limitations which is clearly stated in legislation, while astonishingly 6 countries indicated that it was not.

118. If the Tax Authority wishes to assess a taxpayer beyond the statute of limitations, is the burden on them to show that such action should be allowed?

If the Tax Authority wishes to assess a taxpayer beyond the statute of limitations, the burden to show that such actions should be allowed would normally, one would expect, be on the Tax Authority. 18 countries responded that this was absolutely the case, and 4 countries responded that this was somewhat the case, while 3 countries responded that this was absolutely not the case.

P. The next set of questions address Drafting Standards for Tax Legislation.

119. Is it required that Tax Legislation be written in a clear and unambiguous way such that a taxpayer without specialized knowledge can understand and thereby comply with it?

It is generally accepted that a sovereign State can pass such legislation as it considers fit. Furthermore, a parliament or legislature cannot generally bind a future parliament or legislature from changing laws as the letter may deem appropriate and expedient. The by-product of this is that there are very few cases of countries which have standards for its own legislation, particularly tax legislation. Unless legislation contravenes the country's constitution, or fundamental rights which are granted to its citizens, a country can generally do as it pleases. Experience indicates that this is exactly what occurs. The recourse of a citizen may be through the electoral process to express displeasure but this is not a realistic way to deal with poorly drafted tax legislation. Better that it not occur in the first place.

For these reasons, the topic of tax legislation, how it is written, what it contains, how it is enacted etc., is usually excluded from the domain of taxpayer rights.

That tax legislation be written in clear and unambiguous language is a reasonable request, and one which generally would be viewed as constructive to the relationship between taxpayers and Tax Advisors on the one hand, and the Tax Authority on the other.

Only 9 countries of the 37 countries surveyed responded that there was an absolute requirement for legislation to be written in a clear and unambiguous way such that a taxpayer without specialized knowledge could reasonably understand the legislation and thereby comply with it. A further 12 countries indicated that there was somewhat a requirement. 15 countries indicated that there was no such requirement, which is disappointing because it means that authors of tax legislation can essentially do what they please, and no doubt do, without regard to ensuring that the legislation is clear and unambiguous. Having said this, one cannot conclude from this that tax legislation of a country is in fact [C:\Users\JWhittaker\Desktop\Crikey2_Taxpayer_Charter_Pre_Report_Jan_3_2013_REV_10\(1\).docx](C:\Users\JWhittaker\Desktop\Crikey2_Taxpayer_Charter_Pre_Report_Jan_3_2013_REV_10(1).docx) ~~G:\Taxpayer Charter\Taxpayer Charter Pre Report Jan 3 2013 REV 10.docx~~

written in a way which is unclear or ambiguous or excessively complex. The question simply dealt with whether or not there was a requirement in this regard. The comments below indicate that tax legislation in some countries is gradually improving in terms of its clarity. It was also noted that as tax legislation becomes increasingly complex, this may, in practice, be a difficult objective to achieve.

Netherlands	"As a general principle this is required, but in practice is not often upheld."
Japan	"It is inevitable that tax laws get complex to maintain fairness."
Canada	"Tax legislation follows the English drafting style where each provision is a sentence no matter how long, often with double negatives and exceptions which make the content very difficult to understand. It could be written in much more simple style."
Australia	"The Tax Law was substantially rewritten in 1997 under a Tax Law Improvement Project to rewrite in plain English. Thus we have a 1997 Act and the old 1936 Act which still contains provisions yet to be rewritten. Notwithstanding the new provisions can be very difficult to interpret by professionals let alone taxpayers generally. More recently principles based drafting has led to simpler law rather than the explosion of lengthy black letter law in recent years."
United Kingdom	"Though legislation is increasingly written in plainer language."

120. Has there been an instance of tax legislation, duly passed into law, being void because it was impossible to interpret and/or comply with?

11 countries indicated that there were instances of tax legislation being void because it was impossible to interpret or comply with. Of these, 3 countries responded "Absolutely Yes" to this question, while 8 responded "Somewhat Yes". In these instances, the legislation was generally struck down because it was contrary to the constitution. This reinforces the proposition that legislation can be written in a way which is extremely complex and difficult to interpret, but may still be considered valid. Basically this leaves Taxpayers with little recourse but to suffer with the complexity or retain a qualified tax advisor.

Austria	"The Constitutional Court can void legislation that is e.g. leaving too much discretion to the tax authorities or is undetermined."
Portugal	"There have been several cases in which tax legislation was declared void because it did not comply with principles foreseen in the Constitution."

121. Before tax legislation can be enforced is it required to be passed into law by the State?

Virtually all countries responded that tax legislation cannot be enforced until it is passed into law. One would expect this to be the case, and it would be shocking if this were not so.

United Kingdom	"Legislation is often announced and is effective from the start of the tax year but is not formally passed into statute until part way through the year."
Canada	"The legislation cannot be enforced until passed into law but it can be applied retroactively based on the enforcement date announced at the time the draft legislation was introduced."

122. When legislation increases tax, is it required to be accompanied by revenue projections?

19 countries of the 36 that responded indicated that it was a requirement that new tax legislation, which increases taxes, be accompanied by revenue projections related to the tax to be raised. However, 17 countries indicated that this was not a requirement, which is disappointing. Having said this, it is not clear that the countries which responded "No" to this question did not, as a matter of course, produce revenue projections, even though this may not strictly speaking be legally required.

Bulgaria	"Yes. However, the requirement is not complied in practice."
Czech Republic	"But usually is the revenue projection included in the accompanying documentation."
Finland	"Financial impact of the draft legislation usually examined."
Romania	"In practice, draft legislation increasing taxes usually are accompanied by revenue projections, but no statutory provision requires this."
Canada	"New legislation normally comes with revenue projections. This is parliamentary tradition where presented as part of a budget."
Portugal	"Projections are sometimes provided, although they are not mandatory."
Germany	"Projections are usually provided."
Poland	"Revenue projections are part of the impact assessment of a draft law."

123. When legislation is to be interpreted in accordance with its underlying tax policy, is there a requirement this policy is to be written in a clear and unambiguous manner?

One would expect that where legislation is to be interpreted with reference to its underlying tax policy, that this policy be written in clear and unambiguous terms. 17 countries responded that there was such a requirement, while a disappointing 19 countries indicated that there was no such requirement. This leads to uncertainties in the interpretation of legislation, because how can one interpret legislation in accordance with its underlying tax policy where that tax policy is not clearly stated.

Canada "There is no requirement for legislation to evidence its policy intent. In order for certain anti-avoidance legislation to be invoked by the revenue authorities, the burden of proof is on them to show that a taxpayer has abused/misused the tax legislation."

124. Are Tax Laws that are no longer relevant removed from tax legislation?

As tax legislation becomes increasingly complex, and more frequently subject to voluminous amendments, one would anticipate that legislation which is no longer relevant would be removed, in the interests of clarity. Only 7 countries indicated that this was done without exception, while 18 countries indicated "Somewhat Yes" to this question. 7 countries indicated "No" (3 "Somewhat No" and 4 "Absolutely No") to this question. The comments are interesting.

Belgium "Generally it should be the case, but it is possible that this is done with delay in some instances."

Spain "Not always."

Australia "Redundant sections often remain in the Act for some time."

Canada "Sometimes the legislation that is no longer relevant is removed but often long after it should have been done so."

Q. This series of questions deals with the Retroactivity of Legislation. It is interesting to note that comments below made by the U.K. responder that there is a distinction to be made between retroactive legislation and retrospective legislation. The question did not make this distinction, and this area demands further study.

125. Is retroactive Tax legislation permitted?

Only 5 countries indicated that retroactive legislation was generally permitted, with 19 countries responding that it could be permitted only in certain instances. 10 countries indicated that it was not permissible, and it is interesting to note the wide range of practices. Where retroactive legislation was not permitted, normally it was because of limitations in the country's constitution. That said, one should not conclude that retroactive legislation is a common practice.

Greece "Although in the Constitution it is clearly stated that it is not permitted, in real life many taxes are being levied with retroactive character."

Belgium "As the Constitution does not forbid it, it is in principle possible. But in this case some conditions will have to be met (namely due justification in the preparatory works of the legislation) to avoid that the Supreme Court would declare the legislation or the retroactive effect void."

Luxembourg	"Except in case of favour for taxpayers."
Latvia	"If it is said in law."
Portugal	"If the tax legislation is drafted to include previous years it is forbidden. If the tax legislation is drafted to include a previous period of the same year it is in relation to certain taxes admissible."
Poland	"It is not permitted against taxpayers (e.g., increasing tax burden)."
Australia	"It is not used very often only to correct perceived abuses. A general anti avoidance provision is generally seen as adequate to avoid use of retrospective legislation."
Czech Republic	"Only certain forms of retroactivity are permitted (for instance, it would be permitted to change the depreciation period regarding the assets acquired in the past). Also, if certain rules are changed with future effect it is acceptable to provide the taxpayers with an option to apply the new rules already for the current taxable period."
Germany	"Somewhat Yes."
Slovakia	"Taxpayers and Authorities sometimes cannot agree to what should be regarded as retroactive."
Canada	"There is no law to prevent legislation to be introduced on a retroactive basis. This has been done on rare occasions."
United Kingdom	"We interpret 'retroactive' to be legislation that changes the tax treatment expected on a transaction that has not been completed, e.g. changing the rate of capital gains tax when the investor had expected that an existing rate would continue. This routinely happens. We use the term 'retrospective' to mean changing the tax treatment in a prior year, where the Taxpayer thought that the treatment was set. This is rare and is generally not done, but has been used occasionally in anti-avoidance situations and is controversial. The Government has recently been consulting on a protocol on retrospective legislation and there have been two recent Court of Appeal decisions, Huitson and Shiner which have considered this same issue. It is assumed that the following questions refer to what we term "retrospective"
Spain	"With limitations. It cannot affect to periods already closed and declared."

126. Is retroactive legislation commonly used?
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Following on from question 125, only 7 countries of the 30 countries who responded indicated that retroactive legislation is commonly used. Further clarity needs to be brought to this question, but on the face of things, it is quite shocking that any country surveyed would regularly use retroactive legislation.

127. If retroactive legislation is not commonly used, is it used to curtail tax avoidance?

Where retroactive legislation is used, it is normally used to curtail tax avoidance. 18 countries responded positively to this question, while 8 responded negatively. It was pointed out that retroactive legislation was typically used to curtail tax avoidance only in rare cases.

Belgium	"In order to avoid misuse of tax planning during the period of elaboration of tax legislation, it is sometimes enacted as from a certain date with retroactive effect at the moment that the Council of Ministers approved the proposed legislative measure."
Malaysia	"It is retroactive because the policy/budget proposals have been announced long time ago but laws are only ready and passed now."
United Kingdom	"On very rare occasions."

128. Are there examples of legislation pending for long periods of time? (e.g. several years)

The answer to this question is very telling, and quite shocking. 20 countries of the 37 countries responding indicated that legislation can be pending for long periods of time (e.g. several years). This contributes greatly to uncertainty, and one fundamental right of a taxpayer is arguably to have a degree of certainty as to the tax implications of transactions. This objective cannot reasonably be met where legislation is pending for long periods of time with uncertainty as to whether or not it might be enacted.

Mongolia	"e.g. Inheritance and city tax laws."
Canada	"Technical draft legislation can be pending for 5 to 15 years and the situation is becoming worse. The international area is a particular example."
Poland	"The blatant example was the amendment to the Excise Duty Act, aimed at rendering it compliant with the Energy Directive, processed for more than two years."
Hong Kong	"There are instances of legislations that are pending for several years, but such delays do not happen frequently."
Australia	"With changes to Government, prior announced changes sometimes are substantially delayed."

129. Is there a requirement to provide transitional rules when legislation taxes something that was not previously taxed?

One would expect, generally speaking, that transitional rules would be included in legislation which subjects something to tax. Whether there is a legal requirement for this was the matter of this question.

14 countries had a requirement for transition rules while the other countries did not. However, from the comments it seems that transitional rules are provided as a matter of practice but are not strictly a requirement.

Austria	"According to Constitutional Court in some cases transitional rules are necessary."
Belgium	"Although this can be done, there is no legal requirement in that respect."
Slovakia	"It is general legislative practice to add transitional rules to new legislature."
Romania	"It is not stated in the law, but it happens in practice often."
United Kingdom	"Not generally in UK law but EU law may require it."
Poland	"There is no such specific rule. However, based on the principle of protection of vested rights and legitimate expectations (again, derived by the Constitutional Court from the constitutional principle of democratic state of law) it can be claimed in some circumstances that transitional rules should be provided."
Australia	"Transitional Legislation is the norm to avoid any retrospectivity in a change."
Spain	"Transitional rules are often included, but they are not compulsory."

R. The following questions cover Double Taxation.

130. Does legislation provide for the relief of double taxation?

Virtually all countries indicated that their domestic legislation provides relief for double taxation. Also, many countries cited that double tax relief is provided under international tax treaties.

Canada "There are no legislative requirements that prevent double taxation. A statutory provision directed to this is only partially effective because it only deals with one taxpayer. Certain anti-avoidance tax legislation could result in the same income being taxable to different taxpayers."

Austria "There is no general rule that prohibits double taxation in all instances."

131. How in general terms is double taxation avoided?

Comments provided to this question indicate that the main source of relief is through double tax treaties. Some countries cited that they use an exemption system for corporations in respect of dividends from foreign corporations within a corporate group.

It seems that further study is needed in this area, because double taxation can occur in a number of ways. While the main focus of the answers was with respect to a foreign tax credit or an exemption on international income, to prevent tax being levied by more than one country on the same income, double taxation can also arise in a variety of other ways. For example, double taxation can occur when profits are taxed in the hands of a corporation and again at the personal level when these profits are distributed by way of a dividend to shareholders. Double taxation can also apply when there is not an appropriate recognition of losses. If there is not a reasonable method for relief of losses, arguably this may be a form of double taxation. Also, double taxation can arise where shares of a corporation are purchased without a rebasing of the tax cost of assets in the corporation. Furthermore, double taxation can arise in many circumstances in the event of death. An individual may, for example, be subject to estate tax on death, without a rebasing of the assets in the hands of the heirs, such that capital gains tax is paid by them when the assets are sold.

It is recommended that a further study be done on double taxation as a topic in and of itself.

132. Is double taxation an important issue and a common problem?

Many countries provided comments on whether double taxation is an important issue and a common problem. A large number of countries replied positively to this question, indicating that double taxation was an important issue and a common problem.

Japan "(1) Issues on foreign tax credit. (2) The Judgment of Supreme Court of Japan on 6 July 2010 (Third Petty Bench Judgment: Taxpayer winning the case). The case was concerning the issue of double taxation of inheritance tax and income tax on the benefit of life insurance. As the result of this judgment, the government

had to apply refunds to approximately 200,000 cases for the last 5 years, which was some 30 billion yen."

Bulgaria	"Yes, but more in the following contexts: (i) in the context of Bulgaria being a source country in a double tax treaty situation and the Bulgarian authorities denying the application of the rules of the double tax treaty for different reasons; (ii) on the area of VAT, as the revenue office frequently denies the VAT deduction of the customer while at the same time claims the payable VAT from the supplier. It is not such an issue in the context of double tax treaty relief for domestic companies as Bulgaria is not an exporter of capital and a few domestic companies has investments abroad."
Italy	"Absolutely Yes, specially between corporations and owners, or between different states."
Spain	"Absolutely Yes."
Canada	"It is a problem in certain areas such as taxation at death and purchase and sale of a business. There is a restricted step up of underlying assets of a company purchased or transferred to an estate."
Switzerland	"It is an important issue, which is why Switzerland has signed over 100 DTAs so far."
Austria	"It is important but usually dealt with by the tax authorities in a sensible way except in cases of tax fraud, abuse of law or "aggressive" tax planning."

S. The next series of questions deal with Interest and Penalties. The answers revealed that there is no uniformity in this area across the countries surveyed.

133. Does the State pay interest on overpayments of tax?

24 countries indicated that the State does pay interest on overpayments of tax, while 12 countries indicated that the State does not pay interest.

134. Is that interest rate tied to the rate that taxpayers pay if they are late with their payments?

18 countries indicated that the interest rate paid on overpayments is tied to the rate that taxpayers are required to pay on late or deficient payments. However, in certain cases the rate is not the same. 12 countries indicated that the rate is not the same, and that a higher rate is charged on late payments than the rate paid to taxpayers on overpayments.

There are a number of arguments which can be advanced for the interest rate being different. One is that taxpayers should be deterred from making late payments of tax, through an interest rate which has a penal element. Another argument is that the credit risk of an individual taxpayer is lower than the credit worthiness of the State, and therefore a differential in rates is appropriate.

There are considerable theoretical problems with these arguments, and fairness principles would argue that the rates should be symmetric. If a taxpayer is charged a higher rate because overall it can be argued that taxpayers are not as credit worthy as the State, this penalizes creditworthy taxpayers who may honour their tax commitments as compensation to the State for those who do not.

Canada	"Federally the rate is 2% lower for individuals & 4% lower for corporations than the interest charges on late payment. Provincially the spread varies from 4%-6% depending on the province. Interest received is taxable but interest charges are not deductible."
Spain	"Overpayments accrue interests at legal interest rate. Taxpayer's late payments accrue interest at delay interest rate. Delay interest rate is higher than legal interest rate."
Poland	"The respective rates are the same."
Australia	"At a lower rate than charged"
United Kingdom	"But at a lower rate than interest charged on underpaid tax."

135. Is the basis for a penalty clearly explained when a penalty is assessed?

Virtually all countries responded that the basis for a penalty is clearly explained when a penalty is assessed.

Canada	"The burden of proof is on the revenue authorities to justify a penalty but this is often not done appropriately."
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136. Can Taxpayers who conduct their affairs in good faith and appropriate diligence be assured that a penalty will never be levied?

This question deals with the issue of fault in the levying of a penalty. The question asked whether a taxpayer can be assured that a penalty will not be levied if that person's tax affairs had been conducted in good faith and with appropriate due diligence. Since the essence of a penalty is that the taxpayer must have been at fault in some way, in order to deserve the penalty, can a taxpayer be excused of a penalty with a "no fault" argument? The answers to the question are surprising. 24 countries responded that a taxpayer cannot be so assured. Only 11 countries indicated that a taxpayer could be assured that a penalty would never be levied in these circumstances. Many of the comments made reference to the absence of a due diligence defense to the levying of a penalty.

Czech Republic	"A penalty is automatically levied when tax is additionally assessed by the tax authority. Even if a taxpayer conducts their
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affairs in good faith and appropriate diligence it cannot be excluded that the tax authority adopts different interpretation of the tax legislation than the taxpayer and that the tax is thus assessed in a higher amount than reported by the taxpayer."

Netherlands	"Differences in interpretation between the taxpayer and the tax authorities can result in penalties being imposed."
Belgium	"Even if the taxpayer conduct his affairs in good faith, when he makes a mistake in his tax return, he may be levied a penalty."
France	"However recognition of good faith cannot be guaranteed."
United Kingdom	"It is clearly possible that they still make mistakes but these would not normally be penalized - though the tax would be due, plus interest."
Austria	"No criminal penalty if conduct in good faith, but administrative charges (e.g. interest charges and surcharges, late filing charges) can be levied."
Spain	"The sole fact of having paid less than what taxpayer should is deemed as severe infringement."
Australia	"The threshold for reasonable care is set very high."
Canada	"There is no due diligence defence on penalty related to tax matters such as late filing or omission of a tax return."
Malaysia	"Yes, provided there is full compliance including the public rulings issued by the Tax Authority."

137. Does the Tax Authority possess the authority to exercise discretion and waive penalties?

23 countries indicated that the Tax Authority had the authority to waive a penalty through the exercise of discretion. 12 countries indicated that the tax authority did not have the ability to waive a penalty. This question clearly requires a further elaboration, since certain penalties are procedural in nature (such as a late filing penalty stipulating a set amount for late filing). Other penalties involve the exercise of discretion on behalf of the Tax Authorities based on a taxpayer's conduct (e.g. negligence).

Canada	"This is provided under the fairness provisions that a penalty may be waived in respect of cases involving late filing or omission of returns, as well as hardship cases."
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138. When there is no fault on behalf of the taxpayer, will the Tax Authority exercise discretion and waive the penalty?

19 countries indicated that where the taxpayer is not at fault, the Tax Authorities will exercise discretion and waive a penalty. However, 14 countries indicated that this would not be the case, and certain countries stated that it depended on the circumstances. Again further work should be done in this connection to obtain greater clarity on this issue.

139. Are penalties levied that are unreasonable considering the conduct of the taxpayer and the amount of tax owed? If yes please give an example.

17 countries indicated that penalties can be levied which are unreasonable considering the conduct of the Taxpayer and the amount of tax involved. 16 countries indicated that a penalty must be proportionate.

This raises an interesting question of what may be referred to as fundamental justice. That principle would state that a penalty should be proportionate to a person's conduct. The penalties for criminal offences give the clearest examples of penalties which are proportionate. The penalty is proportionate to the crime committed. One would imagine that this principle should translate, of least to some extent, into the realm of penalties levied in respect of taxation.

There was a wide range of answers to this question, with 7 countries indicating that there was a strict rule of proportionality, and 10 countries indicating that this was somewhat followed. However, 16 countries indicated that there was no particular concept of proportionality in the levying of a penalty. A number of examples were given which are interesting to consider.

Bulgaria "For example, technical omission of a taxpayer to report a VAT invoice in the month in which VAT was due, even if voluntary corrected and fully settled by the taxpayer immediately upon the identification of the omission leads to a fixed penalty of 25% or 100% of the amount of VAT depending on the period of delay."

United States "Example, payroll tax penalties can be disproportionately high."

Spain "Example: penalties for not complying with the periodical information requirements are calculated by multiplying certain amount by each data omitted. They apply even if no tax is owed. Other example. If the taxpayer has not prepared the transfer pricing documentation as requested by Corporate Income Tax regulations, and the Tax Administration makes a valuation adjustment, penalties are calculated as 15% of the adjustment, regardless whether the adjustment were upwards or downwards (with an amount due to the Tax Administration or a refund due to the taxpayer), and not considering the event that taxpayer might have tax losses carry forward that might offset an eventual tax quote."

Portugal "For instance, a delay of only one hour in relation to the deadline is sufficient to levy a penalty which may be considered unreasonable namely in relation to taxpayers that always fulfill their obligations."

Netherlands	"Penalties are imposed as a percentage of tax to be paid. This percentage can amount to 100 percent (in some cases even 300 percent). These penalties therefore have no absolute maximum and as a result can be disproportional."
Canada	"There is no correlation between the taxpayer's conduct and the amount of penalties being levied. The late filing penalties for reporting of ownership of foreign assets, shares of a foreign companies and foreign trusts are examples. The penalties are severe."
Poland	"This concerns in particular the conduct of the taxpayers. As explained before, tax authorities tend to subject the taxpayers to fiscal penal liability even in the absence of the mandatory condition: guilt on the part of a taxpayer. Even if typically such proceedings are settled amicably and the fines imposed on taxpayers are small, this practice deserves a serious criticism."

140. Can interest owing by the State to the taxpayer and interest owed by the taxpayer to the State, be offset?

One would normally imagine that interest owed by a taxpayer to the State could be offset by interest owed by the State to the taxpayer. 13 countries indicated that an offset was allowed, answering "Absolutely Yes" to this question. A further 9 countries answered "Somewhat Yes. However, 12 countries answered "No" or "Somewhat No" to this question.

This question is important because among other things in certain countries interest paid by a taxpayer to the State is not deductible, while interest paid by the State to a taxpayer is taxable, creating an asymmetry of treatment.

141. Are penalties levied against a taxpayer forgiven in the event of death?

This question dealt with penalties levied against a taxpayer and whether such penalties can be collected in the event that the taxpayer is deceased. 14 countries indicated that a penalty would not be forgiven in the event of death, and a further 8 countries indicated "Somewhat No" to this question. However, 12 countries indicated either "Absolutely Yes" or "Somewhat Yes".

The principle is that a penalty which is outstanding against a taxpayer at death becomes a penalty levied on the estate or the heirs. These persons have not committed the infringement of tax rules creating the penalty, and thus this penalty is in fact levied on persons who are innocent of the actions giving rise to it.

Six countries answered that a penalty is forgiven against a taxpayer in the event of death, while 6 answered "Somewhat Yes". The majority of countries, 22 in all, answered somewhat no or absolutely no to this question. The comments to this question are interesting.

Austria	"Fiscal criminal penalties are forgiven, others (e.g. surcharge for late filing) not."
Mongolia	"No, it is transferred to the heir."
Belgium	"The collection of the tax and related interest and penalties will be pursued by the Tax Authorities in the hands of the heirs if the latter accept the inheritance. However, additional penalties pertaining to the taxpayer who died can no longer be levied on the heirs after the death of the Taxpayer."
Canada	"There is no provision to allow penalties levied on a taxpayer to be forgiven at death. The estate will assume the penalty."
Switzerland	"Yet, monetary fines have to be paid by the successors up to their amount of the heritage."

T. The next series of questions concern Tax Policy, and specifically the formulation of tax laws, and the interaction of taxpayers and Tax Advisors in formulation of these laws.

142. When the government considers changing the tax laws is there a consultative process?

The vast majority of countries surveyed indicated that there was a consultative process which the government conducted with respect to changes in tax law.

Bulgaria	"There is a legal requirement on performing public consultations before submission of a draft bill to the Parliament which in most cases is not applied in practice."
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United Kingdom	"generally yes, under the 'Tax Policy Making - a new approach' - but this is not guaranteed."
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143. Is the consultative process binding in any sense?

Most countries indicated that the consultative process was not binding in any sense, and thus it was purely consultative. This is what one would expect, on the basis that the State has the sovereign right to pass tax laws as it sees fit.

Poland	"Performing the process itself is a necessity, whereas the results of it are not binding in any way."
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144. Can citizens force a change of tax law by way of plebiscite or referendum?

Three countries indicated that citizens can force a change of tax law by way of plebiscite or referendum. However, the majority of countries indicated that this was not possible, and that tax laws remained within the sole discretion of the State. Persons may recall the famous proposition 13 in California, where a referendum process was used with respect to tax laws.

Poland	"A change of the tax law can be adopted by way of referendum. However, such referendum cannot be held at the initiative of citizens (this is one of the exceptions to the general rule that 500 000 citizens having voting rights can force a referendum). A group of 100 000 citizens has also the right of legislative initiative - nevertheless a draft law submitted to the Parliament still needs to undergo the legislative process."
Austria	"Referendum can force parliament to deal with a subject. But citizens cannot force a change of law."

145. Is there a mechanism in the legal system for challenging legislation that violates the constitution (if applicable), goes against public policy, or is impossible to follow or implement?

Most countries indicated that there was a mechanism to challenge tax laws in the event that they were contrary to public policy, impossible to follow, or impossible to implement. Most of the countries responding positively to this question (20 in all) are within the European Union which has a mechanism through the European Court of Justice whereby tax laws can be challenged if they violate the EU Constitution. Only 6 countries indicated that such a challenge was not possible, and the most common basis of challenge was through the legal system.

Germany	"In case of violating the constitution."
Portugal	"It is done by one of two ways: through the parliament, whose deputies send the new law to the Constitutional Court (the government or the President of the Republic may also send it) before it is published on the Official Gazette. The second mechanism consists of raising a prejudicial constitutional question in the court of first instance when appealing from a Tax Authority's action - any court has the power to say that a certain law is not according to the Constitution (within a particular case) and hence declare it void and not applicable."
Australia	"Tax laws are often challenged on Constitutional grounds."
Spain	"Tax laws that violate general legal principles may be challenged by citizens before the Supreme court. Or even the Constitutional court if they go against constitutional rights."
United Kingdom	"There have been challenges against some legislation via judicial review but so far these have not been upheld."
Belgium	"With respect to legislation that violates the Constitution, there is a specific mechanism (see answer to question T 5 hereafter). With respect to legislation that goes against public policy or is impossible to follow or to implement, the remedy is to initiate a change of the law through the normal legislative process involving the Parliament."

146. Could you briefly describe the mechanism for challenging legislation that violates the constitution and has it ever been used?

A large number of comments were given in answer to this question, generally describing the process of appeal to a constitutional court or something equivalent.

U. This section covers certain Special Topics.

147. Is there a mechanism for Taxpayers to disclose past omissions with a reduced penalty (voluntary disclosure)?

28 countries of the thirty-five countries who responded to this question indicated that taxpayers have a mechanism to disclose past omissions made on tax returns with a reduced penalty (i.e. a system of voluntary disclosure). 7 countries indicated that there was no such mechanism in place.

The concept of a voluntary disclosure program is an important one which most countries find to be beneficial. Such a process allows taxpayers an opportunity to come forward and make amends to their tax affairs, without fear of prosecution. However, such a program should be distinguished from a tax amnesty. A tax amnesty has been regarded as a mechanism whereby “guilty taxpayers” can obtain a preferred result compared to persons who are tax compliant.

It would be interesting to conduct a separate study into the mechanisms available around the world for voluntary disclosures, the prerequisites to such a process, the use which is made of the process, and other relevant aspects, as well as tax amnesties.

148. Are there laws that require a Tax Advisor to inform the Tax Authority of a client or prospective client who has unreported income or other irregularities?

This question dealt with whether a Tax Advisor has a positive duty under the laws of a country to inform the Tax Authority of irregularities of a client.

4 countries indicated that a Tax Advisor has such a positive duty, while 29 countries indicated that a Tax Advisor does not have such a duty. However, it was noted that a Tax Advisor can face severe penalties for making false or misleading statements in a tax return, and should not prepare a tax return in these circumstances. In addition, the comments made reference to a positive obligation when a matter involved money laundering or proceeds of crime.

149. Are there laws that protect communication between lawyers and clients as privileged?

32 of the 36 countries responding to this question indicated that communications between a lawyer and a client in respect of tax matters are privileged. 4 countries indicated that there was no such privilege.

150. Are there laws that protect communications between accountants and tax professionals and clients as privileged?

When asked whether privilege could be claimed between accountants and/or tax professionals and clients in respect of tax matters, the answer was different with 17 countries indicating that there was such privilege and 19 indicating that there was not.

Netherlands	"According to Dutch Supreme Court case law, tax advice from third parties, such as Tax Advisors, that relates to the analysis of the taxpayer's position and advising thereon, does not have to be disclosed to the tax authorities."
Spain	"No, unless the tax professional is also a lawyer."
Belgium	"Yes, provided that such accountants and tax professionals are member of one of the three relevant Institutes set up by law (Institute of Accountants and of Tax Advisors, Institute of Auditors, Institute of Registered Bookkeepers and Registered Tax Bookkeepers). If so, they are bound by professional secrecy duty as provided by Criminal Law."

V. The survey concludes with an opportunity for persons to express Opinions, Views and Attitudes.

151. Would your professional body like to see a Charter of Taxpayer Rights and Obligations with the force of law?

Asked whether persons belonging to the professional body who answered this questionnaire in a particular country would like to see a Taxpayer Charter with the force of law, nineteen countries indicated that they would like to see such a document with the force of law, which would be binding on the Tax Authority. 2 countries indicated that they would like to see such a document with the force of constitutional law (i.e. it could only be amended through a constitutional amendment). A further 6 countries indicated that they would like to see a non-binding statement authored by the Tax Authority which would be followed by the Tax Authority. (Certain countries responded in multiple categories to this question).

3 countries indicated that they would not like to see a Taxpayer Charter, with 1 country indicating that in their view it was not necessary because Taxpayer Rights and Responsibilities are already laid down in tax law, administrative law and case law, in a way which is considered satisfactory.

Australia	"Our non binding Charter needs the support of law."
Austria	"Taxpayers Rights are stipulated by law. Comprehensive set of rules laid down in the General Tax Code (BAO) so no separate "Taxpayer's Charter" appears necessary."
Netherlands	"There is no necessity for a charter since rights and obligations are laid down in tax law, general administrative law and case law."
United Kingdom	"We have long campaigned for a Taxpayers' Charter and are happy to have one now established. We think it is important that the charter is required by statute but are happy that the wording of the charter is not in statute."

152. Is it realistic that in your country a Taxpayer Charter of Rights and Obligations could become law?

The countries were divided on whether it was realistic that a Taxpayer Charter could become law in their country. Approximately half of the countries responding indicated skepticism as to whether such a document could become law. However, certain countries were more optimistic. Some stated that it would be difficult but realistic in the longer term.

Ireland	"We used to have a Taxpayers' Charter but it was replaced by a Revenue Customer Service Charter. It is felt that the latter document does not confer the same rights as the former did."
Japan	"Yes. The Japanese Diet decided on 16 December 2010 to revise the Act on General Rules for National Taxes, which will be published as revised name of the present act on 1 January 2012. The new Act will include introduction of Taxpayer Charter."

153. Do you think a Taxpayer Charter is a good mechanism to protect taxpayers?

Virtually all countries responded that a Taxpayer Charter would be a good mechanism to protect the rights of taxpayers.

Australia	"Absolutely Yes. Particularly where breaches by the ATO can be reported to an independent Tax Ombudsman."
Poland	"It is a good mechanism. However, in order to be efficient, a Taxpayer Charter needs to be legally binding."
France	"Obviously. Nevertheless almost of current rights and obligations defined in the existing TP are already included in the law. At the end the main issue is the balance between rights and obligation of the TP."
Austria	"Preferable defined by law, if for some reasons not possible, a taxpayer charter would be appropriate."
Israel	"Yes, as it codifies in one act the rights of the taxpayers."

154. Do you think the Taxpayer Charter of Rights and Obligations should apply to all taxes levied by the State? (i.e. Income, VAT, Estate, etc.) or only on certain taxes (i.e. income)?

All countries responded that if a Taxpayer Charter were to become applicable, it should be applied to all taxes, not just income taxes, for example.

155. What is the attitude of the Tax Authority in general towards taxpayers?

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156. How does the Tax Authority see taxpayers?

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157. How do taxpayers see the Tax Authority?

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158. A Taxpayer Charter of Rights and Obligations would be viewed favourably by taxpayers

Asked whether a Taxpayer Charter would be viewed favourably by taxpayers, 10 countries strongly agreed, and 21 countries agreed. Only 2 countries disagreed.

Latvia	"In that case the "rules of the game" would be clearer."
Spain	"It would depend on the terms included in the Charter."
Canada	"Yes, on the premise that most taxpayers would think that the CRA has an unfair advantage in case of disputes."

159. A Taxpayer Charter of Rights and Obligations would be viewed favourably by Tax Professionals

Concurrence was even stronger as to whether a Taxpayer Charter would be viewed favourably by the Tax Profession in the country responding. 14 countries strongly agreed and 17 agreed. Again 2 countries disagreed as before.

160. A Taxpayer Charter of Rights and Obligations would be viewed favourably by the Tax Authority

The response was more mixed when asked whether a Taxpayer Charter would be viewed favourably by the Tax Authority. 2 countries strongly agreed and 19 countries agreed. However, 10 countries disagreed believing that a Taxpayer Charter would not be viewed favourably.

France	"Should be considered as being in compliance with the OECD report about the improvement of relationship between the TP and the TA."
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161. Taxpayer Charter of Rights and Obligations would be viewed favourably by Government

The same conclusions were given when asked whether a Taxpayer Charter would be viewed favourably by government in general. 3 countries strongly agreed, and 19 agreed. However, 9 countries disagreed believing that a Taxpayer Charter would not be viewed favourably.

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In response to this, one could state that time will tell.

162. Do you see any issue with a Taxpayer Charter of Rights and Obligations applying to Corporations?

No countries saw any reason why corporations should not benefit from a Taxpayer Charter, and there was no requirement to restrict the application of the Taxpayer Charter to, for example, individuals.

163. Do you have any comments or suggestions that do not fit within any of the questions asked?

2 comments were submitted to this question, which are reproduced below.

Japan "The Japanese government announced in the FY2011 Tax Reform (Main Points) dated 16 December 2010 that the government will make the largest review on the Act on General Rules for National Taxes and the measures will include introduction of Taxpayers' Charter. However, the draft of the revised Act is under deliberation by the Diet. Our answers were made on the condition of these circumstances. Also, please note that our answers, prepared by the members of International Relations Committee of JFCPTAA, do not necessarily represent the views of JFCPTAA."

Poland "We believe that despite certain flaws and irregularities in the Tax Administration work, still remaining to be tackled and managed, the overall quality of their service has much improved over the recent years. This is due in particular to: - an operation of the tax offices designed specifically for large taxpayers, able to deal more competently with their matters; - an efficient system of tax rulings, as well as the call center initiative, helping the taxpayers with their routine tax issues; - a 'slow but sure' swift in the attitude of the Tax Authorities, towards a more open and co-operative approach. Importantly, a better quality tax laws are needed (in terms of being more consistent, understandable and stable) and solutions facilitating tax settlements (eliminating administrative burdens)."

164. Please indicate the names and contact details of the persons who have completed the survey.

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4 About Taxpayer Rights and Responsibilities

The purpose of this chapter is to look at selected aspects of Taxpayer Rights and Taxpayer Responsibilities in the context of the model Taxpayer Charter. It is intended to provide a theoretical background to the matters addressed in the model Taxpayer Charter (Chapter 2) and the construction of the Taxpayer Charter Survey (Chapter 3).

Any discussion of the nature of Taxpayer Rights and Responsibilities can commence from a number of perspectives but it must first and foremost address property. Article 17 of the *Universal Declaration of Human Rights* provides:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

The second of these requirements leads to the proposition often expressed as being that taxation must be implemented in accordance with the rule of law.

Article 4 of the *Declaration* recognizes that individuals are entitled to the fruits of their labour, at least in part. It provides:

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

An alternative approach is that attributed to Jean Baptiste Colbert (French Economist and Minister of Finance under King Louis XIV of France. 1619-1683):

The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing.

Somewhat paradoxically, the application of each of these approaches leads to the same conclusion: a good tax system is rationally designed, not oppressive in its demands, and must be capable of obtaining general acceptance as being essentially fair, even if taxpayers might prefer to avoid paying tax.

It is truly said that the power to tax is the power to destroy. History is replete with examples of societies and civilisations which have been destroyed by their tax systems. It isn't dramatic, and it doesn't happen overnight. It is at first a barely perceptible movement, and it happens because governments lack the capacity, or the will, to insist on best practices in their tax systems. But the examples of failure to construct effective tax systems are not difficult to find, even at the present time. Indeed modern day Europe offers examples and graphically shows the consequences to a country that loses control of its tax base.

So we offer the following guiding principles which have shaped our work in this report:

- A fundamental civil liberty of any citizen is to retain for his or her own use and enjoyment the product of his or her labour and industry, subject only to those obligations which the law imposes (such as taxation);
- The role of the Tax Advisor is to empower clients, who cannot possibly hope to know the whole of the tax law, to exercise the choices allowed to them by the law, and to assist their compliance with it;
- The role of a Tax Administration is to collect the tax imposed by law, no less and no more; and

- All parties within the taxation system must fully recognise and respect the role of the others.

4-1 Nature of Taxpayer Rights

A 21st Century copywriter would give his/her eye teeth to have coined the strap line “No taxation without representation”. It was the 18th Century riposte to “render unto Caesar the things that are Caesar’s and unto God the things that are God’s”. Both are representative of their time and both chime wholeheartedly with the political economies from whence they came.

It would be an entertaining diversion to discuss at length what the underlying sense of these two profound statements is, but in the context of this work we draw only two relevant conclusions:-

1. Taxation cannot be confused with confiscation. It requires the active participation of the taxpayer either by some form of ethical obedience or democratic participation
2. Tax is inextricably bound with the political and economic system within which it is levied and collected

When the subjects of Boston started emptying tea into the harbour in protest at British colonial administrative attempts to enforce the Tea Act of 1773, an importation tax levied by their distant monarch and his government, their active protest, even if stirred by the self interests of smuggled profitability, grew like wildfire and enabled the colonists to begin to express not just their opposition to the impost but their deep down desires for self rule and the realisation of their rights. The Tax led to revolution, war and eventually citizenship of an independent republic. Today U.S. Citizen Rights stem directly from the U.S. Constitution and the Bill of Rights put in place by those rebellious colonists.

By a strange quirk of history, by 1773 the United Kingdom had already undergone a similar process, if not root and branch, which resulted in the primacy of Parliament in matters fiscal. Over a century had passed since Charles 1 fought a bloody civil war and lost his head. It was, though, not until the full enfranchisement of the male population in the 19th Century to vote (women had to wait until the 20th Century) that any effective link could be seen between tax and democracy.

France, on the other hand, did a thorough job of clearing the decks if in a way both brutal and exceptionally bloody. Excessive demands for taxes with no consideration for the taxpayer fuelled the utter resentment of the ruling establishment. We should not be surprised therefore to note that the new Republic issued, in ~~1789~~1793, a Declaration of the Rights of Man and of the Citizen which included, as Article 134, a specific provision for non discrimination in tax matters. Interestingly there have been two French Charters of Taxpayer Rights, in 1975 and 2005, neither of which are now part of French tax legislation, but both of which referred to the ~~1789~~1793 Declaration.

In putting together this proposal for a model Taxpayer Charter which all can draw on we are very conscious that there are several layers upon which those rights rest. At the top are the inherent rights of the individual encapsulated in the Universal Declaration of Human Rights. Many of the articles have direct relevance to the position of taxpayers but we select the following as being of especial relevance:-

Article 6 which gives everyone the right of recognition as a person before the law,

Article 7 which provides that all are equal before the law and are entitled without any discrimination to equal protection of the law,

Article 11 which provides a fundamental safeguard against retrospective penal action,

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Article 12 which safeguards privacy, family and correspondence from “arbitrary interference”

Article 17 which provides for the right to own property without being arbitrarily deprived of it

Article 21 (3) which provides that “the will of the people shall be the basis of the authority of government” expressed through periodic elections and

Articles 22 – 27 which provide for the rights to education, work, culture and social security which are a nation’s product funded by the tax system.

The direct ancestry of this declaration can be found in the French and U.S. Constitutional embodiment of rights in matters fiscal. Together they provide a powerful argument that a charter for taxpayers would be of little use unless it exists to codify exactly what the rights are, to extend, limit or amend those rights and to indicate to taxpayers exactly how a fiscal measure fits within the tax landscape. In particular it emphasises that tax is a two sided operation. More particularly, Taxpayer Rights with legal force may restrain a Tax Authority that acknowledges the general rights whilst believing there is a pragmatic right held by it alone to breach those rights as and when deemed necessary.

Where there is no specific fundamental embodiment of human rights in a written constitution or where there is an incomplete legal recognition of rights or the extent of those rights, it is often the case that fiscal measures are accompanied by specific and enforceable compliance requirements which carry with them specific rights, for example a time limit for the submission of a return or a limitation of action by a revenue authority. These directly related rights are to be found at a lower level than those emanating from constitutional or fundamental human rights but are none the less significant. Parallel with them are those statutory provisions that set down the basis on which revenue authorities are required to operate. Whilst giving specific powers, they also provide operating restraints which cast in another guise can also be taken as Taxpayer Rights.

We pose the question, therefore, what is the nature of a Taxpayer’s Rights? He/she can expect to be treated equitably, to be required to pay a reasonable amount of tax which is assessed and collected according to a system which is not oppressive, which does not deal differently with different taxpayers and which includes provision for correction of errors and legitimate legal redress if there is an infringement of those rights. In return he/she obtains benefits from the state to which the taxes are paid. This may be limited solely to the right to the receipt of the balance of the income or capital sum on which the tax is levied but which may include the right to hold assets freely and to dispose of those assets as he/she thinks fit, with or without another levy being made. Those very benefits are referred to in the later articles of the Universal Declaration of Human Rights. It will become immediately apparent that a great many human rights can be readily and habitually violated by an ill conceived or poorly administered tax system.

In any modern state there is a strong correlation between the taxpayer’s consent to pay his/her taxes (however grudgingly that may be) and the necessary constraints imposed on the taxpayer by the taxing authority to ensure an even and necessary flow of revenue to fund that state’s determined objectives. This finely tuned balance between right and obligation and between exaction and enforcement lies at the heart of a successful modern nation state. We think it not just best practice but an essential objective of nation building that the rights of the person in a given state in respect of his/her fiscal environment be recorded in a Taxpayer Charter which has legal force. This Taxpayer Charter should also deal with the responsibilities of the taxpayer in equal measure and these we deal with next.

In 1990 following a survey of all its member states the OECD published a briefing paper on taxpayers’ rights and duties. Included in that briefing was the following note identifying what it considered to be

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the basic rights attributable to taxpayers. The survey found that, while most countries at that time did not have an explicit Taxpayer Charter, the following basic Taxpayer Rights were present in all systems:

- *The right to be informed, assisted and heard*
- *The right of appeal*
- *The right to pay no more than the correct amount of tax*
- *The right to certainty*
- *The right to privacy*
- *The right to confidentiality and secrecy*

Whilst we do not think these are complete, we do think they are core rights and have used them as the point of departure for our Taxpayer Charter.

4-2 Nature of Taxpayer Responsibilities

In ancient times, living in a State was something to be endured rather than participated in. History and legend are full of examples of oppression and brutality. We have advanced much to the civilized world of today. On that journey, we adopted a feudal system, founded on the premise that everything was owned by a King, both personally and as a figurehead of the state. Personal assets and land needed to be redeemed generation by generation. This system paid no dues to universal human rights and violated the vast majority of them. It did, though, recognise the existence of a homogenous state within which individuals had rights directly related to their status within society and their revenue contributing abilities. In short, two aspects can be seen, a balance between the interests of the state and the enfranchised individual and a clear alliance between theology and state which brought moral strength to the aid of civil and criminal enforcement.

To consider the development of modern tax systems, we ask the question – how do you ensure compliance with a tax regime without a clearly defined moral imperative supporting compliance? The answer, to some extent, is that at its root it is not a moral question but that compliance behaviour is ensured by the fear of legal penalty for non compliance, be that civil for mild transgression or negligence, or criminal where a taxpayer has gone out of his/her way to evade a liability (including even the death penalty). But that is not the whole answer since an increasing number of taxpayers accept their duty to pay taxes as an essential part of contributing to the common good and the quality of life they enjoy within the society they inhabit. The moral driver for taxpaying is beginning to be part of civic ethics with evasion of taxes viewed as a self seeking and anti social activity.

Ethics as applied to taxpayers encompasses not only the acceptance of the duty to pay one's dues as a concomitant of the right to live, work and thrive in a given location, but also consideration of the legitimacy of the taxes being levied on the individual from his/her standpoint.

In the United Kingdom in the 1970s personal income tax reached levels which equated to confiscation – 83% on earned plus 15% on unearned income. This resulted in the rapid development of an industrial scale tax avoidance industry and the emergence of a black economy with participation regarded as a political statement and in no way a morally censurable crime. With no incentive to earn more than a specific amount, apathy replaced civic enthusiasm and contributed to a reduction in economic activity. Despite rectification measures over the following decades the United Kingdom still suffers from the attitudes and behaviours generated in this period. In common parlance, people vote with their feet if no other avenue is open to them and will only pay taxes with a positive attitude when they feel secure in an underlying equity and balance in the system.

In terms of a Taxpayer Charter, obligations are as important as rights. They match – a right to a 30 day submission period for a return is matched by an obligation to submit that return by the due date, a duty to be honest and open in recording and submitting details of one's income is matched by a right to acceptance of that information without a preconceived idea that it is false or incomplete. Moreover, the rights of the taxpayer are mirrored by the duties of the Tax Administration, a fact often overlooked and ignored by Revenue authorities.

Our difficulty in matching rights and duties is the fact that tax laws are often enacted by a government which has little day to day correspondence with the fiscal administrative authority. Tax laws are rarely subjected to a rigorous testing procedure to see how they will be accepted and in what way they will reflect the equitable balance. Margaret Thatcher the British Prime Minister nearly lost her government on the back of the poll tax, which, it should be noted, had already had a difficult trial run in Scotland. Foolhardy some would say. Even so, governments continue to introduce tax laws without due consideration, leaving Tax Administrations to do the best they can to implement them.

The perceived need for flexibility is one of the reasons Revenue authorities do not like committing themselves to the maintenance of benchmark standards. This is bad news for those wishing to see a widespread introduction of Tax Charters. "Flexibility", however, often **in reality** means departing from the rule of law and the obligation to treat taxpayers equally. Giving taxpayers clear statements of their rights and expectations **hardly may** presage **s** disaster.

The pillory of public exposure will, more often than not, result in the diversion of resource from some needy department not in the public spotlight to satisfy the twin masters of satisfactory compliance and retained confidence. For Tax Administrations the compliance duty of the taxpayer is necessary to ease their task in managing a revenue raising system.

For the taxpayer, the duty of compliance is integral to the smooth running of the tax collection system. The correlating rights, though, are all too often seen by administrations as unnecessary cost laden obstacles best to be avoided. Small surprise therefore to find Tax Administrations opposed to Taxpayer Charters even when expressed in unenforceable self serving statements and they are often wholly opposed to any that carry the force of law.

This does create an anomaly because it is a major impediment in the drive to establish and maintain a clear and balanced fiscal system. Administrative reticence threatens the fundamental right of the taxpayer to an equitable system and, therefore, tends to move the taxpayer in the direction of obligation denial or non compliance and away from civic enlightenment.

It is our view that the introduction of a Taxpayer Charter should be done not from any tax raising motive but as a necessary piece of legislation establishing once and for all the rights and duties of every taxpayer and what is expected and required of the Revenue authority. This is not a matter merely for a Tax Administration or an interested taxpayer or professional body. It is for an elected government to do as a matter of leadership. We believe that, once a charter is in place with the force of law, both taxpayers and Tax Administrations alike will have no doubt that they must abide by the duties set out therein and, as a result, all will benefit. For Tax Administrations, those rights will be the duties and obligations set down for taxpayers, **and** vice versa.

The costs of implementing and running a fiscal system under the umbrella of a Taxpayer Charter is the necessary price to pay and, if properly done, should begin the process of further fiscal evolution to the much desired but seldom met objectives of transparency, simplicity and well thought out legislation. Over time, far from being a cost, it will be a benefit.

The OECD report referred to above listed the corresponding duties expected of taxpayers by Governments as a set of behavioural norms. It stated

“...These expected behaviours are so fundamental to the successful operation of taxation systems that they are legal requirements in many, if not most, countries. Without this balance of Taxpayers’ rights and obligations taxation systems could not function effectively and efficiently. These taxpayer obligations are:

- ***The obligation to be honest***
- ***The obligation to be co-operative***
- ***The obligation to provide accurate information and documents on time***
- ***The obligation to keep records***
- ***The obligation to pay taxes on time...”***

We will refer to these in our proposal but, in this case, we would add that the OECD represents the establishment, in particular governments and Tax Administrations. There is nothing wrong in this but there is a need to maintain a balance. For this reason we add among other things

- ***The obligation of government to consult on legislative proposals***
- ***The duty of Tax Administrations to challenge policy if defective or underfunded***
- ***The obligation of the Tax Administration to provide assistance to Taxpayers***
- ***The obligation of the Tax Administration to follow the rule of law.***

4-3 Past Studies

Whilst Taxpayer Charters have been the subject of several studies, only **three** are referenced in this work as being the most recent and most relevant.

Comment [DR5]: Needs to be four, and include IFA document. You already have my thoughts as to what we should say about it

The first is the report of the National Review of Standards for the Tax Profession titled “Tax Services for the Public” published by the Australian Government Publishing Service in 1994. This excellent, detailed and comprehensive work is recommended to all who have an interest in this subject not least because it was a joint effort between Tax Advisors and a Tax Administration, and was one of the contributing factors in the development of what many consider to be the most practicable and efficient charter yet seen albeit that (contrary to the recommendations of this work) it is without legal effect.

The second is the report of the work undertaken by the OECD which whilst relatively concise summarises many of those items which one would like to include within a charter together with a brief expose of the rationale for having a charter. Examination of this work convinces the reader that for the OECD this is work in progress. Whether for lack of resource, a need to concentrate on more pressing matters or lack of international support at that time, the product of the OECD needs completion. It is one of the key objectives of our study to encourage the OECD together with other global entities, especially the UN, to take up the challenge and produce a definitive model charter that can be accessed and referenced by all states in the interests of their citizens, taxpayers, Tax Administrations and Tax Advisors.

The third work we cite is, in many ways the predecessor of this one. The CFE celebrated its 50th anniversary in 2009 and marked this with a publication which looked back at the development of Tax Advisory services over those 50 years and in looking forward chose to examine relations between Tax Advisors and Tax Administrators in Europe on a country by country basis with particular regard to Taxpayer Charters.

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The detailed examination and analysis of the constituent elements one could see in a charter and how they had been incorporated piecemeal into national tax practice became one of the foundations of the global questionnaire which underpins the survey at the heart of this work.

We acknowledge our debt to these works, commend them to the reader and researcher alike and recognise that, in the journey to achieve a model Taxpayer Charter, the work that the collective authors of those works have undertaken is an essential component.

4-4 Nature of Taxpayer Charters

A Taxpayer Charter is an attempt to summarise and explain in plain language a Taxpayer's Rights and Responsibilities in relation to his or her tax affairs, making such information widely accessible and understandable.

In many countries, Taxpayer Charters are a guide to the law and are not legal documents in themselves, although in some tax systems they may constitute a 'ruling'. Generally they would not provide additional rights or obligations other than those contained in relevant legislation.

The model Taxpayer Charter which has been developed as a result of this study contains examples of elements that might be found based on the discussion contained in this work. It should be stressed that the model Taxpayer Charter, and the statements within it, may not be applicable for every Tax Administration. In drawing up a Taxpayer Charter a jurisdiction must properly reflect its own policy and legislative environment and its own administrative practices, culture and legal traditions. It should also be noted that even countries without a Taxpayer Charter may attach equal importance to Taxpayer Rights and that in practice taxpayers in such countries may have rights similar to those found in formal Taxpayer Charter statements.

That having been said, there are substantial arguments for a comprehensive statement of Taxpayer Rights to be available in all countries, not only to facilitate international trade and commerce, but also to enable benchmarking of a particular country's tax system with that of other countries.

Consideration is given in Chapter 5 to the question whether a Taxpayer Charter should be a legally binding document or merely a practice statement and other related topics.

4-5 Certain Selected Topics

In this section a series of topics are briefly explored with each having a relevance to Taxpayer Rights and Responsibilities and the model Taxpayer Charter. Together they provide a theory for the Charter document and a justification for its provisions.

4-5.1 Rights of Appeal

Article 8 of the *Universal Declaration of Human Rights* provides:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10 of the *Declaration* provides:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Recognition of these rights, and elementary fairness, require that assertions by Revenue authorities as to the liabilities of taxpayers should be the subject of independent review.

Typically, tax systems provide for various modes of review. A distinction is often made between administrative review (where the review authority has the right to substitute its view of the correct decision for that of the Revenue) and judicial review (where decisions of the Revenue authority can be challenged on legal grounds).

The advantage of administrative review is that in many jurisdictions the review authorities are specialist tribunals with knowledge of the workings of the tax system, whereas judicial review is often to the ordinary courts (although some jurisdictions have specialised tax courts).

A distinction is appropriately drawn between best practice in this area, and the minimum necessary in order to comply with the human rights provided for in the *Declaration*. The requirements of the *Declaration* are satisfied provided there is one level of external review, capable of reviewing both the exercise of discretions by the Revenue as well as its conclusions as to fact and law.

Best practice would go further, and provide, consistent with the legal system of the jurisdiction in question, further rights of appeal identical to those in other civil disputes. Typically, that might involve one appeal to a higher court as of right, with further appeals by leave of an ultimate court of appeal.

The right of appeal is illusory unless the tribunal to which the appeal is directed has the right either to itself exercise all of the powers of the Revenue authority, or, alternatively, to remit the matter to the Revenue authority for it to apply the law and facts as determined by the review Tribunal. A review by the Revenue authority is of little use if it is not impartial. Where the Revenue authority has adopted an interpretation or administrative provision, it is unreasonable to expect that another branch of the Revenue authority will, on appeal, adopt a different position unless specifically empowered to do so.

This inherent limitation means that in many cases an independent body must hear a taxpayer dispute if a taxpayer so requests.

There is a trend towards limiting a taxpayer's right to appeal which is disturbing. This takes many forms, among them being:

- Negotiation to settle a dispute of several items on the basis that none of the issues will be appealed. Here the taxpayer is forced to surrender the right of appeal certain matters in order to "conclude a deal".
- Legislation drafted distinctly in the favour of the Tax Authority. For example, a taxpayer may have to prove that "none of the main reasons" for an action was due to something specified. Another approach is to give the Tax Authority discretion, such as "where in the opinion of the Revenue Administration...".
- Onus of proof. The taxpayer has to prove a fact to the satisfaction of the revenue authority and not on balance of probability.
- Complex and unduly burdensome procedural issues. The taxpayer must provide all arguments at the stage of lodging an objection and cannot advance other arguments at a later stage, say in a court hearing, while the Tax Authority can.
- Being forced to file an objection without the Tax Authority's audit report and findings.
- Open ended statutory limitation periods for certain transactions.
- Denial of deductions for technical and procedural reasons. For example, if a structure is found to be a tax shelter, as it may be defined, and it was not registered at inception, all deductions and losses are denied for all periods.
- Multiple assessments of the same income. Uncertain of which step in a sequence of transactions might be the weakest, each step is reassessed independent of the other. The taxpayer must fight multiple reassessments of which only one may (at the most) be correct.
- Lengthy proceedings over many years which are very costly and a huge distraction, so that in the end it is "late justice, no justice".

These practices should be discouraged and curtailed. Since the Tax Authority has a great influence on the form of legislation, some reasonable counterbalance is called for.

These matters are addressed as important elements in the model Taxpayer Charter.

4-5.2 Taxpayer Assistance

There is an old adage that ignorance of the law is no excuse. However, as tax laws become increasingly complex, and arguably beyond the comprehension of ordinary taxpayers, a by-product is that taxpayers cannot be expected to know the law in any detail. They require and should be entitled to receive reasonable assistance from the Tax Authority to enable them to comply with tax legislation. This can take the form of practice aids, guides, forms, access to specialists in the Tax Authority, and so forth.

While one would not argue that Tax Authorities should be required to provide tax planning advice to taxpayers, or Tax Advisors, a by-product of increasing complexity is that Tax Authorities should be prepared to offer greater assistance to taxpayers in whatever form is appropriate in the circumstances. It is reasonable that general guidelines be provided for what a taxpayer or a Tax Advisor is entitled to receive. This taxpayer assistance should be addressed in published service standards and the Tax Authority should be responsible if the guidance has shortcomings.

4-5.3 Service Standards

Following closely from the principle that taxpayers and Tax Advisors should be entitled to reasonable assistance from the Tax Authorities is the concept that the Tax Authority should have service standards with respect to their activities. Taxpayers are required to comply with deadlines, and so should the tax authority. Based on the survey results, most Tax Authorities do not have pre defined service standards for such things as processing of tax returns, ruling requests, interpretations, or time frames for handling a tax appeal and so forth. Even if such service standards do exist, a taxpayer frequently has no recourse to enforce them if these service standards are not met. In many cases, the service standards, if they exist, are not published, and what is done with these service standards is a mystery outside of the tax authority.

A frequent complaint of taxpayers and Tax Advisors is that they are judged by one standard where the tax authority is judged by another, if at all. This leads to a disrespect of the Tax Authority and, thereby, the tax system itself. It is therefore appropriate to say that the defining of service standards, the publishing of same, and the monitoring and reporting of the performance of the tax authority against these service standards, will enhance the respect which taxpayers and Tax Advisors have of the tax system and the Tax Authority. Where the service standards are not being met, the reasons therefor should be investigated and acted upon.

4-5.4 Taxpayer Records and Information

It is well accepted that taxpayers should maintain appropriate records to enable their tax liabilities to be verified. The failure to keep and provide such records leaves the Tax Authorities unable to discharge their duty of determining, upon audit, the accuracy of the taxpayer's tax calculations, and should lead to a reverse onus. This reverse onus then most typically results in a taxpayer having to disprove an assessment which may be made quite properly on the basis of the information which exists however incomplete this may be.

There is an increasing trend around the world to request more and more information of taxpayers, and in many cases this information may not be relevant to the matters under review. However, since the information is free for the taking, why not simply request everything, and later determine what is relevant for tax purposes and what is not? The problem with this approach is the burden it places on taxpayers in providing this information, and it produces a strong resentment for the process as a by-product. Accordingly, a better view is that Tax Authorities should only request information which might reasonably be relevant, and that a taxpayer should have a right to assert that information which is not relevant be withheld absent valid reasons to the contrary. That said, the onus on a taxpayer to provide relevant taxpayer records and information should be far reaching and comprehensive.

Information available to a taxpayer domestically can be subject to seizure in extreme cases (ie suspected fraud), and information which is located in a foreign jurisdiction should be subject to a reverse onus of some nature if the information is not provided. In this regard, the question becomes whether the taxpayer has access to this information so it could reasonably be provided if the taxpayer wished to do so.

A balance is necessary on this matter, with reasonableness being the governing criterion for both taxpayers and the Tax Authority. The model Taxpayer Charter addresses this issue by providing that a taxpayer may contest the provision of information to a Tax Authority on the basis of relevance if it can be clearly demonstrated that the information is not reasonably relevant to matters under review.

4-5.5 Privacy and Confidentiality

Most would agree that taxpayers do not like paying tax but rather accept it as a necessary fact of life. There are those though with a view of the economic environment which reflects their strong belief in the rights of the individual against the state and in particular that earnings, profits and property are private. Such is political diversity. Our view is that whilst the balance is somewhere between, the need to have society recognise property ownership, to measure earnings, profits and income in currency and to ensure the right to a quiet enjoyment of property prevents an individual from eschewing any state breach of their privacy. The question is by what degree should that be?

Does the state have an absolute right to access all a taxpayer's information and to do so without recourse? Does a taxpayer have a duty to make full and complete disclosures to revenue authorities, especially those in which they are not otherwise resident? Must they answer all questions asked of them without any right of protest or reserve?

Answers to those and similar questions are tempered wholly by political sentiment and where you sit on that imaginary divide. One thing is clear, regardless of political persuasion no taxpayer would accept that information supplied by or extracted from him/her by a revenue authority should be made available to any other person or agency. Confidentiality is sacrosanct whether or not privacy has been breached. Even if a state adheres to a level of transparency which equals public disclosure of detailed tax information, we are of the view that individual privacy must be preserved and disclosure made only in such a way that the taxpayer cannot be identified.

Privacy and the right to quiet enjoyment of property are at the core of human rights. Any violation of those rights is a serious threat to the balance and stability required between taxpayer and Taxing Authority. These are rights which exist whether or not there is a Taxpayer Charter. If included within a Taxpayer Charter, it should be by way of recital and reaffirmation of the rights of privacy and confidentiality rather than creation of them.

The inclusion of the rights of privacy and confidentiality within a Taxpayer Charter enables a clear agreement to be set down of what is expected from taxpayers in respect of disclosure and from Tax Administrations on the limits of their powers. Even without a Charter, taxpayer duties are enshrined in laws which carry penalties for breach. This is not the case for a government department which pushes its boundaries and by so doing exceeds its authority. In some countries, judicial review is possible but it is a long and expensive process not readily accessible to most taxpayers.

By agreeing to include sensible restrictions on authorities designed to limit the scope of revenue powers, restrictions which are subject to quick and easily accessed legal enforcement, sovereign states can give taxpayers real and meaningful access to rights which they already have but which, without a Taxpayer Charter, are very difficult to safeguard in practice.

If properly drafted, charter clauses on privacy and confidentiality can provide a strong and efficient framework on which to build the co-operative edifice of taxpayer/Tax Administration relations necessary to improve and advance tax systems throughout the world.

4-5.6 Onus of Proof

The issue of the onus of proof arises in a taxation context in a number of quite distinct circumstances. These include the following:

- At the assessment stage,
- At the objection stage
- At appeal stage; and
- At collection stage.

The last of these is dealt with in the discussion on collection.

In each except the last of these, the issue may be either

- Whether the primary facts demonstrate an amount to be taxable or deductible;
- Whether some discretionary process (such as application of an anti-avoidance rule) displace the outcome otherwise applicable;
- Whether a taxpayer is entitled to the benefit of a safe harbor due to having taken reasonable care or some such standard; and
- Whether (in the case of an assessment going back a number of years) factors such as the existence or otherwise of negligence, fraud or evasion entitle the reopening of an assessment

Most taxation systems provide that, unlike the state of affairs normally obtaining when one person makes a claim on another, there is a reverse onus of proof. Taxpayers must establish they are not liable to tax, rather than the revenue establish they are. Typical of the justifications for this approach are the following:

It is criminal law policy that the prosecution should prove all the elements of an offence beyond reasonable doubt.... However, while departure from this standard is not to be undertaken lightly, placing the burden of proof in the defendant will be acceptable in circumstances where:

- (a) the matters to be raised by way of defence are peculiarly within the knowledge of the defendant; and*
- (b) it would be extremely difficult and costly for the prosecution to be required to negative the defence.*

And, in the context of safe harbours -

In this case it would seem that proper record-keeping, full and honest disclosure to a taxpayer's agent, and conformity with the advice of the agent are probably matters which could be said to be peculiarly within the knowledge of the defendant. In addition, it could be costly for the prosecution to obtain evidence of the record keeping of the defendant. It would also be difficult for the prosecution to prove full and honest disclosure and that the defendant followed the advice of his agent. Accordingly, it would seem that the reversal of proof is justified in this case.

But it should be noted:

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- An assertion of fact by the Revenue that is *unsupported* by evidence has no relevance or weight. It does not need to be disproved;
- The Revenue bears an evidential onus of supporting any positive assertion it makes;
- Once the Taxpayer has adduced probative evidence that discharges his evidential onus, *prima facie* he has discharged his legal onus too. The evidential onus shifts to the Revenue;

The character of each of the legal relationships that are the necessary setting for working out the taxpayer's taxation liabilities is to be determined on the same evidence as would a civil dispute. Discussion of the onus of proof has the capacity to confuse, rather than clarify, the various elements of the assessment, objection and appeal process.

At the point of assessment, the Revenue's function is to adopt a view as to the accessibility of the taxpayer. The onus of proof should play no part in that process. The task of the Revenue is to ensure that the correct amount of tax is paid, "not a penny more, not a penny less".

The same applies at objection stage. The Revenue cannot be said to be confined in the course of considering the taxpayer's "objection" to the matters raised by the taxpayer in that "objection". It has an obligation to administer the applicable legislation and may determine to allow the objection for grounds totally unrelated to those raised by the taxpayer, if that be the correct course, just as it could form the view, based on a reconsideration of the matter, that the assessment should be confirmed for reasons which it had not previously considered.

It is only when the assessment and objection stages are complete, and the Taxpayer (being dissatisfied with the outcome) seeks external intervention, be that curial or administrative, that the question of onus of proof properly arises.

At that point it needs to be kept in mind that if a dispute arises between the Revenue and a taxpayer and it is forwarded to a Court or referred to an administrative tribunal that the Revenue, appears before the relevant Court or tribunal as an opponent of the taxpayer ~~appears before the relevant Court or tribunal~~. But this is not to exact tax improperly payable - ~~rather~~but to assist the Court or tribunal in coming to an answer to the statutory question as to whether the assessment is excessive having regard to the facts as ultimately determined and the law.

It also needs to be kept in mind that although, speaking generally, the taxpayer knows or should know the facts relevant to a correct assessment of his income, there are other facts which will be relevant on the hearing of an appeal. The relevant facts in the appeal include the view of the facts on which the Revenue has based its assessment, and the manner in which it has arrived at its assessment. These facts are not within the knowledge of the taxpayer; they are within the knowledge of the Revenue.

The initial legal onus is rarely of importance after all the evidence is submitted because it is rare that competing evidence will balance the scales precisely.

The proper role of the onus of proof generally adopted in common law countries is thus set out below:

- The taxpayer bears the ordinary civil onus, not any special onus;
- The taxpayer discharges his onus by adducing evidence that – when weighed with any contrary evidence adduced by the Revenue - more likely than not shows either that (i) the assessment is invalid (so no debt is owed to the Revenue) or (ii) the amount assessed should have been less;
- Regard is to be had only to the evidence adduced by each party. The slightest balance of probative evidence in favour of the taxpayer is enough for him to succeed. The taxpayer need not exhaust all the possible evidence that might be produced on a point. Any probative evidence will be sufficient to weigh the balance in his favour if there is no contrary evidence;

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- The taxpayer's sworn evidence is, if accepted, probative evidence of the fact in issue. It is wrong to treat it as prima facie suspicious;
- The rejection of some evidence in support of a fact is not evidence of the contrary fact; and
- If the court is satisfied on the evidence that the amount of the assessment is, on the balance of probabilities, excessive, but that the true amount is probably higher than that asserted by the taxpayer, it should making findings on the evidence before it as to the true amount

Where penalties are applied on the basis of allegedly delinquent conduct, additional considerations arise. The *Universal Declaration of Human Rights* provides, in Article 11:

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Accordingly, where fraud or evasion is asserted, the presumption of innocence should apply and require to be displaced by positive evidence. To approach the matter in any other way is to reduce a fundamental right to a mere formalism, easily avoided by the device of imposing a tax penalty rather than a prosecution, even though the consequences may be extraordinarily severe.

4-5.7 Drafting Tax Legislation

Tax law is designed to raise revenue and set down the framework within which that happens. Ideally it should meet commonly agreed standards, should not be partisan and be understood and accepted even if not agreed with. Whilst specifics such as amounts of tax, determination of the tax base and rates applicable are matters for political decision, the formulation of and application of tax law can be significantly improved if the difficult areas are discussed beforehand, certainly before the commencement of the legislative process. Consultation, on drafting, implementation of systems and guidance to be issued, with those who will be affected as well as their advisers has a beneficial effect both in removing errors and ensuring take up, even if it is grudging.

Dialogue is particularly necessary where the primary legislation is skeletal and broad brush with detailed provisions wrapped in secondary and tertiary law or regulations. Failure to consult or to take up key points made may result in critical failures in the system once introduced and risks the need to introduce early amendments where laws have not been thoroughly thought through. At worst, non consultation can be extremely provocative and result in political unrest as happened in the UK when the poll tax was introduced.

In 1999 the Tax Faculty of the Institute of Chartered Accountants of England and Wales published ten tenets to be used to benchmark tax law. These were submitted to the Treasury Committee of the House of Commons in the U.K. in response to the first question in their inquiries into the legislative process being "*What are the key principles that should underlie tax policy?*"

The ten principles provide a framework for evaluating the tax system and have been widely used to evaluate tax systems and tax policy changes. They state that the tax system should be:

1. Statutory
2. Certain
3. Simple

4. Easy to collect and to calculate
5. Properly targeted
6. Constant
7. Subject to proper consultation
8. Regularly reviewed
9. Fair and reasonable
10. Competitive

Inclusion of principles such as these within a Taxpayer Charter can only be beneficial as they foster mutual co-operation and respect and give everyone involved in the legislative process tools to ensure that the resulting law is fit for purpose. Taxpayers and Tax Administrators working together can only lead to greater acceptance and ownership of tax law. Inclusion within the provisions of a Taxpayer Charter of clauses facilitating this can only assist in moving towards an ever improving tax system for those states which adopt it.

In addition, tax law should be drafted with the stakeholders in mind. It should be clear and precise, not unduly complex, and capable of being readily understood. Lengthy delays in drafting and enacting legislation contribute to the criticisms of the process, undermine credibility, compound enforcement problems, and are detrimental to all stakeholders.

For these reasons the model Taxpayer Charter makes several references to legislation issues.

4-5.8 Retroactive Legislation

There is an increasing trend for tax laws to have retroactive effect. This is potentially problematic for all stakeholders. Taxpayers and Tax Advisors should be entitled to some reasonable certainty as to the tax implications transactions undertaken. Moreover, Tax Administrations require reasonable certainty as to the interpretation of tax laws in order to appropriately assess taxpayers.

Certain countries have limitations on what is permitted in terms of retroactive legislation, but most do not. Retroactive legislation has the potential to undermine the fairness of a tax system and the respect which taxpayers and Tax Advisors have for the system. Unless the legislation is relieving in nature, retroactive passage of legislation is arguably unfair and should be avoided. Thus, the Taxpayer Charter seeks to place limitations on the use of retroactive legislation, particularly if it is not relieving in nature. Also, adequate transitional rules should be placed in the legislation where legislation will have retroactive effect.

Retroactivity can come in many forms. One aspect is a retroactive increase in tax rates or in the tax base (subjecting something to tax which previously was not included) and doing this back to a date in the past. But retroactivity can also be prospective. It can apply to arrangements which have been carried out before the legislation was enacted, making the arrangement subject to tax in the future to a greater extent than in the past. In many instances, so-called grandfathering will apply, so that arrangements put in place before the date of application of the legislation will be permitted to pay taxes on the basis of the previous law. However, this is far from universal, and the results can be very detrimental.

Gaius Caesar, better known as the Emperor Caligula, is reputed in literary tradition to have made a practice of depositing his criminal edicts on top of a monument so that he would have them available for punishment of the luckless victims who transgress them in ignorance of their existence, and with no opportunity of discovering their provisions. But he was also a wayward autocrat, given to impersonating Jupiter, and openly declaring his wish that the whole people of Rome had only one head that he might cut it off at a single stroke.

One only needs to state this proposition for its injustice to be immediately apparent. But retrospective legislation goes beyond this: at least, through judicial and other processes, laws fixed at a particular point of time eventually will become known and can be determined. On the other hand, retrospective legislation necessarily involves law which is both unknown and unknowable. For these reasons, most civilised countries accept the notion that laws should operate prospectively only.

This notion has a long history. In the words of the *Institutes of Justinian (from 533 A.D.)*:

Freedom from which men are called free, is a man's natural power of doing what he pleases, so far as he is not prevented by force or law ...

That freedom cannot exist in a society where what is legal or tax effective according to the law as it stands today may be rendered illegal or ineffective at a later time retroactively. The same principle is recognised in Article 1, section 9 of the *Constitution* of the United States of America, which provides amongst other things that:

No Bill of Attainder or ex-post facto law shall be passed

The French Civil Code, in civil matters, provides:

La Loi ne dispose que pour l'avenir; elle n'a point d'effet retroactif

The Law only provides for the future; it has no retroactive effect

In the context of the criminal law, the entitlement not to be subjected to retrospective legislation has been characterised as a fundamental human right. Article 11 of the *Universal Declaration of Human Rights* provides, in part:

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

While taxation laws are generally not laws creating penal offences, as noted elsewhere they frequently do impose penal type sanctions and in this respect at least, retrospective taxation laws with penal consequences contravene an internationally acknowledged fundamental human right. And retrospective revenue legislation more generally can be argued also to constitute an arbitrary deprivation of property, inconsistent with article 17 (2) of the *Declaration*.

Notwithstanding this, retrospective legislation is increasingly seen by governments as a legitimate device when dealing with revenue matters. This assumption should be challenged.

Retrospective laws:

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- are contrary to the rule of law;
- engender business uncertainty; and
- create adverse perceptions of sovereign risk in relation to taxation laws generally.

A retrospective law undermines the rule of law, because it:

- cannot itself guide action; and
- undercuts the integrity of existing and prospective rules, since it puts them under the threat of retrospective change.

Even where there is clear avoidance behaviour, it still may not be appropriate to apply any legislative fix retrospectively.

It is not to the point to argue that tax avoidance is immoral, and a dereliction of civic duty by those who engage in it. Even assuming for present purposes that that is so (which involves the assumption that, unavoids, the relevant revenue legislation achieves tax equity), fundamental principles of law, whilst they might operate in favour of undesirable persons in particular cases, must nonetheless often be preserved in the interests of the community generally. The use of torture might well be argued to assist the police in combating crime. So might dispensation with the privilege against self-incrimination. Yet few would suggest that in the interest of the suppression of crime (which is at least as desirable as a social objective as the suppression of tax avoidance) these fundamental elements of the rule of law should be dispensed with.

History has shown that once a precedent is set in relation to retrospective legislation, it becomes increasingly easy for legislatures to accept a lower bar beyond which legislation of this nature is seen as acceptable. In many cases the need for change arises because of deficiencies in the original legislation. For this reason, retrospective legislation which increases a taxpayer's liability to tax is not, in any circumstance, acceptable subject to one qualification.

The nature of revenue legislation, and the consequences to the revenue generally of changes, are such that exception is often not taken on rule of law grounds to legislation which is retrospective to the date upon which an announcement of intention to introduce it is made. Provided that the legislation fairly gives effect to an announcement which is made with some precision as to the intended nature of the legislation, and it is introduced and enacted within a short period after the announcement is made, the objections discussed above would not normally be considered to apply.

In addition to legislation which is formally retrospective (that is, it changes for the past the tax consequences of transactions which have occurred in the past), legislation which is formally prospective can nonetheless be economically counter-productive for similar reasons in relation to uncertainty. A useful example is provided by the circumstances of altered tax treatment of capital allowances for assets acquired prior to the change, and the treatment of losses carried forward from earlier years. Jurisdictions which engage in such practices are likely to find themselves less attractive destinations for direct foreign investment, since much foreign investment depends on long lead times between the initial investment and the receipt of the investment return. As a matter of good practice, therefore, it would be wise to also avoid this type of retrospectivity (if it be so regarded).

4-5.9 Double Taxation

Most countries have mechanisms in their domestic law to prevent double taxation. These take a variety of forms and among them are; a foreign tax credit system, an exemption system, or a reduced rate of

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tax (for example for individuals receiving corporate dividends to compensate for corporate tax paid). These mechanisms often have limitations, however, which prevent them providing a complete solution for double taxation.

Double taxation can arise in a number of ways, some of which are not always obvious. Double taxation can be defined as taxation of the same item of income more than once. However, double taxation is not limited to income tax systems, and frequently arises through estate and gift tax systems, where tax can be paid at multiple levels, and sometimes in VAT type systems where input credits on a supply are limited or denied, while sales are taxable. In this sense it may be justified and a fundamental part of the tax system.

Double taxation arises in both domestic contexts and international contexts, although the latter is more common. It is commonly regarded as having two subsets.

Juridical double taxation can be defined as the imposition of income taxes on the same taxpayer in respect of the same income. Juridical double taxation can arise in an international context, for example, where a resident of one country derives income from sources in the other country, and both countries' domestic tax legislation would tax that income. It can also arise where each country considers the taxpayer to be resident in that country under domestic tax laws.

In a domestic context, juridical double taxation will usually arise from fragmentation of the income tax base without proper integration of the concepts.

Tax conventions reduce international juridical double taxation by allocating taxing rights between residence and source states on various categories of income, typically by eliminating or limiting source country taxation or by requiring a residence state to grant relief for source state taxation through a credit or exemption mechanism. For example, tax conventions typically provide that one country may not tax the business profits earned by a resident of the other country unless that resident has a taxable presence in the form of a permanent establishment in the first country and the profits are attributable to that permanent establishment. Tax conventions also reduce juridical double taxation by establishing criteria for determining an exclusive residency status for taxpayers. The most common instances of juridical double taxation disputes are disputes over residency or permanent establishment status, or over the characterisation of particular items of income and their coverage under particular provisions of the convention.

Economic double taxation means the inclusion of the same income in the tax base when the income is in the hands of different taxpayers.

In a domestic context, this occurs when deeming provisions require income which is not in fact earned by a taxpayer to be treated as if it were, while not at the same time requiring that the person who actually earned the income be treated as not having earned it. It also occurs where the same income flows through a number of entities, or capital gains are notionally capable of realization at more than one level in an ownership chain (the opposite is also true, but many countries, whilst legislating to prevent taxpayers from taking advantage of cascading losses, have not made effective provision to prevent occurrence of the reverse).

Transfer pricing cases are the best example of international economic double taxation. For example, a Tax Administration adjusts a price charged between related parties with a resulting tax charged on the additional income in the hands of one related party, where tax has already been charged in another country on that same income in the hands of the other related party.

As the OECD has noted, double taxation has a detrimental effect on the movements of capital, technology and persons and on the exchange of goods and services. At a domestic level, it also skews investment decisions in the absence of a direct legislative statement that double taxation is to be avoided as a basic principle of assessment.

At an international level, tax conventions, when properly applied (according to the OECD), remove most obstacles of double taxation, thereby promoting the development and flow of international trade and investment. This, however requires co-operation between nations which may often not be timely or even forthcoming (for example when countries have differing transfer pricing methodologies) – in marked distinction, at times, to the alacrity with which tax debts are enforced.

Some relief from the problem of international double taxation, in the context of a Double Taxation convention, exists through the Mutual Agreement Procedure (MAP)

The MAP article in tax conventions allows designated representatives (the “competent authorities”) from the governments of the contracting states to interact with the intent to resolve international tax disputes. These disputes involve cases of double taxation (juridical and economic) as well as inconsistencies in the interpretation and application of a convention.

Since most probable occurrences of double taxation are dealt with automatically in tax conventions through tax credits, exemptions, or the determination of taxing rights of the contacting states, the majority of MAP cases are situations where the taxation of an individual or entity is unclear.

A noteworthy point is that the MAP article in most conventions does not compel competent authorities actually to reach an agreement and resolve their tax disputes. They are obliged only to use their best endeavours to reach an agreement. Unfortunately, on occasion competent authorities are unable to come to an agreement. Reasons for unresolved double taxation range from restrictions imposed by domestic law on the Tax Administration’s ability to compromise, to stalemates on economic issues such as valuations.

Unless there are sound reasons to justify double taxation in a particular instance, very few things are more infuriating to taxpayers, or contribute more to the perception that the tax system is unfair than double taxation. Our model Taxpayer Charter accordingly makes mention of double taxation with a general statement that legislation should be drafted, generally speaking, to prevent double taxation as far as possible. In addition, the unwanted by-products of double taxation, such as unduly harsh interest charges, must also be encompassed.

4-5.10 Interest and Penalties

Overview

In recent times many jurisdictions have moved towards an income tax regime based on self-assessment principles. This changes fundamentally the obligations and role of taxpayers *vis a vis* those of the Revenue. The result is that much more responsibility is cast upon upon the shoulders both of Taxpayers and their Tax Advisors. For example, rather than submit a tax return for assessment with the calculation of taxable income and tax liability done by the Revenue, taxpayers became obliged to *ascertain their own* taxable income and, often, their tax liability. The Revenue then accepts the taxpayer’s tax return at face value and, if necessary, issues an assessment, and where a refund is due an accompanying cheque, accordingly. Should, however, it subsequently be found (at audit, for example) that there had been a tax shortfall then the *taxing Act* provides for the taxpayer to be liable in certain circumstances for a penalty plus interest. The level of penalty is determined on the basis of the tax shortfall, and whether that

shortfall is due for example to such factors as *a failure to take reasonable care, recklessness or intentional disregard* of the law, with increasing levels of penalty accordingly.

In addition, there are penalties where a taxpayer refuses or fails to furnish any required return or information.

Taken together, such provisions have made it clear that the taxpayer has the primary responsibility for lodging a correct return. They also have placed upon tax advisors an additional burden of responsibility, for taxpayers normally rely on them to 'get it right' and so ensure no liability for penalty arises.

Interest

The issue of interest can arise in several ways. A taxpayer may simply be late in discharging his undisputed liabilities. The liability may be seriously in dispute, but payment pending resolution of the dispute may be commercially impractical. A further possibility is that the taxpayer may have actually paid disputed tax and is found to be entitled to a refund, or has either directly or by a related entity paid tax elsewhere (for example, in the context of a transfer pricing dispute).

Various approaches are possible in such circumstances. Many jurisdictions have applied differing interest rates, taking into account that late payment should not become a means of using the Revenue as a source of finance. In addressing this issue, Administrations should make clear whether interest paid and charged should be simple or compound. Fairness dictates that in general the rate of interest charged be no higher than the rate given on tax overpayments. Otherwise what is really being charged is a penalty. Where the taxpayer is late in paying tax due, once notice is given an additional charge can then be considered as warranted.

Fairness requires that the Revenue should not obtain an advantage from improperly collecting tax ultimately determined not to be owing, or that those taxpayers who choose to not discharge their liabilities should obtain an advantage over the general body of taxpayers. And there is certainly an argument that there needs to be active discouragement of taxpayers from simply using the Revenue as a funding source – which they do if they simply choose not to pay, but do not do if any delay in collection is the result of delays in process for which they are not responsible or an honest dispute.

Where tax has been paid by another entity in association with the same transaction either to the same revenue authority (in the context of alternative assessments) or to another revenue authority (in the context of a transfer pricing dispute) interest should not be chargeable, except to the extent that it recoups any interest paid by a revenue authority to a related taxpayer as part of resolution of the dispute. As part of resolving the tax issues in dispute, the interest should be settled in a way which is fair as well.

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Penalties

The need for a system of penalties should tax shortfalls occur arises from the need to provide appropriate incentives for responsible taxpayer behaviour in the context of a self assessment system.

Penalties should, however, reflect the various levels of fault which can arise in that context. The usual categories identified are failure to take reasonable care, recklessness, and intentional disregard of the law. In the context of reasonable care, an additional consideration which might be taken into account

where significant amounts of tax are involved is the requirement that the position taken by the taxpayer be reasonably arguable.

Some jurisdictions provide additional penalties for such matters as failure to lodge returns on time, the making of false or incomplete statements, and other administrative failings.

In general terms, the consequences for failure to comply with the requirements of the tax system should be visited by the general system of interest and penalties as outlined above, rather than substantial additional fines. The penalties should be proportionate to the quantum involved and the circumstances. No penalty should arise in “no fault situations”.

In broad terms, the penalty regime should recognise that it is inappropriate for a taxpayer to take a reasonably arguable position, based on appropriate professional advice, and then be penalised because the taxpayer is ultimately found to be wrong. Even more so where the shortfall does not really involve the taxpayer at all, but a dispute between revenue authorities such as occurs in a transfer pricing dispute. In such cases, the amount of the tax shortfall upon which any penalty is calculated should be limited to the net amount of tax payable (if any) by all the taxpayers involved in the dispute taken together.

There is, however, one area in which severe penalties are warranted. That occurs in cases where a taxpayer has withheld money from another, in circumstances where that withholding is authorised on the basis that the first taxpayer will remit the money withheld to the Revenue Authority. Deductions from employee salaries, withholding taxes, and VAT, provide relevant examples.

In such cases, no reasonable argument can be put forward by the person who has failed to remit the money. Failure in this case to remit to the Revenue Authority is simply theft, and penalties appropriate to that circumstance should be equally applicable in that tax context.

The role of Tax Advisors

The task of Tax Advisors is made more difficult by the failure of some taxpayers to understand and/or to comply with their record-keeping obligations under the *taxing Act*. In such circumstances Tax Advisors are put in a difficult position. They must ascertain from their clients the information necessary to produce correct returns, in the knowledge that their clients are liable to severe penalties in the event of a tax shortfall but wish to pay only no more than the tax legally due, *and* wish to keep to a minimum the cost of engaging a Tax Advisor.

The market for tax return preparation services is competitive, and to the extent a Tax Advisor devotes additional effort to producing a correct return and as a result is obliged to charge a higher fee than would otherwise be necessary, that person runs the risk of losing the client's custom. To the extent they do not do so however, they run the risk of lodging an incorrect return and either having their client pay too much tax or, alternatively, exposing their client in the event of a tax shortfall to penalty. Perhaps not surprisingly therefore, and notwithstanding the increased usage of Tax Advisor services it has generated, some Tax Advisors view the advent of self-assessment as a mixed blessing.

The issue of what constitutes *reasonable care* lies at the heart of concerns which can arise regarding the relative rights and responsibilities of taxpayers and Tax Advisors under self-assessment.

The issue arises where revenue legislation provides that in the event that a taxpayer has a tax shortfall for a year and that shortfall was caused in whole or part by the failure of the taxpayer or of a Tax Advisor to take *reasonable care* to comply with the *legislation*, the taxpayer is liable to a penalty. Thus

are introduced two important and contentious concepts: that of *vicarious liability* (whereby the taxpayer becomes liable for the failings of the Tax Advisor as agent - of which more later) and of *reasonable care*.

There ought not to be one standard applied to the returns of persons who use Tax Advisors and another to those of self-preparers, although the way the standard is described may properly reflect the circumstances of each case.

It is desirable that there be a degree of certainty in relation to the requirements for *reasonable care*, and accordingly the legislation should establish conditions which - if satisfied fully - would be deemed to constitute the exercise of *reasonable care*.

Where taxpayers have complied with prescribed requirements regarding record-keeping, made a full and honest disclosure to the Tax Advisor of information requested, and conformed with the Tax Advisor's advice, they should be *deemed* to have exercised *reasonable care*. Taxpayers should be required to bring to the attention of the Tax Advisor information they could be expected to have known was relevant to the preparation of their return.

After all, having regard to the ordinary meaning of words, it is difficult to argue taxpayers are not exercising *reasonable care* in such circumstances.

To meet the reasonable care safe harbour the Tax Advisor should not be an employee, employer or partner of the taxpayer. A possible conflict of interest exists where the Tax Advisor and the taxpayer are in conflict. In order to be deemed to have exercised *reasonable care*, the taxpayer must contend there was a failing by the Tax Advisor, not the taxpayer himself. This becomes meaningless when they are one and the same.

4-5.11 Voluntary Disclosure

Voluntary Disclosure Programs are an important component in the administration of a tax system. Taxpayers may have deficiencies in their tax filings and disclosures for a variety of reasons which range from inadvertence to deliberate non-compliance (i.e. evasion). When confronted with the full weight of the penalties which could apply under tax laws, together with the payment of tax and interest on the tax and perhaps on the penalties, taxpayers may be inclined to conceal these deficiencies. By providing some leniency for taxpayers who voluntarily come forward to correct past deficiencies, a Voluntary Disclosure system can provide a win for all stakeholders.

Through the process taxpayers become compliant, and often become very supportive of the tax system and strive to have an impeccable record of compliance going forward. For the Tax Authority, whose goal, among other things, is to raise revenue and encourage voluntary compliance, the Voluntary Disclosure Program can achieve these objectives remarkably well. In the vast majority of cases, the Voluntary Disclosure represents tax revenue which would otherwise be lost. This is often done at a remarkably low cost, in terms of the resources necessary to raise the revenue.

Thus the program represents a winning scenario for everyone, provided the Voluntary Disclosure Program is not perceived as being unfair to taxpayers who have complied voluntarily. Accordingly, the Voluntary Disclosure Program must be carefully constructed not to provide an overall advantage to those taxpayers who have failed to comply, and who make amends. In this regard, the Voluntary Disclosure Program should not be viewed as a tax amnesty, allowing a taxpayer to obtain a better result than what would have occurred if the taxpayer had complied from the beginning. For this reason, generally the Voluntary Disclosure Program results in a waiver of penalties, and possibly some interest relief, but generally not a reduction in the tax payable.

A successful Voluntary Disclosure Program should have a number of characteristics, generally along the following lines:

1. A voluntary disclosure, usually prepared with the assistance of a Tax Advisor, should be complete in all material respects.
2. The program should not be used, generally speaking, to merely avoid a late filing penalty for the late filing of a tax return or form.
3. The disclosure should be voluntary, and not prompted by enforcement actions of the Tax Authority.
4. The program should not be used repeatedly by a taxpayer, especially in respect of the same item, such that some limitations may be placed on use of the program for repeat offenders.

It is important that a separate branch of the Tax Authority deal with voluntary disclosures, and that the program be well publicized. A taxpayer should not be required to provide reasons for the filing deficiencies, as the point of the program is not to sanction taxpayers or characterize voluntary disclosures by reference to some degree of fault. It is important that all voluntary disclosures be treated objectively, without regard to the taxpayer's "story". However, some limited discretion should be given to the voluntary disclosure tax officers, as in practice various issues will arise such as the extent to which beneficial elections might be made on a late filing basis. Normally retroactive tax planning is not allowed in a voluntary disclosure. That said, there may be some discretion as to where the line is to be drawn.

The Voluntary Disclosure Program should have a basis in law, and not be purely administrative. Otherwise, arguably too much discretion is granted to the tax officers, and the program will suffer from a lack of clarity and a degree of arbitrariness. It may also be illegal. Guidelines need to be developed so that taxpayers are, broadly speaking, treated equally under the program.

It is important that the Voluntary Disclosure Program be distinguished from a tax amnesty. A tax amnesty is often perceived as being unfair by the majority of taxpayers who are compliant, giving a benefit to those who come forward under the amnesty which is hard to justify. That said, on occasion it might be appropriate for a country to consider a tax amnesty in limited circumstances. It should be noted, however, that a tax amnesty has the ability to destabilize the tax system by rewarding persons who have been non-compliant.

Statistics should be published of the results of a Voluntary Disclosure Program including, in general terms, the types of non-compliance encountered, the number of taxpayers making use of the program, the tax revenue raise, the cost of the program to the Tax Authority, and other relevant figures. It is perfectly reasonable for the Tax Authority to gain intelligence on taxpayer risk profiles in general, from the results of the voluntary Disclosure Program, to enable the Tax Authority to focus its audit programs on areas of perceived non-compliance.

Tax Advisors play an important role in the voluntary disclosure process, since taxpayers often approach Tax Advisors for counseling in this regard. Accordingly, the program should be publicized well, particularly among Tax Advisors. Consideration should be given to allowing tax advisors an opportunity to come forward informally on a no-names basis on behalf of a client, to work out an approach for dealing with a matter with the tax authorities.

4-5.12 Towards Greater Certainty

The statement that tax systems around the world are becoming increasingly complex needs no empirical evidence for its justification. It is rare that tax systems become simpler, and the level of complexity can become daunting. No doubt this is responsible, in part, for the growth of the tax profession worldwide.

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In recognition of this, professional bodies of Tax Advisors have increasingly introduced certification programmes, and in many jurisdictions around the world, the tax profession is regarded as separate and distinct from the accounting and legal professions. Tax Advisors may have their professional training rooted in the accountancy or legal professions, but the complexity of tax laws and their administration requires that a separate certification process be adopted.

Taxpayers and Tax Administrations are increasingly feeling the brunt of this complexity. A by-product of this is the increase in the compliance burden faced by taxpayers. As a result, it has become recognized that Tax Administrations must provide an increased level of service to taxpayers and Tax Advisors to deal with this complexity.

In light of this, it is reasonable to expect that Tax Administrations will provide assistance to taxpayers and Tax Advisors so that this complexity can be handled on a practical level. This may take the form of practice aids such as tax forms, instructions, interpretation guides, and rulings.

The implications of this complexity are very pervasive, and are recognized in many provisions of the model Taxpayer Charter.

Issues of tax complexity are compounded, to some extent unnecessarily, by three additional problems which are emerging, namely the frequency of change in tax laws, lengthy delays in the drafting and enacting of tax legislation, and interpretations of tax law which change over time.

We have been and are witnesses to substantial evolutionary change in tax practice. Administrations want cost effective simplicity, transparency and broad brush tax legislation which gives them the greatest flexibility of action and choice. Their wish for greater resource is hindered by financial throttles which in many countries stifle recruitment and retention of quality staff and prevent investment in technological development which would, and, indeed in due course will, revolutionise tax systems for the benefit of all.

Taxpayers on the other hand are becoming more astute and more professionally and technologically informed. Arguably there is an imbalance which administrations seek to correct by ever more complex and far reaching legislation designed to control taxpayer behaviour rather than seeking to guide and encourage it. Most taxpayers accept the need for and want a tax system which is aspirationally fair without the need for heavy handed and punitive measures, except in the case of criminal or grossly negligent activity.

Both sides have certainty as an objective. Administrations want the reassurance that what has been returned to them and what taxes have been paid are complete and accurate. This can be achieved for them by taxpayer transparency, full and complete disclosures and, where intermediaries are used, confidence that they are subject to a regime which includes discipline, adherence to a strict professional code and maintenance of current and applicable tax knowledge.

Taxpayers, on the other hand, view certainty in a practical context. They desire that what has been declared and paid has been accepted and will not be subjected to detailed review or redetermination. We are not here referencing the taxpayer who relies on non-disclosure or questionable interpretation of an event to allow him/her to achieve a lower tax liability than would be appropriate. Rather we are referring to the honest taxpayer whose major concern is the cost of dealing with a detailed review coupled with the nagging fear that despite thorough and adequate procedures, human error has crept in and he/she might have missed something or an alternate and unexpectedly harsh interpretation might be adopted by the Tax Authority.

A classic system where returns are made and subject to audit and checking certainly gives both taxpayer and tax collector a hands on feel to certainty, but, unfortunately it is not a runner in today's world where labour costs of revenue staff have to be paired to the bone. Most Tax Authorities now favour a system of self assessment which puts the onus of compliance and interpretation firmly on the taxpayer's shoulders. For both sides there are tools to help.

A statute of limitations applicable to errors on both sides, but not criminal activity, acts as a long stop which enables both sides to put away their records and move on. A formal system for clearances of difficult or disputed matters both in advance and, where returns have been made, by referral is a major aid to the achievement of certainty, provided there is full and complete disclosure and both sides enter into the process with open minds and in good faith.

4-5.13 Limitation Periods

Following from the principle that it is reasonable that taxpayers be given some certainty as to their tax affairs, there should be limitation periods beyond which a tax assessment cannot be raised absent extraordinary circumstances such as tax evasion, or some lower threshold, such as negligence on a taxpayer's part. Increasingly, these limitation periods seem to be subject to erosion where the threshold for extending the limitation period is lower and lower. A high threshold should apply in all circumstances so that a limitation period will be honoured, in the interest of providing greater certainty to taxpayers in their tax affairs, and enhancing the perceived fairness of the tax system. This threshold should be viewed as a fundamental Taxpayer Right, not easily set aside.

4-5.14 Consultation on Tax Policy

It is recognized that the ultimate authority for tax legislation, and the underlying tax policy, rests in the hands of the legislature. That said, the complexities of taxation in the modern world lead to a proposition that few would contest, being that all stakeholders can benefit from a consultation process with respect to tax legislation, be it technical in nature or as part of a tax reform initiative. Taxpayers benefit because, among other things, they have an avenue into the consultation process, and although there may not be agreement on tax changes being considered, at least they can feel they have had a say. The Tax Authorities and those responsible for drafting the tax legislation can benefit from the input of Tax Advisors who are knowledgeable in the area, and who can provide a unique professional and practical perspective which may not have been considered by the architects of the legislation. France is a fitting example of this, witnessed by a defeat of a proposed tax increase in the Constitutional Court.

Overall, a consultative process, albeit non-binding by necessity, leads to a perception of greater fairness in the bringing about of changes in the tax system, which benefits all stakeholders. It is therefore recommended that a consultation process should be part of a modern tax system. Without a firm basis for a consultative process whereby tax changes ultimately become law, very often this process does not exist at all, or exists only on an ad hoc basis where it suits those involved in drafting the legislation. Furthermore, our survey indicates that the consultative process is a part of the tax system in certain countries, where clearly it must have a beneficial impact (or it would not have been included), so why should the process not be extended universally?

The inclusion of a consultative process in the making of tax legislation could lead to delays in the process, and this is an argument advanced for not including it. However, the benefits will invariably outweigh any disadvantages. Accordingly it is our view that the inclusion of a requirement for a consultative process forms an important part of a Taxpayer Charter.

4-5.15 Role of Tax Advisors

The rights, roles and responsibilities of private sector tax professionals – external Tax Advisors, accountants, in-house Tax Advisors, economists and legal practitioners practising in the taxation arena - flow logically from the roles, rights and responsibilities of the taxpayers who hire them, and from the roles, rights and responsibilities of the Revenue Authority.

It has been said that when a profession is fully developed it may be described as a body of men and women:

- (a) identifiable by reference to some register or record;
- (b) recognised as having a special skill and learning in some field of activity in which the public needs protection against incompetence, the standards of skill and learning being prescribed by the profession itself;
- (c) holding themselves out as being willing to serve the public;
- (d) voluntarily submitting themselves to standards of ethical conduct beyond those required of the ordinary citizen by law;
- (e) undertaking to accept personal responsibility to those whom they serve for their actions and to their profession for maintaining public confidence

The duty of care imposes upon tax professionals a responsibility, consistent with the law, always to safeguard without fear or favour the interests of their clients. It follows from this that tax professionals ought not to undertake tasks or to accept additional responsibilities from other parties (including from the Revenue) which would prejudice their ability to do so.

The relationship between tax professional and client is one whereby the professional provides for a fee or other consideration certain agreed services.

In providing these services (such as the preparation of a tax return and/or the provision of taxation advice) the professional is in a position of trust and has a duty of care. If he or she fails to discharge properly this duty there are legal remedies available to the client. One such remedy is the right of clients to sue for damages arising from a tax professional's negligence.

There also is a duty upon tax professionals to carry out always the instructions of their clients, provided these instructions are consistent with their other legal responsibilities. In this regard tax professionals must always be mindful of the provisions of relevant legislation.

Tax professionals may take losing cases and unpopular causes and, once taken, argue for them to the limit of their ability. They must be frank with their clients and inform them of their prospects of success. If the client wishes to proceed, any possible advice or negative prospects of success notwithstanding, then provided there is no breach of the law and neither the tax professional nor the client is misleading the Revenue (or the court) the client has a right to require the tax professional to assist the client to the best of the tax professional's ability. The tax professional has a corresponding duty to carry out the instructions of the client.

The joining of professional associations by tax professionals may involve the acceptance of certain obligations, compliance with specified ethical or procedural codes, or the meeting of specified professional standards.

Tax professionals may enter into contractual or other arrangements with their clients, their employers, or with whomsoever they choose. Such arrangements may involve an obligation to undertake certain tasks, or to assume certain responsibilities and (provided there is no inconsistency with tax or other law) be legally enforceable. Obviously, should such arrangements exist, the tasks they embody form part of the tax professional's accepted spectrum of responsibilities.

An example in many countries is the contract with the Revenue Authority specifying terms of participation for electronic filings, into which many tax professionals voluntarily have entered. This contract requires these professionals to accept certain conditions in order to enjoy the business benefits flowing from use of the Service. It does not, nor properly could it, prejudice the role of tax professionals as agents of their clients.

There is no legal obligation upon tax professionals to act in accordance with *community interests* (however defined), except in so far as these interests are manifest in law.

Like everyone else, tax professionals have an obligation to obey the law. This obligation provides the rock upon which may be founded ethical standards (of which more later) and codes of professional practice. It also provides boundary lines beyond which professionals cannot properly trespass, whatever the wishes of their clients.

Tax professionals who are legal practitioners are officers of courts and so have, in addition to the obligations noted above, duties to the court. They must not, among other things, mislead either their fellow practitioners or the court.

Tax professionals have a responsibility to maintain adequate knowledge of tax law and to undertake necessary research in order to identify and resolve issues relating to the tax affairs of their clients. It is not the role of the Tax Authority to do for the tax professional the research work, such as that which requires little more than quick reference to the legislation, published Revenue rulings or commercial tax technical services and publications.

Considerations of ethics

It is axiomatic that Tax Authority staff and tax professionals must act always in accordance with the law. It also is the case that both have the option of adopting, by their own choice, codes of behaviour which are founded not in the formal requirements of law, but rather in considerations of *ethics*. Such codes would be expected to compliment the law, and to provide behavioural guidance to those electing to adopt them. They also may be given the status of *legal obligations*, where embodied in formal undertakings by the party or parties in question.

Codes of ethics introduce the concept of duties and loyalties owed to the community and its social and political institutions, and distinguish these from those owed to the law. This begs the question as to what these duties and loyalties are, but clearly it is envisaged they extend beyond a requirement simply to operate in strict accordance with the law (for otherwise there would be no point in making the distinction referred to above).

There potentially is a problem here, for it may happen that a client's lawful instructions are - or are perceived by the tax professional to be - inconsistent with a wider interest owed by the professional to the community. In such circumstances the professional, bound by an obligation to comply both with the [C:\Users\JWhittaker\Desktop\Crikey2_Taxpayer_Charter_Pre_Report_Jan_3_2013_REV_10\(1\).docx](C:\Users\JWhittaker\Desktop\Crikey2_Taxpayer_Charter_Pre_Report_Jan_3_2013_REV_10(1).docx) ~~G:\Taxpayer Charter\Taxpayer Charter Pre Report Jan 3 2013 REV 10.docx~~

client's lawful instructions and with a formal behavioural code, must make a choice. If that choice is to comply with the code, the professional may be obliged to decline to act for the client in that instance; if the choice is to comply with the client's instructions the professional may have no option consistent with his or her ethical and (possibly also legal) obligations, other than to resign or accept the disciplinary consequences.

In some instances, provisions of ethically-founded behavioural codes re-state and/or expand upon existing legal requirements. Even so, their incorporation into the codes of professional bodies is helpful, for it adds an ethical dimension to the legal canvas.

The ethical obligations upon the Tax Authority, and upon its staff, should be no less onerous than are those upon tax professionals. These obligations may be set out in a formal Code of Ethics of the Tax Authority, or one applying to the Government Service as a whole. Such documents articulate requirements which in part are legal obligations and in part are based on considerations of ethics.

To the extent that social attitudes or perspectives of reputational risk motivate a client to adopt a more conservative view of tax planning opportunities, the tax professional can readily adjust because, after all, these are decisions which are properly made by the client, not the professional. The professional's role is simply to ensure that the client makes informed decisions in this area.

Likewise with client attitudes to compliance. No-one likes becoming involved in unnecessary disputes and client instructions to adopt a co-operative approach to dealings the Tax Authority will make for a quieter life for the professional.

The more interesting question is the extent to which tax professionals have their own social responsibility which should influence the conduct of their practices. To ask this question is not to suggest that there are not already significant legal and ethical obligations on practitioners which must be scrupulously observed. Rather, the inquiry is as to whether more is required or desirable.

One sees echoes of this in various projects developed by Tax Authorities relating to the activities of so-called "tax intermediaries": an insulting term if it seeks to characterise tax professionals as mere economic actors in their own interests, and in many ways an irrelevant one if it seeks to include within the group not only tax professionals but others whose activities could affect client behaviour (such as financial advisers).

The approach to administration of tax systems has, over time, fluctuated between an adversarial and a co-operative one. Currently, consistent with a move to a responsive regulatory strategy, Tax Authorities have expressed the desire for a co-operative partnership style relationship with the tax advising profession. The profession is seen as a critical leverage point to promote voluntary compliance with the tax system by the bulk of taxpayers. Note that the number of taxpayers required to self assess is growing rapidly across the world.

The advent of a partnership style relationship between Tax Authorities and the tax profession raises many issues, primary of which is whether the desire to establish this relationship is mere rhetoric employed by both parties in the pursuit of their divergent interests. In fact, the very existence of these opposing interests raises the possibility of ethical conflicts that need to be carefully managed by both parties to the "partnership". There can be no doubt, however, that provided these separate responsibilities are mutually accepted the administration of taxation systems can be significantly improved.

It should be noted that the OECD has recently been exploring the concept of an Enhanced Relationship between Taxpayers and Tax Administrations. The International Fiscal Association has issued a thought [C:\Users\JWhittaker\Desktop\Crikey2_Taxpayer_Charter_Pre_Report_Jan_3_2013_REV_10\(1\).docx](C:\Users\JWhittaker\Desktop\Crikey2_Taxpayer_Charter_Pre_Report_Jan_3_2013_REV_10(1).docx)~~G:\Taxpayer Charter\Taxpayer Charter Pre Report Jan 3 2013 REV 10.docx~~

provoking report on this dated August 31, 2012 which is worthy of further study. It identifies many of the issues touched on above.

4-5.16 Privilege

There is an increasing trend around the world where Tax Authorities have been granted the benefit of legislation to force taxpayers and Tax Advisors to disclose information on a taxpayer's affairs. Very often there are penalties or other sanctions imposed on a taxpayer where tax opinions and other confidential communications between Tax Advisors and taxpayers are not disclosed. These communications often deal with the interpretation of uncertainties in legislation, caused to some extent by the complexities of the tax systems themselves and lack of guidance.

These measures serve to undermine the confidentiality of advice provided by Tax Advisors to their clients, even where it is covered by traditions of privilege.

There is no dispute that a Tax Administration should be entitled to all reasonable factual information concerning transactions which a Taxpayer undertakes. However, it is not generally appropriate for the analysis of the tax consequences of these transactions to also be made available to the Tax Administrations as a matter of course. Taxpayers should not be prejudiced by the fact that they have obtained professional advice, absent circumstances of (possibly) blatant and abusive tax avoidance. Most strikingly, taxpayers should not be prejudiced and required to provide internal tax opinions concerning a dispute with the Tax Authorities. Such undermines the principle of fundamental justice and the right of a taxpayer to freely seek independent counsel on the interpretation of tax laws.

What justification is there for inclusion of privilege in a Tax Charter? By definition it indicates something not necessarily available to all and it is suggestive that there are areas beyond which Tax Authorities may not go.

For most, privilege is to do with the taxpayer and is normally associated with litigation where each party needs to be assured that the advice and representation they are receiving is confidential. Breach of that privilege would be a serious violation of the human rights of a defendant and, as such its appearance within a charter should only be to affirm mutual recognition of its existence and the extent of its application.

Non litigation privilege, referred to here as legal advice privilege, is the subject of much debate given that on one hand non lawyer Tax Advisors are seeking to establish that it applies equally to them as it does to lawyers. On the other hand Tax Administrations are pushing to obtain full access to advice given to taxpayers by Tax Advisors as part of the disclosure of information process. Legal advice privilege is most common in countries which follow the UK system of common law from which that privilege is derived. Rights to non disclosure vary in other jurisdictions and have been a major part of the questionnaire survey we have undertaken, the results of which are detailed within this document.

Whether or not legal advice privilege should be included within a Taxpayer Charter is an open question which carries political rather than legal weight. What is clear, though, is that the inclusion within a charter of a clause indicating the existence of legal privilege and the extent to which it applies would lead to greater certainty and understanding of what is or is not private. It would also lead quickly to the establishment of a level playing field for legally qualified Tax Advisors and those that have another appropriate professional qualification.

4-5.17 Collection

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The review of the practices of the jurisdictions contained in the Survey discloses a range of approaches in relation to collection. The areas in which difference arises include the extent to which, if at all, taxation debts are given priority to other debts in insolvency, the liability to make payment when the tax assessment is disputed, and the attitude of Tax Authorities to collection during any dispute.

It is important to make a distinction between monies owed because the taxpayer has withheld amounts on account of tax from third parties, and monies owed on account of the taxpayer's own liability to tax. As noted in the discussion on Penalties, in the former case the taxpayer is essentially engaged in misappropriation of monies withheld on account of tax, and collection practices may properly reflect that fact. Where, however, there is a genuine dispute, legitimate questions arise as to the method of enforcement of debts.

Again, two categories of tax debts can be identified. The former comprises cases where there is a significant risk to the revenue that tax assessed may not be collected due to taxpayer misconduct – for example, removal of assets from the jurisdiction.

In normal circumstances, notification of a tax debt should bring with it a short, but reasonable, time in which to make payment. If the fact of an assessment is considered, on reasonable grounds, likely to give rise to an attempt to frustrate the liability by removal of assets, a situation in which an assessment can require payment at an earlier time is justified.

This reflects the position at general law, where courts have the power to prevent the removal of assets from the jurisdiction to frustrate any judgment which the court might make, typically known as Freezing Orders or, more commonly, *Mareva* injunctions.

The area of greatest divergence in practice arises in relation to the collection of monies where tax debts are genuinely in dispute.

There is a real risk, if the fact of the dispute is not taken into account in some way, that very real injustice could occur. At its most extreme, the Tax Authority might issue an assessment, proceed to judgment, enforce the judgment through bankruptcy or corporate winding up processes, and, using control of the bankruptcy or corporate winding up process, terminate the taxpayer's appeal against the assessment.

At a less extreme level, the issue of an assessments, if it requires immediate payment, may produce the result that a company is regarded as insolvent because, having regard to the tax debt and its other debts, it is unable to pay its debts as they fall due. This may have corporations law consequences such as a requirement to cease carrying on business. Particularly where multiple assessments in respect of the same amount of income are involved (which can occur in step transactions) the injustice is self-evident.

Best practice requires that the competing interests of the Tax Authority and taxpayer are appropriately taken into account. It needs to be recalled that most jurisdictions have a regime whereby underpaid tax attracts a liability to interest, which may be higher than commercial rates, non-deductible, or both. Provided the Tax Authority is not at risk, this state of affairs should provide sufficient incentive to taxpayers to comply with their responsibilities.

Best practice and the interests of justice require that payment disputed tax liabilities should be deferred until after final resolution of the underlying tax dispute. Payment should not be required until a definitive determination of the taxpayer's liability is concluded, which would be after the objection decision if the appeals process involves, as a first step, internal review or after a decision of a court or tribunal.

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It may be argued that this gives to taxpayers an incentive to behave irresponsibly. But the Courts have as in most matters of general civil jurisdiction the right to dismiss unmeritorious cases summarily, and there is no reason, in principle, why that should not be exercised in relation to unmeritorious tax appeals, and with costs.

The model Taxpayer Charter considers the rights of a taxpayer not to pay tax validly in dispute as being of high importance for the reasons set out above.

4-5.18 Tax Avoidance and Tax Evasion

Taxation is, at its essence, an exercise of state power to appropriate private property without direct compensation. For that reason the Courts have traditionally regarded it as an area in which a strict approach to statutory construction is appropriate². This, in turn, led to the notion in the common law world that *every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be*³.

The attempted application of this principle by taxpayers and their advisers in adopting highly artificial arrangements based on literal interpretation of tax laws led, in due course, to a reaction against what were seen as artificial, blatant and contrived tax avoidance schemes. Typically, this has taken the form of either judicial approaches to the construction of taxation legislation such as the United Kingdom single composite transaction doctrine⁴, or the United States business purpose test⁵, abuse of the law doctrines in civil law countries or, in other jurisdictions, statutory mechanisms to deal with the issue, usually referred to as General Anti-Avoidance Rules (GAARs).

The principle that *every man is entitled if he can to order his affairs to reduce the incidence of tax* tells us nothing about the capacity of a person to order his affairs so as to alter the incidence of tax. Anti-avoidance rules, both general and specific, clearly attempt to reduce that capacity and judicial attitudes to such rules nowadays are such as to give them a meaningful operation.

Underlying all of these rules, whatever their source, is an important distinction to be made between tax mitigation and artificial tax avoidance⁶. (There is no agreed upon world standard for the threshold at which tax avoidance becomes unacceptable so we have used here the term “artificial” to capture our meaning.)

Tax is mitigated by a taxpayer who reduces his income, incurs expenditure or otherwise changes taxable facts in circumstances which reduce his assessable income or entitle him to a reduction in his tax liability.

² See, e.g., the speech of Lord Cairns in *Partington v. Attorney-General* (1869) L.R. 4 H.L. 100, at p. 122:

As I understand the principle of all fiscal legislation it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

³ See, e.g., Lord Tomlin in *Inland Revenue Commissioners v. Westminster (Duke)* [1936] AC 1 at pp.19-20

⁴ *W T Ramsay Ltd v. IRC* [1982] A.C. 300, *Furniss v. Dawson* [1984] A.C. 474

⁵ *Gregory v. Helvering* (1934) 69 F 2d 809

⁶ see *Commissioner of Inland Revenue v. Challenge Corporation Ltd* [1987] 1 A.C. 155 at p.168

Tax is artificially avoided when the taxpayer reduces his liability to tax without involving himself in the loss or expenditure which entitles him to that reduction. The taxpayer engaged in such artificial tax avoidance does not actually reduce his income or suffer a loss or incur expenditure but nevertheless obtains a reduction in his liability to tax as if he had.

It is entirely appropriate that legislatures take action to safeguard tax revenue from artificial tax avoidance but as with other legislative responses the response should be proportionate and not detract from other essential features of the tax system, including certainty and the application of the rule of law. Anti-Avoidance Rules, like other elements of tax legislation, need to be clear in their operation so that taxpayers can know what is expected of them. Otherwise, they will be an impediment to legitimate economic activity.

Whether the issue of tax avoidance is addressed through the framework of a GAAR, or through techniques of statutory construction, it is important to remember that these simply define the area within which a taxpayer is free to make choices which will impact on the tax liability. To the extent that taxpayer choices alter the incidence of taxation, having regard to the operation of applicable anti-avoidance principles, which it is for the courts or legislatures of the countries concerned to determine, the conduct is legal. So far as the reduction effects a purpose of the legislation, as in the category of mitigation, far from being antisocial, precisely the result intended by the legislature is achieved.

Thus far the discussion has concentrated on the position of taxpayers, who are entitled to order their affairs within the law. But there are important ethical constraints on Tax Advisors in this area which need to be separately addressed.

The existence of complex anti-avoidance rules necessarily means that this is an area in which taxpayers need to be professionally advised. This requires that they be advised:

- first, that they cannot engage in unlawful activity for the purpose of evading tax;
- second, that if they do the Tax Advisor not only will not, but cannot, assist them in any way; and
- third, that engagement in lawful activity with a view to artificial tax avoidance (as opposed to tax mitigation) carries with it the risk that anti-avoidance rules may be applied, with potentially the result of even higher taxes and possible penalties.

The obligation of a Tax Advisor to act professionally and avoid conflicts of interest necessarily means that the Tax Advisor cannot ethically use the position of trust which comes with the client's retainer to promote to the client tax avoidance arrangements in which the Tax Advisor has a pecuniary interest. The Tax Advisor needs to be in a position to give objective advice on all of the issues associated with tax avoidance, including the risks involved, and cannot meaningfully do this if he is acting as an entrepreneur advancing his own commercial interests.

Tax evasion is cheating through dishonesty, false or deceptive statements, with deliberate intent to lower a tax liability. Thus it shows its most important hallmark, deliberateness. It generally cannot be accidental except for bluntly reckless conduct.

Tax evasion must be condemned and punished in any tax system which seeks integrity. The alternative would be to tolerate it which will lead to unfairness to honest taxpayers and disrespect for the tax system. Once this sets in, it becomes very difficult to regain control of the tax system and restore fiscal order.

At the same time the lines between tax planning, tax avoidance and tax evasion sometimes become blurred especially in the eyes of the Tax Administration. What is tax planning to the taxpayer is tax avoidance to the Tax Administration, and on from there.

It is therefore important to be very clear on what tax evasion is and is not. For this reason the model Taxpayer Charter addresses this matter as an important taxpayer responsibility for which a severe penalty could be extracted. (But, to be clear we do not support extreme sanctions for tax evasion such as the death penalty occasionally dispensed for this, however extreme the case).

Tax Authorities are making much of the loss of revenue to tax fraud, tax evasion and tax avoidance; the so-called tax gap. Projected revenue flows should take account, in real terms, of the anticipated revenue shortfall attributed to the tax gap so that public expenditure does not suffer and taxpayers can be made to realise the true cost to them of criminal [abuse](#) of the tax system.

Tax fraud and tax evasion are activities which must be subject to the full rigour of the law with those convicted given penalties which are in no way mitigated by reference to a Taxpayer Charter.

Tax avoidance is a different matter and there are diverse views on it. At one end is tax planning which involves structuring an individual's or a company's activity or asset owning in such a way that the tax borne on the activity or the asset is the minimum necessary. At the other is the wholly artificial arrangement which has no commercial purpose other than the removal or mitigation of a tax liability as a result of a transaction or series of transactions the sole purpose of which is to achieve the result. Two common characteristics of the wholly artificial arrangement are the absence of any material financial risk element at any stage of the process and the payment of a fee to the organiser of the scheme.

No Tax Advisor would advocate an attack on tax planning. Many though consider that a wholly artificial scheme, using the tax system as a means of achieving a tax benefit is little more than clever tax evasion. It is either ethically unsound or illegal, and perhaps both. Clearly Tax Authorities are having difficulties handling the huge growth of industrial scale artificial tax avoidance and finding ways to combat the perceived loss of revenue.

We think it is a smart use of a legally enforced Taxpayer Charter to identify what is tax planning and what is artificial tax avoidance (but distinguished from tax evasion). These are difficult issues and we expect substantial debate on them leading potentially to revisions or additions to the Taxpayer Charter in this area.

4-5.19 Taxation Statistics

There is a great deal of variation across the world as to practices concerning the keeping and publishing of statistics of taxes raised by revenue measures and taxes relieved by deductions and exemptions. Some countries maintain and publish these tax statistics in considerable detail while others publish almost nothing.

Publishing such information contributes greatly to the feeling that the tax system is fair and equitable, and that government is accountable to taxpayers from whom the tax is raised. If some countries can produce this information in detail, then surely all countries with any measure of sophistication in their tax systems should be able to do so. It is therefore reasonable that a benchmark be set on an international level as a standard for keeping and publishing tax statistics on an annual basis accessible in the public domain.

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4-5.20 Role of Tax Ombudsman

The concept of an Ombudsman is a Scandinavian concept – a public official who helps citizens in their dealings with other parts of the government. In recent times the concept has been adopted in other jurisdictions, and the role has extended to taxation administration.

Typically, in the tax context, the Ombudsman has a specialist team who focus on the problems arising between taxpayers and the Tax Authority. However taxpayers are encouraged to resolve their problems directly before they contact the Ombudsman's office.

The Ombudsman can investigate all complaints related to Tax Administration. These include debt recovery actions; decisions to bankrupt; conduct of audits; provision of advice; methods of handling inquiries; remission of penalties; handling of correspondence; delays in decision making; handling of private and public rulings; superannuation guarantee audits; operation of the pay as you go instalment system; collection of fringe benefits tax and/or collection of pay as you go withholding tax.

If a complaint is justified, the Ombudsman can recommend that the Tax Authority reconsider its decision; give further reasons for its decisions; pay compensation and/or change existing procedures.

Typically, however, an Ombudsman has no power to require the tax Authority to alter any decision or practice – he would simply draw what was (in his view) an undesirable practice to the attention of the legislature, leaving it, if it thought it necessary, to change the relevant law.

There is no reason why the Tax Authority should be exempt from the activities of the Ombudsman where one exists. It is doubtful, however, that an Ombudsman will be of much assistance in enforcing taxpayer rights without the legal power to do so.

We therefore do not see the rule of a Tax Ombudsman as a substitute for a Taxpayer Charter with legal effect. However a Tax Ombudsman could provide a useful function in investigating taxpayer complaints about a breach of Taxpayer Rights under the Charter.

4-5.21 Taxpayer Rights within the European Union

Since the Treaty of Rome in 1957 there has been a slow but inexorable process of definition and clarification of the rule of “community law” within Member States which in 2012 number 27. Subjects and citizens of Member States have two interactive levels of law to draw from, one national and one covering the European Union.

The powers of the Community derive from the individual Member States through the treaties of accession and successive developmental treaties which give the institutions, courts and principles of the EU superiority over those of the Member State in respect of all issues relating to Community law, including the application of that law within each member state. National institutions of Member States, which include Tax Administrations, have a duty to ensure the application of the fundamental principles of the Community in a balanced way which ensures that the legal person has comparable access to justice in each Member State, the principle of equivalence.

Comment [17]: In the UK a pilot study is underway for an alternative dispute resolution system which is being very well received. Should we include a reference to it in this release of the Charter or should we encourage contributions on the subject and wait for the final document to include it

Comment [DR8]: In Australia ADR is part of both review streams and in my view works well. I think it is appropriately discussed in the appeals context rather than here. And I don't see any reason for tax-related ADR to be distinguished from ADR mechanisms generally.

In considering a tax charter of general application, Member States within the EU need to ensure that the fundamental freedoms established by treaty and clarified by litigation in the Court of Justice of the European Union are not violated or obstructed but either upheld or extended.

The basic four freedoms are the right to free movement of goods, people, services and capital. For tax purposes these freedoms have been examined through the Courts with the result that there are more specific rights derived from them which can be identified.

The right to non discrimination - this means that every person must be treated equally within each Member State. In the absence of total harmonisation, the principle of non discrimination does not apply as between Member States which may have different taxes and different levels of taxation without violation of this principle.

The right to leave a home state without the imposition of exit taxes (ie deemed realization of capital gains) - has widespread effect in tax terms. This means there can be no charge on unrealised capital gains, differential treatment of income sources or expense payments based on location, or denial of access to beneficial reliefs based on residence.

The right to come to a host state without a charge of access taxes - this has been the subject of significant litigation through the CJEU because the movement and expansion of EU enterprises cross border and, in particular, the tax treatment afforded to them as incomers into Member States compared with indigenous entities has in the past been discriminatory. Specific tax affected issues are the definition of the tax base, applicable tax rates, the availability of tax reliefs and tax credits and the eligibility for tax refunds.

The European Commission has announced its intention to develop a Taxpayer's Charter for the European Union. In doing so it has the advantage of knowing that there already exist a number of rights derived from Community law available both to taxpayers and Tax Authorities. These deal with compliance issues of refunds, time limits and access to justice. The proposed Charter may well see those rights extended to cover issues relating to compliance obligations of taxpayers. We encourage the Commission to draw freely on the model Taxpayer Charter articles in this document in order to produce a balanced and effective Charter that is capable of implementation by each Member State whilst drawing its strength from Community Law.

5 Adopting a Taxpayer Charter

A country looking to adopt a Taxpayer Charter will have a number of important decisions to make. Certain of these are outlined below, together with our views on what we consider to be the appropriate answers to these questions. Our comments are reinforced by the results of the survey as described in Chapter 3, and the comments received.

Below we consider the following important questions:

- i) Should the Taxpayer Charter be legally binding or simply a practice statement issued by the Tax Authorities?
- ii) Should the Taxpayer Charter apply to all taxes or only certain taxes (for example income taxes)?
- iii) Should the Taxpayer Charter be drafted in very general terms as statements of principle, or should it be detailed and specific?
- iv) Is a model Taxpayer Charter a useful starting point?

5-1 Legally Binding or Practice Statement

As noted in the discussion on the nature of Taxpayer Charters, the majority of jurisdictions which have adopted such charters have chosen to do so as a practice statement rather than a legally binding document. But to put the question in this way is to obscure rather than clarify the issue posed by the title above.

No jurisdiction which has been reviewed in this document provides that its taxpayers have no rights. Nor do jurisdictions which have such a charter, on a non-binding basis, assert that position. Rather, the question is what should be contained in such a charter and what should be the legal consequences if the charter is not complied with.

The jurisdictions which have non-binding charters simply do not categorize the rights which they confer upon taxpayers as falling within a charter. Concepts such as a right of objection against adverse assessment, or the right to appeal an adverse decision on an objection, are well known in jurisdictions which have non-binding charters. The non-binding charters emphasise entirely desirable objectives such as service standards, commitments to polite and efficient dealing, and the like. It makes little sense to argue that there should be a legal obligation on Revenue officials to be polite and in any event the question arises as to what should flow from circumstances in which that has not occurred.

Ultimately, taxpayers have an obligation to pay the tax which the law, properly interpreted and applied to their circumstances, requires them to pay. Failure on the part of the Tax Authority to deal with them efficiently or politely cannot discharge them from that obligation.

On the other hand, taxpayers do have a right to insist that their liability is determined and enforced according to law, and that Revenue officials respect those rights rather than seek to frustrate them. Provided that the law is balanced, the result should be a fair system which should command respect from the taxpaying public.

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Best practice, therefore, requires a comprehensive set of Taxpayer Rights associated with the determination of liability, and enforcement of revenue laws. Whether those rights are described as being within a Taxpayer Charter, or provided generally as part of the legal system, might be argued to matter little. But the present survey perhaps provides the best answer as to why it does in fact matter. To the best of the knowledge of those involved in its production, this is the first attempt which has been made to assemble a comprehensive body of knowledge as to how the various jurisdictions throughout the world deal with these issues. The existence of that body of knowledge will inform considerations of best practice to the benefit of all. Comprehensive statements of the legal rights of taxpayers (and of course the existence of a substantial body of rights) make for transparency, and competitive advantage for those jurisdictions which align their systems with best practice.

And there is no reason why revenue authorities, together with taxpayers and tax professionals, should not all seek to achieve performance standards which encourage mutual cooperation so as to ensure the law is properly enforced in a mutually respectful professional environment which goes beyond mere legal rights.

There are many Taxpayer Charters in place which are, for the most part, practice statements issued by the Tax Authority. Such Taxpayer Charters do not have the force of law. As pointed out earlier, Taxpayer Rights will be granted in legislation in certain areas, such as those concerning tax appeals. In addition, taxpayer obligations will always be enshrined in legislation.

The results of our survey, and the comments made, indicate that the Taxpayer Charter should have legal force to the extent possible, in order for it to be effective. Clearly not every provision in the model Taxpayer Charter is capable of being formulated in legally binding terms, but most of the provisions are. This leads to the supplementary question of determining how taxpayer rights are to be enforced, if they are violated, because, as Tax Authorities well know, laws which are not capable of enforcement have no real effect. It is therefore clear that a taxpayer must have recourse of some nature where a Taxpayer's Rights under a Taxpayer Charter are not adhered to. The exact nature of how a taxpayer might proceed in a situation where a Taxpayer's Rights under a Taxpayer Charter are not upheld will depend on the legal traditions of the particular country. Since these legal traditions vary considerably across the world, it would be wrong to advocate a particular approach as being suitable in all circumstances. We will caution, however, that the office of a Taxpayer Ombudsman will rarely be the appropriate forum for enforcement of taxpayer rights. Generally the Taxpayer Ombudsman does not have an ability to enforce legal principles, and therefore this is not an appropriate solution.

5-2 Should the Taxpayer Charter Apply to All Taxes?

Our survey results indicate that there is no reason why a Taxpayer Charter should not apply to all taxes, and there would seem to be no merit in the suggestion that income taxes for example, should be subject to the provisions of the Taxpayer Charter while other taxes, such as estate taxes or VAT should not. Equally important is that the provisions of the Taxpayer Charter should apply to taxes levied by all levels of government. In many countries, taxes are levied at various levels which may include the federal level, the state, Canton or provincial level, the city or municipal level, and so forth. It is acknowledged that this may require formal adoption of a Taxpayer Charter by various levels of government through distinct legislative processes.

The failure to do so creates an uneven playing field where, for example, a Taxpayer Charter adopted federally might not apply at the state level. Taxpayers and Tax Advisors form a view of dealing with all tax matters, and the overall tax system, in evaluating the overall fairness of the system. It is acknowledged, however, that in countries where the legislative process of enacting and enforcing tax laws occurs at many levels, this may be a challenging undertaking. The U.S. would offer a good example where international tax treaties are followed at the federal level and by certain states, but not by others. Enactment of a Taxpayer Charter may be a long process, but it nevertheless needs to start somewhere, however challenging the ultimate process might be.

5-3 How Specific Should a Taxpayer Charter Be?

It is clear that for a Taxpayer Charter to be effective, it must deal with specific matters, in the same way that tax legislation deals with the specific issues of Taxpayer obligations. If the Taxpayer Charter provides for Taxpayer Rights in very general terms, then this will not contribute to the achievement of the underlying objectives of the Taxpayer Charter, one of which is to provide an appropriate balance between Taxpayer Rights and Taxpayer Responsibilities. Left in very general terms, Taxpayer Rights can be difficult to interpret, and even harder to enforce. Accordingly, our view is that the Taxpayer Charter should be as specific as possible, and the model Taxpayer Charter provides an example. It is also our view that Taxpayer Responsibilities be included in the model Taxpayer Charter. We have therefore been concerned to provide a balanced document that is not, and should not be viewed as, a taxpayer or Tax Advisor advocacy exercise.

5-4 Is a Model Charter Useful as a Starting Point?

Our view is that a model Taxpayer Charter is a useful starting point for any country seeking to embark on adoption of a Taxpayer Charter with legal effect. There are many reasons for this. One reason is that while tax systems across the world have many differences, there are also many similarities, particularly in the dynamics of how the tax system is administered and the legislative process by which it is amended or reformed. Also, the obligations of taxpayers have a degree of uniformity, so why should taxpayer rights be different? Also, the use of a model Taxpayer Charter as a starting point allows for a benchmarking of one country compared to another. Finally, it is our hope that the model Taxpayer Charter will be viewed as a work of some value, particularly because the model Taxpayer Charter has been crafted based on provisions which already exist in many countries around the world. It is therefore an appropriate starting point from which to embark on unification of principles on a worldwide basis.

6 Consultation Process

This Preliminary Report is issued for comments by interested stakeholders. 5,000 copies of the report have been printed. Copies have been distributed to a wide range of persons including senior government officials in the countries from which survey responses were received, as well as to international bodies including the Parliament of the European Union, the OECD, the United Nations and others. Copies have also been provided to those persons who kindly devoted their time to completing the survey.

We are most interested in feedback on this work, and all comments will be taken into account before a final report is issued.

Comments will be compiled through George Hodgson, Head of Policy, STEP Worldwide, STEP Artillery House (South), 11-19 Artillery Row, London SW1P 1RT. These comments will be distributed to the Authors and the Editorial Advisory Board. While it may not be possible to respond to all comments received, they will be acknowledged, and posted on a website dedicated to this project at www.aotcafestep.com

Appendix 2 - List of Participating Organizations And Members

Comment [DR9]: These are in fact mainly individuals. Their organisations should be listed as well.

* Australia

CPA Australia
Tax Institute of Australia

* Austria

Kammer der Wirtschaftstrehänder (KWT)

Bangladesh

Institute of Chartered Accountants of Bangladesh

* Belgium

Institut des Experts-Comptables I
Instituut van de Accountants en de Belastingconsulenten

* Bulgaria

Bulgaria Chamber of Tax Advisors

* Canada

Society of Trust and Estate Practitioners (STEP Canada)

* China

Chinese Certified Tax Agents Association

Chinese Taipei

Tax Accountancy Association Union of Chinese Taipei

* Croatia

Udruga poreznih strucnjaka (Association of Tax Professionals)

* Czech Republic

Komora daňových poradců ČR (KDP CR)

* Finland

Suomen verokonsultit SVK ry
Suomen Veroasiantuntijat ry

* France

Institut des Avocats Conseils Fiscaux
Union Professionnelle des Societes d'Avocats (UPSA)
Association des Avocats Conseils d'Entreprises (ACE)

* Germany

Bundessteuerberaterkammer (BSeBK)
Bundesverband der Steuerberater e.V. (BVSeB)
Deutscher Steuerberaterverband e.V. (DSeV)

* Greece

The Hellenic Federation of Self-Employed Tax Consultants (P.O.F.E.E.)

* Hong Kong

Hong Kong Institute of Certified Public Accountants
Taxation Institute of Hong Kong

* India

All India Federation of Tax Practitioners

* Indonesia

Indonesian Tax Consultants Association

* Ireland

The Irish Taxation Institute

* Israel	Society of Trust and Estate Practitioners (STEP Israel)
* Italy	Associazione Nazionale Tributaristi Italiani (A.N.T.I.)
* Japan	Japan Federation of Certified Public Tax Accountants Japan Tax Research Institute
* Korea	Korean Association of Certified Public Tax Accountants
* Latvia	Latvijas Nodokļu Konsultantu Asociācija
* Luxembourg	Ordre des Experts-Comptables (OEC)
* Malaysia	Chartered Tax Institute of Malaysia Bekas Pegawai HASIL
* Malta	Malta Institute of Taxation
* Mongolia	Mongolia Certified Public Tax Accountants and Consultants Association
* Netherlands	De Nederlandse Orde van Belastingadviseurs (NOB) Register Belastingadviseurs
Pakistan	All Pakistan Tax Bar Association
* Poland	Krajowa Izba Doradców Podatkowych (KIDP)
* Portugal	Associação Portuguesa de Consultores Fiscais
Philippines	Tax Management Association of the Philippines
* Romania	Camera Consultantilor Fiscali (R.C.F.C)
* Russia	Палата налоговых консультантов (Palata Nalogovych Konsultantov - Chamber of Tax Advisers)
Singapore	Institute of Certified Public Accountants of Singapore Singapore Institute of Accredited Tax Professionals
* Slovak Republic	Slovenská komora danových poradcov (SKDP)
* Slovenia	Zbornica Davcnih Svetovalcev Slovenije (ZDSS)
* Spain	

Asociación Española de Asesores Fiscales (AEDAF)
Registro de Economistas de Asesores Fiscales (REAF)

Sri Lanka

Institute of Chartered Accountants of Sri Lanka

* Switzerland

La Chambre Fiduciaire
Treuhand-Kammer

* U.K.

The Chartered Institute of Taxation (CIOT)
Tax Faculty of Institute of Chartered Accountants in England and Wales

* U.S.A.

Society of Trust and Estate Practitioners (STEP USA)

* Vietnam

Vietnam Tax Consultants' Association

**** Participants in Taxpayer Charter Survey***

Appendix 3 Taxpayer Charters in Participating Countries

Country	Link/Reference
Australia	http://www.ato.gov.au/corporate/content.aspx?doc=/content/63133.htm
Austria	No Charter Reported
Belgium	No Charter Reported
Bulgaria	Charter Exists - No Link Provided
Canada	http://www.cra-arc.gc.ca/gncy/frnss/tbrbl-eng.html
China	No Charter Reported
Croatia	No Charter Reported
Czech Republic	No Charter Reported
Finland	No Charter Reported
France	http://www2.impots.gouv.fr/documentation/charte_contrib/index.htm
Germany	No Charter Reported
Greece	No Charter Reported
Hong Kong	http://www.ird.gov.hk/eng/abo/tax.htm
India	No Charter Reported
Indonesia	No Charter Reported
Ireland	No Charter Reported
Israel	Charter Exists - Broken Link Provided (Charter is in Hebrew)
Italy	Legge 27/7/2000 n. 212 "Disposizioni in materia di Statuto dei diritti del contribuente"
Latvia	No Charter Reported
Luxemburg	No Charter Reported
Malaysia	http://www.hasil.gov.my/goindex.php?kump=2&skum=2&posi=1&unit=8&sequ=1
Malta	http://doi.gov.mt/EN/press_releases/2011/02/pr0206.pdf
Mongolia	No Charter Reported
Netherlands	No Charter Reported
Poland	The Declaration of Taxpayer Rights is an informal document, signed May 18th 2011, there is a plan to submit it to Parliament for law.

Portugal	No Charter Reported
Romania	http://static.anaf.ro/static/10/Anaf/AsitentaContribuabili_r/CARTA_CONTRIBUABILULUI.10.03.2010.pdf
Slovakia	No Charter Reported
Slovenia	No Charter Reported
South Korea	http://www.nts.go.kr/eng/resources/resour_21.asp?minfoKey=MINF7420080211223143&top_code=&sub_code=&isSearch=0&mbsinfoKey=MBS20080308132102140&type=V
Spain	General Taxation Act 58/2003
Switzerland	http://www.estv.admin.ch/dokumentation/00078/00733/index.html?lang=en
U.K.	http://www.hmrc.gov.uk/charter/index.htm
U.S.A	No Charter Reported
Vietnam	No Charter Reported

Appendix 1

Taxpayer Charter Survey - Questions

A) Nature of Taxpayer Rights in [your country]

1. How are Taxpayer Rights set out?

B) Taxpayer Charter

1. Is there an explicit Taxpayer Charter in [your country]? If yes, add link in comment box.
2. What form does the Taxpayer Charter take?
3. Is the Taxpayer Charter legally binding? If in part, describe in text box
4. Is the Taxpayer Charter followed by the Tax Authority?
5. Do tax professionals use the Taxpayer Charter in dealings with the Tax Authority?
6. What are the main aspects of how the Taxpayer Charter is used by professionals?
7. How is the Taxpayer Charter seen by tax professionals in general?
8. How is the Taxpayer Charter seen by taxpayers?

C) Tax Administration

1. Do Taxpayers have a right to be presumed to be honest by the Tax Authority, unless there is evidence to the contrary? In the comment box, can you tell us if the right to be presumed honest is respected by the Tax Authority?
2. Can Taxpayers use Taxpayer Rights to delay payment of tax or delay disclosure of tax?
3. Are Taxpayers entitled to use reasonable tax planning to pay the minimum amount of tax possible?
4. Are there limitations on Taxpayer Rights where their use is to obstruct or delay actions of the Tax Authority without a reasonable basis?
5. Where there is reasonable cause, are there provisions for...
 - i) the relief of interest at the Tax Authority's discretion?
 - ii) the relief of penalties at the Tax Authority's discretion?
 - iii) an extension of deadlines at the Tax Authority's discretion?
6. What constitutes "reasonable cause"? Provide a reference if applicable.
7. Is discretion routinely used by the Tax Authority? if yes, please describe the main areas where discretion is exercised.
8. Is the authority to exercise discretion granted by legislation?

D) Discrimination Amongst Taxpayers

1. In [your country], are all taxpayers within a broad definition (e.g. individual/corporation) treated basically the same?
2. Is there a precedent for the tax system being used to tax more heavily a specific sector (i.e. Speculation Tax on real estate, Tax on Bankers Bonuses)?
3. In what other ways is the tax system used that could be considered discriminatory?

E) Filings

1. Does the Tax Authority provide clear instructions, forms, guides and information to assist the Taxpayer in making a tax filing?
2. Which aspects of the instructions provided by the Tax Authority are well done?
3. Which aspects of the instructions provided by the Tax Authority are poorly done?
4. Is there a statutory requirement that the Tax Authority provide clear instructions, forms, guides and information?
5. Can the Tax Authority apply refunds due to a taxpayer against other liabilities owed by the Taxpayer?
6. Is there specific legislation permitting the Tax Authority to apply refunds due to a taxpayer against other liabilities owed by the taxpayer? If yes, please add citation in textbox.
7. Can the Tax Authority apply refunds that are due to the taxpayer to the liabilities owed by a related taxpayer (i.e. A husband or wife, related corporation...etc)?
8. Can the Tax Authority apply refunds of a year against the tax liability of another year where that year is under appeal?

F) Assessments

1. When a taxpayer files a tax return is an assessment always provided...
2. Is it clearly set out in law that the Tax Authority shall provide an assessment?
3. Can the Tax Authority delay an assessment if they choose to? (e.g. If an important case is pending in the courts?)
4. Under what circumstances would the Tax Authority delay assessment?
5. Can the taxpayer compel assessment from the Tax Authority?
6. Are the assessments delivered by the Tax Authority clear and show the computation of tax and the basis upon it was levied?
7. When assessments from the Tax Authority differ from the taxpayer's calculation, are the reasons clearly explained?
8. When interest is levied, is the cause clearly explained, as well as the methods of calculation?
9. When a penalty is levied, is the cause clearly explained, as well as the methods of calculation?
10. Is the Taxpayer notified of their right to appeal when an assessment is received?
11. Is the Taxpayer provided with reasonable deadlines for appeal that are clearly outlined?

G) Audit

1. What information is a taxpayer required to provide during the course of an audit? (Tick as applicable)
2. Often auditors are given a wide range of powers during the course of an audit (including the power to compel the taxpayer to provide books and records). Certain countries require that once an audit becomes a criminal investigation, use of those broad powers must cease and/or any information procured under the wide ranging powers is inadmissible in a criminal investigation. Does [your country] limit evidence that can be admitted in a criminal matter when it was procured using broader audit powers? If yes, please describe in comment box.
3. Is the taxpayer required to answer questions regarding intent? (i.e. Why did you register a corporation in the a ABC jurisdiction or what was your purpose in doing X?)

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4. Prior to carrying out a routine audit or enquiry, are Tax Officials required to notify the taxpayer of the audit or enquiry?
5. Are Tax Officials conducting an audit only permitted to request information that is applicable to the matters under review and reasonably necessary in the circumstances?
6. Are Tax Officials permitted to use penalty provisions as a negotiating tactic? (e.g. If the Taxpayer does not concede on a point in dispute, penalties may also be applied as well)
7. Do Tax Officials ask questions of taxpayers without necessarily disclosing the intent and implications of the questions?
8. If the taxpayer requests all communication be in writing, is the Tax Authority obligated to comply?
9. Does a taxpayer have a right to have a Tax Advisor (which may include legal counsel) present at all meetings and other interactions? (e.g. during an audit)
10. Are preliminary audit results or conclusions given informally to the taxpayer or Tax Advisor with reasonable time to respond so there can be dialogue before a final audit position is reached?
11. When the imposition of a penalty is considered by the Tax Authority, is this disclosed to the Taxpayer at the time the Tax Authority becomes aware of the circumstances which might justify the penalty?

H) Appeals

1. Is there an internal appeals process if the Tax Authority makes decisions with which the Taxpayer disagrees?
2. Is the process mandated in law which is binding on the Tax Authority?
3. Can the Tax Authority require the taxpayer's waive rights of appeal as a condition of settlement agreement, before the expiration of the time to file an appeal as part of a negotiated settlement?
4. Can a Taxpayer withdraw from an appeal without consent of authority?
5. Do Taxpayers have the right to all relevant information pertaining to an audit in a timely manner upon request to the Tax Authority (except information obtained from a third party and certain other information which may be properly withheld)?
6. Is the period for filing an appeal held in abeyance during the time that the taxpayer has requested, but not received information in the possession of the Tax Authority relevant to the audit or inquiry which the Taxpayer has a right to receive?
7. Are Tax Officials conducting an appeal able to exercise independent and objective decision making and not be bound by decisions by the administration (i.e. Head Office Policy)?
8. Are taxpayers required to make any payments of tax, interest or penalties in respect of a matter which is under appeal?
9. Can a taxpayer use the appeals process to delay the payment of tax, interest, or penalties without a valid reason (i.e. A frivolous appeal)?
10. Is a Taxpayer entitled to self-representation at an appeal of first instance?
11. Is a Taxpayer entitled to a claim of privilege (so that information does not have to be revealed) in respect of communication with a duly appointed Tax Advisor concerning communications between them related to a tax appeal?
12. Is a Taxpayer entitled to costs in respect to an appeal, when justified?
13. On what basis are costs awarded?

I) Assistance

1. Does the Taxpayer have the legal right to be heard and responded to and to receive reasonable assistance from the Tax Administration?
2. Does the Tax Authority provide assistance as to the application and interpretation of tax laws (but not of course planning advice)?
3. Does the Tax Authority provide tax legislation, regulations, forms, guides and information to Taxpayers in an accessible manner?
4. Are the forms and guides kept up to date?
5. Is this information available for free?
6. Are Tax Officials expected to be thoroughly familiar with the law as it is applicable to their duties?
7. Are Tax Officials knowledgeable and adequately trained?
8. Is the taxpayer entitled to information concerning past tax records in possession of the Tax Authority?

J) Service Standards

1. Does the Tax Authority define services standards for its dealings with Taxpayers?
2. Do the service standards include...
3. Are the Service Standards legally binding, administrative or both?
4. Does the Tax Authority investigate and measure actual performance against these service standards?
5. Are these service standards published?
6. Are the results of performance of service standards published?
7. Does the Tax Authority publish the results of its audit programs?
8. Do the publications include...
9. Is the Tax Authority responsible for information it puts into writing so that a Taxpayer may rely on it?
10. Is the information the Tax Authority puts into writing legally binding?
11. If the information put into writing by the Tax Authority later proves to be wrong but was in the taxpayers' favour, can the taxpayer rely on the error?

K) Rulings and Interpretations

1. Does your Tax Authority have a mechanism for issuing rulings and technical interpretations?
2. When the Tax Authority adopts a position on legislation, does the Tax Authority publish this position and make it available to taxpayers?
3. Does the Tax Authority publish the adopted position and makes it available to taxpayers with respect to valuation issues?
4. Does the Tax Authority publish the adopted position and makes it available to taxpayers with respect to pricing data?

5. Can a taxpayer require that the Tax Authority provide an interpretation of the law?
6. Can a taxpayer require the Tax Authority to provide a ruling on a tax matter?
7. Are Tax Rulings binding?
8. Are published interpretations binding on the Tax Authority?
9. Does the Tax Authority adhere to their past rulings and technical interpretations, and keep them up to date?

L) Taxpayer Records

1. Do Taxpayers have an obligation to maintain accurate records in order to verify their tax filings?
2. Are Taxpayers protected from unreasonable search and seizure without due process?
3. When Taxpayer's records are seized, is a copy of materials provided to the taxpayer so that their business is not impaired?
4. Where the Taxpayer's records are inadequate, can the Tax Authority...
 - i) Penalize the taxpayer?
 - ii) Deny deductibles or add additional income as may be appropriate?
5. If a Taxpayer is otherwise presumed to be honest, does the lack of appropriate records call their honesty into doubt?

M) Confidentiality

1. Are the affairs of the taxpayer kept confidential by the Tax Officials who are charged with handling the affairs of the taxpayer in question?
2. Are Tax Officials who have a personal relationship with the taxpayers not to be involved with the taxpayers' dealings with the Tax Authority?
3. Do Taxpayers have the right to refuse to disclose information that is clearly unrelated to the issue being dealt with by the Tax Authority?
4. Can the Tax Authority obtain information from third parties about large groups of taxpayers (e.g. require centralized data from banks)?

N) Tax Authority

1. Does the Tax Authority have broad powers to interpret the laws passed by the State?
2. Does the Tax Authority interpret the laws passed by the state without bias towards the taxpayer or the State?
3. Can the Tax Authority conduct broad audits which target for example specific industries, sectors of the economy or professions?
4. Will the Tax Authority respond to arguments put forward by taxpayers with sufficient detail and reference to legislation in regards to a taxpayer's specific situation?
5. Does the Tax Authority publish statistics of reasonable detail with respect to the Tax levied under the tax legislation?
6. Does this include tax relieved by deductions?
7. Do taxpayers have the right to communicate with the Tax Authority in any official language of the State?
8. Can this choice of language be altered by the taxpayer without reasonable case?

O) Burden of Proof

1. In general, is the burden of proof on the taxpayer?
2. Is the burden of proof where it involves the imposition of a penalty on the taxpayer?
3. Is the State required to prove the facts for the justification of a penalty?
4. Is the burden of proof to demonstrate the policy intent of legislation on the State?
5. Is there a statute of limitations on when the Tax Authority can reassess or audit a taxpayer?
6. Is the statute of limitations on audit and reassessment clearly stated in legislation?
7. If the Tax Authority wishes to assess a taxpayer beyond the statute of limitations, is the burden on them to show that such action should be allowed?

P) Drafting Standards for Tax Legislation

1. Is it required that Tax Legislation be written in a clear and unambiguous way such that a Taxpayer without specialized knowledge can understand and thereby comply with it?
2. Has there been an instance of tax legislation, duly passed into law, being void because it was impossible to interpret and/or comply with?
3. Before tax legislation can be enforced is it required to be passed into law by the State?
4. When legislation increases tax, is it required to be accompanied by revenue projections?
5. When legislation is to be interpreted in accordance with its underlying tax policy, is there a requirement this policy is to be written in a clear and unambiguous manner?
6. Are Tax Laws that are no longer relevant removed from tax legislation?

Q) Retroactivity of Legislation

1. Is retroactive Tax legislation permitted?
2. Is retroactive legislation commonly used?
3. If retroactive legislation is not commonly used, is it used to curtail tax avoidance?
4. Are there examples of legislation that are pending for long periods of time? (e.g. several years)
5. Is there a requirement to provide transitional rules when legislation taxes something that was not previously taxed?

R) Double Taxation and Relief

1. Does legislation provide for the relief of double taxation?
2. How in general terms is double taxation avoided?
3. Is double taxation an important issue and a common problem?

S) Interest and Penalties

1. Does the State pay interest on overpayments of tax?
2. Is that interest rate tied to the rate that taxpayers pay if they are late with their payments?
3. Are the bases for a penalty clearly explained when a penalty is assessed?

4. Can Taxpayers who conduct their affairs in good faith and appropriate diligence be assured that a penalty will never be levied?
5. Does the Tax Authority possess the authority to exercise discretion and waive penalties?
6. When there is no fault on behalf of the taxpayer, will the Tax Authority exercise discretion and waive the penalty?
7. Are penalties levied that are unreasonable considering the conduct of the taxpayer and the amount of tax owed? If yes please give an example.
8. Can interest owing by the State to the taxpayer and interest owed by the taxpayer to the State, be offset?
9. Are penalties levied against a taxpayer forgiven in the event of death?

T) Tax Policy

1. When the government considers changing the tax laws is there a consultative process?
2. Is the consultative process binding in any sense?
3. Can citizens force a change of tax law by way of plebiscite or referendum?
4. Is there a mechanism in the legal system for challenging legislation that violates the constitution (if applicable), goes against public policy, or is impossible to follow or implement?
5. Could you briefly describe the mechanism for challenging legislation that violates the constitution and has it ever been used?

U) Special Topics

1. Is there a mechanism for taxpayers to disclose past omissions with a reduced penalty (voluntary disclosure)?
2. Are there laws that require a tax advisor to inform the Tax Authority of a client or prospective client who has unreported income or other irregularities?
3. Are there laws that protect communication between lawyers and clients as privileged?
4. Are there laws that protect communications between accountants and tax professionals and clients as privileged?

V) Opinions, Views and Attitudes

1. Would your professional body like to see a Charter of Taxpayer Rights and Obligations with the force of law?
2. Is it realistic that in [your country] a Taxpayer Charter of Rights and Obligations could become law?
3. Do you think a Taxpayer Charter is a good mechanism to protect Taxpayers?
4. Do you think the Taxpayer Charter of Rights and Obligations should apply to all taxes levied by the State? (ie. Income, VAT, Estate... etc) or only on certain taxes (ie. income)?
5. What is the attitude of the Tax Authority in general towards Taxpayers?
6. How does the Tax Authority see taxpayers?
7. How do taxpayers see the Tax Authority?
8. A Taxpayer Charter of Rights and Obligations would be viewed favourably by...
 - i) Taxpayer
 - ii) Tax Professional

iii) Tax Authority

iv) Government

9. Do you see any issue with a Taxpayer Charter of Rights and Obligations applying to Corporations?
10. Do you have any comments or suggestions that do not fit within any of the questions asked?
11. Please indicate the names and contact details of the persons who have completed the survey.

R – Reference Consulted

Journal Articles

Author	Title	Source	Year of Publication
Jinyan Li	Taxpayers' Rights in Canada	Revenue Law Journal	1997
Michael Thomas	The Human Rights Act (UK) – Relevance to Tax?	Tax Adviser	2001
Andrei Marmor	On the Right to Private Property and Entitlement to One's Income	Canadian Journal of Law and Jurisprudence	2005
Ruud A. Sommerhalder	Taxpayer Rights in the Netherlands	Revenue Law Journal	1997
Rut Camacho Palma	An Overview of the Protection of Taxpayer Rights in Portugal	European Taxation	2010
Nilgun Serim	Taxpayers' Rights – The Turkish Model	European Taxation	2008
Andrew Reschovsky	The Taxpayer Bill of Rights: A Solution to Wisconsin's Fiscal Problems or a Prescription for Future Fiscal Crises?	Wisconsin Tax Policy Colloquium	2004
Fraser Dickinson	CFE Forum 2008: The Taxpayer's Charter – A Model for Europe?	TNS Online	2008
Daniel Deak	Neutrality and Legal Certainty in Tax Law and the Effective Protection of Taxpayers' Rights	Acta Juridica Hungarica	2008
Jorge Martinez-Vazquez & Robert M. McNab	The Tax Reform Experiment in Transitional Countries	National Tax Journal	After 2000
Unknown	Taxpayer Bill of Rights 3.	The Tax Advisor	1998
Unknown	The Taxpayer Advocate	The Tax Advisor	1997
Simon Goldie	Taxpayers' Charter should be "Highway Code" to safeguard rights	N/A	2007

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Books

Author	Title	Source	Year of Publication
Servass van Thiel (Editor)	The Confederation Fiscale Europeenne at 50 Years	CFE Publication	2009
Wlodzimierz Nykiel and Malgorzata Sek (Editors)	Protection of Taxpayer's Rights. European, International and Domestic Tax Law Perspectives	N/A	2010

Organizational Publications

Chartered Institute of Taxation	Retrospective Taxation	Unknown	Draft for Discussion (Not yet published)
OECD Forum on Tax Administration Compliance Sub-Group	Tax Administration in OECD Countries: Comparative Information Series	OECD	2004
United Nations	Vienna Convention on the Law of Treaties	United Nations	1969
OECD – Committee of Fiscal Affairs Forum on Strategic Management	Principals of Good Tax Administration – Practice Note	OECD	1999 Amended in 2001
OCED – Committee On Fiscal Affairs Forum on Tax Administration	Taxpayers' Rights and Obligations – Practice Note	OECD	2003

Government Publications

Australian Government – Australia Taxation Office	Taxpayers' Charter – What you need to know	Government of Australia	Copyright: 2010
Government of Canada – Canada Revenue Agency	Taxpayer Bill of Rights	Government of Canada	Unknown
Government of the United Kingdom – HM Revenue & Customs	Your Charter	Government of the United Kingdom	Unknown

Other

Oxford International Encyclopaedia	Real Property in Common Law	Oxford International Encyclopaedia of Legal History	Copyright 2003
Unknown	Taxpayer Rights – The Way Forward (In Malaysia)	The New Straits Times	2007