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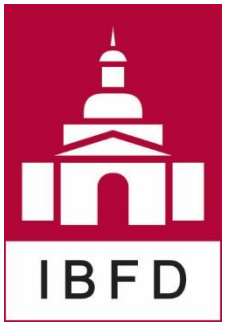

The IBFD Yearbook on Taxpayers' Rights
2022

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0. Executive Summary

0.1. Introduction

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

The 2022 Yearbook initially provides an executive summary of the most significant findings of the year, which serves to illustrate the overarching trends. This introduction is followed by a detailed description of the method used for the underlying data.

The 2022 Yearbook elaborates on 12 different areas and provides the full set of findings for each of them, supported by reference to the underlying empirical data from the 56 reports provided for the year.

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

0.2. Short overview of findings

The year 2021 in many ways established a *new normal* for taxpayers. Following a year of extraordinary measures to deal with the ongoing pandemic, this past year saw a few of the newly arisen trends solidify into trends for the future as well. For more than 5 years, ever since the General Report of the 69th IFA Congress in Basel in 2015, the OPTR's work has been reporting on these developments in the protection of taxpayers' rights.

In terms of protecting taxpayers' rights, 2022 witnessed the follow-up of measures being hastily implemented as a necessity during the pandemic, providing for practical improvements on the protection of taxpayers' rights. While these measures may have been a necessary evil, they have also proven effective as permanent protections for taxpayers' rights.

Section 0.3. will provide a more granular representation of the key developments observed in 2022, but in very broad strokes, a few general findings may hereby be concisely outlined.

Across the surveyed geographic regions, Latin America came across as perhaps the most dynamic one, witnessing several important developments across all key areas and driven primarily by legislative reform and the practice of tax administrations.

In terms of thematic areas that saw the most significant developments, confidentiality and the conduct of tax audits ("normal" as well as more "intensive" ones) probably stand out, also in consideration of relevant case law developments. Of note as well are the institutional, legislative and administrative dimensions for the protection of taxpayers' rights, where, despite some occasional regressive trends, for instance on the prerogatives of Tax Ombudspersons, a fundamental evolutionary push towards a more structured approach to the underlying fundamental issues of the practical protection of taxpayers' rights may be recognized.

Positive developments in the area of the right to access (and correct) information held by tax authorities (See further Section 1) could be observed across most covered geographic areas. Some of these developments are still in the initial proposal stage (e.g., in Spain, the Tax

Ombudsman has proposed including the right to correct errors in Spanish tax legislation) while in other Countries further concrete measures have been taken (e.g., in the United States the IRS made additional information available through taxpayer online accounts). Several improvements were also observed across regions in the area of assistance with compliance obligations, from those directed to people with special needs to follow ups to the COVID-19 pandemic phase, generally relying on greater accessibility and ease of communication via electronic means.

With regard to the issue of a tax assessment (see further Section 2), a notable increase in the number of countries using e-filing for the speeding up of assessments and the correction of errors could be observed. It is interesting to remark in this respect that several Countries have adopted a balanced approach in connection with this course of action: for instance, in Denmark the Ombudsman performed several investigations as to the compliance of digital solutions with the principles of general administrative law and tax procedures.

With reference to confidentiality (see further Section 3), several country developments were observed in the course of 2022, both progressive (across various sub-areas) and regressive (in particular, with regard to instances of exceptions to confidentiality). On the front of case law developments, a notable one was the ruling delivered by the ECJ in the case C-694/20, *Orde van Vlaamse Balies* (see further Section 3.14).

With regard to normal audits (see further Section 4), several improvements could be observed across regions in ensuring compliance with fundamental principles. In particular, it is possible to mention relevant case law developments in Spain and remarkable improvements, following the release of guidance, in administrative practice in Chile. In some instances, the shift towards best practices could also be seen as a "return to normality" after disruptions connected with the COVID-19 pandemic (e.g., in the United States, after a shift away in 2020, in 2022, in-person meetings with tax examiners resumed, following updated guidelines on locations and timings). Relevant case law was also delivered in this area by the ECJ, in particular in relation to Art. 48 of the Charter (Case C-203/21 *DELTA STROY 2003*, see further Section 4.1). Also in 2022, the ECtHR delivered its decision in the *Vegotex* case dealing with the reasonable time requirement of proceedings (see further, Section 4.3).

On the other hand, the area of "most intensive audits" (see further Section 5) is perhaps the one where the most frequent instances of "shifts away" from best practices could be observed across various regions, in particular in connection with the (lack of) requirements of court authorization or notification to engage in more intensive auditing practices.

In the area of review and appeals (see further Section 6), some notable positive developments were also observed. For instance, the Spanish Supreme Court ruled in 2022 that it is not necessary to exhaust administrative reviews to access the special process for the protection of fundamental rights. Furthermore, progressive trends could also be observed across Latin America (Chile, Guatemala) and Europe (Serbia) with regard to the publication of judgments and privacy. It should also be reported that the ECJ delivered a notable ruling in the area of the application of Art. 47 of the Charter (Case C-582/20 - *SC Cridar Cons SRL*, on which see further Section 6.1).

Several evolutionary trends could also be observed with regard to the general framework surrounding penalties and the enforcement of taxes (see further Sections 7 and 8), in particular in connection with penalties for the late filing of income tax returns. The decision rendered by

the ECtHR in connection with the *Krayeva* case is also of note with regard to the application of Art. 1 of Protocol No. 1 of the Convention (see further section 7.1).

In the area dealing with legislation (see further Section 10), several instances of regressive developments could be observed across various regions with regard to constitutional limits to retrospective laws.

With reference to developments concerning the administrative framework (see further Section 12), the fold of countries foreseeing some form of tax ombudsman infrastructure was further expanded as, in Chile, a decentralized public service office called *Defensoría del Contribuyente* (DEDECON) became operational.

With regard to the feedback received in connection with Questionnaire 1, in which national reporters were requested to assess assertively (yes/no) the level of practical implementation of legal procedures, safeguards and guarantees associated with taxpayers' rights in domestic law in 82 "key situations", as evidenced in the pie charts that have been included in the present Yearbook, a comparison with the outcomes from the previous year (2021) tends to display a rather static picture, with some marginal improvements (when assessed in percentage over the global pool of countries covered in this Yearbook) in the earlier mentioned core areas associated with confidentiality and the conduct of tax audits.

0.3. Most significant developments of the year

0.3.1. Identifying taxpayers, issuing tax returns and communicating with taxpayers

With regard to the identification of taxpayers, while 2022 was for the most part a static year, a couple of shifts towards the envisaged minimum standard in this area[1] can be observed.

In particular, **Australia** introduced a single business registry service.[2]

Mexico introduced a requirement for tax authorities to issue a taxpayer identification number in order to prevent identity theft.[3]

With regard to information supplied by third parties and withholding obligations, one instance of convergence towards the minimum standard was observed.[4] Notably, **Lithuania** modified its law on tax administration to include provisions on data protection standards to be respected by data controllers.[5]

With regard to the right to access and correct information held by tax authorities, positive developments as well as concerning ones may be observed.

[1] Encompassing the introduction of safeguards to prevent impersonation when issuing a unique identification number.

[2] *See* sec. 1.2.

[3] Id.

[4] Envisaging that obligations of confidentiality should be imposed on third parties with respect to information gathered by them for tax purposes.

[5] *See* sec. 1.3.

The analysis can be further broken down in light of two minimum standards[6] and one best practice.[7]

In the former respect, some progressive trends have been observed.

Notably, in **Colombia**, a total of 4,8 million pre-filled income tax returns were made available, subject to modification by the taxpayer. VAT returns were also prepared by the Tax Administration based on information obtained from electronic invoicing.[8]

Encouraging developments have also been observed in **Chile**, where a tax reform is currently under discussion that aims to update the rights of taxpayers, granting them tools to oppose requests for personal information in the context of tax audits. New restrictions have been introduced on the use of personal banking information, and administrative guidance was issued on the interpretation of the duty of confidentiality.[9]

In the same vein, **Lithuania** modified its Law on Tax Administration to include provisions on data protection standards to be respected by data controllers.[10]

It may further be mentioned that, in **Spain**, the tax ombudsman formulated a proposal to include the right to correct errors into Spanish tax legislation.[11]

On the other hand, although of a contingent nature, some mishaps in this regard were also observed in 2022. Namely, in **Mexico**, pre-populated returns came into question due to several failures being reported.[12]

Developments that may be ascribed to the earlier mentioned best practice were also observed in 2022. Notably, in the **United States**, the IRS made additional information available to taxpayers through online tools such as personal accounts that taxpayers can create.[13] These new tools have been extensively promoted through press releases and distributed via social media channels.[14]

In connection with the improvement of communications with taxpayers, several positive developments can be registered, which could be reconnected to the pursuit of a minimum standard by which, where communication with taxpayers is conducted in electronic form, systems to prevent impersonation or interception should be introduced.

[6] The first minimum standard envisages that, where pre-populated returns are used, these should be sent to taxpayers to correct errors. The second minimum standard in this area foresees the introduction of a right of access for taxpayers to personal information held about them and a right to apply to correct inaccuracies.

[7] By which guidance should be published on taxpayers' rights to access information and correct inaccuracies.

[8] *See further* sec. 1.4.

[9] Id.

[10] Id.

[11] *See further* sec. 1.4.

[12] Id.

[13] Id.

[14] Id.

In particular, in **Australia,** a significant upgrade to myGovID was introduced, including a face verification service.[15]

In **Belgium**, in order to prevent phishing, all contacts with the taxpayer will have to take place via a central telephone number or through the official platform.[16]

In **Honduras**, the tax administration implemented electronic notification with digital signature to prevent interception or impersonation.[17]

In the **United States**, the IRS announced that taxpayers would not have to provide biometrical data to establish an online account. Enhanced methods to detect potentially fraudulent tax returns have been introduced.[18]

The introduction of a cooperative compliance regime may be regarded as desirable in the current, increasingly complex, tax compliance framework for corporate and individual taxpayers alike. While the introduction of such a system would not necessarily constitute a minimum standard for the purposes of this Observatory, where a system of cooperative compliance operates, it should at least be ensured that it is available on a non-discriminatory and voluntary basis.

In **Chile**, a new cooperative compliance system was announced within the framework of a tax reform and will be open to taxpayers on a voluntary basis.[19]

Although not technically speaking a cooperative compliance regime, the new **Brazilian** advance pricing agreements system deserves particular mention in light of the country's undergoing changes in the area of transfer pricing.[20]

On the other hand, it should be reported that, in **Honduras**, the cooperative compliance pilot project activated in 2021 was discontinued in the course of 2022.[21]

With regard to assistance with compliance obligations, a minimum standard can be envisaged in which assistance is provided to those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas and those unable or unwilling to use electronic forms of communication.

In this respect, several positive developments were observed in the course of 2022.

Most notably, in **Chile**, the earlier mentioned tax reform would include requirements for tax authorities to support taxpayers who lack the technological means to file their tax returns.

[15] *See further* sec. 1.5.

[16] Id.

[17] Id.

[18] Id.

[19] *See* proposed art. 8 no. 19 Chilean Tax Code, allowing companies to obtain a certificate that indicates that they comply with Chilean tax law based on principles of transparency, collaboration and good faith. These qualifying entities will then be enrolled in a public register.

[20] *See* sec. 1.6.

[21] Id.

In **Honduras**, improvements were made in respect of social media campaigns and the installation of temporary service desks in remote areas of the country.

In **Mauritius**, taxpayers can now receive assistance in filing tax returns through a WhatsApp video call.

In **New Zealand**, additional support and relief were provided as a result of restrictions in place during lockdowns under COVID-19.

In **Poland**, general incentives were introduced to improve interaction between persons with special needs and the public administration. Guidance on personal income tax in Ukraine is provided to Ukrainian citizens. Certain non-resident taxpayers are no longer required to appoint a resident tax representative.

In the **United States**, Taxpayer Assistance Centers (TACs) are made available during certain months, where taxpayers can receive help without an appointment.

0.3.2. The issue of tax assessment

With regard to the best practice of establishing a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms, several positive developments were recorded in 2022, especially in Latin America.

In **Brazil**, at the end of 2022, Provisional Measure 1152 was published, which aligned the Brazilian transfer pricing rules with the OECD Guidelines. In this context, it was established that, if the tax authority disagrees with the method applied by the taxpayer, the latter will be able to voluntarily adjust its position without any penalty.[22]

In **Chile**, Law 21.210 of 2020, which established the Public Defender's Office of Taxpayers (tax ombudsmen, DEDECON),[23] entered into force in the course of 2022.

In **Guatemala**, in the course of 2022, the tax administration published a report concerning the types of schemes that were put in place in 2021 and 2022 for evading the payment of capital gains tax in real estate transactions. In the same report, taxpayers were informed that the tax administration has implemented new technologies and information systems.[24]

In **Honduras**, during 2022, there were several forums regarding tax policy and other public discussions, especially on exemptions and other tax breaks, which signalled an improvement in the communication between the government, academia and the private sector as to the discussion of new tax policies.[25]

In **Mexico**, at the end of December 2021, an amendment to the PRODECON's (tax ombudsmen's) guidelines was published. Following this amendment, in the course of 2022,

[22] *See further* sec. 2.

[23] Id.

[24] Id. It may be wondered whether this initiative may be regarded as a tool for dissuading taxpayers from engaging in the scrutinized conduct and what the concrete impact on the compliance behaviours of taxpayers will be.

[25] Id.

the PRODECON's powers where further extended to facilitate its tax ombudsperson function and its work as mediator between taxpayers and the Mexican revenue authority.[26]

It should also be reported that, in the **United States**, at the start of 2022, pandemic-related service reductions continued to jeopardize taxpayers' rights due to delays in processing tax returns and correspondence. However, in February 2022, the IRS suspended its automated levy programme and many automated collection notices.[27]

On the other hand, it has been reported that, in **Bolivia**, administrative practices tend to avoid constructive dialogue with taxpayers, mostly because tax audits and assessments are notified by email or website to taxpayers without an actual notice of the situation.[28]

With regard to the best practice of using e-filing to speed up assessments and the correction of errors, essentially positive developments were observed across various regions.

In **Australia**, the Australian Taxation Office (ATO) strengthened the use of data matching and prefiling to assist with lodgement and other compliance activities.[29]

In **Denmark**, the ombudsman performed several investigations as to the compliance of digital solutions with the principles of general administrative law and tax procedures.[30]

In **Japan**, from January 2022, according to the revised Electronic Book-Keeping Act, taxpayers are required to save their transactional data (receipts, etc.) received via the Internet in the form of electronic data. Moreover, according to an announcement of the National Tax Agency of August 2022, the percentage of tax returns using the Internet (e-tax) increased slightly in 2021 compared to 2020.[31]

In **Mauritius**, a legislative framework was introduced that is meant to regulate the electronic service to taxpayers of correspondence, notices of assessments and any other notices or documents, as well as the electronic payment of taxes and the e-filing of tax returns.[32]

In the **United States**, the IRS created an automated tool to correct recovery rebate credit errors, which had been manually processed in 2021 due to the pandemic crisis. It also automated correction of advance child tax credit reconciliation errors.[33]

[26] Id.

[27] Id.

[28] Id.

[29] Id.

[30] Id.

[31] Id.

[32] Id.

[33] Id.

0.3.3. Confidentiality

With regard to the provision of guarantees of privacy in the law,[34] several positive developments were observed in Asia and in the Americas.

In **China (People's Rep.)**, taxpayers were granted tools to oppose requests of personal information in the context of a tax audit. Legal restrictions to the use of personal banking information were introduced. A circular letter on the administrative interpretation of taxpayers' right to confidentiality was published.[35]

In **Chinese Taipei**, it has been reported that a tax official was prosecuted due to negligence with regard to the handling of personal information of taxpayers.[36]

In **Brazil**, the Superior Court of Justice denied the exchange of information between tax authorities and criminal prosecutors without prior and specific judicial authorization.[37]

With regard to encryption and control of access,[38] several positive developments were observed in the Americas.

In **Chile**, taxpayers were granted tools to oppose requests for personal information in the context of a tax audit. Legal restrictions on the use of personal banking information were also introduced.[39]

With regard to restricting access only to authorized officials through the use of digital access codes and, more generally, encrypting information held by a tax authority about taxpayers to the highest level attainable,[40] several positive developments were observed in the Latin American region in the course of 2022.

In the **United States**, continued implementation of the Secure Access Digital Identity Platform was observed.[41]

[34] And, most notably, the minimum standard according to which legal guarantees should be provided for confidentiality, with sanctions for officials who make unauthorized disclosures and a mechanism to ensure that sanctions are enforced.

[35] *See further* sec. 3.2.

[36] Id.

[37] Id.

[38] Thereby including as a minimum standard the introduction of an offence for tax officials covering up unauthorized disclosure of confidential information.

[39] *See further* sec. 3.3.

[40] Thereby including, as a best practice, the activation of firewalls to prevent unauthorized access to data held by revenue authorities.

[41] *See further* sec. 3.3.

In connection with the need to ensure periodical auditing of access, in **Colombia**, as a result of continuous internal monitoring carried out by the tax administration, events of unauthorized access and collection of information were identified, which lead to judicial measures.[42]

In **Guatemala**, the tax administration continued to receive periodical audits on the matter, and an official within the administration was placed in charge of overseeing data protection.[43]

When it comes to the introduction of administrative measures emphasizing confidentiality to tax officials, further instances of convergence towards the minimum standard were observed in the course of 2022.

The **Brazilian** Federal Revenue Service refused the exchange of some information (such as a list of employees) with other departments of federal and local administrations, qualifying such as a breach of tax secrecy. This decision is binding on every official of the Federal Tax Administration.[44]

In **Chile**, a circular letter on the administrative interpretation of taxpayers' right to confidentiality was published.[45] At the same time, it should be mentioned that some concerns may be raised by a proposed tax reform that would introduce a new naming-and-shaming procedure.[46]

Latin America was once again the main laboratory as far as developments towards the pursuit of best practices in this area are concerned.

Notably, in **Chile**, the earlier mentioned circular letter on the administrative interpretation of taxpayers' rights also addresses, inter alia, the appointment of data stewards within the tax administration.[47]

In **Guatemala**, the tax administration implemented a requirement regarding access to information on a taxpayer.[48]

When it comes to putting into place mechanisms to monitor breaches of confidentiality, it may be held as a minimum standard that, when a breach of confidentiality occurs, investigations shall be conducted by independent persons with an appropriate level of seniority.

In this respect, positive developments were observed in **Colombia**, where, as a result of continuous internal monitoring carried out by the tax administration, instances of unauthorized access and collection of information were identified. This, in turn, led to the discovery of situations of fraud in VAT refund procedures that involved some officials. Currently, judicial

[42] *See further* sec. 3.4.

[43] Id.

[44] See BR: Internal Ruling (*Solução de Consulta Interna*) No. 01/2022, available at http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=123020 (accessed 13 Feb. 2023).

[45] See CL: Circular Letter No. 34 (4 Aug. 2022), available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu35.pdf.

[46] Proposed article 100 quater of the Chilean Tax Code.

[47] *See further* sec. 3.6.

[48] Id.

investigations are being carried out against the officials for the crimes of embezzlement, conspiracy to commit a crime and favouring smuggling.[49]

As a minimum standard, remedies shall be provided to taxpayers in cases of breaches of confidentiality.

In **Bolivia**, although no cases in which a breach of confidentiality occurred were investigated, it appears to be a common practice for the tax administration to disclose confidential information,[50] and it is clear that this reverberates with the possibility for taxpayers to access remedies.

On the positive side, a new **Chilean** law[51] adds further remedies relating to the exchange of banking information and, as mentioned, taxpayers have been granted tools to oppose requests for personal information in the context of a tax audit.[52]

With regard to exceptions to confidentiality, it may be regarded as a minimum standard that the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted

In this respect, positive developments across various geographical regions could be recorded in the course of 2022.

In **Spain**, the Supreme Court delivered a decision[53] the main impact of which will be that if tax information is requested by a public administration, the data should in principle be used for tax purposes.

In **Mexico**, a shift away from the best practice can be reported. Under the applicable Mexican legislation, it is necessary to have judicial authorization to disclose any personal and tax data.[54] However, during 2022, personal information relating to a journalist was disclosed by the Mexican President without such authorization.[55]

A particularly worrisome trend can be noticed regarding supply of information to other government departments, in respect of which not a single jurisdiction has reported a positive change in these areas.

On the other hand, in April 2022, following the dissolution of Parliament to allow for a federal election to take place, the **Australian** House of Representatives Standing Committee on Tax

[49] *See further* sec. 3.7.

[50] *See further* sec. 3.8.

[51] CL: Law No. 21.453 of 2022.

[52] Id.

[53] *See* ES: TS [Supreme Court], 6 July 2022, 930/2022 , available at https://www.poderjudicial.es/search/documento/TS/10045147/tributario/20220718 (accessed 12 Feb. 2023). **]**

[54] *See* MX: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 19.

[55] *See* MX: *Inai ordena sancionar a AMLO por exhibir datos personales de Loret de Mola*, available at https://www.eleconomista.com.mx/politica/Inai-ordena-sancionar-a-AMLO-por-exhibir-datos-personales-de-Loret-de-Mola-20220817-0058.html (accessed 13 Feb. 2023).

and Revenue,[56] which previously had oversight over the ATO and other taxation matters, ceased to exist.[57] The new government has not made any announcements in relation to whether the committee would be reconstituted.

In the **United States**, the House of Representatives Ways and Means Committee released taxpayer information of former President Trump to the public.[58] There was no change in the law, but this act had not occurred in past decades, as all US presidents had voluntarily released their tax returns to the public since return information was made confidential in 1976.[59]

Also in the area of the anonymization of judgments and rulings, Latin America appeared as the most dynamic region in the course of 2022, with several instances of convergence towards minimum standards[60] and best practices,[61] as well as a few regressive developments, being observed.

A new **Chilean** circular letter imposes data anonymization on tax courts.[62]

In October 2022, the **Colombian** Tax Administration made available an electronic consultation service for all regulations, general tax rulings and judicial rulings related to tax, customs and exchange matters. In this new service, the rulings are published anonymously and without specific information from the interested parties, unlike the way it had been done.[63]

The tax administration of **Guatemala** further developed its transparency best practices in connection with the requirement to publish all judgments regarding tax matters, which contain the taxpayer's name.[64]

In the area of the safeguarding of professional privilege, one minimum standard, by which legal professional privilege shall apply also to tax advice, as well as one best practice, by which privilege from disclosure should apply to all tax advisers (not just lawyers) who supply similar advice to lawyers, and information imparted in circumstances of confidentiality may be privileged from disclosure, assumed central relevance in the course of 2022 on both sides of the Atlantic.

In Latin America, a major development and a reconsideration of a mandatory disclosure regime that had proven perhaps too stringent were observed in **Argentina**, where the Argentine tax authorities suspended the application of a mandatory tax planning information

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[56] *See also* https://www.aph.gov.au/Parliamentary_Business/Committees/House/Former_Committees/Tax_and_Revenue (accessed 13 Feb. 2023).

[57] *See* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 20.

[58] *See House Democrats release Trump's tax returns* (NPR 30 Dec. 2022 (updated)), available at https://www.npr.org/2022/12/30/1146215064/trumps-tax-returns-released (accessed 13 Feb. 2023).

[59] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 20.

[60] According to which, if published, tax rulings should be anonymized and details that might identify the taxpayer should be removed.

[61] Mandating anonymization of all tax judgments and removal of details that might identify the taxpayer.

[62] *See* CL: Circular No. 35/2022.

[63] *See further* sec. 3.13.

[64] Id.

regime by taxpayers and their tax advisers.[65] The obligation for tax advisers to provide such information had been considered by the courts to violate the professional secrecy that protects the relationship between lawyer or public accountant and the client.[66] On 1 September 2022, the tax authorities suspended the regime,[67] which was later extended until the regime was finally repealed.[68]

In Europe, the Court of Justice of the European Union (ECJ) delivered an important ruling[69] on DAC 6 and its compatibility with articles 7 (Respect for private and family life) and 47 (Right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights, clarifying the extent of the legal professional privilege under DAC,[70] concluding that the obligation to disclose information imposed on an intermediary lawyer is not compatible with article 7 of the Charter, which protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients. The Court ruled that article 8ab(5) of amended Directive 2011/16/EU is invalid in the light of article 7 of the Charter, in so far as the Member States' application of that provision has the effect of requiring a lawyer acting as an intermediary (where he is exempt from the reporting obligation laid down in article 8ab(1) of the Directive on account of the legal professional privilege by which he is bound) to notify without delay any other intermediary who is not his client of that intermediary's reporting obligations under article 8ab(6).[71]

This development will have wider repercussions outside of Belgium, where, furthermore, Judgment No. 103/2022 of 15 September 2022 of the Constitutional Court referred further questions to the ECJ in addition to those addressed by *Orde van Vlaamse Balies* (Case C-694/20). In this respect, it is noteworthy that a similar French case formed the object of a preliminarily ruling request, later withdrawn, before the ECJ.[72]

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65 *See* AR: AFIP General Resolution 5306 (B.O. 12/27/22), accessible at the following link: http://biblioteca.afip.gob.ar/dcp/REAG01005306_2022_12_22 (last accessed 12 Mar. 2023)

66 *See* AR: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 23.

67 *Tax Authority Suspends Mandatory Disclosure Regime on Tax Planning Schemes for 60 Days* (9 Sept. 2022), News IBFD.

68 *Tax Authority Further Suspends Mandatory Disclosure Regime for Tax Planning Schemes* (7 Nov. 2022), News IBFD.

69 BE: ECJ, 8 Dec. 2022, Case C-694/20, *Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU v. Vlaamse Regering*, Case Law IBFD.

70 For further comments and analysis, *see* sec. 3.14.

71 *ECJ Decides That Transfer of DAC6 Reporting Obligations Due to Professional Secrecy Is Not Compatible with Charter of Fundamental Rights of European Union: Orde van Vlaamse Balies and Others (Case C-694/20) (Direct)* (8 Dec. 2022), News IBFD.

72 *See* FR: ECJ, formerly pending, Case C-398/21, *Conseil national des barreaux, Conférence des bâtonniers, Ordre des avocats du barreau de Paris v. Premier ministre, Ministre de l'Economie, des Finances et de la Relance*, Case Law IBFD. The case is no longer pending, as the proceedings were terminated by an order of 7 Mar. 2023, whereby the French court withdrew the preliminary question in light of the ECJ decision in *Orde van Vlaamse Balies* (C-694/20), as the matter was considered to having been resolved.

0.3.4. Normal audits

Regarding tax audits and their foundation principles, a couple of shifts were observed, both towards and away from the four minimum standards[73] and one best practice.[74] Moreover, there was a substantial case law development on the part of courts at the international and supranational levels.

As regards the general convergence toward the four main principles[75] that should underpin tax audits, **Belgium** introduced a possibility for tax officials to take part in police investigations, thereby preventing the double burden that parallel tax and criminal procedures might create.[76]

On the other hand, **Uruguay** shifted away as the result of a new decision of the supreme court that ruled that there is no need to warn taxpayers at the beginning of tax proceedings as to their right to remain silent. This development is also in line with the recent case law of the European Court of Human Rights (**ECtHR**), in which a clearer dividing line is drawn between tax and criminal proceedings.[77] The same development was observed in **Belgium**, where taxpayers are now potentially subject to severe penalties if they do not abide by their obligation to cooperate in tax audits, even if such cooperation might eventually undermine their right against self-incrimination.[78]

The **ECJ** has reaffirmed its general lack of competence to interfere in the purely domestic tax procedures of the Member States based on the Charter when there is no reasonable relationship between the domestic measure in question and EU law.[79]

In terms of proportionality, a shift away was observed in **Chinese Taipei**, where financial institutions were imposed a further reporting obligation on accounts suspected of engaging in online selling activities.[80]

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[73] The first minimum standard envisages that audits should respect the following principles: (i) proportionality; (2) *non bis in idem* (prohibition of double jeopardy); (3) *audi alteram partem* (right to be heard before any decision is taken); and (4) *nemo tenetur se detegere* (principle against self-incrimination). Tax notices issued in violation of these principles should be null and void. The second minimum standard in this area foresees that, in the application of proportionality, tax authorities may only request information that is strictly needed, that is not otherwise available and that imposes the least burdensome impact on taxpayers. According to the third minimum standard, in the application of *audi alteram partem*, taxpayers should have the right to attend all relevant meetings with the tax authorities (assisted by advisers), as well as the right to provide factual information and present their views before decisions of the tax authorities become final. The fourth and final minimum standard states that, in application of *nemo tenetur*, the right to remain silent should be respected in all tax audits.

[74] The best practice suggests that, in application of *non bis in idem*, the taxpayer should only receive one audit per taxable period, except when facts become known after the audit was completed.

[75] *See supra* n. 73.

[76] *See further* sec. 4.1.

[77] NL: ECtHR, No. 58342/15, *De Legé v. The Netherlands*, available at https://hudoc.echr.coe.int/eng?i=001-219556 (accessed 18 Feb. 2023).

[78] *See further* sec. 4.1.

[79] HU: ECJ, 13 Jan. 2022, Case C-363/20, *MARCAS MC Szolgáltató Zrt. / Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, Case Law IBFD.

[80] *See further* sec. 4.1.

As regards the possibility of taxpayers effectively taking part in the audit procedure, the Supreme Court in **Spain** provided further protection by ruling that the scope of an audit can be extended only if such extension is clearly communicated to the taxpayer prior to initiating the investigation.[81] In the **United States**, in-person meetings between taxpayers and tax authorities have resumed.[82] The **ECJ** has also strengthen the right of participation for legal persons that might be subject to a criminal penalty, recognizing a separate standing, alongside the natural person who might be subject to criminal charges as well.[83]

In terms of the best practice of one audit per taxable period, **Belgium** observed a convergence towards the standard by a new court decision that recognized that the principle also applies between the tax offices of different federal units.[84]'

There were not many new developments in the two minimum standards[85] and four best practices[86] as regards the structure and content of tax audits.

As a matter of fact, there were no developments in the minimum standards.

As regards the best practices, both **Chile** and **Spain** have published public administrative guidelines on the structure and patterns of tax audits.[87]

A shift away from the best practices was observed in **Columbia**, where a deemed income taxation regime was extended, providing limited possibilities for appeal by the taxpayer and being based on a system without an official notification of an audit being communicated to the taxpayer.[88]

With regard to the time limits for normal audits and the single best practice that reasonable time limits should be fixed for the conduct of audits, there were developments both towards and away from the best practice.

In **Colombia**, the Supreme Administrative Court ruled that the statute of limitations is suspended only if the tax authorities effectively initiate a tax inspection and not just based on a notification that they make to the taxpayer without any effective subsequent actions.[89]

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[81] Id.

[82] Id.

[83] BG: ECJ, 10 Nov. 2022, Case C-203/21, *DELTA STROY 2003*.

[84] *See further* sec. 4.1.

[85] The first minimum standard relates to the fact that, where tax authorities have resolved to start an audit, they should inform the taxpayer. The second minimum standard is that taxpayers should be informed of information gathering on the part of third parties.

[86] According to the first best practice, tax audits should follow a pattern that is set out in published guidelines. The second best practice concerns the existence of a manual of good practice in tax audits that is established at the global level. The third best practice concerns an entitlement on the part of taxpayers to request the start of an audit to obtain finality. According to the fourth best practice, where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they discuss the aims and procedure, together with the time scale and targets. They should then disclose any additional evidence in their possession to the taxpayer.

[87] *See* sec. 4.2.

[88] Id.

[89] *See Supreme Administrative Court Rules on Suspension of Statute of Limitations* (2 June 2022), News IBFD.

In **Mexico**, time limits have been fixed to 2 years when a cross-border request for information is made.[90]

In **Belgium**, on the other hand, the time limits have been substantially extended, especially for instances involving tax fraud, uncooperative jurisdictions or complex cross-border arrangements.[91]

The **ECtHR** confirmed its long-established case law on the existence of a violation of article 6 of the Convention whenever the judicial proceedings continue excessively.[92]

0.3.5. More extensive audits

According to the minimum standard, if at any point in the course of an audit it becomes foreseeable that a penalty of a criminal nature might apply, stronger protection in light of the right to remain silent must be present.

A notable shift away from this minimum standard was observed in **Colombia**, where statements made in the course of an ordinary audit can be obtained and used also when it is foreseeable that the taxpayer has committed a crime.[93] On the other hand, **Chile** has converged with the standard by allowing voluntary cooperation by the taxpayer with a view to reducing future criminal liability.[94]

The court authorization and notification benchmarks consist of four minimum standards[95] and three best practices[96].

In 2022, there were no reported developments under the minimum standards.

Belgium departed from the best practices by allowing evidence obtained from taxpayers' premises even without judicial authorization to be potentially used in subsequent proceedings,

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[90] *See* sec. 4.3.

[91] Id.

[92] *See* BE: ECtHR, No. 49812/09, *Vegotex International v Belgium*, available at https://hudoc.echr.coe.int/eng?i=001-220415 (accessed 20 Feb. 2023).

[93] *See* sec. 5.2.

[94] Id.

[95] The first minimum standard is that any entering of premises or interception of communications should be authorized by the judiciary. The second minimum standard relates to the limits on such authorization within the revenue authorities, which should be able to grant it only in urgent cases and upon subsequent reporting to the judiciary. The third minimum standard provides that inspection of the taxpayer's home should require authorization by the judiciary and should only be authorized in exceptional cases. Finally, according to the fourth minimum standard, seizure of documents should be subject to a requirement to give reasons why it is necessary, along with a set time frame within which the documents must be returned.

[96] The first best practice provides that, where tax authorities intend to search a taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, unless there is evident danger of documents being removed or destroyed. According to the second best practice, access to bank information should require judicial authorization. Under the third best practice, authorization by the judiciary should be necessary for the interception of telephone communications and monitoring of online activity. Specialized offices within the judiciary should be established to supervise these actions.

subject to evaluation and testing against the principles of good administration and the right to a fair trial.[97]

There were further substantial departures in the area of direct access to bank information by the tax authorities in a further deconstruction of banking secrecy across the globe. In **Poland**, the tax authorities can already request information before initiating formal proceedings against a specific taxpayer.[98] In **Mexico**, the Supreme Court has confirmed that banking information can be requested by the tax authorities without any judicial order or special authorization.[99] In **Argentina**, a bilateral agreement was signed with the United States whereby FATCA would become operational in 2024.[100]

0.3.6. Reviews and appeals

With regard to EU law developments in this area, the ruling rendered by the ECJ on 24 February 2022 in connection with *SC Cridar Cons SRL* (Case C-582/20)[101] should be mentioned, in which the Court held that, subject to certain conditions, the Charter does not preclude national legislation that enables the tax authorities to suspend the examination of a tax appeal for the time needed to obtain evidence relating to the taxpayer's involvement in a fraud. The Court also ruled that if the appeal is "put on hold", there is no requirement to suspend the execution of the assessment unless there are serious doubts as to its legality.

With regard to the length of procedures, in relation to which it is envisaged as a best practice that procedures and appeals should not exceed 2 years, in the course of 2022, on balance, developments appeared mostly negative across various regions.

In particular, in **Guatemala**, the time frame for an average appeal procedure has further expanded and is currently in excess of 2 years.[102]

In **Italy**, on 22 June 2022, the Ministry of Finance published a report[103] on tax litigation showing that the average length of tax disputes in 2021 was 1,080 days before second-tier tax courts (an increase of 2.5% compared to 2020) and 652 days before first-tier tax courts (an increase of 3.4% compared to 2020).

With regard to the safeguarding of the principle of *audi alteram partem*, no specific developments across the countries monitored by the Observatory were recorded in 2022, nor

[97] *See* sec. 5.3.

[98] Id.

[99] Id.

[100] Id.

[101] RO: ECJ, 24 Feb. 2022, Case C-582/20, *SC Cridar Cons SRL v. Administrația Județeană a Finanțelor Publice Cluj and Direcția Generală Regională a Finanțelor Publice Cluj-Napoca*, Case Law IBFD.

[102] *See further* sec. 6.2.

[103] *See further* sec. 6.2.

were any judicial decisions delivered, even though some interesting pending case law can be reported before both the ECJ[104] and the ECtHR.[105]

With regard to *solve et repete* ("pay now, argue later") no case law was delivered by either the ECJ or the ECtHR in the course of 2022, but a communication of an ECtHR matter can be reported.[106]

Turning to country practices in this area, both positive and negative developments could be observed in Latin America in connection with the best practice according to which appeals should not require prior payment of tax in all cases.

In **Honduras**, prior to 2022, according to article 206 of the Tax Code, for the admission of a claim before the courts of the Administrative Litigation Jurisdiction in tax and customs matters, a sufficient guarantee in favour of the state was required from taxpayers. This practice has been abolished, as the requirement of the guarantee had a statute of limitations of 5 years, which expired in January 2022.[107]

In **Argentina**, a new administrative measure[108] unexpectedly provided for an extraordinary advance of the income tax payable by corporations (in addition to those already established for the year 2022), which is computed as payment on account of the tax finally determined for the year 2022. Due to its nature as a payment on account of the tax, the appeal of this advance does not have suspensive effect[109].

In connection with the best practice according to which legal assistance should be provided to those taxpayers who cannot afford it, the following developments can be mentioned.

In **Australia**, the ATO awarded 14 grants to support the National Tax Clinic Program. This programme is a government-funded initiative to help people who may not be able to afford professional advice and representation with their tax affairs.[110]

In **Chile**, DEDECON started functioning in 2022, providing legal assistance to taxpayers.[111]

Concerning the publication of judgments and the safeguarding of privacy, a positive development could be observed in **Guatemala**, where, since 2022, tax judgments are published.[112]

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[104] HU: ECJ, 6 Dec. 2022, Case C-746/22, *Slovenské Energetické Strojárne A.S. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, Request for a preliminary ruling.

[105] FI: *FER SPA v. Italy*, No. 57718/15, communicated on 25 Oct. 2022; and *Grazia BRAMBILLA v. Italy*, No. 32077/12, communicated on 25 Oct. 2022.

[106] *Bourikas AVEE v. Greece*, No. 78572/17.

[107] *See further* sec. 6.5.

[108] AR: AFIP, General Resolution No. 5248/2022, accessible at the following link: https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-5248-2022-369721 (accessed 4 Mar. 2023).

[109] Id.

[110] *See further* sec. 6.6.

[111] Id.

[112] *See further* sec. 6.8.

0.3.7. Criminal and administrative sanctions

With regard to the minimum standard according to which proportionality and the *non bis in idem* principle should apply to tax penalties, many developments were observed in 2022 across a diverse geographic expanse.

In **Belgium**, a decision by the Court of Cassation upheld the *ne bis in idem* principle in line with the judgment of the ECtHR in *A and B v. Norway* (24130/11 and 29758/11) with reference to the imposition of a fixed fine and a tax surcharge for the same offence (late filing of income tax declaration).[113]

In **Bolivia**, newly enacted provisions mitigated the proportional rate for tax penalties.[114]

In **Colombia**, legislative enactment reduced the tax penalty due for not sending information requested by the tax administration.[115]

In **Mexico**, a decision by the Supreme Court of Justice invalidated automatic preventive detention for a series of crimes, including tax fraud, ruling that it was an unconstitutional punishment.[116]

In the **United States**, in light of accumulated backlogs in processing tax returns and correspondence, the IRS provided relief from late filing penalties for 2019 and 2020 tax returns filed on or before 30 September 2022.[117]

On the other hand, some regressive trends could also be observed in 2022, especially in Europe.

For instance, **Lithuania** saw the introduction of a measure amending the Law on Tax Administration and introducing an increase in the amount of fines. It also establishes that the fine is doubled if a repeated violation of the same tax rule is committed within a 5-year period.[118]

In the **Netherlands**, the Supreme Court ruled that an administrative penalty imposed for the late submission of a tax return may be followed by criminal prosecution for a more severe offence, which would constitute a shift away from the best practice according to which, where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.[119]

[113] *See further* sec. 7.1.

[114] Id.

[115] Id.

[116] Id.

[117] Id.

[118] Id.

[119] Id.

The proportionality of penalties has been at the core of recent case law developments on the part of the ECtHR. In this respect, mention may in particular be made of *Krayeva v. Ukraine* (72858/13).[120] The case concerned an alleged breach of customs regulations by the applicant while conducting the customs clearance of imported goods and the sanction imposed on her in that connection, namely a fine in an amount equal to the value of the imported goods. The Court found that this constituted a violation of article 1 of Protocol No. 1 to the Convention.

With regard to ECJ case law, reference could be made to *BV* (Case C-570/20),[121] where, with respect to *ne bis in idem*, the Court ruled that, while the Charter in principle permits duplications of financial penalties and a custodial sentence under two separate procedures, there is an obligation to have clear rules in place making sure that all penalties imposed do not cumulatively exceed the seriousness of the offence identified.

On the other hand, several positive developments could be observed with regard to voluntary disclosure regimes, especially in Latin America. Most notably, 2022 saw several instances of convergence towards a best practice according to which voluntary disclosure should lead to a reduction of penalties.

Notably, in **Bolivia**, pursuant to Law 1448 of 25 July 2022, a voluntary disclosure period was extended from 10 business days to 20 calendar days.[122]

In **Brazil**, new provisions were introduced according to which, if the tax administration disagrees with the transfer price method applied by the taxpayer, the latter is entitled to voluntarily adjust its assessment without any penalty due.[123]

In **Chile**, a proposed tax reform aims to establish that voluntary disclosure in criminal cases might reduce criminal liabilities.[124]

In **Mauritius**, a tax arrears settlement scheme was introduced. It allows for full waiver of penalties and interest for tax arrears that are due on 7 June 2022 and are paid in full by 31 March 2023, provided that the taxpayer makes an application to the tax administration by 31 December 2022.[125]

On the other hand, a somewhat regressive development could be observed in **Lithuania**, where a measure amending the Law on Tax Administration was introduced. The new measure

[120] *See* UA: ECtHR, No. 72858/13, *Krayeva v. Ukraine*, available at https://hudoc.echr.coe.int/fre?i=001-214758 (accessed 23 Feb. 2023). Of interest also is the pending case *Josip Klemm v. Croatia*, Application No. 16272/21, lodged on 15 Mar. 2021 and communicated on 22 Nov. 2022, which raises issues similar to those already addressed by the ECtHR in the cases *A and B v. Norway* [GC], Nos. 24130/11 and 29758/11, 15 Nov. 2016; *Jóhannesson and Others v. Iceland*, No. 22007/11, 18 May 2017; and *Milošević v. Croatia*, No. 12022/16, 31 Aug. 2021. Furthermore, mention can be made of *S.C. Zorina International s.r.l. v. Romania*, application No. 15553/15, lodged on 23 Mar. 2015 and communicated on 20 Nov. 2019 and 1 Mar. 2022.

[121] *See* FR: ECJ, 5 May 2022, Case C-570/20, *BV*, available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=258873&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1709066 (accessed 23 Feb. 2023).

[122] *See* sec. 7.2.

[123] Id.

[124] Id.

[125] Id.

provides that sanctions cannot be lower than 20% of the unpaid taxes in cases of voluntary disclosure by the taxpayer.[126]

0.3.8. Enforcement of taxes

With reference to the need to shield the minimum necessary for living,[127] several positive developments were observed in 2022 across different continents.

In **Colombia**, a recent provision[128] temporarily establishes a significant reduction of the amount of sanctions and of the late payment interest rate applicable to tax obligations, provided that taxes are paid in full or a deferral of payments is approved within the terms established therein.[129]

In **Lithuania**, new rules increased the amount of tax-free income by 15.7%. This amendment reduces the tax burden on taxpayers with a monthly income of up to one average wage.[130]

In the **United States**, the IRS published procedures for offsetting bypass refunds for taxpayers requesting an offer in compromise, implementing a policy change from the fall of 2021.[131]

With regard to the right for taxpayers to request delayed payments in arrears, which can similarly be regarded as a minimum standard in this area, instances of further convergence could be observed in the Americas and in Europe.

In **Colombia**, a positive development was observed in connection with recent legislation[132] that modified the regime applicable to the deferral of payments. Deferrals will be granted without the need for a guarantee when the term is not greater than 1 year and the taxpayer has not failed to comply with a deferral of payment during the former year.[133]

On a more contingent basis, in the course of 2022, the possibilities of requesting and obtaining the deferred payment of arrears increased in **Sweden**.[134]

When it comes to ensuring the avoidance of the bankruptcy of taxpayers by partial remission of the debt or structured plans of deferred payment, which could be regarded as a best practice in this area, some positive developments were observed in Latin America.

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[126] Id.

[127] Which should be regarded as a minimum standard in this area.

[128] CO: Art. 81 of Law 2277 of 2022, accessible at the following link: https://minvivienda.gov.co/normativa/ley-2277-2022#:~:text=Por%20medio%20de%20la%20cual,y%20se%20dictan%20otras%20disposiciones (accessed 4 Mar. 2023).

[129] See Section 8 *infra*.

[130] Ibidem.

[131] Ibidem.

[132] CO: Law 2277 of 2022, art. 81.

[133] Id.

[134] Id.

In **Colombia**, recent legislation[135] provides that, in business restructuring processes, the priority of tax obligations will not prevent the achievement of the reorganization agreement when a real guarantee or insurance policy is constituted for the value of the debt. This provision intends to correct situations in which the unjustified obstruction of a reorganization agreement by the tax administration led to the liquidation of companies.[136]

In March 2022, **Guatemala** adopted a new bankruptcy law that also takes into consideration the tax ramifications of this procedure.[137]

With regard to the temporary suspension of tax enforcement following natural disasters, in **Belgium**, recent legislation[138] introduced the possibility for employers to be exempted from payment of withholding tax on wages in certain cases of natural disasters.[139] On the initiative of the competent region, the federal tax authority can allow an employer who has one or more establishments affected by natural disasters recognized by the region to withhold the entire withholding tax from the wages of employees employed in said establishment(s) but only pass on part of it to the tax authorities.

0.3.9. Cross-border procedures

With reference to the granting of additional safeguards in connection with exchange of information procedures, both positive and negative developments were observed in the course of 2022, once again, for the most part in Latin America.

On the one hand, in **Honduras**, a regressive development in connection with best practices in the area of information prerogatives of taxpayers in cases of cross-border tax information requests, which can be ascribed once again to international peer pressure, as frequently observed in the past, needs to be reported. The right to be informed in exchange of information cases was not explicit in the tax code, but it was a common practice of the tax administration as a matter of transparency. However, during the review of the exchange of information questionnaire required for the signature of the Convention on Mutual Administrative Assistance in Tax Matters (MAC), it was suggested that this practice be abandoned. It is important to mention that the taxpayer will know about the exchange of information and have access to these documents when it has access to the audit file.[140]

Concerning additional safeguards in connection with exchange of information requests where information is sought from third parties, ECJ case law developments were observed in the

[135] CO: of Law 2277 of 2022, art. 85.

[136] Id.

[137] Id.

[138] BE: Law of 26 December 2022.

[139] Id.

[140] Id.

course of 2022. In *SIA 'SS' v. Valsts ieņēmumu dienests* (Case C-175/20),[141] the Court ruled that the collection of information involving a considerable amount of personal data from the hands of an economic operator is subject to the requirements of the General Data Protection Regulation (GDPR). For this reason, tax authorities may request information concerning taxpayers only as long as this is necessary for the purposes for which it is collected and the period covered by the collection of data is not excessive.

With regard to best practices in the area of mutual agreement procedures, in **Chile** Circular Letter No. 13 2022 outlined a more comprehensive framework for the safeguarding of taxpayers' rights within the context of administrative cooperation procedures.[142]

0.3.10. Legislation

With regard to the enactment of constitutional limits to retrospective tax legislation,[143] both positive and negative developments were observed in 2022.

Among the positive developments, it can be remarked that, in **Bolivia**, the tax authority (*Autoridad de Impugnación Tributaria*) confirmed the prohibition of retrospective tax legislation regarding the statute of limitations.[144]

In **Spain**, the Supreme Court (*Tribunal Supremo*) decided to reinforce the principle of non-retroactivity of tax law unless a specific legal provision regulates the opposite.[145]

In **Argentina**, a new measure[146] unexpectedly introduced an extraordinary payment on account of the corporate income tax (*impuesto a las ganancias*), which is computed as payment of the income tax. The extraordinary payment is calculated based on 25% of the tax or 15% of the tax result of the previous year, without applying the deduction of tax losses from previous years. In practice, it is a way of creating tax liability without law. Hence, it affects the principles of legal certainty, legality, ability to pay and reasonableness.[147]

In **Poland**, an amendment to the Polish Personal Income Tax (PIT) Act provisions took place. The relief, introduced half a year earlier, was abolished, and the lowest PIT rate of 17% was reduced to 12%. At first glance, it seems that no constitutional principles were violated in this case, as these modifications should not have adverse effects on taxpayers (due to the

[141] *See* LV: ECJ, 24 Feb. 2022, Case C-175/20, *SIA 'SS' v Valsts ieņēmumu dienests*, available at, https://curia.europa.eu/juris/document/document.jsf?mode=lst&pageIndex=0&docid=254583&part=1&doclang=ES&text=&dir=&occ=first&cid=1154614 (accessed 18 Feb. 2023).

[142] *See* sec. 9.

[143] In relation to which it can be regarded as a minimum standard that retrospective tax legislation should only be permitted in limited circumstances, which are spelled out in detail, while a complete ban on retrospective tax legislation may be envisaged as a best practice.

[144] *See* sec. 10.2.

[145] Id.

[146] AR: General Resolution No. 5248/2022, accessible at the following link: https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-5248-2022-369721 (accessed 4 Mar. 2023)

[147] *See* sec. 10.2.

mechanism of refunding tax resulting from the difference between the taxation under the rules in force to 30 June and after this date). Nevertheless, the amendments in 2022 caused significant uncertainty and exposed many taxpayers (mainly entrepreneurs) to additional costs, e.g. in the field of tax advice and the modification of human resources (HR) and payroll systems, which infringes the principle of low-cost taxation[148].

In **New Zealand**, in the course of 2022, more statements were made regarding proposed legislative changes well ahead of any draft legislation being made public and eventually enacted.[149]

With reference to the reliance on a framework of public consultation and involvement in the making of tax policy and law, which should be regarded as a best practice, several positive developments were reported in the Americas.

In **Chile**, relevant circular letters of the Chilean tax authorities were first published in draft form for public consultation, such as Circular Letter No. 4/2022 (taxpayers' representation before tax authorities) and Circular Letter No. 35/2022 (tax authorities' duty of confidentiality).[150]

In **Colombia**, a tax reform project presented during the first quarter of 2021 was withdrawn from Congress by the national government due to strong social protests of disagreement. In the second half of 2021, consultations and public sessions were held in view of the adoption of a new piece of legislation.[151] Continuing this process, in 2022, before the approval of the act, there were public sessions to disseminate information regarding the tax reform project in different regions of the country. The tax reform was discussed with representatives of various sectors of the economy and other actors, such as academics. Because of that, the government made some modifications to the initial text of the tax reform considering the proposals of business sectors, tax practitioners and academia.[152]

In the **United States**, courts showed greater willingness to scrutinize IRS guidance for compliance with the public notice and comment process laid down in the Administrative Procedure Act (APA). This is an evolving and highly disputed area of law. Following several unsuccessful court cases,[153], the IRS and the Treasury Department issued proposed regulations with a public comment period, seeking to implement a disclosure regime for syndicated easements that would comply with the APA.[154]

[148] Id.

[149] Id.

[150] *See further* sec. 10.3.

[151] CO: Act No. 2277/2022 accessible at: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883 (4 Mar 2023)

[152] *See further* sec. 10.3.

[153] Among which, in particular, US: 6CA, 3 Mar. 2022, No. 21-150, *Mann Construction v. United States*; and US: TC, 9 Nov. 2022, No. 17379-19, *Green Valley Investors LLC v. Commissioner*.

[154] *See further* sec. 10.3.

0.3.11. Revenue practice and guidance

With regard to making revenue practice and guidance more easily accessible,[155] many positive developments were observed in 2022 across several regions.

In **Colombia**, in October 2022, the tax administration made available to individuals an electronic consultation service for all regulations, doctrine and jurisprudence related to tax, customs and exchange matters.[156]

In **Mauritius**, rulings and decisions of the Assessment Review Committee are now published online, albeit they relate only to the year 2016 and onwards.[157]

In the **Netherlands**, starting from 2023, official opinions of the tax authority's expert groups will be published automatically on a publicly available website.[158]

In **Poland**, the creation of a single open access online database (the EUREKA System of Tax and Customs Information) improved the accessibility of guidance. Previously, various forms of guidance were published in different databases and on different websites.[159]

On the other hand, a shift away from the minimum standard concerning non-binding guidance was observed in **Mexico**,[160] where taxpayers subject to a simplified fiscal regime (the RESICO regime) are relieved from certain obligations,[161] but on the basis of unclearly drafted guidelines[162] that are expected to increase legal uncertainty in the upcoming years.

0.3.12. Institutional framework for the protection of taxpayers' rights

In 2022, there was no change in the number of countries to have adopted a charter or statement of taxpayers' rights.

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[155] And, in particular, in compliance with the minimum standard, according to which taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance.

[156] *See* sec. 11.2.

[157] Id.

[158] Id.

[159] Id.

[160] It must be highlighted that there are discrepancies among the different national reporters. This particular amendment was suggested by the reporters representing taxpayers and tax practitioners. Meanwhile, reporters representing academia have not indicated further changes to take into account regarding this matter. *See further* sec. 11.3.

[161] Such as filing electronic accounting and entering their accounting information monthly.

[162] *See*, in particular, MX: rule 3.13.19 of 2022 RMF, accessible at the following link: http://omawww.sat.gob.mx/normatividad_RMF_RGCE/Paginas/documentos/rmf/rmf/RMF_2023-27122022.pdf (accessed 4 Mar. 2023).

At the same time, the continuation of a positive trajectory that started back in the 1990s could be observed in **Australia**. Namely, the ATO has maintained a Taxpayers' Charter since 1993, following a Parliamentary Committee report. In 2021, there were recommendations for changes to the charter to enhance enforceability, awareness and status. In 2022, there was a public consultation for reviewing the Taxpayers' Charter to ensure its contemporary nature and that it continues to meet the expectations of taxpayers and tax authorities.[163]

On the other hand, while some positive developments in this regard may be on the horizon, it was reported that, in **Poland**, for the third year since the promotion of a legislative initiative in December 2019 by an opposition group, the parliament has failed to examine the draft of the Bill of Taxpayers' Rights developed by representatives of tax academia at the University of Łódź.[164]

With regard to the reinforcement of organizational structures for protecting taxpayers' rights, both progressive and regressive trends were observed in the Americas in the course of 2022.

In **Chile**, DEDECON was created as a decentralized public service office, independent of the Chilean tax authorities, to assist taxpayers and provide them with legal assistance. DEDECON became operational in 2022.[165]

On the other hand, in this regard, it was reported that, in **Mexico**, a country that has traditionally been at the forefront in this area, an amendment to the Federal Tax Code effectively limited the tax ombudsman's powers, restraining the duration of the alternative mediation process. According to the amendment, a "conclusive agreement" still cannot exceed 12 months from the filing of the request.[166]

In the **United States**, the Taxpayer Advocate Service (TAS) continues to maintain offices in each state.[167] While access to TAS assistance improved in 2022 over 2021, as pandemic restrictions and backlogs eased, and as TAS implemented new efficiencies in its intake and Operations Assistance Request processes, more progress is needed.

0.4. Methodological remarks

Following the OPTR's working standards and procedures, this Yearbook has been prepared based on the information provided in national reports from 43 countries worldwide,[168] distributed regionally as presented in Chart A.

[163] *See further* sec. 12.2.

[164] Id.

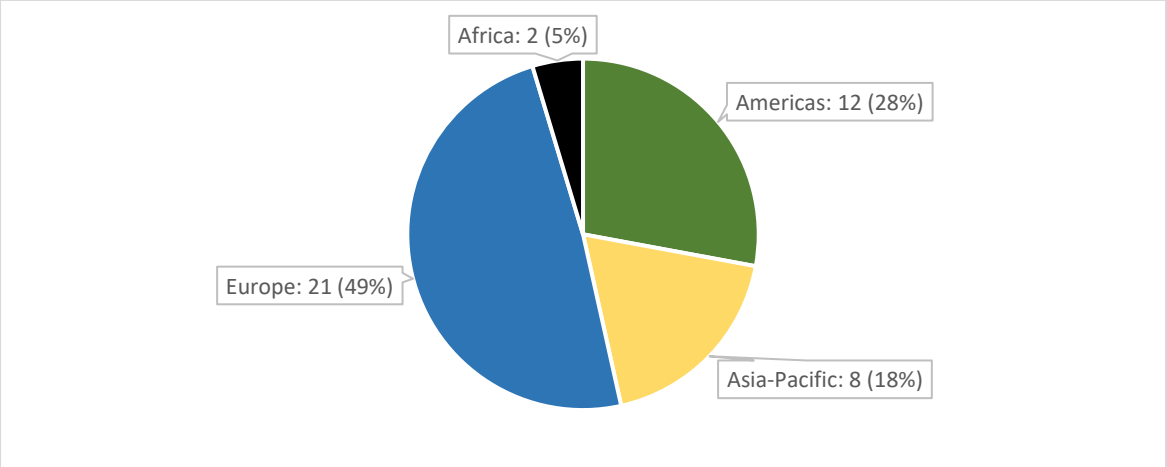
[165] This may be regarded as fulfilling the best practice, according to which a taxpayer advocate or ombudsman should be established to scrutinize the operations of the tax authority, handle specific complaints and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from the normal operations of that authority. *See further* sec 12.3.

[166] See further Section 12.3 *infra*.

[167] This may be regarded as in compliance with the best practice, according to which the organizational structure for the protection of taxpayers' rights should operate at a local level as well as nationally. *See further* sec. 12.3.

[168] It should be noted that, in connection with some countries, two or more national reports were submitted, as indicated further in this section.

Chart A. Surveyed countries per region



Reporters are grouped by country. To the fullest extent possible, these groups of experts are composed of practitioners/taxpayers, tax authorities, academics, tax ombudspersons and members of the judiciary of each surveyed country, in order to obtain a neutral, balanced report on the situation of taxpayers' rights in each jurisdiction. Individual reporters can have more than one affiliation simultaneously (e.g. tax administration and academia). The judicial, academic and tax ombudsperson members of each country group of experts are considered neutral, whereas the taxpayer, tax practitioner and tax administration members are considered not neutral. The national groups of experts for 2022 are as follows:

Country	Position	Name
Argentina	Practitioner-Academic	Alberto Tarsitano
Australia	Ombudsperson	Duy Dam
		Karen Payne
	Academic	John Bevacqua
Austria	Academic	Barbara Gunacker-Slawitsch
	Practitioner	Christina Schwarzenbacher
	Tax Administration	Alfred Faller
Belgium	Practitioner	Jef Van Eyndhoven
	Academic	Sylvie De Raedt
Bolivia	Practitioner-Academic	Alvaro Villegas Aldazosa

Country	Position	Name
Brazil	Practitioner-Academic	Paulo Ayres Barreto
		Dalton Luiz Dallazem
	Judiciary	Bianor Arruda
	Academic	Luís Eduardo Schoueri
		Raphael Assef Lavez
Bulgaria	Academic	Stoycho Dulevski
	Practitioner	Boyana Milcheva
		Ivan Alexander Manev
Chile	Practitioner	Yuri Alberto Varela
		Ignacio Núñez
China (People's Rep.).	Academic	Zhengwen Shi
	Tax Administration	Zhiyong Zhang
Colombia	Ombudsperson	Leonardo Andrés Bautista Raba
		Yvonne Carolina Florez Cutiva
Colombia	Practitioner	Daniela Carolina Garzon Rey
Czech Republic	Practitioner-Academic	Hana Skalická
Denmark	Tax Administrator	Henrik Klitz
	Practitioner	Henrik Peytz
Finland	Academic	Kristiina Äimä Eero Männistö
Germany	Tax Administrator	Eva Oertel
	Practitioner	Martin Bartelt

Country	Position	Name
	Academic	Daniel Dürrschmidt
Guatemala	Practitioner	Alfredo Rodríguez
		Alejandra Fuentes-Pieruccini
Honduras	Tax Administrator	Roberto Ramos Obando
		Cristian Erazo Delgado
India	Practitioner	Kuntal Dave
Ireland	Practitioner	Tatiana Kelly
Italy	Practitioner	Pietro Mastellone
		Isabella Cugusi
	Academic	Giovanna Tieghi
Japan	Academic	Masato Ohno
Kazakhstan	Practitioner	Anuar Nurakhmet
Lithuania	Practitioner	Marius Grajauskas Artūras Liutvinas
Luxembourg	Judiciary	Fatima Chaouche
Mauritius	Practitioner	Ahmad Khalid Phul
Mexico	Practitioner	Luis Salinas
		Fernando Juárez Hernández
		Diana Bernal Ladrón de Guevara
	Academic	Carlos Espinosa Berecochea
Netherlands	Practitioner	Roxana Bos
		Paul Halprin

Country	Position	Name
New Zealand	Academic	Adrian Sawyer
Norway	Tax Administration	Eileen Monsen
Peru	Practitioner-Academic	Cecilia Delgado Ratto
	Practitioner	Esteban Montenegro Guillinta
	Ombudsperson	Víctor Alberto Zúñiga Morales
Poland	Practitioner-Academic	Małgorzata Sęk
		Aneta Nowak-Piechota
	Judiciary-Academic	Dominik Mączyński
Portugal	Practitioner	Rui Camacho Palma
Serbia	Academic	Svetislav V. Kostić
		Lidija Živković
Slovenia	Practitioner	Marusa Pozvek
South Africa	Ombudsperson	Gert van Heerden
	Academic	Jennifer Roeleveld
	Practitioner	Kevin Burt
Spain	Ombudsperson-Academic	Javier Martín Fernández Jesús Rodríguez Márquez
	Judiciary	Felipe Alonso Murillo Manuel J. Lucas Durán
	Academic	Yolanda Martínez Muñoz
		Elizabeth Gil García
Sweden	Practitioner	Lynda Ondrasek Olofsson

Country	Position	Name
	Academic	Eleonor Kristoffersson
Switzerland	Academic	Peter Hongler
Chinese Taipei	Academic	Huang Shih Chou Martin Yuan-Chun
Turkey	Academic	Billur Yaltı
United States	Academic	Christine S. Speidel
Uruguay	Practitioner	Guzmán Ramírez
Venezuela	Academic	Melissa Elechiguerra
	Practitioner	Ronald Evans David Mongiovi Marie Roschelle Quintero

In addition, two regional units keep track of the development of the jurisprudence of international courts dealing with taxpayers' rights, namely (i) for Europe, comprising the case-law of the ECtHR and the ECJ; and (ii) for the Americas, covering the judgments of the Inter-American Court of Human Rights (ACtHR). The regional groups of experts for 2022 are as follows:

Region	Position	Name
Court of Justice of the European Union	Tax Administrator-Academic	Katerina Perrou
European Court of Human Rights	Tax Administrator-Academic	Katerina Perrou
Inter-American Court of Human Rights	Practitioner	Guzmán Ramírez

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

In cases in which there is more than one report per country, it may be reported that the same country has experienced progress and setbacks in the adoption of a given standard or practice, depending on the different assessments made by the reporters concerned. In those cases, the groups of national reporters were asked to discuss internally their disagreement and, if possible, to align their assessments of a given factual situation. Despite these efforts, agreement was not always possible. In cases of remaining divergences, the different reports from the same country are taken as fractions of the jurisdiction's report to maintain parity between jurisdictions, so that all countries are equally represented. Specifically, each of the two reports from **Brazil**, **Mexico** and **Poland** will have a value of 0.5, and each of the three reports from **Bulgaria** and **Peru** will have a value of 0.33 for Questionnaire 1's statistical purposes, as presented in the pie charts, so that each of these countries is represented with an equal value vis-à-vis other countries with single reports. All divergent opinions among reporters of the same country have been reported alongside the pie charts.

This formula aims to give all countries equal weight and to split the input of each country among the various reporters. In other words, where more than one team is involved, or a question has sub-questions, there may be decimals in the findings. All decimal results have been rounded off by (i) dropping all decimals when the first decimal is smaller than or equal to 4; (ii) adding 1 to the rounding digit when the first decimal is greater than 5; (iii) dropping all decimals when the first decimal is 5 and the figure is smaller than its counterpart in the statistical analysis; and (iv) adding 1 to the rounding digit when the first decimal is 5 and the figure is greater than its counterpart in the analysis. Appendix B of this Yearbook compiles all answers reporters provided in this regard.

Second, through Questionnaire 2, reporters should assess assertively (shift towards/shift away from) the level of compliance with 57 minimum standards and 44 best practices to protect taxpayers' rights, grouped in 86 benchmarks. The answers are presented throughout this Yearbook, in boxes that state the minimum standard or best practice discussed in each specific section. In cases in which there is more than one report per country, it may be reported that the same country has experienced progress and setbacks in the practical adoption of the minimum standard or best practice, depending on the different assessments made by the reporters concerned. In those cases, different reports from the same country have been identified by a number, as they appear in Appendix B of this Yearbook.

Third, reporters should provide an impartial, non-judgemental summary of events occurring in 2022 (legislation enacted, administrative rulings, circulars, case law and tax administration practices)[169] that grounds each report's assessment of the level of compliance in the above-mentioned benchmarks for the practical protection of taxpayers' rights. The information is presented, editorially selected, throughout this Yearbook. Reporters do not always

[169] Only for the purposes of the main texts of secs. 1. to 12. (thus thereby excluding the exhibits arranged by minimum standard/best practice) and the Appendices . With regard to Questionnaire 2, specific mention was made of situations in which a shift towards/away from recorded in 2021 was not reversed in 2022 and could hence be considered as to some extent consolidated.**]**

substantiate their evaluations, which makes it methodologically impossible to report the reasons for diverging assessments in the cases of multiple reports for a single country.

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

1.1. General issues

Over the past several years, the OPTR has documented a growing utilization of digital tools for taxpayer identification, tax return filing and communication with taxpayers. As highlighted in the 2021 Yearbook, the COVID-19 pandemic has accelerated this trend by promoting the adoption of digital tools and solutions.[170] According to the OECD's Tax Administration 2022 Report, the pandemic accelerated the shift to digital services with a 30% increase in digital contacts in 2020.[171]

Despite the gradual easing of pandemic-related restrictions over 2022, it is evident that all jurisdictions, with a limited number of exceptions, have either maintained these digital solutions or have made significant strides in aligning with the minimum standards and best practices recommended by the OPTR.

This shift toward digital solutions undoubtedly has positive effects for both the tax administration and for taxpayers. Indeed, the adoption of digital tools facilitates the process of taxpayer identification. Furthermore, the widespread use of electronic tax return filing (e-filing) and working with pre-populating tax returns will reduce the time and resources required to file returns. An electronic filing environment can not only provide taxpayers with instant access to their tax-related information, but might also facilitate in making corrections to data, if required.[172]

However, it is important to acknowledge that the increased use of such digital resources could also present challenges, particularly for those members of society who may not have access to (or be familiar with) technology, such as the elderly and other vulnerable populations that may struggle to navigate the digital landscape. As outlined in this Yearbook, countries are inclined to still provide for the possibility for real-life contacts with tax officials, which was received as a positive development by reporters.

In light of the abovementioned concerns, tax authorities and legislators should ensure that adequate measures and safeguards are in place to assist taxpayers in need and, in particular, to ensure that the digitalization process is inclusive and accessible to all taxpayers. Tax authorities should not only safeguard sensitive information that was collected from their own records, third parties or the taxpayer himself, but they should also install mechanism to avoid identity theft and other forms of cybercrime. The implementation of robust and effective security measures is essential to maintain the trust and confidence of taxpayers in this process. As will be demonstrated below, in several countries, steps in the right direction have been taken in this respect.

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[170] *See* OPTR, *The IBFD Yearbook on Taxpayers' Rights 2021*, sec. 1. (IBFD 2022), Books IBFD.

[171] OECD, *Tax Administration 2022: Comparative Information on OECD and other Advanced and Emerging Economies* p. 22 (OECD 2022), available at https://www.oecd.org/ctp/tax-administration-23077727.htm (accessed 11 Feb. 2023).

[172] In 2022, the OECD published the first phase of a new global Inventory of Tax Technology Initiatives (ITTI), containing information on leading technology tools and digitalization solutions implemented by tax authorities, available at https://www.oecd.org/tax/forum-on-tax-administration/tax-technology-tools-and-digital-solutions/ (accessed 11 Feb. 2023).

In our opinion, it is crucial for tax authorities to strike a delicate balance between *accessibility* and *security* in further developing digital tools and measures. As mentioned in this section, despite the introduction of digital tools, tax authorities have still introduced (or enhanced) alternative ways of entering into contact with taxpayers, such as phone or in-person support, for taxpayers who may not be able to use digital tools. Striking the right balance between accessibility and security is required to foster trust and confidence in the tax system and may ultimately lead to an increased overall compliance.

In the area of *taxpayer identification*, states have once again taken steps to enhance security measures to prevent identity theft. One notable example is Australia, where additional measures have resulted in positive change for the fifth consecutive year in this area. The case of Australia demonstrates the importance of continuous improvement and the need for tax authorities to remain vigilant in securing taxpayer identification processes (section **1.2.**).

In 2022, with a single exception, there were no major shifts in the trend towards protecting the confidentiality of taxpayers with regards to the *handling of their information by third parties* for tax purposes (section **1.3.**). It is important to also keep in mind the developments at the EU level with regards to the protection of taxpayer information. Changes to the legal framework of administrative cooperation have resulted in new reporting requirements for platforms operating in the areas of both direct taxation and VAT (DAC7). The recently proposed DAC8 will also require financial institutions to report on e-money and digital currencies. In our opinion, while the trend towards outsourcing tax-related formalities to non-governmental entities is likely to continue, this will also present new challenges in terms of the protection of taxpayer information and proper handling thereof.

With regards to the *right to access (and correct) information held by tax authorities*, known as *habeas data*, it is generally observed that there is a positive trend towards greater protection of this right (section **1.4.**). While last year, the OPTR has reported several setbacks in this respect,[173] taxpayers are again increasingly being granted access to their personal information held by tax authorities, which allows them to ensure the accuracy of this information and make any necessary corrections. As demonstrated by the example of Mexico, this right is also tied to the further digitalization of the tax administration. Indeed, the implementation of digital solutions, such as pre-populated tax returns, can also bring about additional challenges for both taxpayers and tax administrations.

When it comes to *communication with taxpayers*, several countries have reported positive developments by providing more secure communication channels (section **1.5.**). However, this area highlights the need for balancing accessibility and security as outlined above. On the one hand, implementing secure communication channels can provide greater protection for sensitive taxpayer information and reduce the risk of identity theft and fraud. On the other hand, as demonstrated by recent developments in Belgium, these measures can also create additional hurdles for taxpayers when trying to reach out to the tax administration. It is therefore important for tax authorities to ensure that communication channels are secure but also accessible and user-friendly for taxpayers.

[173] *See* OPTR Yearbook on Taxpayers' Rights (2021), at sec. 1.4. https://www.ibfd.org/sites/default/files/2023-02/2021-optr-yearbook-final-version.pdf (accessed 12.04.2023).

The trend in the area of *cooperative compliance* is mixed (section **1.6.**). While cooperative compliance has seen continued growth in recent years,[174] with several tax authorities implementing or expanding cooperative compliance programs, one jurisdiction has discontinued its pilot project in this area. This suggests that there may be challenges and limitations to implementing cooperative compliance programs, depending on the specific needs and circumstances of each jurisdiction.

The trend of increasing *assistance with compliance obligations*, as observed in previous OPTR Yearbooks, has continued in recent years, even though the COVID-19 pandemic is no longer widely mentioned as a contributing factor (section **1.7.**). This suggests that this trend towards providing more assistance to taxpayers in meeting their compliance obligations is a permanent and positive development. The example of Poland serves as a remarkable illustration of the adaptability of tax administrations in providing assistance to taxpayers. By offering guidance on personal income tax in the form of brochures in Ukrainian to Ukrainian citizens, the tax administration in Poland has demonstrated its commitment to serving the needs of its diverse taxpayer population, in the face of the ongoing conflict in Ukraine.

In conclusion, the use of digital tools in tax administration has continued to increase over recent years, driven in part by the COVID-19 pandemic. This trend has had a positive impact on the speed and efficiency of the tax process, but it has also raised concerns about accessibility and security. Safeguards are being implemented to prevent impersonation and protect the confidentiality of taxpayer information, but these measures can also create additional hurdles for taxpayers. In the area of cooperative compliance, the trend has been mixed, with one jurisdiction reporting a setback. Assistance with compliance obligations has continued to be a positive and permanent trend, with tax administrations providing more resources and guidance to help taxpayers meet their obligations. The trend towards increased digitalization in tax administration presents both opportunities and challenges, but overall one can notice a shift towards the minimum standards and best practice that the OPTR monitors.

1.2. Identification of taxpayers

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Australia, Mexico	None

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

[174] *See* id., at sec. 1.6.

As mentioned in previous OPTR Yearbooks, an overall positive trend can be noticed towards the issuance of taxpayer identification numbers.[175] None of the jurisdictions has reported a shift away from the minimum standards in this respect.

For the fifth consecutive year, **Australia** reported an improvement towards the minimum standard. In 2022, an Australian Business Registry Services (ABRS) was established.[176] The ABRS aims to operationalize a single business registry service, including director identification numbers (director ID).[177] A director ID is a 15-digit identifier given to a director (or someone who intends to become a director) who has verified their identity with ABRS. The ID can be obtained for free and will make it easier for regulators to trace directors' relationships with companies over time. It is a critical tool used to provide transparency of director activity and help to detect potential director involvement in unlawful activity, including illegal phoenix activity.[178] When fully established, the ABRS will bring together the Australian Business Register and more than 30 Australian Securities and Investments Commission registers in one place.[179] The ABRS initiative will continue as a "key focus area" in 2022-23.[180]

In addition, as reported in the 2021 Yearbook,[181] Australia reported changes to myGovID identity requirements, enabling taxpayers to achieve a greater online identity strength. A further safeguard was introduced in 2022, with the introduction of a single sign out of myGov.[182] This functionality ensures that when a client logs out of one session in myGov, all open sessions are closed to enhance overall security of the platform.

In **Mexico**,[183] it has become mandatory, pursuant to article 27, section A, paragraph IV of the Federal Tax Code, for all adult (over 18 years) Mexican individuals to have a Taxpayers Identification Number issued by the Mexican Tax Authorities to prevent identity theft and promote a change in tax culture.[184]

Like in previous years, no changes were reported as to the minimum standard relating to religious sensitivities in this area.[185]

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175 *See* id., at sec. 1.2.

176 The ABRS website launched on 6 Oct. 2022 with the director identification number (director ID) platform live from 31 Mar. 2022.

177 The introduction of a director ID was already contemplated by the Australian government back in 2017. *See* OPTR, *The IBFD Yearbook on Taxpayers' Rights 2017* sec. 1.2. (IBFD 2018).

178 *See* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 1.

179 *See* https://www.abrs.gov.au/about-us (accessed 11 Feb. 2023).

180 *See* AU: Commissioner of Taxation, *Annual Report 2021-22* p. 15, available at https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Reports/n0995_ATO_annual_report_2021-22_Digital.pdf (accessed 11 Feb. 2023).

181 *See* OPTR (2021), *supra* n. 173, at sec. 1.2.

182 *See* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 1.

183 *See* MX: OPTR Report Mexico 2 (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 1.

184 *See* D. Patino, *El SAT espera que con el RFC obligatorio se combata el robo de identidad*, available at https://expansion.mx/economia/2021/10/07/sat-rfc-obligatorio-combate-robo-de-identidad (accessed 11 Feb. 2023).

185 *See* OPTR (2021), *supra* n. 173, at sec. 1.2.

1.3. Information supplied by third parties and withholding obligations

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Lithuania	None

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

There were no significant changes in 2022 to the trend in favour of protecting the confidentiality of taxpayers regarding the information handled by third parties for tax purposes.

In **Lithuania**, article 38 of the Law on Tax Administration was supplemented by provisions regarding: (i) the purpose of publicizing personal data; (ii) specific personal data to be made public; (iii) the period of publication; and (iv) the right of a person to demand his protection and the duties of the tax administrator corresponding to this right. Regulation was amended taking into account the fact that non-confidential information is not equated with public information in order to ensure personal protection, as well as taking into account the requirements of the State Data Protection Inspectorate. Also, in order to properly apply the General Data Protection Regulation, a new duty of the tax administrator is added to article 32 of the Law on Tax Administration, to ensure compliance with the requirements for personal data processing and to implement appropriate technical and organizational data security measures and other obligations imposed on the data controller.

No changes were reported in relation to the best practice that requires, where tax is withheld by third parties, that the taxpayer should be excluded from liability if the third party fails to pay over the tax.

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

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Colombia	Mexico

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile, Lithuania	None

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile, United States	None

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

53 responses

Source: OPTR: Questionnaire 1, Question 1

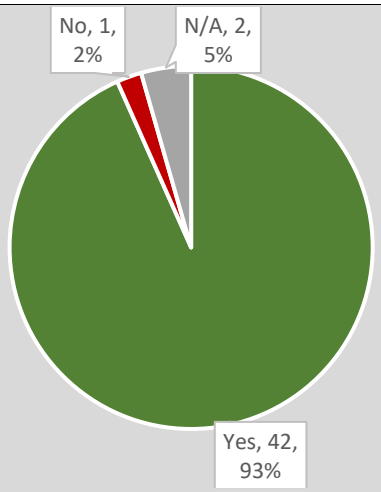
Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Mexico (1), Mexico (2), New Zealand

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

53 responses

Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, United States, Uruguay, Venezuela (1), Venezuela (2)



Source: OPTR: Questionnaire 1, Question 2

No: Türkiye

Not applicable: Mexico (1), Mexico (2), New Zealand

Regarding pre-populated returns, in **Colombia**, 4.8 million pre-filled income tax returns were made available to taxpayers through electronic services. These tax returns incorporated the content of the information reported by third parties and may be modified by the taxpayer. Additionally, VAT returns were pre-populated by the tax administration based on the information obtained from electronic invoicing.[186]

In **Mexico**, the authorities introduced the *Régimen Simplificado de Confianza* (RESICO), aiming to reduce the administrative burden for taxpayers. According to the government, this system of pre-populating tax returns is based on international best practices.[187] Even though this should, in our opinion, be seen as a positive development, the first roll-out of the regime resulted in several mistakes with the pre-populated returns being reported, leading to an erroneous determination of tax to be paid or returned.[188] Some of these mistakes resulted from inter alia ambiguous formulations used for certain fields of the tax return.[189]

With regard to taxpayers' access to information held by the tax administration and the possibility of correcting inaccuracies, for the second year in a row, **Chile** reported a positive change.[190] A tax reform currently under discussion in the Chilean Congress aims to update the rights of taxpayers, granting them further tools to oppose requests for personal information in the context of a tax audit. In addition, a new law[191] has imposed new restrictions on the use

[186] *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 4.

[187] *See also* http://omawww.sat.gob.mx/RegimenSimplificadodeConfianza/Paginas/index.html (accessed 11 Feb. 2023).

[188] *See* MX: OPTR Report Mexico 2 (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 4.

[189] *See* A. Gordillo, *Detectan problemas con declaraciones prellenadas del RESICO de personas físicas*, available at https://www.elcontribuyente.mx/2022/02/detectan-problemas-con-declaraciones-prellenadas-del-resico-de-personas-fisicas/ (accessed 11 Feb. 2023).

[190] *See also* OPTR (2021), *supra* n. 173, at sec. 1.4.

[191] Law No. 21.453 from 2022, available at: https://www.bcn.cl/leychile/navegar?idNorma=1178003 (accessed 14 March 2023).

of personal banking information. In addition, a circular letter has updated the administrative interpretation of the duty of confidentiality that tax authorities must follow in their relation to taxpayers.[192]

As already mentioned in this Yearbook,[193] in **Lithuania**, the Law on Tax Administration was supplemented by provisions introducing new safeguards relating to taxpayers' data.[194]

Like last year,[195] the **United States**' IRS made additional (though still limited) information available on their right to access information through taxpayer online accounts and through online tools.[196] The IRS also promoted its online tools through press releases and social media (so-called "IRS Tax Tips").[197]

[192] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 5.

[193] *See* sec. 1.3.

[194] *See* LT: OPTR Report (2022) (Taxpayers/Tax Practitioners, Law Firm LEADELL), Questionnaire 2, Question 5.

[195] *See also* OPTR (2021), *supra* n. 173, at sec. 1.4.

[196] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 5.

[197] *See* for example IRS, *IRS online account makes it easy for taxpayers to view their tax info anytime*, available at https://www.irs.gov/newsroom/irs-online-account-makes-it-easy-for-taxpayers-to-view-their-tax-info-anytime (accessed 11 Feb. 2023).

1.5. Communication with taxpayers

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Australia, Belgium, Honduras, Switzerland, United States	None

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

53 responses

Source: OPTR: Questionnaire 1, Question 3

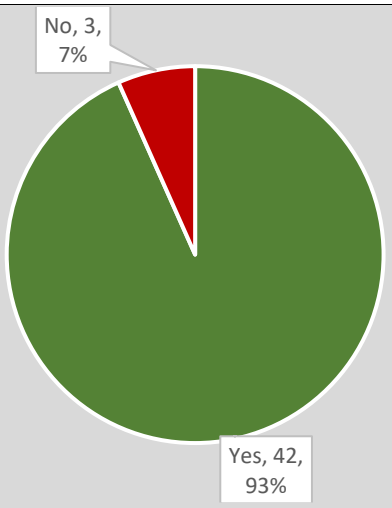
Yes: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Bolivia, Japan

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

53 responses

Yes: Argentina, Australia, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)



Source: OPTR: Questionnaire 1, Question 4

No: Bolivia, Bosnia and Herzegovina, Japan

The trend towards implementing and improving systems to prevent impersonation or interception of e-communications with taxpayers was maintained in 2022.[198]

In **Australia**, a significant upgrade to myGovID was introduced. The implementation introduced myGovID with biometrics.[199] This technology uses liveness detection to verify whether an individual is real and present, and a face verification service (provided by the Department of Home Affairs) to enable a user to complete a face verification against their passport image. The Australian tax authorities also recognize the need to proactively identify security vulnerabilities and work closely with the Commonwealth Fraud Prevention Centre in this respect.[200]

For several years, **Belgium** has focused on reliable electronic communication with taxpayers.[201] For some time now, the possibility for taxpayers (or their mandataries) to contact individual officials of the tax administration directly by telephone or by email is being phased out. In response to a parliamentary question of 23 March 2022, the Belgian Minister of Finance stated that it is planned to completely stop direct telephone and e-mail communication between taxpayers (or their mandataries) and the tax administration. All contacts will have to be made via a central information number or via the website MyMinFin (in combination with the digital platform eBox). This step is justified by the Minister of Finance partly on the basis of a concern about fraud attempts via phishing and fake email addresses of government services. According to the Minister of Finance, only communication via a secure platform, such as MyMinFin, can guarantee optimal security. Ordinary emails can end up with the wrong person and carry a risk of delayed follow-up, for example, if the addressee is absent. The tax

198 *See also* OPTR (2021), *supra* n. 173, at sec. 1.5.

199 *See* AU: OPTR Report ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 6.

200 *See* AU: Commissioner of Taxation, *Annual Report 2021-22* pp. 34-35, available at https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Reports/n0995_ATO_annual_report_2021-22_Digital.pdf (accessed 11 Feb. 2023).

201 *See also* OPTR (2021), *supra* n. 173, at sec. 1.5.

authorities no longer consider it responsible to exchange sensitive information, such as account numbers via email. In general, they fear that it is too difficult to guarantee privacy in all circumstances via normal email traffic. Although this evolution is being marked as a shift towards the minimum standard concerning the prevention of impersonation or interception, the national reporters noted that a lot of tax practitioners consider the impossibility of direct communication with the competent tax official as a negative evolution.[202]

In this regard it may be observed that, even though the concerns of the Minister of Finance are justified, the measures introduce an additional hurdle when reaching out to the tax administration, which could, in particular, adversely affect the (technologically) weaker members of society. The current central information number that is in place does not always lead to a satisfactory outcome to taxpayers' queries. It should also be noted that several tax officials still tend to provide taxpayers (or their representatives) with their direct contact details in order to counter the inefficiencies of the current contact system, which in itself may lead to an unequal treatment.

As reported in the 2021 Yearbook,[203] **Honduras**'s *Servicio de Administración de Rentas* (SAR) implemented an Integrated Information System (*Sistema de Información Integrado*) with many features allowing secure electronic communication with taxpayers, including identification and validation requirements.[204] In 2022, an electronic notification with digital signature was fully implemented by the tax administration, aiming to prevent interception or impersonation of communication.[205]

The **Switzerland** reporter notices, based on his anecdotal evidence, that tax authorities increasingly use highly protected communication forms.[206]

Lastly, the **United States**, on balance, shifted towards the standard, but developments in both directions were noted.[207] On the positive side, the IRS announced that taxpayers would not have to provide biometric data to establish an online account. The IRS also increased the number of filters used to identify potentially fraudulent tax returns, which increased the number of fraudulent returns detected. However, the Treasury Inspector General for Tax Administration (TIGTA) also expressed security concerns with the IRS's new Taxpayer Digital Communications (TDC) platform.[208]

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[202] *See* BE: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 6.

[203] *See also* OPTR (2021), *supra* n. 173, at sec. 1.5.

[204] *See* SAR, *Notificaciones ya pueden enviarse al correo electrónico vigente del contribuyente*, available at /https://www.sar.gob.hn/2021/01/notificaciones-ya-pueden-enviarse-al-correo-electronico-vigente-del-contribuyente/ (accessed 11 Feb. 2023).

[205] *See* HN: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 6.

[206] *See* CH: OPTR Report (2022) (Academia), Questionnaire 2, Question 6.

[207] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 6.

[208] *See also* Treasury Inspector General for Tax Administration, *Taxpayer Digital Communications Platform Security and Access Controls Need to Be Strengthened*, available at https://www.tigta.gov/sites/default/files/reports/2022-09/202220051fr.pdf (accessed 11 Feb. 2023).

1.6. Cooperative compliance

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Brazil, Chile	Honduras

One of the national reports of **Brazil** mentions the publication of Provisional Measure n. 1152, which aligned the Brazilian transfer pricing rules with the OECD Guidelines.[209] In this context, the right of taxpayers to request an advanced pricing agreement was assured, although upon the payment of a BRL 80,000 fee. Moreover, the regulation of settlement for tax controversies moved forward in 2022, including also tax debts that are not yet registered as an overdue tax liability.[210]

In **Chile**, a tax reform established a new cooperative compliance system that allows companies to obtain a certificate that indicates that they comply with Chilean tax law based on principles of transparency, collaboration and good faith. Such entities will be enrolled in a public register. In addition, taxpayers will be allowed to provide information to the tax authorities in the context of tax crimes committed by them, resulting in a reduction of their potential criminal liability.[211]

Honduras reports a setback. As reported in the 2021 Yearbook,[212] the tax authorities were in the process of approving an internal guide on the implementation of a cooperative compliance programme for "large" taxpayers, as part of a pilot project with the Vienna University of Economics and Business (WU). Following a change in the tax administration, the pilot project was discontinued.[213]

[209] *See* BR: OPTR Report (2022) (Academia), Questionnaire 2, Question 7. The text of the Provisional Measure can be accessed at the following link: https://presrepublica.jusbrasil.com.br/legislacao/1730398839/medida-provisoria-1152-22 (accessed 14 March 2023).

[210] BR: Ordinance Federal Revenue Service n. 247/22 (following Law n. 14.375/22).

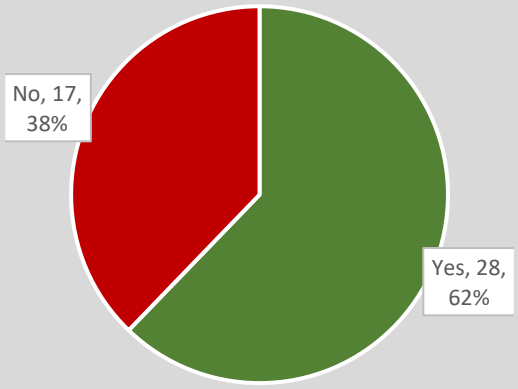
[211] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 7.

[212] *See also* OPTR (2021), *supra* n. 173, at sec. 1.6.

[213] *See* HN: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 7.

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

53 responses



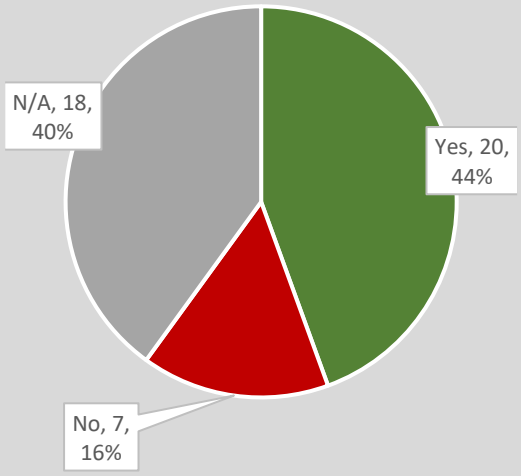
Source: OPTR: Questionnaire 1, Question 5

Yes: Australia, Austria, Belgium, Brazil (1), Brazil (2), China (People's Rep.), Colombia (1), Colombia (2), Croatia, Denmark, Finland, Honduras, Ireland, Italy, Japan, Kazakhstan, Lithuania, Mauritius, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, United States, Venezuela (1), Venezuela (2)

No: Argentina, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Czech Republic, Germany, Guatemala, India, Kenya, Luxembourg, Mexico (1), Mexico (2), Peru (1), Peru (2), Serbia, Chinese Taipei, Türkiye, Uruguay

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

53 responses



Source: OPTR: Questionnaire 1, Question 6

Yes: Australia, Austria, Brazil (1), Brazil (2), China (People's Rep.), Colombia (2), Croatia, Ireland, Italy, Japan, Kazakhstan, Lithuania, Mauritius, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, United States, Venezuela (1), Venezuela (2)

No: Belgium, Denmark, Finland, Honduras, Netherlands, New Zealand, Switzerland

Not applicable: Argentina, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Czech Republic, Germany, Guatemala, India, Kenya, Luxembourg, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Serbia, Chinese Taipei, Türkiye, Uruguay

Reports with diverging opinions: Colombia

1.7. Assistance with compliance obligations

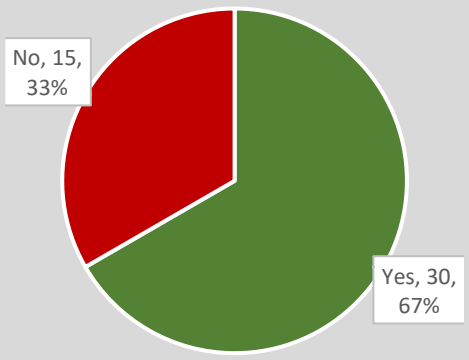
Minimum standard: Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remoted areas and those unable or unwilling to use electronic forms of communication

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile, Honduras, Mauritius, New Zealand, Poland, United States	None

Previous Yearbooks mentioned a trend of increasing tax compliance services since the beginning of the COVID-19 pandemic.[214] This trend has continued, even though the COVID-19 pandemic is only mentioned in the **New Zealand** national report.[215] This seems to indicate that this may be a structural (and positive) trend.

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

53 responses



Source: OPTR: Questionnaire 1, Question 7

Yes: Australia, Austria, Belgium, China (People's Rep.), Colombia (1), Colombia (2), Denmark, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Poland (1), Poland (2), Serbia, Slovenia, South Africa, Spain, Sweden, Chinese Taipei, Türkiye, United States, Venezuela (1)

No: Argentina, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Croatia, Czech Republic, Finland, Lithuania, Luxembourg, Peru (1), Peru (2), Portugal, Switzerland, Uruguay, Venezuela (2)

Reports with diverging opinions: Venezuela

[214] *See also* OPTR (2021), *supra* n. 173, at sec. 1.7.

[215] *See* NZ: OPTR Report (2022) (Academia), Questionnaire 2, Question 8.

For the third year in a row, **Chile** reported a shift toward the minimum standard. A tax reform included new obligations for the tax authorities. Offices of the Chilean Internal Revenue Service must have the proper tools to help taxpayers who lack technological means to file their relevant tax returns.[216]

While **Honduras** reported a setback last year,[217] this year there has been a considerable improvement in social media campaigns and the setting up of temporary service desks in remote areas of the country, especially in the coastal and rural areas of Honduras.[218] These service desks assist taxpayers with filling out their tax declarations and with different queries about their personal situation.[219] In addition, face-to-face training was provided to citizens in order to assist them with their tax obligations.[220]

An "e-Appointment" facility is now available on the website of the **Mauritius** Revenue Authority (MRA). Taxpayers can reserve a time slot to receive assistance to file their income tax return through a WhatsApp video call. In addition, taxpayers may also view various short explanatory videos.[221]

In **Poland**, initiatives have been undertaken that are aimed at improving architectural, digital, information and communication accessibility of public administration to persons with special needs. The initiatives were not tax specific but included public administration in general. In addition, statements have been published by the public administration, including very detailed description of architectural accessibility and how customers with special needs are served (e.g. persons with visual, hearing, speech impairment or limited mobility). Interestingly, as a response to the conflict in Ukraine, guidance on personal income tax in the form of brochures in Ukrainian is provided to Ukrainian citizens.[222]

Portugal changed its rules relating to the obligation for non-residents to appoint a resident tax representative under certain circumstances.[223] Non-resident taxpayers adhering to the official digital notification system are, going forward, no longer required to appoint a resident tax representative.[224]

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[216] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 8.

[217] *See also* OPTR (2021), *supra* n. 173, at sec. 1.7.

[218] *See* HN: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 8.

[219] *See also* SAR, *SAR sale de sus oficinas para asistir a la ciudadanía en declaración de ISR*, available at https://www.sar.gob.hn/2022/04/sar-sale-de-sus-oficinas-para-asistir-a-la-ciudadania-en-declaracion-de-isr/ (accessed 11 Feb. 2023).

[220] *See also* SAR, *Se desarrollan capacitaciones en diferentes puntos del país*, available at https://www.sar.gob.hn/2022/03/se-desarrollan-capacitaciones-en-diferentes-puntos-del-pais/ (accessed 11 Feb. 2023).

[221] *See also* MRA, *Individual income tax returns: e-Filing Season 2022*, available at https://www.mra.mu/download/FilingSeason2022.pdf (accessed 11 Feb. 2023).

[222] *See* PL: OPTR Report Poland 2 (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 8.

[223] See PT: Portugal Updates Guidelines on Appointment of Tax Representatives for Non-Residents (22 July 2022), News IBFD.

[224] *See* PT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 8.

The **United States** also noticed several positive changes but, at the same time, the national reports mentions that more progress is needed.[225] The 2021 Yearbook already mentioned low levels of service, which adversely impacted taxpayers.[226] Throughout 2022, taxpayers still faced significant barriers accessing in-person help, including the requirement to make an appointment on a single phone line with a 15% level of service. Problems with telephone and in-person service is listed as one of the "most serious problems" in the National Taxpayer Advocate's Annual Report to Congress.[227] In April, the IRS implemented a virtual appointment process, but it was limited to a narrow range of issues and not easy to access. Helpfully, Taxpayer Assistance Centers (TACs) held monthly Saturday events February through August where taxpayers could receive help without an appointment.[228] In August 2022, Congress passed the Inflation Reduction Act, Pub. L. No. 117-169, which provides significant 10-year funding for the IRS, including $3.2 billion for taxpayer services and $4.8 billion for business systems modernization. The IRS intends to increase staffing at TACs for 2023 and has announced job openings to hire over 700 new employees.[229]

[225] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 8.

[226] *See also* OPTR (2021), *supra* n. 173, at sec. 1.7.

[227] *See* US: National Taxpayer Advocate, *Annual Report to Congress 2022* pp. 74-89, available at https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/ (accessed 11 Feb. 2023).

[228] Id., at pp. 77-83.

[229] *See* IRS, *IRS announces job openings to hire over 700 new employees across the country to help taxpayers in person*, available at https://www.irs.gov/newsroom/irs-announces-job-openings-to-hire-over-700-new-employees-across-the-country-to-help-taxpayers-in-person (accessed 11 Feb. 2023).

2. The Issue of Tax Assessment

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Brazil, Chile, Guatemala, Honduras, Mexico, United States	Bolivia

In 2022, several steps were taken to build a constructive dialogue between taxpayers and tax authorities, maintaining the trend towards the fulfilment of the best practice.

In **Brazil**, the Provisional Measure n. 1152 of 22 December 2022[230] (already mentioned above[231] and which will be further mentioned in this Yearbook[232]) aligned the Brazilian transfer pricing rules with the OECD Guidelines and, to ensure compliance and avoid disputes,[233] introduced a penalty protection regime according to which, if the tax authority disagrees with the method applied by the taxpayer, the latter will be able to voluntarily adjust its position without the application of any penalty.[234]

During 2022, in **Chile**, Law n. 21.210 of 2020 on tax modernization started to operate.[235] This Law introduced the Public Defender's Office of Taxpayers (DEDECON). The DEDECON (tax ombudsmen) is required, inter alia, to support taxpayers in the compliance of their obligations and to offer assistance through mediation processes with the Chilean tax administration.[236]

In **Guatemala**, the tax administration published a report regarding the types of schemes that have been put in place in years 2021 and 2022 for evading the payment of capital gains tax in real estate transactions. In the same report, taxpayers were informed that the tax

[230] Provisional Measure n. 1152 (22 Dec. 2022), available at http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2022/Mpv/mpv1152.htm (accessed 9 Feb. 2023).

[231] *See* sec. 1.7. (Question 7).

[232] *See* sec. 7.2. (Question 60).

[233] *See OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 4.18.-4.28 (10 July 2017), Primary Sources IBFD: "Improved compliance in the transfer pricing area is of some concern to OECD member countries and the appropriate use of penalties may play a role in addressing this concern. However, owing to the nature of transfer pricing problems, care should be taken to ensure that the administration of a penalty system as applied in such cases is fair and not unduly onerous for taxpayers. […] it would be unfair to impose sizable penalties on taxpayers that made a reasonable effort in good faith to set the terms of their transactions with associated enterprises in a manner consistent with the arm's length principle."

[234] *See* BR: OPTR Report Brazil 2 (2022) (Academia), Questionnaire 2, Question 9. On the contrary, BR (2), OPTR Report Brazil 2 (Taxpayers/Tax Practitioners, Judiciary, Academia), Questionnaire 2, Question 9, did not report the Provisional Measure n. 1152 of 22 Dec. 2022 as a "shift towards" with respect to the best practice at hand.

[235] *See* CL: *Ley 21.210 moderniza la legislación tributaria* (13 Feb. 2020), available at http://bcn.cl/2f9fr (accessed 18 Feb. 2023).

[236] CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 9; moreover, *see* J. Kokott & P. Pistone, *Taxpayers in International Law: International Minimum Standards for the Protection of Taxpayer's Rights* p. 297 (Hart Publishing 2022).

administration has implemented new technologies and information systems that will significantly facilitate the fight against similar evasive strategies in the future.[237]

As to **Honduras**, it has been reported[238] that during 2022 there were several forums regarding tax policy and other public discussions, especially on exemptions and other tax breaks, which signalled an improvement in the communication between the government, academia and the private sector in the field of new tax policies.[239]

Mexico engages a constructive dialogue between taxpayers and revenue authorities, following an amendment, published on 27 December 2021,[240] to the Guidelines of the *Procuradurìa de la Defensa del Contribuente* (PRODECON). Indeed, it has been reported[241] that, following this amendment, the PRODECON's powers were further extended to facilitate its tax ombudsperson function and its work as mediator between taxpayers and the Mexican revenue authority.[242]

In the **United States**, the IRS has struggled to administer the tax system since the start of the COVID-19 pandemic. Its challenges are due partly to the paper backlogs that developed when the agency closed its processing centres and offices early in the pandemic and partly to the need to divert resources from its core tax processing responsibilities to administer financial relief programs that Congress authorized.[243]

For the third year in a row, the IRS failed to pay timely refunds to taxpayers.[244] The IRS also struggled to process taxpayers' tax returns, correspondence and requests for a CDP appeal.[245] These processing delays resulted in the IRS's records of taxpayer accounts being

[237] *See* the report available at https://portal.sat.gob.gt/portal/noticias/tipologias-de-incumplimiento-tributario-detectadas-por-sat-en-compraventa-de-bienes-inmuebles/ (accessed 9 Feb. 2023); and GT: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 9.

[238] *See* HN: Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 9.

[239] Information in this respect is available at https://www.sar.gob.hn/2022/04/se-debe-contribuir-con-el-pago-de-los-tributos-para-resolver-temas-que-a-todos-nos-competen-presidente-de-la-ccic/ (accessed 10 Feb. 2023); and https://www.sar.gob.hn/2022/06/sar-y-iies-unah-unen-esfuerzos-para-fortalecer-capacidad-tecnica-investigacion-e-intercambio-de-informacion/ (accessed 10 Feb. 2023).

[240] The amendment is available at https://www.dof.gob.mx/nota_detalle.php?codigo=5639421&fecha=27/12/2021#gsc.tab=0 (accessed 10 Feb. 2022).

[241] *See* MX: OPTR Report Mexico 2 (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 9. On the contrary, MX: OPTR Report Mexico 1 (Academia), Questionnaire 2, Question 9, did not report the aforesaid amendment to the Guidelines of the *Procuradurìa de la Defensa del Contribuente* as a "shift towards" with respect to the best practice at hand.

[242] For a more general overview of the PRODECON's functions, *see* Kokott & Pistone, *supra* n. 236, at p. 297.

[243] *See* National Taxpayer Advocate, *National Report to Congress (2022)* pp. 2-3, available at https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/ (accessed 17 Feb. 2023).

[244] In this respect, *see* below the next best practice.

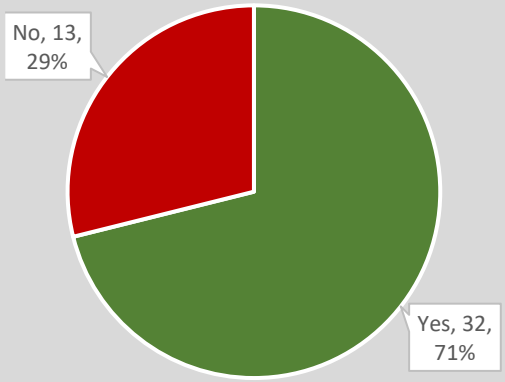
[245] *See* National Taxpayer Advocate, *National Report to Congress (2022)* p. 213, available at https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/ (accessed 17 Feb. 2023): "Taxpayers who receive a Notice of Intent to Levy and a Final Notice are advised to request a hearing with Appeals. When the notice is issued, it is recorded on the IRS's central taxpayer account database. However, if the taxpayer's response is not entered into the database within ten weeks, the IRS's Automated

inaccurate, which led the IRS to automatically send erroneous automated levies. In spite of this, the positive note is that, upon a request from the National Taxpayer Advocate and outside stakeholders, on February 2022 the IRS made the decision to temporarily suspend its Automated Levy Program (ALP) until the mail backlog is current to ensure that taxpayers are not subject to premature levy and that their right to an appeal is protected.[246]

On the other hand, negative developments have been reported in **Bolivia**, where tax administration practices avoid a constructive dialogue with taxpayers,[247] mostly because the tax audits and assessments are notified by email or website to taxpayers without an actual notice of the situation.[248]

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

53 responses



Source: OPTR: Questionnaire 1, Question 8

Yes: Austria, Belgium, Bolivia, Chile, China (People's Rep.), Colombia (1), Colombia (2), Denmark, Finland, Germany, Guatemala, Honduras, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Portugal, Slovenia, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Australia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Croatia, Czech Republic, India, Poland (1), Poland (2), Serbia, South Africa, Spain, Sweden

Chart 9. If yes, can the taxpayer request a meeting with the tax officer?

53 responses

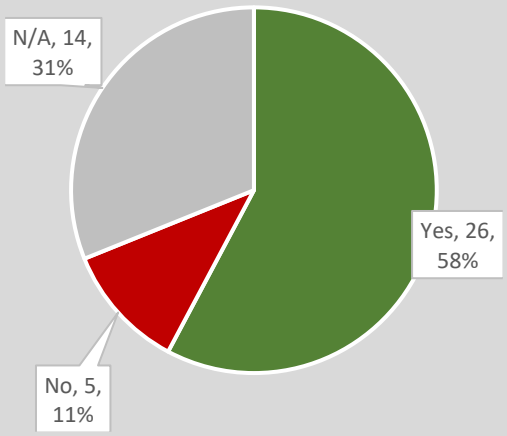
Yes: Austria, Belgium, Bolivia, Chile, China (People's Rep.), Colombia (1), Colombia (2), Denmark, Guatemala, Ireland,

Levy Program (ALP) generates a levy. Many taxpayers' CDP requests remained unopened until after the ten-week deadline, resulting in the issuance of erroneous automated levies."

[246] *See* National Taxpayer Advocate, *National Report to Congress (2022)* p. 214, available at https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/ (accessed 17 Feb. 2023); and US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 9.

[247] *See* BO: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 9.

[248] *See* BO: Tax Code Law No.2492, art. 83 Bis (introduced by Law No.812 of 30/06/2016); and BO: Supreme Decree No.27310, art.12 (modified by Supreme Decree No.2993 of 23/11/2016), available at https://sac.impuestos.gob.bo/formularios/pdf/2.-%20LEY%20N%C2%B0%202492%20-01-23.pdf (accessed 17 Feb. 2023). *Also see* the administrative regulation issued by the National Tax Service RND No. 10-0030-16 on 25/11/2016, available at https://www.impuestos.gob.bo/pdf/NORMATIVA/RND/rnd2016/RND10-0030-16.pdf (accessed 17 Feb. 2023).



Source: OPTR: Questionnaire 1, Question 9

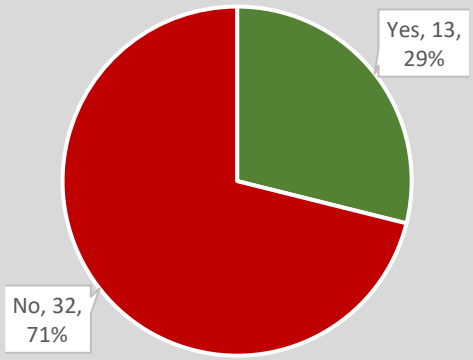
Italy, Japan, Kazakhstan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Germany, Honduras, Lithuania, Portugal, Slovenia

Not applicable: Argentina, Australia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Croatia, Czech Republic, Finland, India, Poland (1), Poland (2), Serbia, South Africa, Spain, Sweden

Chart 10. If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?

53 responses



Source: OPTR: Questionnaire 1, Question 10

Yes: Australia, Austria, China (People's Rep.), Croatia, Denmark, Germany, Ireland, Italy, Norway, Slovenia, South Africa, Switzerland, Chinese Taipei

No: Argentina, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Czech Republic, Finland, Guatemala, Honduras, India, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Spain, Sweden, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Australia, Denmark, Japan, Mauritius, United States	None

The pandemic provided a decisive impetus for e-filing in 2021, a time during which a significant number of countries surveyed reported progress (e.g. Australia, Bulgaria, Chile, China

(People's Rep.), Chinese Taipei, Colombia, France, Guatemala, India, Ireland, Luxemburg, Peru, Slovenia, Spain, Sweden, Türkiye, United States). Electronic invoicing, electronic taxpayer folders and tax "rewards" for businesses filing account documents electronically were among the several measures taken by many jurisdictions worldwide to level the playing field between taxpayers and tax authorities, at the cost of an increased reporting burden.

A trend towards the use of e-filing to speed up assessments was also present in 2022.

Australia strengthened the use of data-matching and real-time messaging for those using online services to lodge activity statements, prompting them to self-correct and prevent inadvertent errors prior to lodgement. Investment in data and analytics capability is indeed perceived by the Australian Tax Office (ATO) as critical for achieving its 2024 aspiration to be data-driven, streamlined and integrated.[249]

In 2021-2022, ATO used its data and analytics technology to pre-fill over 94.5 million pieces of data. In the same period, ATO also: (i) provided over 441,000 real-time prompts to taxpayers to check amounts in their 2020-21 income tax returns, resulting in an estimated USD 45.5 million revenue protected, as well as saving those taxpayers from subsequent compliance action and the risk of penalties; (ii) sent over one million targeted messages to clients to consider the tax consequences of their crypto asset sales; (iii) provided over 250,000 real-time prompts to taxpayers to check amounts in their business activity statements; and (iv) piloted a programme that prompted over 1,400 self-preparing sole traders to check amounts reported in their 2020-21 tax return where the amounts differed to the small business benchmark, 25% of which prompted adjustments as a result.[250]

In **Denmark**, it has been reported that the ombudsman focused, in several investigations,[251] on compliance of digital solutions with principles of general administrative law and tax procedures. The ombudsman stressed the importance of considering the aspect of compliance with administrative law in the design and development phase of new digital solutions as well as testing the realization of the planned compliance when solutions go online. Moreover, the ombudsman also pointed out that administrative law requires that e-filing must be possible not only for the taxpayer but also for the chosen representative of the taxpayer. In this respect, however, a point of criticism was detected, as this feature had not been included in the design and development of a new digital reporting system.[252]

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[249] *See* Commissioner of Taxation, *Annual Report 2021-2022* p. 32, available at https://www.ato.gov.au/uploadedFiles/Content/CR/Downloads/Annual_Reports/n0995_ATO_annual_report_2021-22_Digital.pdf (accessed 17 Feb. 2023). *See also* AU: OPTR Report (Tax Ombudsperson/Academia), Questionnaire 2, Question 10.

[250] Id. More information about how the ATO uses data and analytics is available at ato.gov.au/dna (accessed 17 Feb. 2023).

[251] FOB 2022-11 (https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/2022-11/pdf); FOB 2022-12 (https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/2022-12/pdf); and Case No. 21/03154 (https://www.ombudsmanden.dk/ombudsmandensarbejde/skatteomraadet/afsluttede_sager/21_03154/) (all accessed 18 Feb. 2023).

[252] *See* DK: OPTR Report (2022) (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 10.

In **Japan**, according to the announcement of the National Tax Agency of August 2022, the percentage of tax returns using internet (e-Tax) slightly increased in 2021 compared to 2020[253] (individual income tax shifted from 55.2% to 59.2% and corporate income tax from 86.7% to 87.9%[254]). Moreover, to speed up the issuing of tax assessments, the Electronic Book Keeping Act, starting from January 2022, requires taxpayers to save their transactional data received via internet in the form of electronic data.[255]

In **Mauritius**, it has been reported[256] that there is a legislative framework[257] regulating the electronic service to taxpayers of correspondence, notice of assessments and any other notices or documents, as well as the electronic payment of taxes and the e-filing of tax returns.

As it was noted above, following the COVID-19 pandemic crisis, in the **United States** the IRS has struggled to administer the tax system. The taxpayer impact has been felt acutely also in the area of refund delays. For the majority of taxpayers who e-file their returns and whose returns are processed without issue, refunds were paid timely. But millions of individual taxpayers filed paper returns, and millions of e-filed returns were "suspended" because they tripped IRS processing filters and required further review by IRS employees. In other words, those returns required human intervention and could not be automated.

In spite of this situation, there are positive notes. Indeed, the IRS created and utilized an automated tool to correct errors associated with the Recovery Rebate Credit and changes to refundable credits (earned income tax credit (EITC) and child tax credit (CTC)), resulting in quicker refunds for over 12 million taxpayers as compared to 2021.[258]

Moreover, in March 2022, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) to the IRS directing it to implement scanning technology to machine-read paper-filed tax returns in time for the 2023 filing season.[259] In November 2022, the acting IRS Commissioner stated that in the next filing season the IRS will automate scanning individual

[253] Information as to the percentage of tax returns that were filed via internet or the National Tax Agency's website is available at https://www.e-tax.nta.go.jp/topics/0408pressrelease01.pdf (accessed 18 Feb. 2023).

[254] For large corporations whose capital is higher than JPY 100 million, it is mandatory to file their tax return data via electronic filing system since 2020.

[255] *See* JP: OPTR Report (2022) (Academia), Questionnaire 2, Question 10.

[256] *See* MU: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 10.

[257] *See* secs. 24A ("Mode of service and transmission of documents"), 24B ("Setting up of system for secure electronic services and payment of taxes") and 24C ("E-tax account or tax representative e-tax account") of the Mauritius Revenue Authority Act No. 33 of 2004 (Consolidated Version up to Finance Act 2022), available at https://www.mra.mu/download/MRAAct.pdf (accessed 10 Feb. 2023).

[258] *See* National Taxpayer Advocate, *National Report to Congress (2022)* p. 2, available at https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/ (accessed 17 Feb. 2023); and US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 10.

[259] *See* E.M. Collins, *Getting Rid of Kryptonite: The IRS Should Quickly Implement Scanning Technology to Process Paper Tax Returns*, National Taxpayer Advocate Blog (15 Apr. 2022), available at https://www.taxpayeradvocate.irs.gov/news/nta-blog-getting-rid-of-the-kryptonite-the-irs-should-quickly-implement-scanning-technology-to-process-paper-tax-returns/ (accessed 18 Feb. 2023). Specifically, the TAD directed the IRS to (i) implement technology to automate the processing of paper-filed returns prepared with tax software by the start of the 2023 filing season; and (ii) automate the processing of handwritten paper-filed returns by the start of the 2023 filing season if possible or, if not, by the start of the 2024 filing season.

paper returns into a digital copy, among other upgrades being implemented.[260] For taxpayers, this could mean faster processing and faster refunds.

[260] *See* Letter from Doug O'Donnell, Acting Comm'r Internal Revenue, to Sen. Ron Wydman, Chair, Comm. on Fin., (22 Nov. 2022), mentioned in the National Taxpayer Advocate, *National Report to Congress* p. 211 (2022), available at https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/ (accessed 17 Feb. 2023)

3. Confidentiality

3.1. General issues

From the perspective of tax authorities, the proliferation of national and international data flows and storage of personal information unquestionably offer positive implications in terms of compliance and income. With the increasing availability of information and expanding data streams, tax authorities can more effectively monitor and ensure tax payment compliance and reduce the risk of tax fraud or evasion.

However, this greater accessibility to information can also pose significant challenges to taxpayers' rights. The increased surveillance and obligations to disclose information to tax authorities could lead to privacy breaches. This section of the Yearbook demonstrates that both tax authorities and taxpayers are increasingly aware of the importance of privacy and confidentiality. Overall, there is a noticeable positive trend in this regard, indicating progress and improvements in various areas. However, as will be explained below, small but significant exceptions stand out as areas of particular concern.

Another notable general trend that has emerged in recent years is the increasing scrutiny exercised by international and European courts on tax-related matters due to privacy concerns. This trend has been particularly evident in two recent judgments handed down by the Court of Justice of the European Union (ECJ). In the first case (*Orde van Vlaamse Balies*), the ECJ invalidated provisions of an amendment to the European Directive on Administrative Cooperation (DAC6) that required intermediaries to report cross-border tax arrangements.[261] In the second case (*Luxembourg Business Registers*), the Court declared invalid a provision requiring EU Member States to provide public access to beneficial ownership (BO) registers in the area of anti-money laundering. The Court held that unrestricted public access to such registers would disproportionately infringe on the right to privacy of the private parties listed in these registers.[262]

When it comes to ensuring guarantees of privacy in tax law, specific legal provisions should be put in place to safeguard the confidentiality of taxpayer information (section 3.2.). In 2022, there have been several examples of cases in which domestic legislators have taken further steps to strengthen the legal protections for taxpayer data. These developments include the introduction of laws that impose confidentiality obligations and introducing a legal framework to provide taxpayers with tools to oppose requests for personal information. Moreover, judicial authorities have played a crucial role in enforcing legal safeguards.

Another positive trend that can be observed as to the protection of privacy and confidentiality is the increasing use of secure platforms in order to have access to sensitive data (section **3.3.**). This trend is particularly important given the growing amount of personal taxpayer information that is stored and transmitted as outlined above. Regular audits can also help to

[261] *See* BE: *ECJ Decides That Transfer of DAC6 Reporting Obligations Due to Professional Secrecy Is Not Compatible with Charter of Fundamental Rights of European Union: Orde van Vlaamse Balies and Others (Case C-694/20) (Direct)* (8 Dec. 2022), News IBFD.

[262] *See* LU: ECJ, Joined Cases C-37/20 and 601/20, *WM and Sovim SA v. Luxembourg Business Registers*. *See* also EU: *ECJ Decides that AML Directive Provision Granting Public Access to Information on Beneficial Owners is Invalid: Luxembourg Business Registers (Joined Cases C-37/20, C-601/20)* (2 Dec. 2022), News IBFD.

identify potential weaknesses in security protocols and provide an opportunity to address them before they are exploited, as demonstrated by the example of the United States.

In addition to conducting regular audits to identify security vulnerabilities and ensure that necessary safeguards are in place to protect taxpayer data, auditing *access to data* can also be beneficial. In 2022, there has been a reported case where auditing access to data has resulted in the identification of unauthorized access, leading to internal investigations and even judicial action against government officials (section **3.4.**).

In addition to legal guarantees for confidentiality and auditing access to data, some countries have yet again taken *administrative* measures to emphasize the importance of confidentiality to tax officials (section **3.5.**). Reports indicate that data protection officers have also been appointed at the tax authorities to oversee the implementation of data protection policies (section **3.6.**).

As already indicated, it is important that in case a breach of confidentiality occurs, such breach should be investigated fully with an appropriate level of seniority by independent persons (e.g. judges). In this respect, only a limited number of ongoing investigations have been reported across the jurisdictions that were surveyed by the Yearbook (section **3.7.**). A setback in this regard is that a national report has indicated that disclosing confidential information is a "common practice". This is clearly a violation of the confidentiality guarantees provided by tax laws and can have serious consequences for the affected taxpayers (section **3.8.**).

As indicated in the introductory paragraphs of this section, the ECJ has been increasingly involved in rulings related to tax-relevant information, including reporting, disclosure and publication requirements (section **3.9.**). These rulings are increasingly shaping the legal framework for data protection standards and privacy rights in tax-related situations, especially in the European Union. However, as the legal framework for data protection and privacy continues to evolve, legal challenges are likely to arise in different EU Member States as they seek to adjust their domestic legal frameworks to the evolving interpretation (or even invalidation) of harmonized rules by the ECJ. This can already be seen in the aftermath of the abovementioned *Luxembourg Business Registers* case, where EU Member States have taken diverging initiatives to adjust their domestic legal frameworks as regards public access to BO registers.

Unfortunately, some negative developments have been noticed in 2022 regarding the disclosure of confidential information by revenue authorities or so-called "naming and shaming" (section **3.10.**). There have been situations reported where information was deliberately disclosed without authorization (e.g. for political reasons), which is a clear violation of taxpayer rights and can undermine taxpayers' trust in the tax system.

Another worrisome trend in 2022 concerns the supply of information by revenue authorities to other government departments (section **3.11.**). While four countries reported a shift away from the minimum standard or best practice, not a single jurisdiction has reported a positive change in this area. This is certainly an area that should be further monitored in the years to come.

As regards the interplay between taxpayer confidentiality and freedom of information legislation, no relevant facts have been reported in 2022 (section **3.12.**). Hence, we can conclude that the situation across the surveyed jurisdictions remains stable in this regard.

As noted in previous editions of this Yearbook, there has been a growing trend among countries to introduce anonymization requirements when publishing tax judgments and rulings (section **3.13.**).

Lastly, the abovementioned ECJ case (*Orde van Vlaamse Balies*) has significant implications for the development of legal professional privilege (section **3.14.**), as the Court held that provisions of DAC6 in this respect were at odds with fundamental rights. The outcome of this case poses legal challenges for both the European legislator and EU Member States. The European legislator will need to carefully consider the scope of legal professional privilege, and EU Member States will also need to adjust their domestic legal frameworks to comply with the ECJ's decision to ensure that any reporting requirements are consistent with the Court's ruling.

3.2. Guarantees of privacy in the law

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Brazil, Chile, China, Chinese Taipei	None

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile	None

A specific legal guarantee for confidentiality can be provided through the inclusion of provisions in tax legislation that outline the protection of taxpayer information and the consequences for unauthorized disclosures. In 2022, we have seen several examples of cases in which domestic legislators not only introduced such rules, but we also notice that such rules are effectively enforced by the competent (judicial) authorities.

In **Brazil**, a positive change for the second year in a row[263] was surveyed as the Superior Court of Justice denied the exchange of information from tax authorities to criminal prosecutors without prior and specific judicial authorization.[264] In addition, the Federal Revenue Service refused the exchange of some information (such as the list of employees)

[263] *See* OPTR (2021), *supra* n. 173, at sec. 3.2.

[264] *See* BR: Superior Tribunal de Justiça (Supreme Court of Justice), *Recurso em habeas corpus* (Appeals in habeas corpus) n° 83447, available at https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201700899299&dt_publicacao=15/03/2022 (accessed 12 Feb. 2023); and BR: *Superior Tribunal de Justiça* (Supreme Court of Justice), *Recurso em habeas corpus* (Appeals in habeas corpus) n° 83233, available at https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201700833385&dt_publicacao=15/03/2022 (accessed 12 Feb. 2023).

with other departments of federal and local administration, qualifying it as a breach of tax secrecy.[265]

Also, **Chile** continues on the previous year's positive trend,[266] as another legal reform has granted taxpayers tools to oppose requests for personal information in the context of a tax audit. In addition, legal restrictions to the use of personal banking information were introduced.[267] Further guidance on the administrative interpretation of taxpayers' rights to confidentiality was provided by the publication of a lengthy circular letter,[268] which includes several safeguards that will be discussed throughout this Yearbook.

A new law was adopted in **China (People's Rep.)** that imposes confidentiality obligations on the administration and officials, along with sanctions for illegal disclosure of confidential information.[269]

Chinese Taipei is a good example of a jurisdiction where privacy rules were actually enforced, as a tax official was prosecuted due to negligence when dealing with personal taxpayer-related information.[270]

3.3. Encryption: Control of access

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile	None

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile, Guatemala	None

[265] *See* BR: Solução de consulta interna cosit nº 1 (internal ruling) (4 Feb. 2022), available at http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=123020 (accessed 12 Feb. 2023).

[266] *See* OPTR (2021), *supra* n. 173, at sec. 3.2.

[267] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 11.

[268] *See* CL: Circular Letter n° 34 dd. (4 Aug. 2022), available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu35.pdf (accessed 12 Feb. 2023).

[269] *See* CN: OPTR Report (2022) (Academia), Questionnaire 2, Question 11.

[270] *See* TW: OPTR Report (2022) (Academia), Questionnaire 2, Question 11; and TW: "國稅局政風人員出包！檢舉人資料誤放公用區　慘被自家人檢舉, available at https://tw.nextapple.com/local/20230107/6D40B94AB2372C36DC36A4733B0ADAEF (accessed 12 Feb. 2023).

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile	None

As already mentioned above, in **Chile**, a circular letter on the administrative interpretation of taxpayers' right to confidentiality was published, which can be read to indicate a further reinforcement of rights and obligations in the area of information security.[271]

The tax administration in **Guatemala** implemented a requirement regarding the access to the information of the taxpayer.[272]

The report for the **United States** was mixed. On the positive side, the reporter mentioned a continued implementation of the Secure Access Digital Identity Platform.[273] On the other hand, audits conducted by the Treasury Inspector General for Tax Administration (*see also* section 1.5.) also uncovered security vulnerabilities with new digital communication tools and cloud-based services,[274] such as The Child Tax Credit Update Portal[275] and The Taxpayer Digital Communications Platform.[276]

Chart 11. Is information held by your tax authority automatically encrypted?	
53 responses	**Yes:** Argentina, Austria, Bolivia, Brazil (1), Brazil (2), Chile, China (People's Rep.), Czech Republic, Denmark, Finland, Germany, Honduras, India, Ireland, Italy, Japan, Kenya, Lithuania, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Serbia, Slovenia, Spain, Sweden, Türkiye, United States

[271] *See* CL: Circular Letter n° 34 dd. (4 Aug. 2022), available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu35.pdf (accessed 12 Feb. 2023).

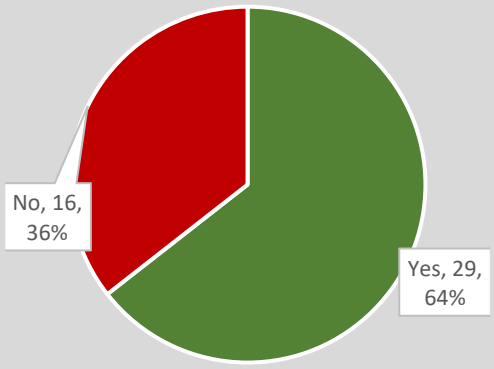
[272] *See* GT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 11.

[273] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 13.

[274] *See* US: Treasury Inspector General for Tax Administration, *Cloud Services Were Implemented Without Key Security Controls, Placing Taxpayer Data at Risk*, available at https://www.tigta.gov/sites/default/files/reports/2022-09/202220052fr.pdf (accessed 13 Feb. 2023).

[275] *See* US: Treasury Inspector General for Tax Administration, *The Child Tax Credit Update Portal Was Successfully Deployed, but Security and Process Improvements Are Needed*, available at https://www.tigta.gov/sites/default/files/reports/2022-06/202227028fr_0.pdf (accessed 13 Feb. 2023).

[276] *See* US: Treasury Inspector General for Tax Administration, *Taxpayer Digital Communications Platform Security and Access Controls Need to Be Strengthened*, available at https://www.tigta.gov/sites/default/files/reports/2022-09/202220051fr.pdf (accessed 13 Feb. 2023).

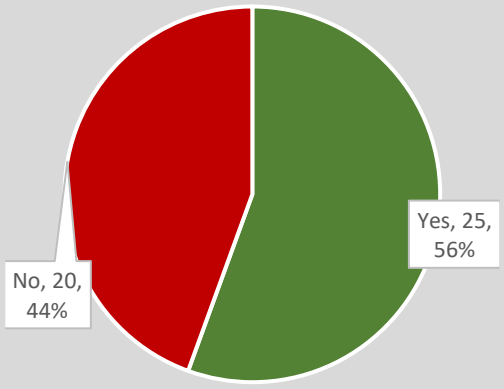


Source: OPTR: Questionnaire 1, Question 11

No: Australia, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Colombia (1), Colombia (2), Croatia, Guatemala, Kazakhstan, Luxembourg, Netherlands, Portugal, South Africa, Switzerland, Chinese Taipei, Uruguay, Venezuela (1), Venezuela (2)

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

53 responses



Source: OPTR: Questionnaire 1, Question 12

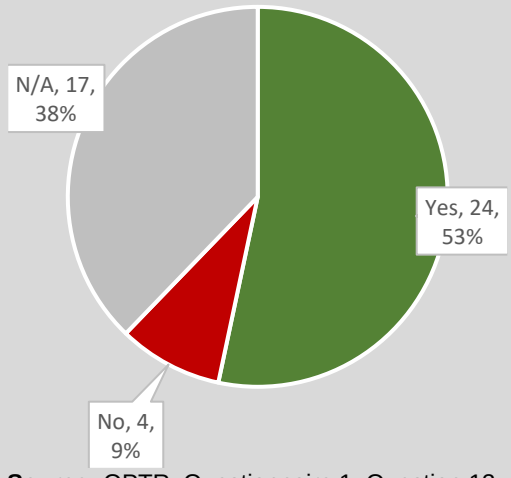
Yes: Argentina, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Czech Republic, Germany, Guatemala, Honduras, India, Ireland, Japan, Kenya, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Serbia, Spain, Chinese Taipei, Türkiye, United States, Venezuela (1), Venezuela (2)

No: Australia, Bolivia, Bosnia and Herzegovina, Colombia (1), Colombia (2), Croatia, Denmark, Finland, Italy, Kazakhstan, Lithuania, Luxembourg, Netherlands, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Sweden, Switzerland, Uruguay

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

53 responses

Yes: Argentina, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Czech Republic, Germany, Guatemala, Honduras, India, Ireland, Japan, Kenya, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Serbia, Spain, Chinese Taipei, Türkiye, United States



Source: OPTR: Questionnaire 1, Question 13

No: Finland, Netherlands, Switzerland, Venezuela (1), Venezuela (2)

Not applicable: Australia, Bolivia, Bosnia and Herzegovina, Colombia (1), Colombia (2), Croatia, Denmark, Italy, Kazakhstan, Lithuania, Luxembourg, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Sweden, Uruguay

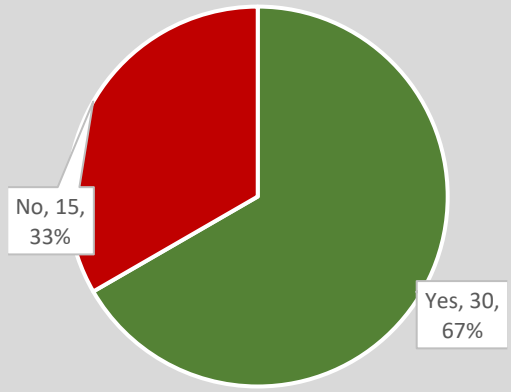
3.4. Auditing of access

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Colombia, Guatemala	None

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

53 responses



Source: OPTR: Questionnaire 1, Question 14

Yes: Argentina, Australia, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Czech Republic, Denmark, Germany, Guatemala, Honduras, India, Ireland, Japan, Luxembourg, Mauritius, Mexico (2), New Zealand, Norway, Peru (1), Peru (2), Portugal, Serbia, Spain, Sweden, Chinese Taipei, Türkiye, United States

No: Bolivia, Bosnia and Herzegovina, Croatia, Finland, Italy, Kazakhstan, Kenya, Lithuania, Mexico (1), Netherlands, Poland (1), Poland (2), Slovenia, South Africa, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

Reports with diverging opinions: Mexico

In **Colombia**, as a result of continuous internal monitoring carried out by the tax administration, events of unauthorized access and collection of information were identified. This, in turn, led to the discovery of situations of fraud in VAT refund procedures that involved some officials. Currently, judicial investigations are being carried out against the officials for the crimes of embezzlement, conspiracy to commit a crime and favouring smuggling (*see also* section 1.7.).[277]

The tax administration in **Guatemala** periodically receives an audit that includes the compliance with data protection rules.[278]

3.5. Administrative measures to ensure confidentiality

Minimum standard: Introduce administrative measures emphasizing confidentiality to tax officials

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Brazil, Chile	None

The **Brazil** Federal Revenue Service refused the exchange of some information (such as the list of employees) with other departments of federal and local administration, qualifying it as a breach of tax secrecy.[279] This decision is binding to every official of the federal tax administration.[280]

For **Chile**, we refer to the abovementioned measures, including an administrative circular on the interpretation of taxpayer confidentiality.[281]

3.6. Official responsibility for data confidentiality

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile, Guatemala	None

In comparison to the 2021 Yearbook,[282] there are relatively few changes to report regarding

[277] *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 14.

[278] *See* GT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 14.

[279] BR: Internal ruling (*Solução de Consulta Interna*) n. 01/2022, available at http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=123020 (accessed 13 Feb. 2023).

[280] *See* BR: OPTR Report (2022) (Academia), Questionnaire 2, Question 15.

[281] Namely, Circular No. 35 of 4 Aug. 2022, available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu35.pdf (accessed 27 Feb. 2023). *See* CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

[282] *See* OPTR (2021), *supra* n. 173, at sec. 3.6.

the best practice to appoint data protection officers at tax offices. For **Chile**, we can once again refer to the recently published circular letter dealing with these and similar issues (*see* section 3.2.).[283] In **Guatemala**, an officer in the tax administration has been appointed specifically with the task of being in charge of data protection.[284]

3.7. Breaches of confidentiality: Investigations

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Colombia	Bolivia

The report for **Bolivia** indicates a shift away from the minimum standard as, in practice, no cases were investigated where a breach of confidentiality occurred.[285]

As mentioned above (section 1.4.), in **Colombia**, as a result of continuous internal monitoring carried out by the tax administration, events of unauthorized access and collection of information were identified. This, in turn, led to the discovery of situations of fraud in VAT refund procedures that involved some officials. Currently, judicial investigations are being carried out against the officials for the crimes of embezzlement, conspiracy to commit a crime and favouring smuggling.[286]

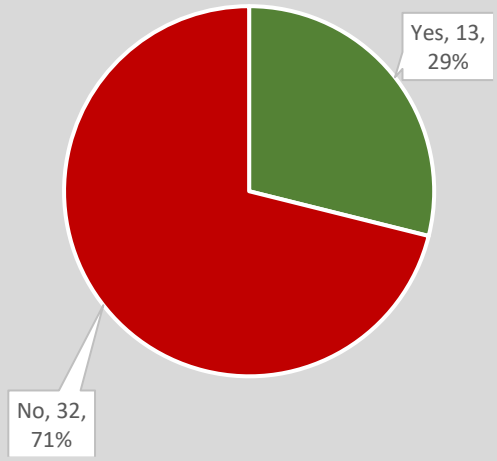
Chart 15. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	
53 responses	**Yes:** Argentina, Australia, Austria, Brazil (1), Brazil (2), China (People's Rep.), Germany, Honduras, Luxembourg, Netherlands, New Zealand, Sweden, Chinese Taipei, United States

283 *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

284 See GT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 15.

285 See BO: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 16.

286 *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 16.



Source: OPTR: Questionnaire 1, Question 15

No: Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Guatemala, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Mauritius, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Switzerland, Türkiye, Uruguay, Venezuela (1), Venezuela (2)

3.8. Breaches of confidentiality: Remedies

Minimum standard: Provide remedies for taxpayers who are victims of unauthorized disclosure of confidential information

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile	Bolivia

Also as regards remedies for breaches of confidentiality in the area of taxation, a setback can be reported for **Bolivia**. According to the national report, based on anecdotal evidence of the reporter, it is not uncommon practice for the tax administration to disclose confidential information.[287]

A new **Chilean** law adds further remedies relating to the exchange of banking information and, as mentioned, taxpayers have been granted tools to oppose requests for personal information in the context of a tax audit (see section 1.2.).[288] It should be noted that a positive trend for Chile can be seen in this respect, as last year's Yearbook already mentioned a letter in which the tax administration was instructed on the procedures to be followed to safeguard taxpayers' rights.[289]

3.9. Exceptions to confidentiality: The general principle

Minimum standard: Exceptions to the general rule of confidentiality should be explicitly stated

[287] *See* BO: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 17.

[288] Namely, Law No. 21.453 of 2022, available at: https://www.bcn.cl/leychile/navegar?idNorma=1178003 (accessed 27 Feb. 2023). *See* also CL: OPTR Report (Taxpayers/Tax Practitioners), Questionnaire 2, Question 17.

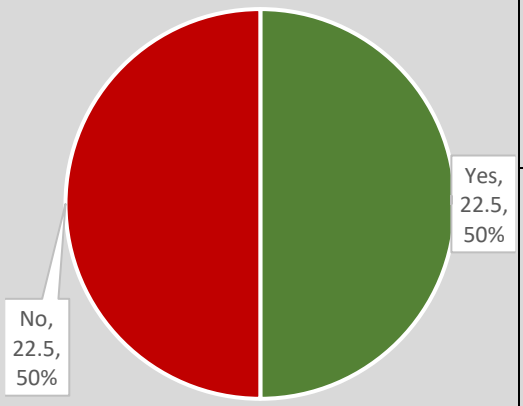
[289] *See* OPTR (2021), *supra* n. 173, at sec. 3.8.

in the law, narrowly drafted and interpreted

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Australia, Brazil, Chile, Spain	None

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

53 responses



Source: OPTR: Questionnaire 1, Question 16

Yes: Australia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Colombia (2), Czech Republic, Denmark, Finland, Guatemala, Honduras, India, Italy, Kazakhstan, Mexico (1), Norway, Peru (1), Peru (2), Portugal, Serbia, Slovenia, Sweden, Chinese Taipei, Türkiye, United States

No: Argentina, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Chile, Croatia, Germany, Ireland, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (2), Netherlands, New Zealand, Poland (1), Poland (2), South Africa, Spain, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

Reports with diverging opinions: Mexico

Note: Exceptionally in this case, no rounding up has been implemented in the pie chart in order to depict that both outcomes are equally represented across the survey countries.

In the context of corporate tax transparency, the ATO is required by law to publish certain tax information.[290] In 2022, the tax information reporting threshold was lowered for Australian corporate tax entities from USD 200 million total income to USD 100 million.[291] The changes are intended to apply from the 2022-23 financial year onwards. The effect of the threshold being lowered is that the Commissioner will be required, by law, to publish the corporate tax entity's Australian Business Number (ABN), total income, taxable income and income tax payable for the financial year corresponding to the income year.[292] According to the national report, this was indicated as a shift towards the minimum standard, even though, arguably,

[290] *See* AU: *Report of entity tax information*, available at https://www.ato.gov.au/Business/Large-business/Corporate-Tax-Transparency/Report-of-entity-tax-information/ (accessed 13 Feb. 2023).

[291] *See* AU: Treasury Laws Amendment (2022 Measures No.1) Act 2022, No. 35, 2002, available at https://www.legislation.gov.au/Details/C2022A00035 (accessed 13 Feb. 2023).

[292] *See* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 18.

this amendment may also likely lead to information being disclosed for additional entities, so further developments will have to be monitored.

As in the previous edition of this Yearbook, a positive trend can be noticed for **Brazil**.[293] The Superior Court of Justice denied the exchange of information from tax authorities to criminal prosecutors without prior and specific judicial authorization.[294] In addition, the Federal Revenue Service refused the exchange of some information (such as the list of employees) with other departments of federal and local administration, qualifying it as a breach of tax secrecy.[295]

As mentioned several times throughout this Yearbook, the **Chilean** authorities have published a circular letter on the administrative interpretation of taxpayers' right to confidentiality.[296]

According to a Judgement of the **Spanish** Supreme Court of 6 July 2022, when a public administration requires the transfer of tax data, such transfer should be for tax purposes.[297] Otherwise, the authorization of the taxpayer is required unless a specific legal provision regulates the transfer of tax data for other public purposes. Therefore, when an administrative act is issued relying on tax data, it could only be in accordance with the law if the rules stated in article 95(1) of the General Tax Act for the transfer of data are respected.[298] This is in line

[293] *See* OPTR (2021), *supra* n. 173, at sec. 3.2.

[294] *See* BR: Superior Tribunal de Justiça (Supreme Court of Justice), *Recurso em habeas corpus* (Appeals in habeas corpus) n° 83447, available at https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201700899299&dt_publicacao=15/03/2022 (accessed 12 Feb. 2023); and BR: Superior Tribunal de Justiça (Supreme Court of Justice), *Recurso em habeas corpus* (Appeals in habeas corpus) n° 83233, available at https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201700833385&dt_publicacao=15/03/2022 (accessed 12 Feb. 2023).

[295] *See* BR: *Solução de consulta interna cosit* nº 1 (internal ruling), 4 Feb. 2022, available at http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=123020 (accessed 12 Feb. 2023).

[296] See *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 18.

[297] *See* ES: Tribunal Supremo (Supreme Court), 6 July 2022, 930/2022 available at https://www.poderjudicial.es/search/documento/TS/10045147/tributario/20220718 (accessed 12 Feb. 2023).

[298] Art. 95 of ES: General Tax Act (*Ley General Tributaria*) establishes the confidentiality of tax data and regulates in which cases such information can (exceptionally) be transferred.

with a series of cases dealing with the interpretation of the same provision,[299] which were reported in last year's Yearbook.[300]

Regarding *whistle-blower protection*, last year's Yearbook already mentioned[301] that only a limited number of EU Member States had transposed the so-called EU Whistle-blowers Directive.[302] In January 2022, the European Commission initiated infringement proceedings against 24 EU Member States and, subsequently, sent reasoned opinions to several EU Member States (i.e. Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia and Spain).[303] In early 2023, the European Commission has decided to refer the Czech Republic, Germany, Estonia, Spain, Italy, Luxembourg, Hungary and Poland to the ECJ for failure to transpose and notify the national measures transposing the directive.[304]

In 2022, the ECJ also rendered a judgment on the compatibility of several provisions of DAC7 with the freedom to provide services as laid down in article 56 of the TFEU, in response to a preliminary question that was referred from **Belgium**. In *Airbnb Ireland UC*, the Court decided that "legislation which imposes an obligation on providers of property intermediation services, irrespective of their place of establishment and the manner in which they mediate, in respect of tourist accommodation establishments that are located in a region of the Member State concerned and for which they act as intermediary or carry on a promotion strategy, to provide the regional tax authorities, on the latter's written request, with the particulars of the operator and the details of the tourist accommodation establishments, as well as the number of overnight stays and of accommodation units operated during the past year" is not contrary to

[299] *See* ES: STS 4788/2021 [ECLI:ES:TS:2021:4788], 22 Dec. 2021, available at https://www.poderjudicial.es/search/AN/openDocument/a08a1a3877792cbb/20220104 (accessed 13 Feb. 2023); STS 2528/2021 [ECLI:ES:TS:2021:2528], 24 June 2021, available at https://www.poderjudicial.es/search/AN/openDocument/b59039f61afa0344/20220128 (accessed 13 Feb. 2023); STS 2340/2021 [ECLI:ES:TS:2021:2340], 10 June 2021, available at https://www.poderjudicial.es/search/AN/openDocument/e09fdbecf17ff765/20210622 (accessed 13 Feb. 2023); STS 2340/2021 [ECLI:ES:TS:2021:2340], available at https://www.poderjudicial.es/search/AN/openDocument/e09fdbecf17ff765/20210622 (accessed 13 Feb. 2023); STS 1818/2021 [ECLI:ES:TS:2021:1818], 13 May 2021, available at https://www.poderjudicial.es/search/AN/openDocument/c9464e1515e2902e/20210524 (accessed 13 Feb. 2023); STS 1002/2021 [ECLI:ES:TS:2021:1002], 15 Mar. 2021, available at https://www.poderjudicial.es/search/AN/openDocument/1015f3b26b045fbe/20210329 (accessed 2 Feb. 2022); and STS 894/2021 [ECLI:ES:TS:2021:894], 11 Mar. 2021, available at https://www.poderjudicial.es/search/AN/openDocument/fab4450daa63bc03/20210323 (accessed 13 Feb. 2023).

[300] *See* OPTR (2021), *supra* n. 173, at sec. 3.9.

[301] http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=123020 (accessed 13 Feb. 2023).

[302] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L305 (2019).

[303] *See* European Commission, *July Infringements package: key decisions*, available at https://ec.europa.eu/commission/presscorner/detail/en/inf_22_3768 (accessed 13 Feb. 2023); and European Commission, *September Infringements package: key decisions*, available at https://ec.europa.eu/commission/presscorner/detail/en/inf_22_5402 (accessed 13 Feb. 2023).

[304] *See* European Commission, *The European Commission decides to refer 8 Member States to the Court of Justice of the European Union over the protection of whistleblowers*, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_703 (accessed 15 Feb. 2023).

article 56 of the TFEU.[305] A related case was referred by an **Italian** Court and involved the obligation for the tax authorities to transmit data to national tax authorities relating to rental contracts.[306] Also in the latter case, the ECJ upheld the national legislation.

An additional preliminary question in this matter, related to the VAT Directives applicable to intermediary digital platforms, has been raised by the First-Tier Tribunal (Tax Chamber) of the **United Kingdom**.[307] On 15 September 2022, Advocate General Rantos already concluded that the contested provision was valid, a conclusion confirmed by the ECJ with a decision from 28 February 2023[308]

In the same vein, the ECJ ruled in a case referred by a **Latvian** court that the GDPR[309] does not prohibit requests for information addressed by the tax authority to internet service providers, insofar as (i) the request is linked to the determination of advertisers' tax obligations; (ii) there is a clear legal basis in national law for such a type of data transfer; and (iii) the data requested are suitable and necessary for the tax authority to complete its official tasks.[310]

Lastly, in the *WM and Sovim SA v. Luxembourg Business Registers* case, the ECJ declared a provision of the EU framework on ultimate beneficial ownership (UBO) to be invalid. In its judgement, the Court ruled, basing its decision on grounds of privacy and data protection, that a provision requiring EU Member States to provide unlimited public access to BO registers is invalid.[311] In response to this case, several states, like **Belgium**,[312] **Greece**,[313] **Luxembourg** and the **Netherlands**,[314] have announced a (temporary) suspension of access to the BO

[305] *See* BE: ECJ, 27 Apr. 2022, Case C-674/20, *Airbnb Ireland UC v. Région de Bruxelles-Capitale*, Case Law IBFD. *See also* BE: *ECJ Allows Tax Authorities to Request Information from Electronic Platform Intermediaries under EU Law: Airbnb Ireland (Case C-674/20)* (14 Mar. 2023), News IBFD.

[306] *See* IT: ECJ, 22 Dec. 2022, Case C-83/21, *Airbnb Ireland UC plc, Airbnb Payments UK Ltd v. Agenzia delle Entrate*, Case Law IBFD; and IT: *ECJ Decides That Freedom to Provide Services Does Not Preclude Reporting and Withholding Obligations of Online Intermediation Services: Airbnb Ireland and Airbnb Payments UK: Airbnb Ireland and Airbnb Payments UK (Case C-83/21) (Direct Tax)* (22 Dec. 2022), News IBFD.

[307] *See* UK: ECJ, 28 Feb. 2023, Case C-695/20, *Fenix International Limited v. Commissioners for Her Majesty's Revenue and Customs*, Case Law IBFD.

[308] *See* UK: *ECJ Advocate General Opines on Validity of EU Provisions in Context of Services and Electronic Platforms: Fenix International (Case C-695/20) (VAT)* (15 Sept. 2022), News IBFD and UK: ECJ, 28 Feb. 2023, Case C-695/20, *Fenix International Limited v. Commissioners for Her Majesty's Revenue and Customs*, Case Law IBFD.

[309] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, OJ C 391 (2012), Primary Sources IBFD.

[310] *See* LV: ECJ, 24 Feb. 2022, Case C-175/20, *SIA 'SS' v. Valsts ieņēmumu dienests*.

[311] *See* LU: ECJ, Joined Cases C-37/20 and 601/20, *WM and Sovim SA v. Luxembourg Business Registers*. *See also* EU: *ECJ Decides that AML Directive Provision Granting Public Access to Information on Beneficial Owners is Invalid: Luxembourg Business Registers (Joined Cases C-37/20, C-601/20)* (2 Dec. 2022), News IBFD.

[312] *See* BE: *Belgium Temporarily Suspends Access to Beneficial Ownership Register* (30 Nov. 2022), News IBFD.

[313] *See* GR: *Greece Temporarily Suspends Access to Beneficial Ownership Register* (1 Dec. 2022), News IBFD. In early 2023, the extension was prolonged. *See* GR: *Greece Extends Suspension of Public Access to Beneficial Ownership Register Until 30 June 2023* (21 Feb. 2023), News IBFD.

[314] *See* LU/NL: *Luxembourg and Netherlands Temporarily Suspend Access to Beneficial Ownership Register* (28 Nov. 2022), News IBFD.

register.[315] **France**, conversely, has announced that it will maintain public access to the register pending the drawing of all the consequences deriving from the ECJ's judgment.[316]

3.10. Exceptions to taxpayer confidentiality – disclosure in the public interest: Naming and shaming

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile	Bolivia

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Brazil	Mexico

As regards "naming and shaming", there is little to report in 2022 aside from **Chile**, where a proposed tax reform aims to introduce a new naming and shaming procedure.[317]

There are, however, two developments as regards disclosure of confidential information by revenue authorities. As already mentioned throughout this Yearbook, the Superior Court of Justice of **Brazil** denied the exchange of information from tax authorities to criminal prosecutors without prior and specific judicial authorization.[318]

In **Mexico**, a shift away from the best practice can be reported. Under the applicable Mexican legislation, it is necessary to have judicial authorization to disclose any personal and tax

[315] *See also* LU: *Luxembourg Partially Restores Access to Beneficial Ownership Register* (7 Dec. 2022), News IBFD.

[316] *See* FR: *France Maintains Public Access to Beneficial Ownership Register* (20 Jan. 2023), News IBFD.

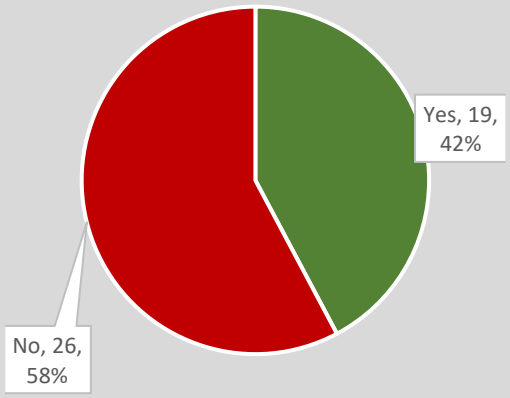
[317] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 18.

[318] *See* BR: Superior Tribunal de Justiça (Supreme Court of Justice), *Recurso em habeas corpus* (Appeals in habeas corpus) n° 83447, available at https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201700899299&dt_publicacao=15/03/2022 (accessed 12 Feb. 2023); and BR: Superior Tribunal de Justiça (Supreme Court of Justice), *Recurso em habeas corpus* (Appeals in habeas corpus) n° 83233, available at https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=201700833385&dt_publicacao=15/03/2022 (accessed 12 Feb. 2023).

data.[319] However, during 2022, personal information relating to a journalist was disclosed by the Mexican President without such authorization.[320]

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

53 responses



Source: OPTR: Questionnaire 1, Question 17

Yes: Australia, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Croatia, Finland, Ireland, Kazakhstan, Mauritius, Mexico (1), Mexico (2), Portugal, Serbia, Slovenia, South Africa, Spain, Chinese Taipei, Türkiye, Venezuela (1),

No: Argentina, Austria, Belgium, Chile, Colombia (1), Colombia (2), Czech Republic, Denmark, Germany, Guatemala, Honduras, India, Italy, Japan, Kenya, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Sweden, Switzerland, United States, Uruguay, Venezuela (2)

Reports with diverging opinions: Venezuela

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

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	Bolivia, Mexico, United States

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	Australia

[319] *See* MX: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 19.

[320] *See* MX: *Inai ordena sancionar a AMLO por exhibir datos personales de Loret de Mola*, available at https://www.eleconomista.com.mx/politica/Inai-ordena-sancionar-a-AMLO-por-exhibir-datos-personales-de-Loret-de-Mola-20220817-0058.html (accessed 13 Feb. 2023).

A particularly worrisome trend can be noticed regarding supply of information to other government departments. While four countries reported a shift away from the minimum standard or best practice, not a single jurisdiction has reported a positive change in these areas.

In April 2022, following the dissolution of Parliament to allow for a federal election to take place, the **Australian** House of Representatives Standing Committee on Tax and Revenue,[321] which previously had oversight of the ATO and other taxation matters, ceased to exist.[322] The new government has not made any announcements in relation to whether the Committee would be reconstituted.

For **Mexico**, we can refer to the situation mentioned above (section 3.10.), in which information relating to a journalist was published without authorization.

In the **United States**, the House of Representatives Ways and Means Committee released taxpayer information of former President Trump to the public.[323] There was no change in the law, but this act had not occurred in past decades as all US presidents had voluntarily released their tax returns to the public since return information was made confidential in 1976.[324]

2022 Relevant Case Law – Inter-American Court of Human Rights

Case	***Journalists of Digital Newspaper "El Faro" v. El Salvador***[325]	
Date	8 July 2022	
ACHR Articles	Articles 11 ("Right to Privacy") and 13 ("Right to Freedom of Thought and Expression")	
Facts	**Decision**	**Comments**
On 4 February 2021, the Inter-American Commission on Human Rights issued Resolution No. 12/2021 by which such Commission granted precautionary measures in favour of several members of the digital newspaper "El Faro" in El Salvador. The Commission deemed that such journalists' rights were in a serious and urgent situation. As a result, the Commission requested that the	Resolution No. 32/2022 on Precautionary Measures, Inter-American Commission on Human Rights The Inter-American Commission on Human Rights came to the conclusion that the matter previously described continues to meet the requirements of serious, urgent and irreparable harm, which justify the adoption of	In a context of serious affectations to democratic institutions, the Inter-American Commission on Human Rights has received several complaints about the growing hostile environment for the exercise of freedom of expression in El Salvador. Among the main concerns, complainants have mentioned a recurring stigmatizing discourse promoted from the governmental spheres. Such hostility includes intimidating

[321] *See* *also* https://www.aph.gov.au/Parliamentary_Business/Committees/House/Former_Committees/Tax_and_Revenue (accessed 13 Feb. 2023).

[322] *See* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 20.

[323] *See* E. Moore, *House Democrats release Trump's tax returns*, available at https://www.npr.org/2022/12/30/1146215064/trumps-tax-returns-released (accessed 13 Feb. 2023).

[324] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 20.

[325] *See* BE: ECtHR, Application No. 49812/09, *VEGOTEX International S.A. v. Belgium*, https://hudoc.echr.coe.int/eng/?i=001-206214 (accessed 24 Feb. 2022).

Case	***Journalists of Digital Newspaper "El Faro" v. El Salvador***[325]	
Date	8 July 2022	
ACHR Articles	Articles 11 ("Right to Privacy") and 13 ("Right to Freedom of Thought and Expression")	
Facts	**Decision**	**Comments**
state of El Salvador adopt necessary measures to preserve such rights so that the journalists are able to carry out their professional activities in exercise of their freedom of expression, without being subject to acts of intimidation, threats and harassment. The request for such precautionary measures was based on the grounds that several journalists of the newspaper had been allegedly subject to threats, harassment and intimidation, as well as criminalization and stigmatization by high government authorities, as a result of their work. Among other actions of alleged censorship, the governmental authorities have extensively used social and other media under their control to target El Faro's journalists. In particular, such journalists had highlighted that the government used a nationwide television broadcast to advertise the fact that the above newspaper was being investigated for tax evasion. The journalists also stated that on 11 November 2020, the President of El Salvador, Mr Nayid Bukele, had started a thread on his Twitter account against the above newspaper. The messages stated: "pay your taxes you crybabies" and "you damned liars the day will come when you will not even have money to pay your internet bills". The claimants considered that all these actions were a response to their investigation work and their critical stance towards the current government. In the framework of the follow-up process related to the above	precautionary measures. Accordingly, the Commission decided to maintain the precautionary measures granted in favour of the journalists. This means that the Inter-American Commission required the state of El Salvador to continue to adopt necessary measures to effectively protect their rights, in a way to guarantee that the claimants are able to carry out their journalistic activities in the exercise of their right to freedom of expression without being subject to acts of intimidation, threats and harassment, in the same terms expressed in Resolution No. 12/2021.	and disqualifying messages/statements, usually after publications or journalistic investigations that document cases of government corruption, arbitrary use of public funds or questionable behaviour by members of the Salvadoran executive branch. In accordance with the opinion of the Inter-American Commission, the recurrent use of these messages/statements by government actors have contributed to creating a degrading environment towards the press, entrenching the growing social perception of journalists and media as "enemies" of the Salvadoran people. The declarations of high-ranking public officials have most probably created or at least contributed to emphasizing or exaggerating situations of hostility, intolerance or animosity of some sections of the population towards the media. In this vein, the existence of a situation of animosity has generated a climate conducive to the violation of human rights. In a democratic society, state authorities and public officers have a position of guarantor of the fundamental rights of people. Such duty of special care is particularly accentuated in situations where their statements or declarations may constitute forms of direct or indirect interference in the work of those who (as journalists) seek to contribute to the defence of the right to free information. In this matter, the messages/statements attributed to the Salvadoran authorities raise

Case	***Journalists of Digital Newspaper "El Faro" v. El Salvador***[325]	
Date	8 July 2022	
ACHR Articles	Articles 11 ("Right to Privacy") and 13 ("Right to Freedom of Thought and Expression")	
Facts	**Decision**	**Comments**
Resolution, the journalists indicated that on 7, 16 and 18 February, 9 March and 10 April 2021, the President of El Salvador published new stigmatizing messages against El Faro and its journalists on social networks. The messages mentioned, among other aspects, that the newspaper would be involved in alleged tax crimes. For such reason (among others), the journalists requested to maintain the precautionary measures in force.		a series of expressions addressed to the claimants in intimidating tones. Such messages/statements must be characterized as an unauthorized disclosure of information covered by the right of privacy, which clearly contravenes the tax officials' responsibility for keeping confidentiality and for ensuring that information about taxpayers' affairs is not used for political purposes. This is aggravated by the continuity of publication and dissemination of such messages/statements after the adoption of precautionary measures by the same Inter-American Commission in 2021.

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

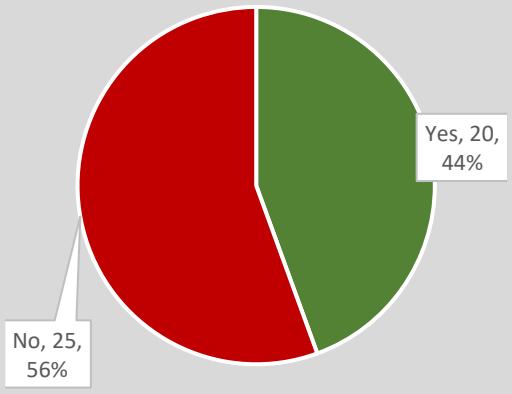
Minimum standard: Freedom of information legislation may allow a taxpayer to access information about themselves. However, access to information by third parties should be subject to stringent safeguards, namely only if an independent tribunal concludes that, in disclosing, the public interest outweighs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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

No relevant facts have been reported regarding the interplay between taxpayer confidentiality and freedom of information legislation in 2022, so the situation across the surveyed jurisdictions remains stable in this regard.

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

53 responses



Source: OPTR: Questionnaire 1, Question 18

Yes: Australia, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), China (People's Rep.), Colombia (1), Colombia (2), Denmark, Guatemala, Honduras, India, Ireland, Italy, Kazakhstan, Lithuania, Mexico (1), Mexico (2), New Zealand, Serbia, Slovenia, United States, Venezuela (1), Venezuela (2)

No: Argentina, Austria, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Croatia, Czech Republic, Finland, Germany, Japan, Kenya, Luxembourg, Mauritius, Netherlands, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, Uruguay

3.13. Anonymized judgments and rulings

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Colombia	None

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile	Guatemala

A **Chilean** circular letter, as mentioned several times throughout this Yearbook, imposes data anonymization on tax courts.[326]

In October 2022, the **Colombian** tax administration made available an electronic consultation service for all regulations, general tax rulings and judicial rulings related to tax, customs and exchange matters. In this new service, the rulings are published anonymously and without specific information from the interested parties, unlike the way it had been done.[327]

The tax administration of **Guatemala** has further developed its transparency best practices in connection with the requirement to publish all judgements regarding tax matters, which contains the taxpayer's name.[328]

3.14. (Legal) professional privilege

Minimum standard: Legal professional privilege should apply to tax advice

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Belgium	Chile

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Argentina	Chile

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

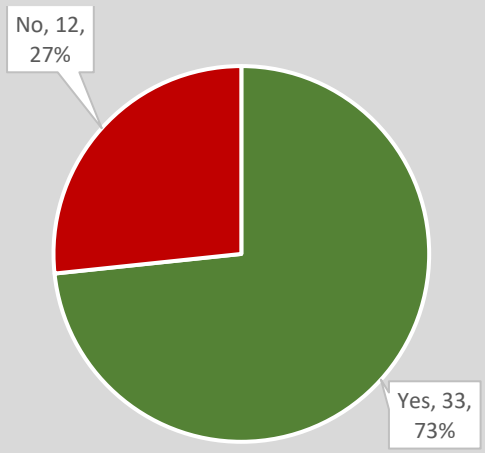
[326] *See* the earlier cited Circular No. 35/2022. *Compare* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 22.

[327] *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 22; and CO: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 22.

[328] *See* GT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 22. *See also* https://portal.sat.gob.gt/portal/sentencias-firmes/ (accessed 13 Feb. 2023).

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

53 responses



Source: OPTR: Questionnaire 1, Question 19

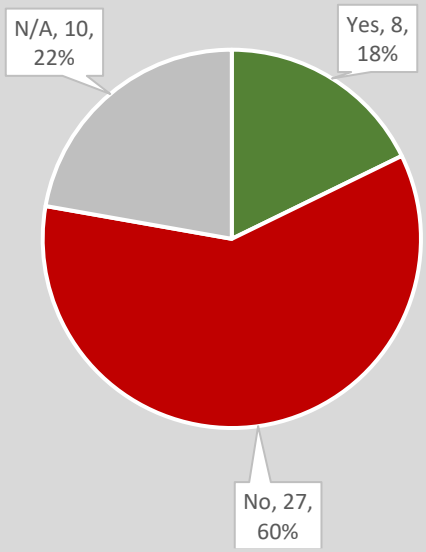
Yes: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Denmark, Germany, Honduras, Italy, Kazakhstan, Kenya, Luxembourg, Mauritius, Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Sweden, Türkiye, United States, Uruguay, Venezuela (1)

No: Argentina, Czech Republic, Finland, Guatemala, India, Ireland, Japan, Lithuania, Mexico (1), Slovenia, Switzerland, Chinese Taipei, Venezuela (2)

Reports with diverging opinions: Mexico, Venezuela

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

53 responses



Source: OPTR: Questionnaire 1, Question 20

Yes: Colombia (1), Colombia (2), Germany, Mexico (2), Netherlands, Serbia, Spain, United States, Uruguay, Venezuela (1)

No: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Croatia, Denmark, Guatemala, Honduras, Italy, Kazakhstan, Kenya, Luxembourg, Mauritius, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Slovenia, South Africa, Sweden, Türkiye

Not applicable: Argentina, Czech Republic, Finland, India, Ireland, Japan, Lithuania, Mexico (1), Switzerland, Chinese Taipei, Venezuela (2)

Reports with diverging opinions: Mexico, Venezuela

2022 Relevant Case Law – Court of Justice of the European Union

Case	C-694/20, *Orde van Vlaamse Balies*	
Date	8 December 2022	
EU Charter Articles	Articles 7 (Respect for private and family life) and 47 (Right to an effective remedy and to a fair trial)	
Facts	**Decision**	**Comments**
The Bar Association challenged the obligation imposed by DAC6 on lawyers as intermediaries to disclose information relating to reportable persons.	Article 8ab(5) of the DAC (as amended by DAC6) is invalid in the light of article 7 of the Charter, in so far as it has the effect of requiring a lawyer acting as an intermediary, within the meaning of article 3(21) of that directive, where they are exempt from the reporting obligation laid down in paragraph 1 of article 8ab of that directive, on account of the legal professional privilege by which they are bound, to notify without delay any other intermediary who is not their client of that intermediary's reporting obligations under paragraph 6 of article 8ab.	The decision clarifies the extent of the legal professional privilege under DAC6 (*see also* section 3.

The **Argentine** tax authorities have suspended the application of a mandatory tax planning information regime by taxpayers and their tax advisers.[329] The obligation of information by tax advisers had been considered by the courts to violate the professional secrecy that protects the relationship between a lawyer or public accountant and the client.[330] On 1 September 2022, the tax authorities suspended the regime,[331] which was later extended until the regime was finally repealed.[332] However, on 27 December 2022, a new mandatory disclosure regime was introduced for certain international transactions (RICOI or *Régimen de Información Complementario de Operaciones Internacionales*).[333]

[329] *See* AR: AFIP General Resolution 5306 (B.O. 12/27/22)

[330] *See* AR: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 23.

[331] AR: Tax Authority Suspends Mandatory Disclosure Regime on Tax Planning Schemes for 60 Days (9 Feb. 2022), News IBFD.

[332] AR: Tax Authority Further Suspends Mandatory Disclosure Regime for Tax Planning Schemes, News IBFD.

[333] AR: Tax Authority Introduces New Disclosure Regime to Counter International Tax Planning Schemes (9 Feb. 2022), News IBFD.

As mentioned in the 2021 Yearbook,[334] the **Belgian** Constitutional Court[335] referred a preliminary question to the ECJ asking whether DAC6[336] is compatible with the right to a fair trial and the right to respect for private life, where that directive obliges Member States to provide for an exception to the "legal privilege under the national law of that Member State" when an intermediary is required to inform another intermediary. In particular, the Constitutional Court asks whether the duty of the intermediary "lawyer" to disclose information that he has learned in the course of exercising the essential activity of his profession to another intermediary, even outside any court proceeding, is compatible with the right to a fair trial and to respect for private life.

In a judgement of 8 December 2022 (C-694/20), the ECJ ruled that this obligation to disclose information imposed on an intermediary lawyer is *not* compatible with article 7 of the Charter of Fundamental Rights of the European Union, which protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients. The ECJ ruled that article 8ab(5) of amended Directive 2011/16/EU (as per the amendments introduced by DAC6) is invalid in the light of article 7 of the Charter, in so far as the Member States' application of that provision has the effect of requiring a lawyer acting as an intermediary (where they are exempt from the reporting obligation laid down in paragraph 1 of article 8ab of that directive on account of the legal professional privilege by which they are bound), to notify without delay any other intermediary who is not their client of that intermediary's reporting obligations under paragraph 6 of article 8ab.[337]

This development will have wider repercussions also outside of Belgium. In this respect, it is noteworthy to mention that a similar French case is currently still pending before the ECJ.[338]

Lastly, in **Chile**, a tax reform is envisaged among whose goals the introduction of additional sanctions to tax advisers is foreseen.[339]

[334] *See* OPTR (2021), *supra* n. 173, at sec. 3.19.

[335] Note that another Belgian case concerning DAC6 is also pending before the Court, *see* BE: ECJ, Case C-623/22, *Belgian Association of Tax Lawyers and Others v Premier ministre/ Eerste Minister*.

[336] EU Council Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (2018), Primary Sources IBFD.

[337] BE: ECJ Decides That Transfer of DAC6 Reporting Obligations Due to Professional Secrecy Is Not Compatible with Charter of Fundamental Rights of European Union: Orde van Vlaamse Balies and Others (Case C-694/20) (Direct) (8 Dec. 2022), News IBFD.

[338] *See* FR: ECJ, Case C-398/21, *Conseil national des barreaux, Conférence des bâtonniers, Ordre des avocats du barreau de Paris v. Premier ministre, Ministre de l'Economie, des Finances et de la Relance*.

[339] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 23.

4. Normal Audits

4.1. Tax audits and its foundation principles

Facts and legal qualifications are an essential part of correct tax assessments; therefore, they are also a fundamental part of the tax administration's means to enforce the law. Today, much tax reporting is pre-populated for the tax returns, but additional investigation is often required in order to determine potential tax liability and, if so, the appropriate amount. This holds especially true for cross-border income where generally no real-time data exists for pre-populating tax returns and self-assessment is later cross-checked against the information received by foreign tax authorities. As a crucial part of the tax authorities' practical enforcement of the tax code, the investigations require that the authorities abide by the law, which includes the adequate protection of taxpayers' fundamental rights.

From a procedural aspect, tax audits should be conducted around four fundamental principles of general procedural law, namely (i) proportionality; (ii) *non bis in idem*, or the prohibition of double jeopardy; (iii) *audi alteram partem*, or the right to be heard before any decision is taken; and (iv) *nemo tenetur se detegere*, or the principle against self-incrimination.

If a tax assessment is conducted and an audit is carried out contrary to these four principles, depending on the gravity of the breach, some of its findings might be considered unlawful and in case of especially serious breaches, the whole audit should be considered null and void altogether.

Against this background, it is important to stress that, whereas good tax governance is converging towards the minimum standards, it is not enough by itself. As Baker and Pistone have said, making tax governance prevail over taxpayers' rights endangers the possibility of an access to an effective legal remedy when tax authorities do not comply with the good tax governance standards.[340]

In this regard, the growing trend towards allowing the participation of independent technical experts in the framework of tax audits (as is the case in 92% of the surveyed jurisdictions, according to Chart 28) is promising.[341]

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Belgium	Uruguay

In terms of the convergence towards respecting the four main principles underpinning tax audits, progress has been reported in **Belgium**, where a new law made it possible for some

[340] P. Baker & P. Pistone, *General Report*, in *The Practical Protection of Taxpayers' Fundamental Rights*, sec. 4.1. (IFA Cahiers vol. 100B, 2015), Books IBFD.

[341] *See* Chart 28, at sec. 4.4.

tax officials to be vested with the capacity of judicial police officers.[342] Thus, any proceeds of investigations where such tax officials take part in can be used simultaneously in both criminal and tax proceedings. This avoids double gathering of evidence in light of the *ne bis in idem* principle but also in light of the proportionality principle and the administrative burden of taking part in multiple parallel procedures over the same factual pattern.

Chile continues the tendency of aligning itself with the four main principles, where the *Servicio de Impuestos Internos* Letter No. 12 has been regarded as producing a general improvement of administrative procedures in favour of taxpayers and making administrative dispute resolution mechanisms more effective.[343]

In **Slovenia**, the convergence with the four principles continues to be ensured by the Constitutional Court's decision declaring unconstitutional a surcharge tax of 70% on undeclared income fully applicable just by the commencement of an ex officio assessment.[344]

A contrary development has been observed in **Uruguay** in 2022, where the High Administrative Court departed from its previous case law and ruled that in light of the duty of cooperation of the taxpayer in the context of an audit and the fact that an audit is not a criminal prosecution in its nature, there is no obligation to warn the taxpayer of their rights regarding non-self-incrimination.[345] The decision is similar to the recent case law of the ECtHR that upholds a high threshold of the coercive measures that might undermine the right against self-incrimination in a tax law context.[346]

2022 Relevant Case Law – Court of Justice of the European Union

Case	C-363/20 *MARCAS MC*[347]	
Date	13 January 2022	
EU Charter Articles	47, 54	
Facts	**Decision**	**Comments**
The tax authorities did not accept the method that the company had followed in order to invoice certain royalty fees. The company challenged the tax assessment,	The Court declared itself incompetent, as the questions concerned the administrative practice on tax audit and tax sanctions in the area of corporate	The Court did not consider that the practice of the Hungarian tax authorities was within the scope of EU law and, therefore, regarded the EU Charter of Fundamental

[342] *See* BE: OPTR Report (2022) (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 25.

[343] *See* CL: Circular No. 12, que Imparte instrucciones sobre derechos de los contribuyentes, comparecencia, notificaciones, procedimientos administrativos y judiciales de impugnación que establece la Ley N° 21.210 que moderniza la legislación tributaria, ch. 1, available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu12.pdf (accessed 25 February 2023), at sec. IV.

[344] *See* SI: Constitutional Court, 30 Sep.t 2020, U-I-113/17, available at https://www.us-rs.si/decision/?lang=en&q=113%2F17&caseId=U-I-113%2F17&df=&dt=&af=&at=&pri=1&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=116202 (accessed 25 Feb. 2023).

[345] UV: High Administrative Court, Decision 716, 6 Oct. 2022. *See also* UV: OPTR Report (2022) (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 25.

[346] NL: ECtHR, No. 58342/15, *De Legé v. The Netherlands*, available at https://hudoc.echr.coe.int/eng?i=001-219556 (accessed 18 Feb. 2023).

[347] *See* HU: ECJ, 13 Jan. 2022, Case C-363/20, *MARCAS MC*, Case Law IBFD.

Case	C-363/20 *MARCAS MC*[347]	
Date	13 January 2022	
EU Charter Articles	47, 54	
Facts	**Decision**	**Comments**
arguing that the tax authority did not apply correctly the provisions of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (repealed by Directive 2013/34/EU) and considered that the Charter of fundamental rights was breached.	income tax, thus falling outside the scope of EU law and the EU Charter of Fundamental Rights.	Rights inapplicable in the case. This case was fully in line with the Court's cautious approach in overly expanding the scope of the Charter to cases where only a remote link to EU law exists.

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile	Bulgaria, Chinese Taipei

The principle of proportionality – as a minimum standard for ensuring that tax authorities may only request information that is strictly needed, not otherwise available and imposes the least burdensome impact on taxpayers – has seen several setbacks.

The **Bulgarian** tax authorities request an ever-increasing amount of documentation and information during audits, even when large parts of this information are not of any relevance to the scope of the audit or, even worse, are already available to the tax authorities or other public authorities.[348] This leads to shifting away from the minimum standard.

A similar development was observed also in **Belgium** during last year's report, which continued in 2022, whereby during an audit the taxpayer is requested to provide a digital backup file containing its entire bookkeeping/accounts, raising questions regarding the proportionality of such practices.[349]

In **Chinese Taipei**, banks are required to collect and provide to tax authorities reports on personal accounts with high-frequency transactions in an attempt to capture undeclared income from online sales performed by individuals.[350] The obligation is subject to de minimis

[348] *See* BG: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

[349] *See* Aternio, *Fiscale controle: graag een back-up van uw digitale boekhouding* (15 June 2021), available at https://atern.io/fiscale-controle-graag-een-back-up-van-uw-digitale-boekhouding/?printoje=81711 (accessed 25 Feb. 2023).

[350] The information is available at https://ctee.com.tw/news/tax-law/668744.html (accessed 19 Feb. 2023). *See also* TW: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

rules. However, the requests for information are grounded only on a vague legal basis and therefore constitute a departure from the minimum standard.[351]

The shift away regarding proportionality reported in **Guatemala** in 2021, whereby the tax administration imposes a 3-day deadline for receiving all information requested, continues to persist also in 2022.[352]

A contrary development – towards convergence with the minimum standard – was reported in **Chile**, where a proposed tax reform aims to establish clearer guidance on the information that a taxpayer has the right not to provide.[353] This can be seen as a continuation of the already existing shift towards convergence seen last year where Letter No. 12 enhanced the protection of taxpayers regarding the statute of limitations, *non bis in idem* (by prohibiting multiple audits over the same taxpayer for the same taxable events), etc.[354]

Back in 2021, **Denmark** moved towards convergence with the minimum standard by repealing the obligation to provide transfer pricing documentation for purely domestic transactions, considering it particularly burdensome and without any real purpose since internal Danish transactions do not entail a risk of profit shifting. The bill, which entered into force last year, specifically motivated this amendment by referring to the principle that taxpayers should face as few burdens as possible.[355] It is interesting whether in such context, the recent findings of the ECJ in *Viva Telecom Bulgaria* that equally applicable domestic transfer pricing legislation cannot violate the fundamental freedoms[356] stand, where the domestic framework is equally applicable (e.g. TP obligations arise for both purely domestic and cross-border transactions) but the administrative practice in its application is to impose the burden only in cross-border situations.

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Belgium	

[351] TW: OPTR Report (2022) (Academia), Questionnaire 2, Question 26.

[352] *See* GT: Yearbook2021 (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26 and Annex.

[353] CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 26.

[354] CL: Circular No. 41, Imparte instrucciones sobre modificaciones introducidas por la Ley N° 21.210 al Código Tributario, en relación con las normas que regulan la relación de los contribuyentes con el Servicio de Impuestos Internos, incluyendo normas sobre sitio electrónico, facilitación del cumplimiento tributario, ciclo de vida y fiscalización de los contribuyentes, available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu41.pdf (accessed 25 Feb. 2023).

[355] *See* DK: Law No. 2194 of 30 November 2021, Act amending the Tax Control Act and the Equalisation Act, available at https://www.retsinformation.dk/eli/lta/2021/2194 (accessed 25 Feb. 2022); and DK: Proposal to Act amending the Tax Control Act and the Equalisation Act L-7-2021/1, available at https://www.retsinformation.dk/eli/ft/202112L00007 (accessed 25 Feb. 2022).

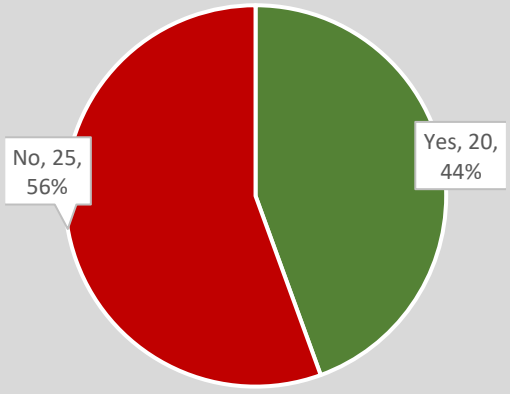
[356] BG: ECJ, 24 Feb. 2022, Case C-257/20, *Viva Telecom Bulgaria*, Case Law IBFD.

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

For tax proceedings, *non bis in idem* means that the taxpayer must only be subject to one audit per taxable period, comprehensively covering all possible issues that might arise from the underlying investigation, within the scope of the audit. The sole exception is facts that become known after the audit is completed.

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

53 responses



Source: OPTR: Questionnaire 1, Question 21

Yes: Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Czech Republic, Honduras, Japan, Lithuania, Luxembourg, Mexico (1), Mexico (2), Peru (1), Peru (2), Portugal, Serbia, Slovenia, United States, Uruguay, Venezuela (1), Venezuela (2)

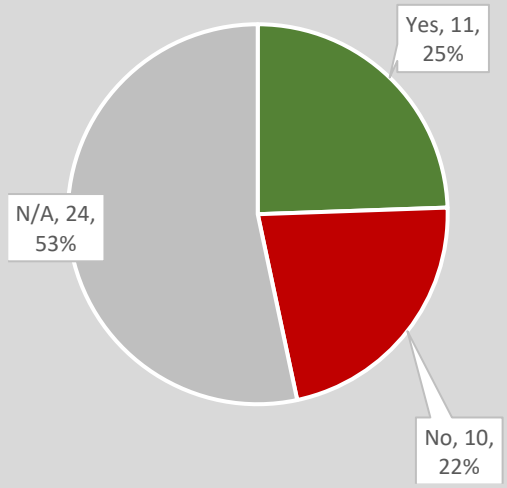
No: Argentina, Australia, Belgium, Brazil (1), Brazil (2), Croatia, Denmark, Finland, Germany, Guatemala, India, Ireland, Italy, Kazakhstan, Kenya, Mauritius, Netherlands, New Zealand, Norway, Poland (1), Poland (2), South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye

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

53 responses

Yes: Austria, Bolivia, China (People's Rep.), Colombia (1), Colombia (2), Honduras, Lithuania, Mexico (1), Mexico (2), Portugal, Serbia, United States, Venezuela (1), Venezuela (2)

No: Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Czech Republic, Japan, Luxembourg, Peru (1), Peru (2), Slovenia, Switzerland, Uruguay



Source: OPTR: Questionnaire 1, Question 22

Not applicable: Argentina, Australia, Belgium, Brazil (1), Brazil (2), Croatia, Denmark, Finland, Germany, Guatemala, India, Ireland, Italy, Kazakhstan, Kenya, Mauritius, Netherlands, New Zealand, Norway, Poland (1), Poland (2), South Africa, Spain, Sweden, Chinese Taipei, Türkiye

A new court case in **Belgium** resolved the issue of receiving one audit per taxable period when multiple audits were performed by different territorial subdivisions within a single jurisdiction.[357] A company was subject to an audit in Ghent, and reached a final agreement with the tax authorities, only to be subjected to a second audit within less than a year later by another territorial division of the tax authorities – this time in Brussels. The court concluded that the agreement reached with the first tax office is binding to all other tax offices in the country unless new elements can be proven. Hence, the court upheld the principle of *non bis in idem* standard.

The above findings were in line with last year's judgment of the National Court (Audiencia Nacional) of **Spain**, which continues to ensure convergence with the minimum standard. According to this judgment, once a limited audit has been carried out for a given tax and period, it is not possible to subsequently initiate another limited verification procedure for the same tax and tax period, in order to request additional documentation, if there are no new facts or data that justify such a procedure.[358]

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile, Spain, United States	

[357] BE: Court of First Instance of Antwerp, Judgment of 21 February 2022, accessible at the following link:.... *See also* BE: OPTR Report (2022) (Academia), Questionnaire 2, Question 27.

[358] *See* ES: SAN 3391/2021, 3 June 2021, available at https://www.poderjudicial.es/search/AN/openDocument/8e0d6deef7bad41c/20210806 (accessed 25 Feb. 2022).

In a recent decision of the Supreme Court, **Spain** has moved towards the minimum standard of endowing private parties with the right to take effective part in tax proceedings and be heard before a final decision is taken. To that end, the Supreme Court ruled that within the context of an audit with limited scope, the scope can be extended only when clearly communicated to the taxpayer prior to initiating investigation into the relevant period.[359] This is a further continuation of a series of decisions by the Spanish Supreme Court last year, preventing tax authorities from extending the scope of the audit by notifying a second assessment proposal and opening a new period of time for observations before the end of the audit procedure previously opened for the same matter.[360]

After a shift away from the possibility of taxpayers to take part in meetings with the tax authorities due to the COVID-19 pandemic, the **United States** has shifted back towards the standard in 2022 by providing for a possibility for in-person meetings with tax officials.[361] However, it must be noted that access to a meeting with a tax official is still not practically a realistic option and the majority of audits are conducted by written correspondence.[362]

2022 Relevant Case Law – Court of Justice of the European Union

Case	C-203/21 DELTA STROY 2003[363]	
Date	10 November 2022	
EU Charter Articles	48, 49 and 52	
Facts	**Decision**	**Comments**
The Bulgarian tax authorities charged an individual with tax offences in relation to the payment of the VAT due by the company in which he is a manager. While the criminal case was pending, the tax authorities imposed a financial penalty on the company, for the offence committed by the individual. The company challenged the imposition of the financial penalty arguing that the offence had not yet been definitively concluded.	Article 48 of the Charter must be interpreted as precluding national legislation under which a national court may impose on a legal person a criminal penalty for an offence for which a natural person who has the power to bind or represent that legal person is allegedly liable, where that legal person has not been put in a position to dispute the reality of that offence.	The decision is especially interesting in light of the fact that in principle Bulgarian law does not provide for criminal responsibility of legal persons. Thus, the Court relies on the autonomous definition of sanctions of criminal nature in order to apply the rights derived from article 48 of the Charter.

[359] ES: Supreme Court, Judgment 509/2022 from 3 May 2022. *See also* ES: OPTR Report (2022) (Taxpayer/Tax Practitioner, Ombudsperson, Academia), Questionnaire 2, Question 28.

[360] *See* ES: STS 839/2021, 24 Mar. 2021, available at https://www.poderjudicial.es/search/TS/openDocument/9895cb10cf224d78/20210322 (accessed 25 Feb. 2023); ES: STS 412/2021, 24 Mar. 2021, available at https://www.poderjudicial.es/search/documento/TS/9423282/tributario/20210223 (accessed 25 Feb. 2023).

[361] US: IRS, Examining process, sec. 4.10.2.9.2., available at https://www.irs.gov/irm/part4/irm_04-010-002r (accessed 19 Feb. 2022). *See also* US: OPTR Report (2022) (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 28.

[362] US: OPTR Report (2022) (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 28.

[363] BG: ECJ, 10 Nov. 2022, Case C-203/21, *DELTA STORY 2003*, Case Law IBFD.

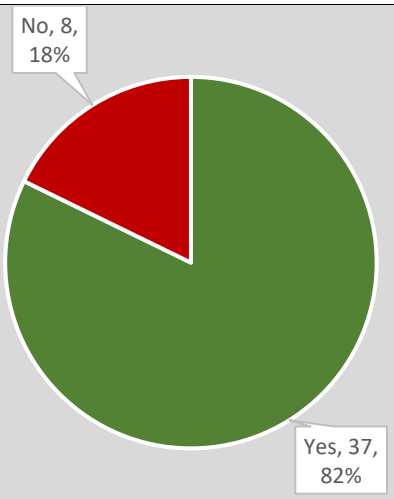
2022 Relevant Request for Preliminary Ruling – Court of Justice of the European Union

Case	C-746/22 Slovenské Energetické Strojárne[364]
Date	6 December 2022
EU Charter Articles	47
Facts	**Questions**
The taxpayer filed an application for a VAT refund. By administrative act of 22 February 2021, the Hungarian tax administration, taking the view that it was unable to adopt a decision based on the information that it had at its disposal, requested the applicant to provide further information. Inter alia, it requested the applicant to provide, within 1 month of notification of the administrative act, invoices, together with the contracts and orders on which those invoices were based and also to submit a statement declaring for what purpose and for whom it had purchased the services referred to in the invoices and what connection they had to its economic activity. The first-tier tax authority sent the administrative act to the applicant's postal address and assumed that the applicant had received it. By decision of 6 May 2021, the first-tier tax authority brought to a close the proceedings stating that the applicant had failed to comply with its obligation to provide information, despite having been requested to do so, and that, as a consequence, it was not possible to establish the precise factual background using the information which that authority had at its disposal.	The referring court questions whether there should be a finding that the right to an effective remedy and to a fair trial, enshrined in article 47 of the Charter, has been breached because, under Hungarian law, as a result of the prohibition of new facts and evidence applicable in appeal proceedings, there is a limitation of the right to produce evidence. As a result of this prohibition, there is no possibility of presenting new facts or evidence, which clearly has a bearing on the decision of the second-tier tax authority and on the final outcome of any judicial proceedings brought as a result of the administrative appeal which may be lodged against that decision.

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

53 responses	**Yes:** Argentina, Austria, Bosnia and Herzegovina, Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

[364] HU: ECJ, Request for Preliminary Ruling, 6 Dec. 2022, Case C-746/22, *Slovenské Energetické Strojárne*, Case Law IBFD.



Source: OPTR: Questionnaire 1, Question 23

No: Australia, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Kazakhstan, Sweden, Switzerland

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	Belgium

Unlike in the previous edition of the Yearbook, in 2022, there were reported changes regarding the right to remain silent. In a departure from this principle, a new law was introduced in **Belgium** allowing the tax authorities to levy substantial penalties on taxpayers and third parties who are not complying with their obligations to cooperate in the context of a tax audit.[365] This was further supported by the decision of the ECtHR in *De Lege v. the Netherlands*.[366]

One might expect that the development of the ECtHR case law might influence further departures from the principle of *nemo tenetur* when it comes to tax audits and the obligations to provide information by taxpayers. While one should recognize that the right against self-incrimination is applicable only as regards the criminal limb of Article 6 of the ECHR and thus does not apply to tax procedures in the strict sense, the distinction between tax procedures and procedures of a criminal nature is difficult to draw. Moreover, it is difficult to foresee, at the time when an audit is initiated, whether the outcomes of an audit would be escalated to sanctions of a criminal nature.

[365] BE: OPTR Report (2022) (Taxpayer/Tax Practitioner, Academia), Questionnaire 2, Question 29.

[366] NL: ECtHR, No. 58342/15, *De Legé v. The Netherlands*, available at https://hudoc.echr.coe.int/eng?i=001-219556 (accessed 18 Feb. 2023).

2022 Relevant Case Law – European Court of Human Rights

Case	*De Legé v. The Netherlands No. 58342/15*[367]	
Date	4 October 2022	
ECHR Articles	Article 6	
Facts	**Decision**	**Comments**
The case concerns the use of documents for the resetting of a tax fine. Those documents relate to a foreign bank account and had been obtained from the applicant under threat of substantial penalty payments. The applicant alleged disrespect of the privilege against self-incrimination and invoked article 6 § 1 of the Convention.	No violation of article 6 § 1 of the Convention	The court restricted the right against self-incrimination to criminal proceedings only, without however providing any clear guidance as to how to draw a distinction between audits that might be escalated in criminal proceedings and those that might not. It seems plausible that this opens the possibility for validly initiating audits and requesting sensitive information in such context also under the threat of sanctions for the sole purpose of the tax procedure. However, it is likely that if such documents are later relied upon in criminal proceedings, there might be a violation of article 6 of the Convention.

4.2. The structure and content of tax audits

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile, Spain	None

Chile continued to improve taxpayers' rights mainly by means of an extensive administrative guidance that clearly regulates audits, taxpayers' rights, and the rights of appearance, notification, administrative and judicial appeal as well as rules on facilitation of tax compliance, life cycle and taxpayer control.[368]

[367] NL: ECtHR, No. 58342/15, *De Legé v. The Netherlands*, available at https://hudoc.echr.coe.int/eng?i=001-219556 (accessed 18 Feb. 2023).

[368] CL: Circular No. 41, Imparte instrucciones sobre modificaciones introducidas por la Ley N° 21.210 al Código Tributario, en relación con las normas que regulan la relación de los contribuyentes con el Servicio de Impuestos Internos, incluyendo normas sobre sitio electrónico, facilitación del cumplimiento tributario, ciclo de vida y fiscalización de los contribuyentes, available at

A similar development was observed in **Spain**, whereby a Decision of 26 January 2022 of the General Directorate of the Tax Administration, the general guidance of the 2022 Annual Audit Plan for Taxes and Customs was approved, spelling out explicitly and publicly the structure and pattern that tax audits should follow.[369]

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

In line with the developments last year, **Honduras** continues to support its tax audit procedure by an internal guide of global application as well as being informed by a short guide on taxpayers' rights and obligations during audit procedures that was published on the tax administration's website, and outlines chronologically the rights and obligations of the taxpayer at each stage of the audit process.[370]

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
	None

In line with 2021 developments, **Chile** has maintained its shift towards the best practice, including a possibility for taxpayers to request the start of a tax audit, particularly in cases of so-called *reposición administrativa voluntaria* (voluntary administrative replenishment).[371]

On this point, it should be noted that in the **United States**, there is in principle the possibility for a taxpayer to request a repeat audit via audit reconsideration but the tax authorities do not have to oblige.[372]

https://www.sii.cl/normativa_legislacion/circulares/2021/circu41.pdf (accessed 25 Feb. 2023). *See also* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 30.

[369] ES: *Boletín Oficial Del Estado* [Official Journal of Spain], 31 Jan. 2022, p. 12091 and following, available at https://www.boe.es/boe/dias/2022/01/31/pdfs/BOE-A-2022-1453.pdf (accessed 23 Feb. 2023). *See also:* ES OPTR Report (2022) (Taxpayers/Tax Practitioners/Ombudsperson, Academia), Questionnaire 2, Question 30.

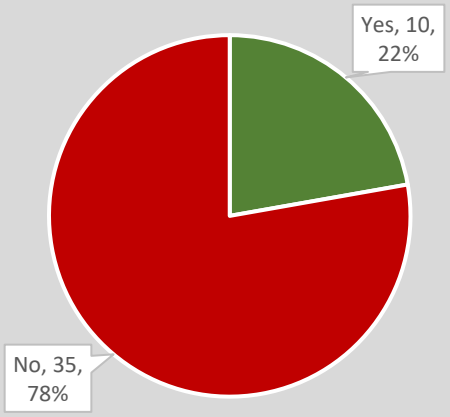
[370] *See Servicio de Administración de Rentas* (Honduran Tax Administration), *Derechos y Obligaciones del Obligado Tributario*, available at https://www.sar.gob.hn/derechos-y-obligaciones/ (accessed 25 Feb. 2023).

[371] CL: Circular No. 12, que Imparte instrucciones sobre derechos de los contribuyentes, comparecencia, notificaciones, procedimientos administrativos y judiciales de impugnación que establece la Ley N° 21.210, que moderniza la legislación tributaria, ch. 1, available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu12.pdf (accessed 25 Feb. 2023).

[372] *See* Internal Revenue Manuals (IRM), 4.13.1, available at https://www.irs.gov/irm/part4/irm_04-013-001 (accessed 23 Feb 2023). *See also* US: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 32.

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

53 responses



Source: OPTR: Questionnaire 1, Question 24

Yes: Guatemala, Honduras, India, Italy, Kazakhstan, New Zealand, Portugal, Serbia, South Africa, Uruguay

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Ireland, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Slovenia, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Venezuela (1), Venezuela (2)

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

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

Best practice: Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they discuss the aims and procedure, together with the time scale and targets. They should then disclose any additional evidence in their possession to the taxpayer.

Shifted towards/matched the best practice:	Shifted away from the best practice:
	Colombia

A significant departure from the best practice was observed in **Colombia**, on the basis of a new legislative measure that provides for determining income on a deemed basis and with very limited possibilities for the taxpayers to appeal such assessments.[373] The new regime is applicable to taxpayers who omit to submit a tax return and in the event that such taxpayers do not explicitly reject the deemed assessment, the latter becomes final with no possibility of appeal. The same procedure can also be used for the assessment of consumption taxes. One should note that such developments are especially detrimental to the protection of taxpayers'

[373] *See* CO: Law 2277 of 2022, accessible at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883 (accessed 22 Feb. 2023). *See also* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 33.

rights if coupled with relaxed systems of deemed notifications that are often used by tax authorities, leaving taxpayers de facto with no possibilities to appeal.

This development is a further deterioration as compared to 2021, where Law 2155 of 2021 established that the official determination of income tax will be made by invoicing based on information obtained from third parties and the e-invoice system. Under that system, once a taxpayer is notified of the assessment, they have 2 months to file the respective tax return and pay the tax within this period. If the taxpayer files the tax return, the tax administration may issue a provisional official assessment or an official assessment.[374]

Uruguay appears to continue to be shifting away from the best practice as observed back in 2021, when some municipal governments engaged private companies to collect taxes owed for advertising activities. These activities, which should be characterized as tax audits, were conducted without first informing the alleged taxpayers.[375]

At the same time, the judgment of the Supreme Court of **Spain** of 22 April 2021 has not been reversed so that the shift towards the best practice that it marked by establishing an obligation for the tax administration to verify not only what is harmful to the taxpayer but also what is favourable continues to be observed.[376] In addition, a judgment of the Supreme Court of 26 May 2021 stated that the tax administration should analyse all necessary requirements in order to declare, as unduly paid, the input VAT subject to a refund claim.[377]

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

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

[374] *See* CO: Ley 2155/2021, de Inversión Social y Otras Disposiciones (14 Sep. 2021), available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=170902 (accessed 25 Feb. 2023). *See also* CO: OPTR Yearbook 2022 (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 33.

[375] *See* Correo de Punta del Este, Tasa: empresa que posee más de 1300 carteles en la zona apeló a un estudio de abogados, available at https://correopuntadeleste.com/tasa-empresa-que-posee-mas-de-1300-carteles-en-la-zona-apelo-a-un-estudio-de-abogados/ (accessed 25 Feb. 2023).

[376] *See* ES: STS 1557/2021, 22 Apr. 2021, available at https://www.poderjudicial.es/search/documento/TS/9423282/tributario/20210223 (accessed 25 Feb. 2023).

[377] *See* ES: STS 2242/2021, 26 May 2021, available at https://www.poderjudicial.es/search/documento/TS/9423282/tributario/20210223 (accessed 25 Feb. 2023).

2022 Relevant Communicated Cases – European Court of Human Rights

Case	***Ferrieri v. Italy No. 40607/19***[378]
Date	7 July 2022
ECHR Articles	Article 6, 8 and 13
Facts	The applications concern tax investigating authorities' access to the applicants' banking data regarding movements, transactions and any other disposition that could be related to the applicants or traced back to them. The applicants have not been notified by tax authorities of the authorization. They have received letters from the banks informing them that they had received such requests from the investigating authority and that they were going to comply with their legal obligation to provide the requested information.

4.3. Time limits for normal audits

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Colombia, Mexico	Belgium

There were some significant developments in **Colombia**, where in converging with the best practice, the Supreme Administrative Court has ruled on the suspension of the statute of limitations of income tax returns.[379] As in many countries, initiating a tax audit suspends the statute of limitations in Columbia. The question in the case was whether a mere notification of a tax inspection has a suspensive effect, or the inspection must actually also take place effectively. According to the Supreme Administrative Court, for the statute of limitations term to be suspended, it is necessary that the tax inspection is effectively carried out and not just notified by the tax authorities. Hence, for the statute of limitation to be suspended the tax authorities are expected to effectively start the activities corresponding to a tax inspection.

Mexico has also moved towards the best practice by fixing the applicable time limits when the tax authorities engage in international exchange of information. In such circumstances, the audit term can be extended to 2 years from the moment of the first information request.[380] It is interesting to note that Mexico sets the time limit not in relation to the moment of receiving a reply from the foreign tax administration - which in some instances might be a very lengthy process and exceed in itself 2 years - but from the moment of making a request for information.

[378] *See* IT: ECtHR, No. 49812/09, *Ferrieri v. Italy*, available at https://hudoc.echr.coe.int/eng?i=001-218777 (accessed 20 Feb. 2023).

[379] *See* CO: Supreme Administrative Court Rules on Suspension of Statute of Limitations (2 June 2022), News IBFD (accessed 25 Feb. 2023).

[380] *See* MX: Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la ley del impuesto sobre la renta, de la ley del impuesto al valor agregado, de la ley del impuesto especial sobre producción y servicios, de la ley federal del impuesto sobre automóviles nuevos, del código fiscal de la federación y otros ordenamientos, article 46-a, available at 8 sep anexo D.qxd (diputados.gob.mx) (accessed 25 Feb. 2023). *See also* MX: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 35.

It is therefore questionable whether this approach strikes the right balance between the effective collection of taxes and taxpayers' rights protection.

China (People's Rep.) appears to be consolidating the shift towards the best practice as it continues to rely on the guidance rules on the procedures for handling tax audits that reinforce the supervision and restraint mechanism and protect taxpayers' rights, including the reduction of the time for tax audits.[381]

The reverse developments were observed in **Belgium** where a new law of 20 November 2022 has radically changed the time limits for conducting audits and imposing taxes, thereby shifting away from the best practice.[382] The new time limits only apply as of assessment year 2023. In general, the new law introduces longer time limits for the conduct of audits and the imposition of taxes than the existing ones, increasing the time limits for instances related to non-declaration, complex and cross-border arrangements, involving non-cooperative jurisdictions and fraud. The rules are applicable to both income taxes and VAT.

2022 Relevant Case Law – European Court of Human Rights

Case	***Vegotex International v. Belgium No. 49812/09***[383]	
Date	3 November 2022	
ECHR Articles	Article 6	
Facts	**Decision**	**Comments**
The company complained among other things about the unreasonable length of proceedings. The company was informed on 5 October 1995, of the tax authorities' intention to rectify its tax return and impose a surcharge. The proceedings ended with the Court of Cassation judgment of 13 March 2009.	Violation of article 6 § 1 of the Convention on account of the failure to comply with the reasonable-time requirement	The starting point for calculating the "reasonable time" is 5 October 1995, the date on which the applicant company was informed of the tax authorities' intention to rectify its tax return and impose a surcharge. The proceedings ended with the Court of Cassation judgment of 13 March 2009. The proceedings brought by the applicant company therefore lasted for over 13 years and 6 months: the administrative phase lasted for 4 years and 7 months at one level of decision-making, while the subsequent judicial phase lasted for almost 9 years across three levels of jurisdiction.

[381] *See* CN: Order No. 52 of the State Administration of Taxation, Provisions on the Procedures for Handling Tax Audit Cases (12 Jul. 2021), available at http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5166617/content.html (accessed 25 Feb. 2023).

[382] BE: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 35.

[383] *See* BE: ECtHR, No. 49812/09, *Vegotex International v. Belgium*, available at https://hudoc.echr.coe.int/eng?i=001-220415 (accessed 20 Feb. 2023).

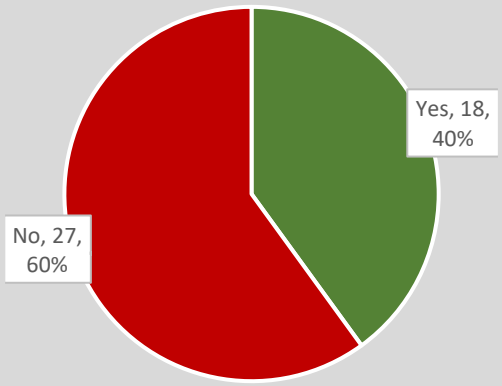
2022 Relevant Case Law – Court of Justice of the European Union

Case	T-593/20, *Tirrenia di navigazione v. Commission*[384]	
Date	18 May 2022	
EU Charter Articles	41	
Facts	**Decision**	**Comments**
Following a State aid investigation, the Commission concluded that certain measures relating to the appellant were to be regarded as illegal and incompatible State aid. The company complained inter alia about the excessive length of the procedure, arguing that this is a breach of the principle of good administration enshrined in article 41 of the Charter, as well as to the principles of legal certainty and proportionality. The company challenged the imposition of the financial penalty arguing that the offence had not yet been definitively concluded.	The complaint was rejected.	Note: The case is not a tax case - it concerns State aid procedures. Appeal Case before the Court of Justice C-514/22 P. Appeal brought on 29 July 2022.

Certainty for taxpayers is a fundamental right, and part of this right includes a reasonable time limit for audits. Interestingly, this best practice is not present in most surveyed jurisdictions, as only 40% of surveyed countries reported time constraints applicable to tax audits as illustrated in Chart 25.

Chart 25. Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	
53 responses	**Yes:** Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Czech Republic, Honduras, India, Kazakhstan, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Portugal, Slovenia, Spain, Türkiye, United States, Venezuela (1), Venezuela (2)

[384] IT: ECJ, 18 May 2022, Case T-593/20, *Tirrenia di navigazione v. Commission*, Case Law IBFD.



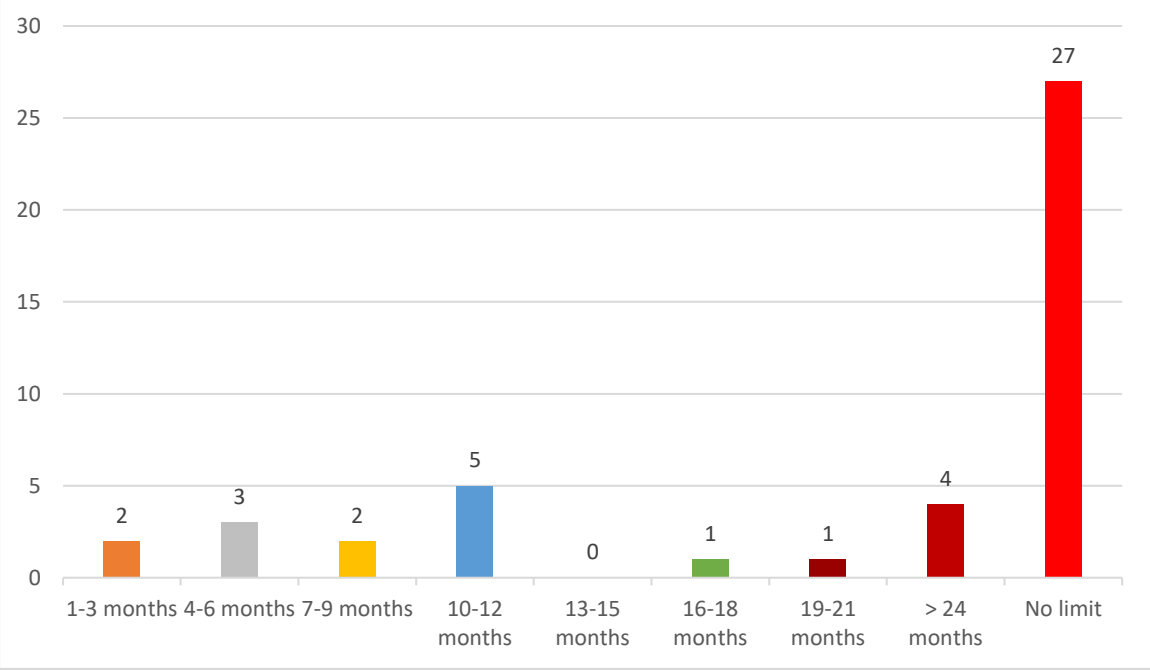
Source: OPTR: Questionnaire 1, Question 25

No: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Croatia, Denmark, Finland, Germany, Guatemala, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, New Zealand, Poland (1), Poland (2), Serbia, South Africa, Sweden, Switzerland, Chinese Taipei, Uruguay

The notion of a "reasonable" time limit is not easily determined and varies greatly between jurisdictions based on their specific legal context and background, in terms of a formal timeline and efforts to reduce the average time spent on a tax audit.

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

53 responses



Source: OPTR: Questionnaire 1, Question 26.

1-3 months: China (People's Rep.), Venezuela (1), Venezuela (2) **4-6 months:** Bulgaria (1), Bulgaria (2), Bulgaria (3), Portugal, Slovenia **7-9 months:** Chile, Honduras **10-12 months:** Bolivia, Kazakhstan, Mexico (1), Mexico (2), Peru (1), Peru (2), Türkiye **13-15 months:** none	**16-18 months:** Spain **19-21 months:** India **More than 24 months:** Colombia (1), Colombia (2), Czech Republic, Norway, United States **No limit:** Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Croatia, Denmark, Finland, Germany, Guatemala, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, New Zealand, Poland (1), Poland (2), Serbia, South Africa, Sweden, Switzerland, Chinese Taipei, Uruguay

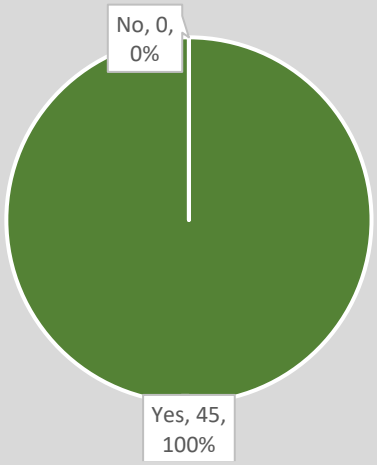
4.4. Technical assistance (representation) and the involvement of independent experts

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

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

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

53 responses



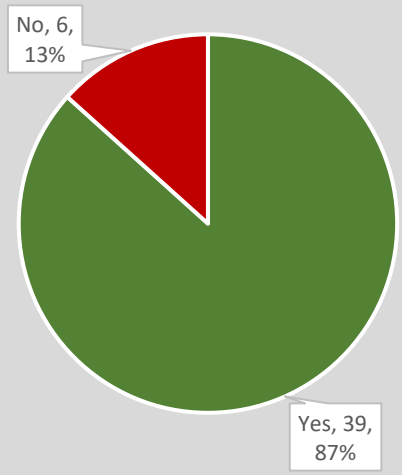
Source: OPTR: Questionnaire 1, Question 27

Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: none

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

53 responses



Source: OPTR: Questionnaire 1, Question 28

Yes: Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Lithuania, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Bosnia and Herzegovina, Guatemala, Kenya, Mauritius, Chinese Taipei

Within the framework of the earlier mentioned proposed tax reform a shift towards the minimum standard in the area of availability of technical assistance to taxpayers may be envisaged in **Chile**.

4.5. The audit report

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
	None

Belgium continues to observe the shift towards the minimum standard that was recorded in 2021.[385]

Chile continues to observe the shift towards the minimum standard that was recorded in 2021.[386]

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

Shifted towards/matched the best practice:	Shifted away from the best practice:

[385] BE: OPTR 2022, accessible at the following link: https://www.ibfd.org/sites/default/files/2022-05/National%20Report%20of%20Belgium.pdf (accessed 12.04.2023).

[386] CL: OPTR 2022, accessible at the following link: https://www.ibfd.org/sites/default/files/2022-05/National%20Report%20of%20Chile.pdf (accessed 12.04.2023).

None	None

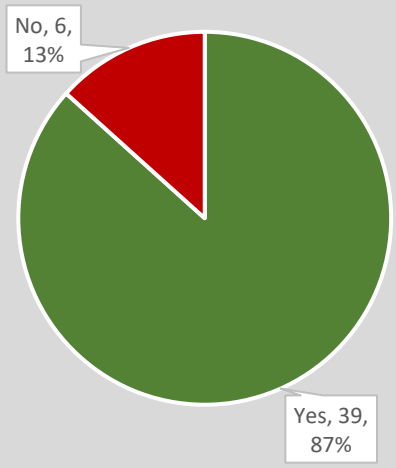
Best practice: **Following an audit, a report should be prepared even if the audit does not result in an additional tax or refund.**

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

In a deviation from the best practice as regards the audit report, in **Chinese Taipei** the audit report is classified as a confidential internal official document, which shall not be available to audited taxpayer.[387]

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

53 responses



Source: OPTR: Questionnaire 1, Question 29

Yes: Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Australia, Chile, Colombia (1), Colombia (2), Netherlands, Chinese Taipei

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

53 responses

Yes: Bosnia and Herzegovina, China (People's Rep.), Lithuania, Luxembourg

[387] TW: OPTR Report (2022) (Academia), Questionnaire 2, Question 38.

Source: OPTR: Questionnaire 1, Question 30

No: Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

5. More Intensive Audits

5.1. The general framework

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
	None

As regards the limited nature of the powers of the tax administration in the context of these audits, **China (People's Rep.)** appears not to have reversed the trajectory in the direction of a shift towards the fulfilment of the best practice following the revised Regulations on Tax Audit Work that took place in 2021. The Regulations clarified the need to strengthen the management of case sources and add new provisions that the inspection bureau may conduct inspections before filing a case in accordance with the law if necessary. The criminal investigation authority usually acts based on the cases handed over by tax agencies or other governmental institutions.[388]

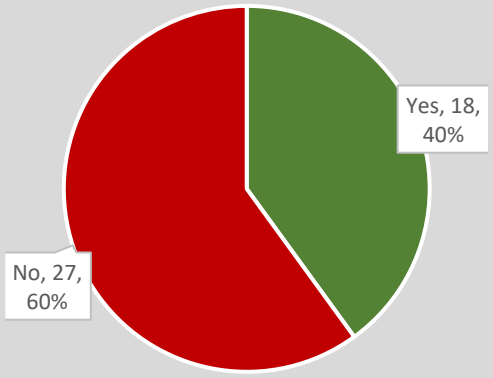
5.2. The implications of the *nemo tenetur* principle in connection with subsequent criminal proceedings

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile	Colombia

Chart 31. Is the principle *nemo tenetur* applied in tax investigations (i.e. the principle against self-incrimination)?	
53 responses	**Yes:** Bolivia, Brazil (1), Brazil (2), China (People's Rep.), Croatia, Czech Republic, Denmark, Finland, Germany, Japan, Kazakhstan, Kenya, Netherlands, Norway, Poland (1), Poland (2), Portugal, South Africa, United States, Uruguay

[388] *See* CN: CN: Order No. 52 of the State Administration of Taxation, Provisions on the Procedures for Handling Tax Audit Cases (12 Jul. 2021), available at http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5166617/content.html (accessed 26 Feb. 2023).; CN: Criminal Procedure Law of the People's Republic of China (2018), available at http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-11/05/content_2065631.htm (accessed 26 Feb. 2023); and CN: Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs (State Council No. 730), available at http://www.gov.cn/zhengce/content/2020-08/14/content_5534841.htm (accessed 26 Feb. 2023). *See also* CN: OPTR *Yearbook* 2022 (Academia), Questionnaire 2, Question 39.

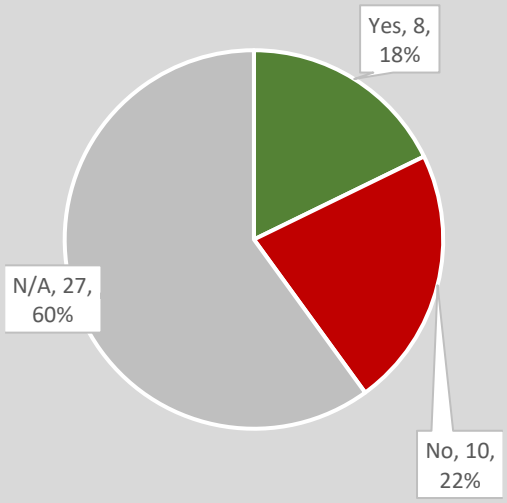


Source: OPTR: Questionnaire 1, Question 31

No: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Guatemala, Honduras, India, Ireland, Italy, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Serbia, Slovenia, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, Venezuela (1), Venezuela (2)

Chart 32. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?

53 responses



Source: OPTR: Questionnaire 1, Question 32

Yes: China (People's Rep.), Czech Republic, Denmark, Kazakhstan, Kenya, Netherlands, Poland (1), Portugal, South Africa

No: Bolivia, Brazil (1), Brazil (2), Croatia, Finland, Germany, Japan, Mexico (2), Norway, Poland (2), United States, Uruguay

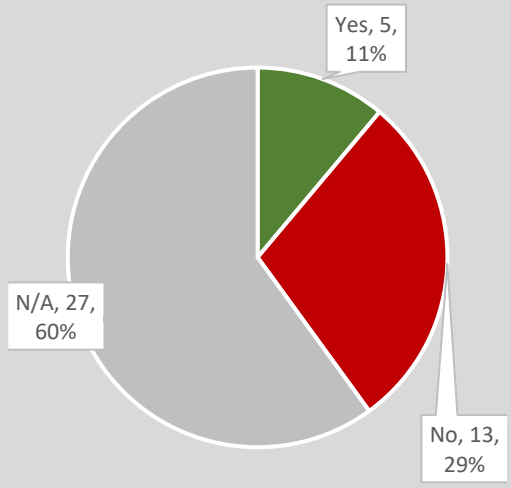
Not applicable: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Guatemala, Honduras, India, Ireland, Italy, Lithuania, Luxembourg, Mauritius, Mexico (1), New Zealand, Peru (1), Peru (2), Serbia, Slovenia, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, Venezuela (1), Venezuela (2)

Reports with diverging opinions: Mexico, Poland

Chart 33. If the *nemo tenetur* principle is allowed, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?

53 responses

Yes: Croatia, Germany, Kazakhstan, Norway, Uruguay



Source: OPTR: Questionnaire 1, Question 33

No: Brazil (1), Brazil (2), China (People's Rep.), Czech Republic, Denmark, Finland, Ireland, Kenya, Mexico (2), Netherlands, Poland (1), Poland (2), Portugal, Slovenia, South Africa, United States

Not applicable: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Guatemala, Honduras, India, Italy, Japan, Lithuania, Luxembourg, Mauritius, Mexico (1), New Zealand, Peru (1), Peru (2), Serbia, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, Venezuela (1), Venezuela (2)

Reports with diverging opinions: Mexico

According to a recently proposed tax reform in **Chile**, the country will move towards the convergence with the minimum standard by giving taxpayers the opportunity to provide information and cooperate in the context of a criminal case in order to reduce their tax liability.[389]

A shift away from the minimum standard was reported in **Columbia**, where the taxpayers' statements made during the audit process can be obtained and used even when it is foreseeable that the taxpayer may have committed a crime.[390] Furthermore, article 69 of Law 2277 of 2022 reduced the de minimis threshold for tax evasion, and thus there will be an increase in audits that do not comply with the minimum standard.[391]

Mexico appears to be continuing on its path away from the minimum standard in this area, as an amendment to the Federal Tax Code requires certified public accountants to report to the tax authorities if they become aware of a possible criminal conduct incurred by the taxpayer, affecting the latter's right to professional advice, the presumption of innocence and, naturally, *nemo tenetur*.[392]

Chart 34. Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty

[389] CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 40.

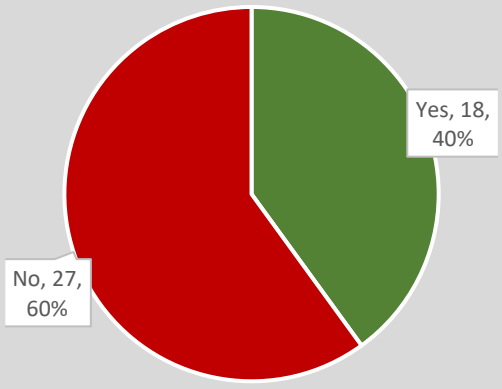
[390] CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 40

[391] CO: Law 2277 of 2022, accessible at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883 (accessed 22 Feb. 2023). *See also* CO: OPTR Report ((Tax) Ombudsperson), Questionnaire 2, Question 40

[392] *See* MX: OPTR Report (2021) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 40, accessible at the following link: https://www.ibfd.org/sites/default/files/2022-05/National%20Report%20of%20Mexico%20%281%29.pdf (accessed 11.04.2023).

or a criminal charge and, from that time onwards, the taxpayer's right not to self-incriminate is recognized?

53 responses



Source: OPTR: Questionnaire 1, Question 34

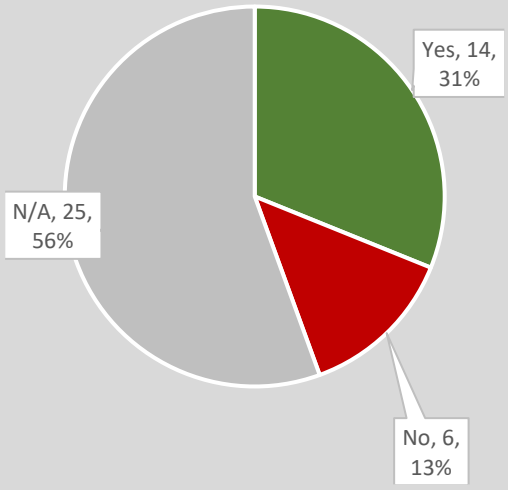
Yes: Austria, China (People's Rep.), Denmark, Germany, India, Kazakhstan, Luxembourg, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, United States, Venezuela (1)

No: Argentina, Australia, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Finland, Guatemala, Honduras, Ireland, Italy, Japan, Kenya, Lithuania, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Portugal, Chinese Taipei, Türkiye, Uruguay, Venezuela (2)

Reports with diverging opinions: Venezuela

Chart 35. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?

53 responses



Source: OPTR: Questionnaire 1, Question 35

Yes: Austria, Denmark, Germany, Kazakhstan, Luxembourg, Netherlands, Norway, Poland (1), Poland (2), Serbia, Slovenia, Spain, Sweden, Switzerland, United States

No: China (People's Rep.), India, Mexico (2), New Zealand, South Africa, Uruguay, Venezuela (1)

Not applicable: Argentina, Australia, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Finland, Guatemala, Honduras, Ireland, Italy, Japan, Kenya, Lithuania, Mauritius, Mexico (1), Peru (1), Peru (2), Portugal, Chinese Taipei, Türkiye, Venezuela (2)

Reports with diverging opinions: Mexico, Venezuela

5.3. Court authorization or notification

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

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

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

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
	Belgium

There was a significant shift away from this best practice with a new decision from the Court of Cassation in **Belgium**. In principle, under Belgian law, the tax authorities only have access to private homes or occupied premises with the authorization of a judge. Thus, in cases where the tax authorities have collected evidence in a taxpayer's home without the required authorization from a judge, the Court of Appeal of Ghent ruled that such evidence was, by definition, obtained illegally, so it could not be used for tax purposes. With a judgment of 21 April 2022, the Belgian Court of Cassation, however, overturned the judgment of the Court of Appeal of Ghent.[393] According to the Court of Cassation, such evidence cannot be excluded "by definition" but the decision whether it is to be allowed should be tested against the principles of good administration and the right to a fair trial.[394]

The developments in Belgium are similar to the shifting away from the minimum standards and best practices observed in **Brazil**, where a 2021 decision of the State Court of Appeals of Minas Gerais does not appear to have been overturned so that a departure from the best practice continues to be observable. This court has found that prior authorization by the

[393] BE: Court of Cassation, Judgement of 21 April 2022, F.20.0156.N, retrievable at this link: https://juportal.be/content/ECLI:BE:CASS:2022:ARR.20220421.1N.15/NL (accessed 12.04.2023).

[394] *See* BE: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 43.

judiciary to enter premises is unnecessary since such an activity would represent – in the view of the court – a mere exercise of the police power by the tax authorities. An extraordinary appeal against this decision was not entertained by the Supreme Federal Court. The decision is debatable, considering the guarantee of inviolability of the home, as the Supreme Federal Court has previously recognized that any evidence obtained in non-authorized on-site inspections is illegal and not permitted for use in a trial. Despite this constitutional guarantee, infra-constitutional legislation authorizes the access of taxpayers' premises by tax authorities without prior judicial authorization.[395]

Both of these outcomes are in stark departure from the jurisprudence in **Spain** where the Supreme Court's judgment of 14 July 2021 does not appear in the meanwhile to have been overturned so that a convergence with the best practice continues to be observed. According to this Court, the tax administration cannot conduct investigations, determine settlements or impose sanctions on a taxpayer based on documents or evidence seized as a result of a search practised in the home of third parties, when such documents were considered invalid in a final criminal judgment because they were obtained in violation of fundamental rights, even if the entry and registration has been authorized by a judge. Also, another Supreme Court judgment, this time of 23 September 2021, stated that the tax authorities cannot enter premises without first notifying the beginning of the audit procedure.[396]

2022 Relevant Communicated Cases – European Court of Human Rights

Case	***ITALGOMME PNEUMATICI S.R.L. v. Italy No. 36617/18***[397]
Date	24 May 2022
ECHR Articles	Article 6, 8 and 13
Facts	The applicants complain of the absence in the Italian legal system of a judicial remedy directly accessible and aimed at assessing the lawfulness of, and justification for, search warrants. As the applicants argue, search warrants are not subject to a direct appeal and they can be challenged only at the end of the tax assessment proceedings, provided that a final administrative act has been adopted. Moreover, that act must have been based on information and evidence gathered through the search. As evident from other similar cases raised against Italy, the domestic framework creates potentially systemic deficiencies as regards the applicable standard of legal protection.[398]

[395] *See* BR: 27 July 2020, STF, ARE 1279182/MG, available at https://stf.jusbrasil.com.br/jurisprudencia/1106752172/recurso-extraordinario-com-agravo-are-1279182-mg-0350112-6820138130433/inteiro-teor-1106752191 (accessed 23 Feb. 2022). *See also* BR: OPTR Yearbook 2021 (Academia), Questionnaire 2, Question 41.

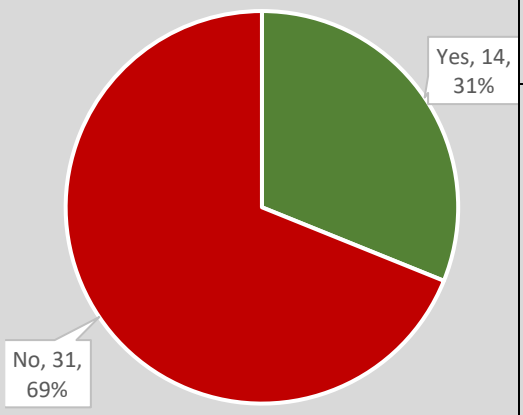
[396] *See* ES: STS 2982/2021, 14 July 2021, available at https://www.poderjudicial.es/search/TS/openDocument/018f7cf37885acb1/20210727 (accessed 26 Feb. 2023); and ES: STS 3502/2021, 23 Sept. 2021, available at https://www.poderjudicial.es/search/TS/openDocument/36fc512f06556163/20211011 (accessed 23 Feb. 2022). *See also* ES: OPTR Yearbook 2022 (Taxpayers/Tax Practitioners/Judiciary/(Tax) Ombudsperson/Academia), Questionnaire 2, Question 43.

[397] *See* IT: ECtHR, No. 36617/18, *ITALGOMME PNEUMATICI S.R.L. v. Italy*, available at https://hudoc.echr.coe.int/eng?i=001-217990 (accessed 20 Feb. 2023).

[398] *See* IT: ECtHR, No. 32539/18, *AGRISUD 2014 S.R.L. SEMPLIFICATA v. Italy,* available at https://hudoc.echr.coe.int/eng?i=001-221454 (accessed 20 Feb. 2023).

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

53 responses



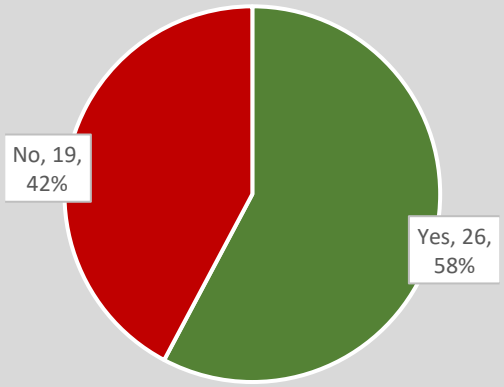
Source: OPTR: Questionnaire 1, Question 36

Yes: Brazil (1), Brazil (2), Finland, Germany, Guatemala, Ireland, Japan, Kenya, Lithuania, Norway, Slovenia, South Africa, Sweden, Chinese Taipei, Türkiye

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Honduras, India, Italy, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Spain, Switzerland, United States, Uruguay, Venezuela (1), Venezuela (2)

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

53 responses



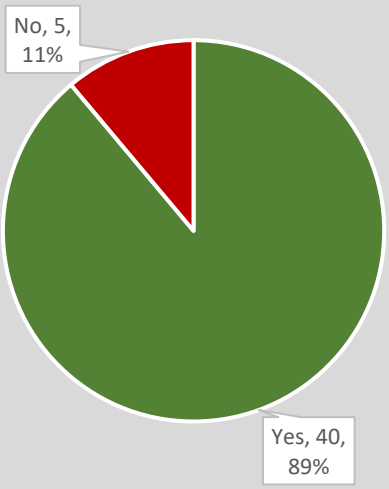
Source: OPTR: Questionnaire 1, Question 37

Yes: Australia, Austria, Belgium, Brazil (1), Brazil (2), Denmark, Finland, Germany, Guatemala, India, Ireland, Italy, Japan, Kenya, Luxembourg, Mauritius, New Zealand, Poland (1), Poland (2), Serbia, Slovenia, Spain, Sweden, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Honduras, Kazakhstan, Lithuania, Mexico (1), Mexico (2), Netherlands, Norway, Peru (1), Peru (2), Portugal, South Africa, Switzerland

Chart 38. Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?

53 responses



Source: OPTR: Questionnaire 1, Question 38

Yes: Argentina, Australia, Austria, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Belgium, China (People's Rep.), Croatia, Czech Republic, Switzerland

Best practice: **Access to bank information should require judicial authorization.**

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile	Argentina, Mexico, Poland

A partial shift towards the best practice could be observed in **Chile**, where a recent legislative development allows the request for bank account balances, while adding additional requirements and rights to taxpayers regarding this matter.[399]

Outside this experience, overall the downward trend in judicial protection of bank secrecy continued further in 2022.

In a departure from the best practice, **Argentina** signed the Bilateral Government Agreement between the United States (US) and Argentina (FATCA) towards the end of 2022 with the agreement entering into force from 2023 and the first automatic exchange of financial information is expected to occur in September 2024.[400]

The situation in **Mexico** is similar where the Mexican Supreme Court has ruled that the Tax Authorities could request the statements of account of taxpayers without any judicial order or authorization leading to a shift away from the best practice.[401]

There was a shift away from the best practice also in **Poland**, where since July 2022, tax authorities have been entitled to obtain information about the account of a specific taxpayer

[399] CL: Law 21.453 of 2022, retrievable at the following link: https://www.bcn.cl/leychile/navegar?idNorma=1178003 (accessed 14.03.2023).

[400] AR: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

[401] Suprema Corte, Tesis, 1a./J. 20/2022 (11a.), available at Detalle - Tesis - 2024653 (scjn.gob.mx) (accessed 26 Feb. 2023). *See also* MX: OPTR Report 2 (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 44.

by requesting the information from a bank, on suspicion of a tax crime, but before charging a given person (the “in rem” phase). As a result, taxpayers' bank information is reviewed without their knowledge and without explicit criminal proceedings being initiated. From a formal point of view, it is sufficient to initiate preparatory proceedings or explanatory activities, and there is no obligation to obtain judicial authorization.[402] This essentially authorizes the tax authorities to engage in “fishing expeditions”.

In **Bolivia** it has been the case for a long time that the Bolivian Tax Code and regulations authorize full access to the taxpayers’ bank account records.[403] A trend that continues to be exacerbated since last year in money laundering cases where the tax authorities may request a taxpayer’s bank information directly from the financial entities instead of through the regulatory authority, which is otherwise the standard.[404]

2022 Relevant Communicated Cases – European Court of Human Rights

Case	***Ferrieri V. Italy No. 40607/19***[405]
Date	7 July 2022
ECHR Articles	Article 6, 8 and 13
Facts	The applications concern tax investigating authorities’ access to the applicants’ banking data regarding movements, transactions and any other disposition that could be related to the applicants or traced back to them. The applicants have not been notified by tax authorities of the authorization. They have received letters from the banks informing them that they had received such requests from the investigating authority and that they were going to comply with their legal obligation to provide the requested information.

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

[402] PO: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

[403] BO: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

[404] *See* BO: Ley de 28 de diciembre de 2020 No. 1.357, Impuesto a las Grandes Fortunas, available at https://web.senado.gob.bo/sites/default/files/LEY%20N%C2%B0%201357-2020.PDF (accessed 26 Feb. 2023). *See also* BO: OPTR Yearbook 2022 (Taxpayers/Tax Practitioners/Academia), Questionnaire 2, Question 44.

[405] *See* IT: ECtHR, No. 49812/09, *Ferrieri v. Italy*, available at https://hudoc.echr.coe.int/eng?i=001-218777 (accessed 20 Feb. 2023).

No developments were reported regarding this best practice in 2022.

Minimum standard: The seizure of documents should be subject to a requirement to give reasons why it is necessary, along with a set time frame in which the documents must be returned.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile	Mexico

Letter No. 12 2021 of the Internal Revenue Service of **Chile** continues to be applicable thus not reversing the earlier observed shift towards the minimum standard by requiring the tax authorities to provide sufficient motivation for accessing the documentation and prior notification to the taxpayer of all administrative actions in this regard.[406]

On the other hand, a shifting away from the minimum standard continues to be observed in Mexico after the 2021 amendments to the Federal Tax Code in **Mexico** that allowed the tax authorities to seize bank deposits without prior judicial hearing when a tax assessment has become "due". However, the Federal Tax Code has not provided to date a definition of a "due" tax assessment, and in accordance with the general interpretation of various provisions of the Code, a due tax assessment arises when the assessment is not paid. This concept is different from a "final assessment", where the period to challenge on an administrative stage or via the judiciary, has expired. In practice, this provision is reported to allow the authorities to seize property, including bank accounts, without giving taxpayers an opportunity to be heard.[407]

5.4. Treatment of privileged information

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
	None

It is worth noting that in **China (People's Rep)** if the taxpayer refuses to provide electronic documents, the tax authority may take appropriate technical means to directly audit the

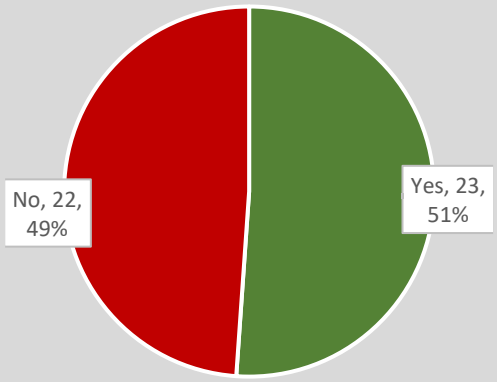
[406] *See* CL: OPTR Yearbook 2022 (Taxpayers/Tax Practitioners), Questionnaire 2, Question 45.

[407] *See* MX: Federal Tax Code (*Código Fiscal de la Federación*), art. 144, D.O.F. 12 Nov. 2021, available at http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 26 Feb. 2023). *See also* MX: OPTR Yearbook 2022 (Taxpayers/Tax Practitioners), Questionnaire 2, Question 45.

electronic information system of the taxpayer, or extract or copy the electronic data for the purpose of a tax audit. However, in trying to not disproportionately affect the taxpayer, any such intervention and the technical means applied shall not damage the original electronic data of the electronic information system, or affect the normal operation of the electronic information system.[408]

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

53 responses



Source: OPTR: Questionnaire 1, Question 39

Yes: Australia, Austria, Bosnia and Herzegovina, Colombia (1), Colombia (2), Czech Republic, Denmark, Ireland, Italy, Kazakhstan, Kenya, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, United States

No: Argentina, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Croatia, Finland, Germany, Guatemala, Honduras, India, Japan, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Chinese Taipei, Uruguay, Venezuela (1), Venezuela (2)

[408] CN: OPTR Report (2022) (Academia), Questionnaire 2, Question 48.

6. Reviews and Appeals

6.1. The remedies and their function

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
China (People's Rep.)	Bolivia

In **China (People's Rep.)**, it was reported that the local governments opened on-line administrative review service platforms on their official website.[409]

In 2020 and 2021, the pandemic provided an impetus not only for the e-filing of tax returns, but also for the e-filing of reviews and appeals. For instance, during 2021, **Colombia** opted for full digitalization of all tax proceedings (e.g. e-notifications, obligation to email any lawsuit to the defendant, digital notifications, virtual hearings, e-files) as part of the amendments introduced to the Administrative Procedure Code, which includes specific provisions related to tax litigation procedures, in parallel with a similar regulation for tax administrative procedures.[410] A similar development was also implemented in **Peru**, where e-filing of claims to the Peruvian tax administration has been implemented through the so-called Table of Virtual Parties (*Mesa de Partes Virtuales*), also allowing taxpayers to present an appeal, respond to information requests and send requests related to the process.[411] All these developments do not appear to have been reversed in 2022.

Negative developments have been reported in **Bolivia**, where e-filing requests for internal review are not available. This point of criticism may perhaps be explained due to the fact that Bolivia has only recently introduced an administrative review procedure. Indeed, until 2022, this jurisdiction did not report having a similar procedure.

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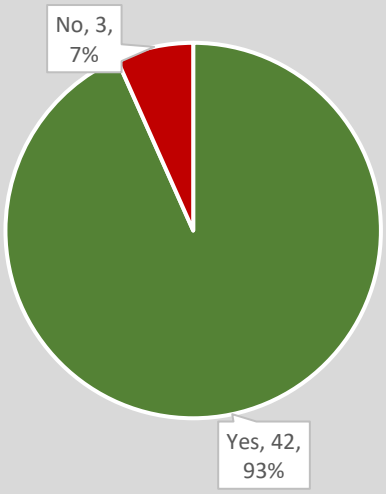
409 *See* CN: OPTR Report (2022) (Academia), Questionnaire 2, Question 49.

410 *See* CO: Ley 2080 de 2021, por medio de la cual se reforma el Código de Procedimiento Administrativo y de lo Contencioso Administrativo -Ley 1437 de 2011- y se dictan otras disposiciones en materia de descongestión en los procesos que se tramitan ante la jurisdicción (25 Jan. 2021), available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=156590 (accessed 23 Feb. 2022); CO: Resolución DIAN No. 000056, por la cual se implementa la presentación electrónica de los recursos de reconsideración que deban presentarse ante la Dirección de Impuestos y Aduanas Nacionales, en cumplimiento de lo establecido en el artículo 559 del Estatuto Tributario (12 July 2021), available at https://www.dian.gov.co/normatividad/Normatividad/Resoluci%c3%b3n%20000056%20de%2012-07-2021.pdf (accessed 23 Feb. 2022); M. Bocachica, *Congress Establishes Mandatory Use of Electronic Means in Tax Proceedings* (22 Feb. 2021), News IBFD; and M. Bocachica, *Taxpayers May File Reconsideration Claims Electronically* (28 July 2021), News IBFD.

411 *See* PE: Resolución No. 000031-2021/SUNAT, respecto a la presentación de escritos de reclamación, otros escritos y de solicitudes vinculadas a expedientes electrónicos de reclamación, a través de la mesa de partes virtual de la SUNAT (24 Feb. 2021), available at https://sunat-pe.com/legislacion/superin/2021/031-2021.pdf (accessed 23 Feb. 2022); and PE: e-portal *Mesa de Partes*, available at https://www.gob.pe/20416-acceder-a-mesa-de-partes?child=8878 (accessed 23 Feb. 2022).

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

53 responses



Source: OPTR: Questionnaire 1, Question 40

Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Germany, Guatemala, Honduras, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Finland, India, Türkiye

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Spain	None

In a large number of jurisdictions, access to justice in tax matters requires the prior exhaustion of "administrative review procedures". These procedures normally have (one or more of) the following characteristics:[412] (i) they are triggered by taxpayers; (ii) they may end either with the annulment or the confirmation of a tax measure (prohibition of *reformatio in pejus*); (iii) they secure that administrative measures issued by tax authorities comply with the rule of law and, thus, are aimed to protect the interest of the community rather than the rights of individual persons; (iv) they may entail the replacement of an administrative measure with a new one; (v) they are conducted by the same branch of the state government that issued the measure under the review; (vi) they should operate as a "filter" that reduces the number of tax disputes to be addressed at the judicial level; and (vii) they do not automatically suspend the tax collection during the review process nor the time limits for the appeal of the measure under review.

The need for prior exhaustion of administrative review adds at least one layer of revision to those that are necessary for securing taxpayers' effective protection, thus increasing the risk

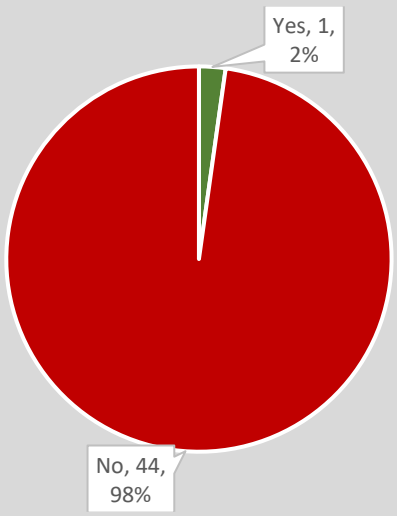
[412] *See* P. Pistone, *General Report*, in *Tax Procedures*, pp. 69-73 (P. Pistone ed., IBFD 2020).

of undermining the right to justice within a reasonable period.[413] At the same time, it allows for some uncomplicated cases to be swiftly resolved.

With respect to the minimum standard at hand, the only development reported[414] for 2022 relates to **Spain**. For historical reasons, Spain (like many other EU Member States) maintains specific administrative bodies and procedures for the review of tax measures, but there are diverging views in the literature as to whether such mandatory reviews should be maintained, eliminated or kept on an optional basis.[415] In this context, the Spanish Supreme Court (Tribunal Supremo. Sala de lo Contencioso), with judgment 1580/2021 of 22 December 2021, declared that it is not necessary to exhaust administrative reviews to access the special process for the protection of fundamental rights (*procedimiento especial deprotección de los derechos fundamentales*).[416]

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

53 responses



Source: OPTR: Questionnaire 1, Question 41

Yes: Kazakhstan

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

Chart 42. Does the taxpayer need permission to appeal to the second or higher instance tribunals?

53 responses

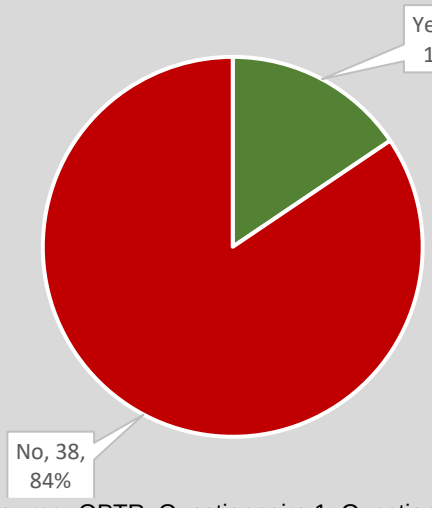
Yes: Bosnia and Herzegovina, Denmark, Finland, Germany, Mauritius, Sweden, Chinese Taipei

[413] *See* C.P. Taboada, *Is the Previous Exhaustion of Administrative Procedures a Necessary Condition to Access Judicial Procedures?,* in *Tax Procedures,* pp. 177-196 (P. Pistone ed., IBFD 2020)?

[414] *See* ES: OPTR Report (2022) (Academia, Taxpayers/Tax Practitioners), Questionnaire 2, Question 50.

[415] *See* V.A. García Moreno et al., *Spain*, in *Tax Procedures*, pp. 912-914 (P. Pistone ed., IBFD 2020).

[416] The judgment is available at https://www.poderjudicial.es/search/documento/AN/9944313/Personal%20interino/20220506 (accessed 21 Feb. 2023).

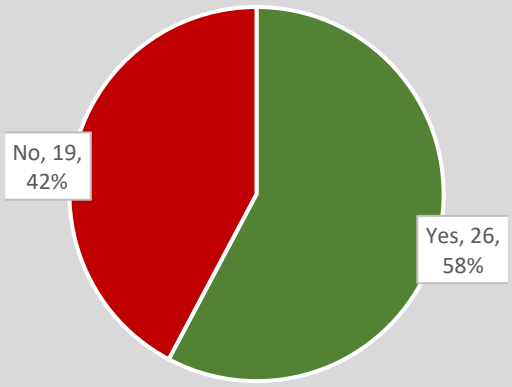


Source: OPTR: Questionnaire 1, Question 42

No: Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Switzerland, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

Chart 43. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision before the case can proceed to a judicial hearing?

53 responses



Source: OPTR: Questionnaire 1, Question 43

Yes: Argentina, Austria, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Croatia, Czech Republic, Germany, Guatemala, Honduras, India, Ireland, Japan, Kazakhstan, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Poland (1), Poland (2), Serbia, Slovenia, Spain, Switzerland, Chinese Taipei, Türkiye,

No: Australia, Belgium, Bolivia, Brazil (1), Brazil (2), Chile, Colombia (1), Colombia (2), Denmark, Finland, Italy, Kenya, Netherlands, New Zealand, Norway, Portugal, South Africa, Sweden, United States, Uruguay, Venezuela (1), Venezuela (2)

2022 Relevant Case Law – European Court of Justice

Case	C-582/20 - *SC Cridar Cons SRL*[417]	
Date	24 February 2022	
EU Charter Articles	47	
Facts	**Decision**	**Comments**
The Romanian tax authorities denied to Cridar ("the taxpayer") the right to recover VAT in respect of transactions that were presumed to be fraudulent. At the time of this assessment, criminal investigation was still ongoing and the Romanian tax authorities did not possess objective information concerning the taxpayer's involvement in the fraud. For this reason, the Romanian tax authorities suspended the appeal against the VAT assessment until the relevant facts were clarified during criminal proceedings.	Article 47 of the Charter does not preclude national legislation from enabling tax authorities to suspend the examination of a tax appeal for the time needed to obtain evidence relating to the taxpayer's involvement in a fraud. However, the following conditions must be met: (i) the suspension must not unreasonably delay the appeal procedure; (ii) the ruling allowing the suspension must be reasoned (both in law and in fact) and subject to judicial review; and (iii) if it is established that the right to recover VAT was undeservedly denied, the taxpayer must obtain repayment of the tax amount (including default interest) within a reasonable period of time. The ECJ also ruled that if the appeal is "put on hold" there is no requirement to suspend the execution of the assessment unless there are serious doubts as to its legality.	The Court also clarified (paragraphs 45-46) that the administrative review procedure at hand constitutes implementation of European Union law and that such procedure must consequently be conducted in compliance with the right to good administration.

6.2. Length of the procedure

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	Guatemala, Italy

Reviews and appeals in tax cases need to be swift to ensure effective tax collection and improve the efficiency of tax systems. At the same time, the completion of tax reviews and appeals within a reasonable time is crucial not only for the protection of taxpayers' rights to a fair trial, but also for the right to certainty about their tax liability.

[417] *See* RO: ECJ, 24 Feb. 2022, Case C-582/20, *SC Cridar Cons SRL v. Administraţia Judeţeană a Finanţelor Publice Cluj and Direcţia Generală Regională a Finanţelor Publice Cluj-Napoca*, available at https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-363/20 (accessed 22 Feb. 2023).

The pandemic has raised awareness of the need for faster responses; at the same time, however, it has also presented challenges that cannot be easily resolved.

With respect to the best practice at hand, 2022 confirmed the swinging trend reported in 2021. Indeed, the reports for 2022 show that some jurisdictions are still engaged in the positive trends reported for 2021 (e.g. **Colombia,**[418] **Denmark**[419] and **Lithuania**[420]), while other jurisdictions that deviated from the best practice in 2021 have either not improved at all (e.g. **Bolivia** and **Brazil**) or deviated further (e.g. **Guatemala**[421]).

Although national reports for both 2021 and 2022 signalled a "no-change" situation,[422] it should be highlighted that **Italy** is constantly shifting away from the best practice.[423] On 22 June 2022, the Italian Ministry of Finance published a report[424] on tax litigation showing that the average

[418] In Colombia the diminishing effects of the COVID-19 pandemic allowed, in 2021, to lift the suspension of administrative terms decreed due to the quarantine measures adopted by the government. *See* CO: Resolución DIAN No. 000055, por la cual se adoptan medidas de urgencia para garantizar la atención y la prestación de los servicios por parte de la Unidad Administrativa Especial Dirección de Impuestos y Aduanas Nacionales - DIAN, en el marco del Estado de Emergencia Económica, Social y Ecológica (29 May 2020), available at https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000055%20de%2029-05-2020.pdf (accessed 23 Feb. 2022); CO: Resolución DIAN No. 000048, por la cual se modifica la Resolución 00043 de fecha 18 de mayo de 2021, por la cual se suspenden los términos en los procesos y actuaciones administrativos en materia tributaria, aduanera, cambiaria y administrativa de competencia de la UAE Dirección de Impuestos y Aduanas Nacionales – DIAN (1 June 2021), available at https://cijuf.org.co/node/21596 (accessed 23 Feb. 2022); CO: Resolución DIAN No. 000079, por la cual se levanta parcialmente la suspensión de términos prevista en el literal a) del artículo 2º de la Resolución 55 de 2020, modificado por el artículo 1º de la Resolución 62 de 2020 (24 Aug. 2021), available at https://cijuf.org.co/sites/cijuf.org.co/files/normatividad/2021/RESOLUCION%2079.pdf (accessed 23 Feb. 2022); and CO: Resolución DIAN No. 000104, por la cual se levanta la suspensión de términos prevista en el literal a) del artículo 2º de la Resolución 55 de 2020, modificado por los artículos 1º de la Resolución 62 de 2020 y 1 y 2 de la Resolución 079 de 2021 (29 Sept. 2021), available at https://cijuf.org.co/node/22183 (accessed 23 Feb. 2022).

[419] The Danish Tax Appeals Agency, in 2021, has reported shorter average times for the completion of reviews and appeals. *See* DK: Notat om beretning om Skatteankestyrelsens sagsbehandlingstider og produktivitet (2021), available at https://rigsrevisionen.dk/Media/637744653367185996/1110-21.pdf (accessed 23 Feb. 2022); and DK: Report 6/2016 - Rigsrevisionens beretning om Skatteankestyrelsens sagsbehandlingstider og produktivitet afgivet til Folketinget med Statsrevisorernes bemærkninger (2016), available at https://rigsrevisionen.dk/Media/C/D/sr0616.pdf (accessed 23 Feb. 2022).

[420] Lithuania, during the pandemic, adopted several measures (e.g. remote hearings, more efficient written procedures, wider use of electronic means) that encouraged a faster dispute resolution and only exceptional cases may still exceed 2 years. *See* LT: Law on Tax Administration (16 June 2005), available at https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.276549?jfwid=q8i88lr3sArticle (accessed 7 Mar. 2022). The reported statements are based mostly on practical experience.

[421] *See* GL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 51.

[422] *See* IT: OPTR Report (2022) (Academia), Questionnaire 2, Question 51.

[423] Unlike many EU Member States, Italy does not make access to justice in tax matters conditional upon the prior exhaustion of administrative review procedures (unless the value of the case is less than EUR 50,000). *See* articles 17-bis and 19 of Decree No. 546/1992, available at https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1993-01-13&atto.codiceRedazionale=093G0007&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=87d8c585-14a2-45a9-9f67-7b45d058f9c8&tabID=0.8491476831258369&title=lbl.dettaglioAtto (accessed 10 Feb. 2023). *See also* A. Carinci, *Italy*, in *Tax Procedures*, p. 663 (P. Pistone ed., IBFD 2020).

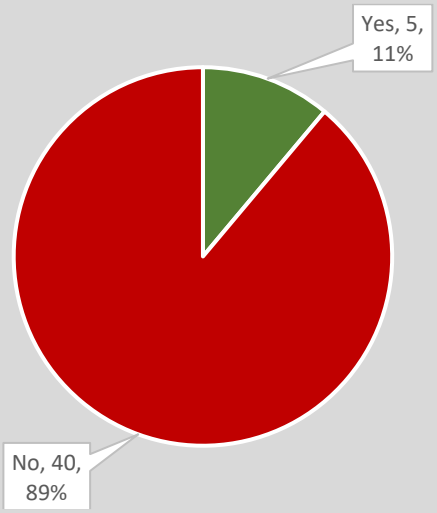
[424] *See* the report MEF, *Direzione della Giustizia Tributaria, Relazione sul monitoraggio dello stato del contenzioso tributario e sullo stato delle commissione tributarie*, Roma, June 2022, p. 12, available at https://www.finanze.gov.it/export/sites/finanze/.galleries/Documenti/Contenzioso/Relazione-monitoraggio-contenzioso-2021.pdf (accessed 10 Feb. 2023).

length of tax disputes in 2021 is 1,080 days before second-tier tax courts (with an increase of 2.5% compared to 2020) and 652 days before first-tier tax courts (with an increase of 3.4% compared to 2020).

On 31 August 2022, the Italian parliament approved Law 133/2022, which reforms both the Italian tax justice system and the Italian tax procedural rules. The aim of this reform is to eliminate the backlog of cases before tax courts, to reduce the number of tax trials before the Supreme Court and to improve the quality of tax court judgments. The legal literature, however, seems rather sceptical about the effectiveness of this reform.[425]

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

53 responses



Source: OPTR: Questionnaire 1, Question 44

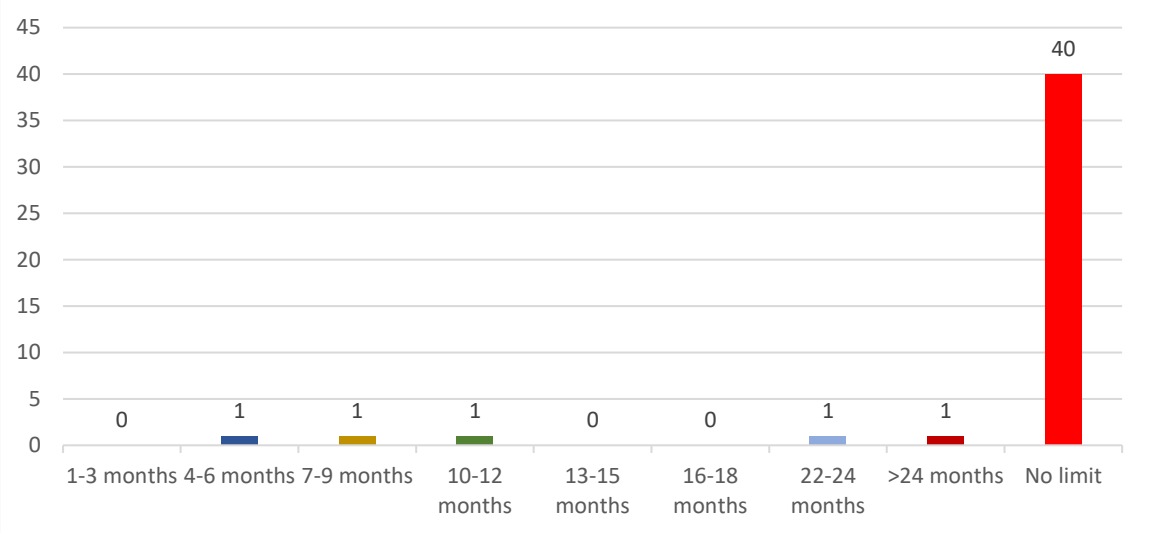
Yes: China (People's Rep.), Czech Republic, Honduras, Kazakhstan, Chinese Taipei

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Denmark, Finland, Germany, Guatemala, India, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

[425] *See* E. Manzon, Sulla riforma della giustizia tributaria: stallo (prevedibile), colpo d'ala e discesa sulla terra (necessari), in Giustizia Insieme, 6 Feb. 2023, available at https://www.giustiziainsieme.it/it/diritto-tributario/2647-sulla-riforma-della-giustizia-tributaria-stallo-prevedibile-colpo-dala-e-discesa-sulla-terra-necessari---editoriale (accessed 10 Feb. 2023); the author of the article is a prominent judge of the Italian Supreme Court. From Academia, *see* A. Contrino, Irragionevolezze ordinamentali e innovazioni processuali (rilevanti) della recente riforma della giustizia tributaria, in Nuovo Diritto delle Società, 2023, forthcoming.

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

53 responses



Source: OPTR: Questionnaire 1, Question 45.

1-3 months:
none

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

7-9 months:
Chinese Taipei

10-12 months:
Kazakhstan

13-15 months:
None

16-18 months:
none

22-24 months:
Honduras, Venezuela (2)

>24 months:
Czech Republic

No limit:
Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Denmark, Finland, Germany, Guatemala, India, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Türkiye, United States, Uruguay, Venezuela (1)

Reports with diverging opinions: Venezuela

2022 Relevant Case Law – European Court of Justice

- *See* ***C-582/20 - SC Cridar Cons SRL*** at section 6.1.[426]

[426] *See* RO: ECJ, 24 Feb. 2022, Case C-582/20, *SC Cridar Cons SRL v. Administraţia Judeţeană a Finanţelor Publice Cluj and Direcţia Generală Regională a Finanţelor Publice Cluj-Napoca*, available at https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-363/20 (accessed 22 Feb. 2023).

2022 Relevant Communicated Cases – European Court of Human Rights

Case	***Ēriks OSIS v. Latvia*, No. 31624/18**[427]
Date	24 November 2022
ECHR Articles	6(1)
Facts	The application concerns the length of criminal proceedings for tax evasion under article 6(1) of the Convention. On 10 March 2009, criminal proceedings were instituted on suspicion of tax evasion by officials of a company of which the applicant was a board member. On the same day the company documents were seized from the applicant. On 21 August 2014, the pre-trial investigation was closed and the case was referred to the first-instance court. By a judgment of 14 June 2016, the first-tier court convicted the applicant of tax evasion, sentenced him to 3 years' imprisonment, imposed a prohibition to engage in business activities for 3 years and ordered him to pay EUR 334,536.70 in damages to the state. On 6 April 2017, the Riga Regional Court upheld the judgment and on 22 June 2017 a judge of the Supreme Court refused to examine an appeal on points of law lodged by the applicant's lawyer. By a final decision of 28 February 2018, the Supreme Court dismissed another request by the applicant's lawyer to re-examine the findings of the Riga Regional Court and noted that the appellate court had correctly concluded that there had been no breach of the reasonable time requirement.

6.3. Alternative dispute resolution

Despite both parties' best efforts, tax assessment conflicts between tax administrations and taxpayers are inevitable. Alternative dispute resolution (ADR) can be necessary to resolve conflicts efficiently. In the end, these instruments provide certainty for both parties and offer the possibility to reach better results in terms of tax policy.

In this area there seem to be no major developments. Indeed, jurisdictions reporting in 2021 not to have arrangements for alternative dispute resolution (e.g. mediation or arbitration) also gave the same answer for 2022.

Nevertheless, if one considers the international framework, in 2022 there have been some developments in the context of international tax dispute prevention and/or resolution in the context of OECD Pillar One.[428]

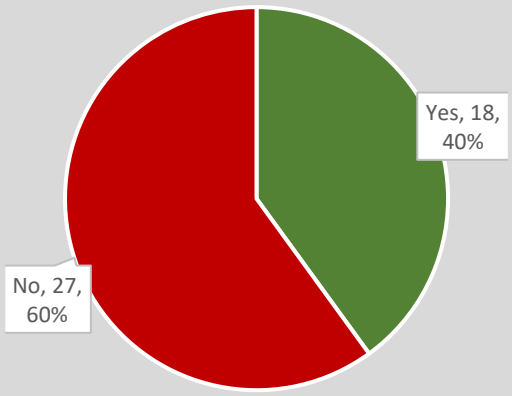
[427] *See* LV: ECtHR, No. 31624/18, *Ēriks OSIS v. Latvia*, available at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221913%22]} (accessed 23 Feb. 2023).

[428] *See* OECD, *Pillar One – Tax certainty for issues related to Amount A, Public Consultation Document, 27 May – 10 June 2022*, available at https://www.oecd.org/tax/beps/public-consultation-document-pillar-one-amount-a-tax-certainty-issues.pdf (for the comments *see*: https://www.oecd.org/tax/beps/public-comments-received-on-tax-certainty-aspects-under-amount-a-of-pillar-one.htm); OECD, *Progress Report on the Administration and*

Moreover, it should be recalled that in 2021 the United Nations Committee of Experts on International Cooperation in Tax Matters approved the Handbook on Dispute Avoidance and Resolution.[429] The document is divided into two parts: Part 1 has a broad focus and deals with mechanisms for avoiding and resolving tax disputes that could arise in a purely domestic context and cross-border tax disputes (including those related to the application of tax treaties). Part 2 focuses exclusively on mutual agreement procedures included in tax treaties.[430]

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

53 responses



Source: OPTR: Questionnaire 1, Question 46

Yes: Australia, Belgium, Brazil (1), Brazil (2), Chile, China (People's Rep.), Colombia (2), Guatemala, Italy, Kenya, Lithuania, Mauritius, Mexico (1), Mexico (2), Netherlands, Norway, Poland (1), Poland (2), South Africa, Chinese Taipei, United States, Venezuela (1), Venezuela (2)

No: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Colombia (1), Croatia, Czech Republic, Denmark, Finland, Germany, Honduras, India, Ireland, Japan, Kazakhstan, Luxembourg, New Zealand, Peru (1), Peru (2), Portugal, Serbia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Uruguay

Reports with diverging opinions: Colombia

Chart 47. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file or by e-filing)?

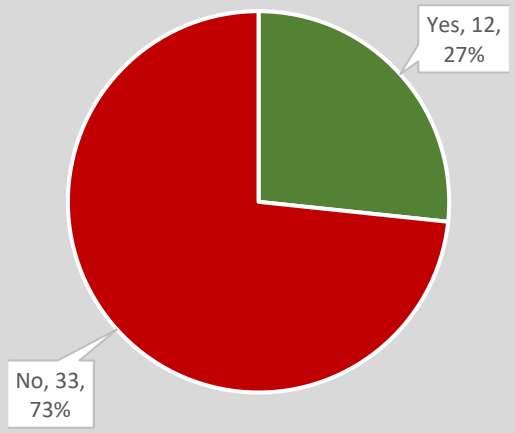
53 responses

Yes: Australia, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Denmark, Germany, Honduras, Italy, Lithuania, Mexico (2), Poland (1), Poland (2), South Africa,

Tax Certainty Aspects of Pillar One, Public consultation, 6 October – 11 November 2022, available at https://www.oecd.org/tax/beps/progress-report-administration-tax-certainty-aspects-of-amount-a-pillar-one-october-2022.pdf (for the comments *see*: https://www.oecd.org/tax/beps/public-comments-received-on-the-progress-report-on-the-administration-and-tax-certainty-aspects-of-amount-a-of-pillar-one.htm). *See also* OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar On Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project*, available at https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint-beba0634-en.htm.

[429] *See* United Nations, *Handbook on Dispute Avoidance and Resolution, 2021*, available at file:///C:/Users/user1/Downloads/Dispute%20Avoidance%20and%20Resolution%20English.pdf.

[430] *See* S. Marsit, *UN Tax Committee Approves Handbook on Dispute Avoidance and Resolution* (22 Apr. 2021), News IBFD.



Source: OPTR: Questionnaire 1, Question 47

Türkiye, United States

No: Argentina, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Finland, Guatemala, India, Ireland, Japan, Kazakhstan, Kenya, Luxembourg, Mauritius, Mexico (1), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Portugal, Serbia, Slovenia, Spain, Sweden, Switzerland, Chinese Taipei, Uruguay, Venezuela (1), Venezuela (2)

Reports with diverging opinions: Mexico

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

Minimum standard: *Audi alteram partem* should apply in administrative reviews and judicial appeals.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

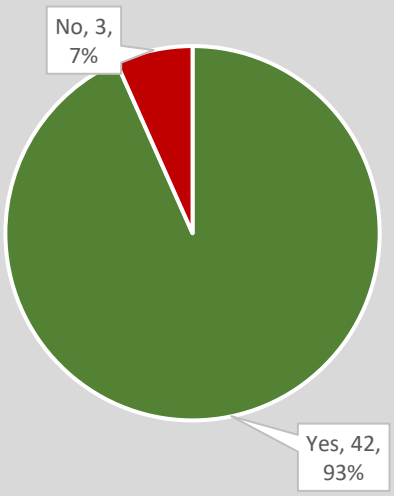
No developments have been reported with respect to this minimum standard. There are, however, some points worthy of attention.

Spain continues to engage positively towards the minimum standard, following a judgment from the Supreme Court of 27 July 2021 that allowed the possibility to admit documentation during administrative reviews even if not presented during an audit.[431]

Moreover, the right to a hearing seems somewhat strengthened in all those jurisdictions – such as **China (People's Rep.)** and **Italy** (*see* section 6.7.) – that, following the COVID-19 pandemic, have implemented virtual hearings during administrative reviews and judicial appeals.

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

[431] *See* ES: STS 3251/2021, 27 July 2021, available at https://www.poderjudicial.es/search/TS/openDocument/1f329eb618684589/20210816 (accessed 24 Feb. 2022).



Source: OPTR: Questionnaire 1, Question 48

Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: China (People's Rep.), Mexico (1), Mexico (2), Switzerland

2022 Relevant request for preliminary rulings – European Court of Justice

Case	**C-746/22 Slovenské Energetické Strojárne**[432]
Date	6 December 2022
EU Charter Articles	47
Facts	**Questions**
A Hungarian taxpayer filed an application for a VAT refund. By administrative act of 22 February 2021, the competent Hungarian tax authority ("the first-tier authority") took the view that it was unable to adopt a decision and requested the taxpayer to provide further information pursuant to paragraph 251/F(1) of the VAT Law. By decision of 6 May 2021, this authority, in accordance with paragraph 49(1)(b) of the Law on tax administration, terminated the proceedings, stating that the applicant had failed to comply with its obligation to provide the requested information within the given deadline. The applicant appealed the decision before the Hungarian Appeals Directorate of the National Tax and Customs Administration ("the second-tier authority"). During the appeal, the taxpayer submitted all the documents requested by the first-tier authority. The appeal was rejected pursuant to paragraph 124(3) of the Law on tax administration, which	By the request for a preliminary ruling, the Budapest High Court questioned whether the prohibition of new facts and evidence laid down in paragraph 124(3) of the Law on tax administration is contrary, inter alia, to the right to an effective remedy and to a fair trial.

[432] HU: ECJ, Request for Preliminary Ruling, 6 Dec. 2022, Case C-746/22, *Slovenské Energetické Strojárne*, Case Law IBFD.

Case	C-746/22 Slovenské Energetické Strojárne[432]
Date	6 December 2022
EU Charter Articles	47
Facts	**Questions**
provides that "unless there is a ground for invalidity, it will not be possible, in the appeal and in the proceedings commenced as a result of the appeal, to plead new facts or rely on new evidence which the person with the right of appeal was aware of before the adoption of the first-tier decision". The taxpayer appealed against the second-tier decision before the Budapest High Court.	

2022 Relevant Communicated Cases – European Court of Human Rights

Case	FIN FER SPA v. Italy, No. 57718/15[433]
Date	25 October 2022
ECHR Articles	6(1) and (3)(d)
Facts	A tax assessment undertaken by the Italian tax authority was based on the legal presumption according to which movements and transactions in the bank accounts of shareholders and administrators of small companies are presumed to be non-declared revenues of the company. For the tax authority, this presumption was confirmed by the oral statements of the administrators of two companies that had commercial relationships with the applicant, who declared that they had made payments for activities attributable to the company directly to its administrator. Eventually, the Italian Supreme Court (partially) upheld the tax assessment on 15 May 2015. The taxpayer complained of the alleged violation of article 6(1) and (3)(d) of the Convention as the tax assessment was largely based on the oral statements of witnesses issued outside the judicial procedure.

[433] *See* IT: ECtHR, No. 57718/15, *FIN FER SPA v. Italy*, available at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221126%22]} (accessed 23 Feb. 2023).

Case	**Grazia BRAMBILLA v. Italy, No. 32077/12**[434]
Date	25 October 2022
ECHR Articles	6(1)
Facts	During audit proceedings, the taxpayer was invited to submit clarifications to the tax authority regarding significant amounts of money deposited on her bank accounts. The request was issued pursuant to article 51 of Presidential Decree 633/1972 and article 32 of Presidential Decree 600/1973. The taxpayer's sister submitted to the tax authority a brief, explaining that she had obtained payment from her husband's life insurances, and that she had deposited the money on the applicant's bank account. She did not attach any document to support the claim. The tax authority considered the explanations provided by the taxpayer's sister as irrelevant as they had not been substantiated and filed a tax assessment. During judicial proceedings, the taxpayer submitted documents that proved her allegations. The first-tier Court ruled in the taxpayer's favour and quashed the tax assessment notice. The second-tier Court considered that, pursuant to the relevant provisions, the taxpayer could not invoke in her favour the documents substantiating her allegations, given that she had failed to deliver them to the tax authority when requested to do so. Therefore, it confirmed the tax assessment, the tax surcharges and the tax fines imposed on the applicant. The applicant lodged an appeal on point of law before the Italian Supreme Court, which was declared inadmissible. The taxpayer complained under article 6 of the Convention of a violation of the right to a fair trial. She argued that, when requested to provide documents that substantiated her allegations, she could not do so due to circumstances outside of her control.

6.5. *Solve et repete*

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
	None

No developments have been reported with respect to this minimum standard. **Portugal**, however, continues to engage it positively following Law 7/2021 of 26 February, which prescribed that guarantees offered to suspend tax enforcement procedures may expire, upon request, if the judicial appeal is not decided within 4 years.[435]

[434] *See* IT: ECtHR, No. 32077/12, *Grazia BRAMBILLA v. Italy*, available at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221125%22]} (accessed 23 Feb. 2023).

[435] *See* PT: Lei No. 7/2021, Reforça as garantias dos contribuintes e a simplificação processual, alterando a Lei Geral Tributária, o Código de Procedimento e de Processo Tributário, o Regime Geral das Infrações Tributárias e outros atos legislativos (26 Feb. 2021), available at https://data.dre.pt/eli/lei/7/2021/02/26/p/dre/pt/html (accessed 24 Feb. 2022).

2022 Relevant Case Law – European Court of Justice

- *See* ***C-582/20 - SC Cridar Cons SRL*** at section 6.1.[436]

2022 Relevant Communicated Cases – European Court of Human Rights

Case	**BOURIKAS AVEE v. Greece, No. 78572/17**[437]
Date	7 December 2022
ECHR Articles	6(1)
Facts	The applicant is a company that declared bankruptcy and ceased its functions. Following tax controls, the tax administration imposed taxes, including additional taxes, for false declaration and fines for irregularities found in its bookkeeping. The applicant lodged a complaint before the first-tier Court. Following the dismissal of the complaint, the applicant appealed. The second-tier Court declared the appeal inadmissible because the taxpayer did not comply with the condition of paying 50% of the imposed tax or fine. The applicant did not lodge another appeal because it was in financial difficulty, arguing that such an appeal was bound to fail in light of the standard case law of the Supreme Administrative Court. Relying on article 6(1) of the Convention, the applicant complained that it was deprived of the right of access to Court, as the failure to comply with the requirement to pay 50% of the imposed taxes or fines was due to its difficult financial situation.

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Honduras	Argentina

While in 2021 there were “no changes” with respect to this best practice, 2022 presents both ups and downs.

A positive development was reported in **Honduras**. Before 2022, according to article 206 of the Tax Code, for the admission of a claim before the courts of the Administrative Litigation Jurisdiction in tax and customs matters, taxpayers were required to render before the Judge sufficient guarantees in favour of the state, according to the following categories:

(i) small taxpayers: 5% of the amount of the demand;

[436] *See* RO: ECJ, 24 Feb. 2022, Case C-582/20, *SC Cridar Cons SRL v. Administraţia Judeţeană a Finanţelor Publice Cluj and Direcţia Generală Regională a Finanţelor Publice Cluj-Napoca*, available at https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-363/20 (accessed 22 Feb. 2023).

[437] *See* GR: ECtHR, No. 78572/17, *BOURIKAS AVEE v. Greece*, available at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-222222%22]} (accessed 23 Feb. 2023).

(ii) medium taxpayers: 10% of the amount of the claim; and
(iii) large taxpayers: 20% of the amount of the claim.

This practice has now been abolished, since the requirement of the guarantee had a statute of limitations of 5 years that expired in January 2022.

On the contrary, a shift away was reported in **Argentina**, as the Argentine Tax Agency (AFIP), on 16 August 2022,[438] issued the General Resolution 5248/22, which sets an extraordinary "one-time" prepayment on account of income tax payable by corporate taxpayers that have obtained extraordinary income derived from the general increase in international prices (the so-called "windfall income tax prepayment"). From a legal perspective, the issue is whether the executive power (through the AFIP), by creating administratively a new levy, has violated the constitutional principle of legality.[439] Moreover, a national report highlighted that, due to its nature as a payment on account, the appeal of this advance would not have a suspensive effect.[440]

As to **Denmark**, even if this jurisdiction does not require prior payment of tax for the lodging of an appeal, it has been reported that the national rules for the calculation of interest on tax claims may impair the fulfilment of this best practice. Indeed, the interest rates applied in court cases are very high compared to market rates. Moreover, within the tax area, a special set of rules on calculation of interest on unpaid taxes is applied (which not only includes a very high rate of interest, but also includes compound interest).[441]

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[438] The General Resolution No. 5248/22 is available at https://www.boletinoficial.gob.ar/detalleAviso/primera/268609/20220816 (accessed 21 Feb. 2023).

[439] *See* G.O. Teijeiro, *Argentina: Taxation without representation or how to disguise a new tax under the form of an additional prepayment of Income Tax*, in Kluwer International Tax Blog (25 Aug. 2022). *See also* AR: OPTR Report (2022) (Academia), Questionnaire 2, Question 53 (BP).

[440] *See* AR: OPTR Report (2022) (Academia), Questionnaire 2, Question 53.

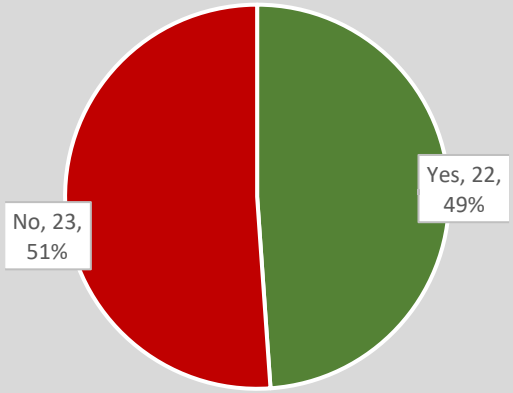
[441] The Danish national report also illustrates that if a taxpayer loses a case in the last instance, the interest claim can be very high and even exceed (significantly) the tax claim itself. The issue typically arises if the taxpayer is successful at the National Tax Tribunal, but the Ministry of Taxation subsequently appeals the National Tax Tribunal's decision before ordinary courts. Indeed, the rules on interest under the Tax Collection Act stipulate that, in this situation, the taxpayer who has paid the tax shall receive a refund of the amount of tax with interest for the period from the date of payment to the date of the National Tax Tribunal's decision. However, if the Ministry of Taxation's appeal is subsequently upheld, the same taxpayer must pay back the tax and interest to the date of the court's decision.

If this last scenario occurs and the proceedings last several years, the claim for interest can be very high. For instance, in the Danish cases on beneficial ownership, the interest claims ended up being almost double the tax claim itself. This situation led to the view that the interest rules envisioned under the Tax Collection Act constitute an obstacle to access to justice, thus entailing a violation of both art. 6 ECHR and art. 47 EU Charter of Fundamental Rights.

With respect to these cases, the Danish Supreme Court, in a recent judgment of 9 January 2023 (Joined Cases Nos. 69/2021, 70/2021 and 79/2021, available at https://domstol.dk/media/thefi0yn/69-70-79-2021-anonym-dom.pdf) decided otherwise and found no legal basis for assuming that the rules of the Tax Collection Act entail a violation of the right to a fair trial, thus ruling that interest tax claims must be burdened accordingly to these rules. Nevertheless, as this understanding of the Tax Collection Act meant that the total interest claim was disproportionate with respect to the tax claim, the Supreme Court stated that there are reasons of expediency for parliament to consider whether such consequences are desirable. In this way, the Supreme Court left it to parliament to consider whether the Tax Collection Act should be amended. *See* DK: OPTR Report (2022) (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 53.

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

53 responses



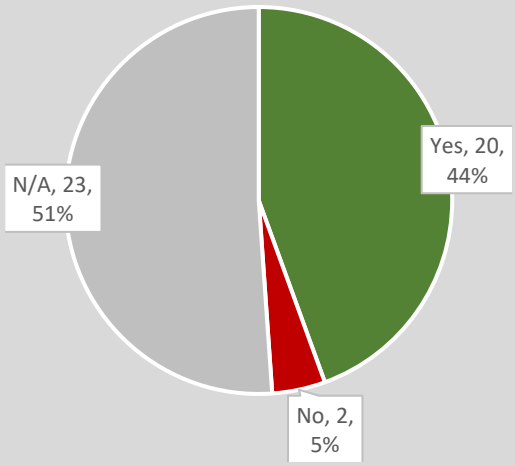
Source: OPTR: Questionnaire 1, Question 49

Yes: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Finland, Germany, India, Ireland, Italy, Luxembourg, Mauritius, Netherlands, Norway, Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Chinese Taipei

No: Australia, Belgium, Brazil (1), Brazil (2), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Guatemala, Honduras, Japan, Kazakhstan, Kenya, Lithuania, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Sweden, Switzerland, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

Chart 50. If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?

53 responses



Source: OPTR: Questionnaire 1, Question 50

Yes: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Finland, Germany, India, Italy, Luxembourg, Mauritius, Netherlands, Norway, Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Chinese Taipei

No: Ireland, Slovenia

Not applicable: Australia, Belgium, Brazil (1), Brazil (2), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Guatemala, Honduras, Japan, Kazakhstan, Kenya, Lithuania, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Sweden, Switzerland, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

6.6. Costs of proceedings

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

No developments have been reported in this area for 2022. There are, however, some points worth mentioning.

Australia continues to engage positively in this best practice, as the ATO is required to pay the reasonable costs for the taxpayer to engage external legal representation in disputes within the Small Business Tax Division of the Administrative Appeals Tribunal, if the taxpayer is self-represented and the ATO engages external legal representation[442]. Moreover, it has been reported[443] that in **Denmark** the Supreme Court[444] has defined the conditions under which taxpayers may qualify for remuneration under the special scheme for legal costs in tax cases.

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Australia, Chile	Bolivia

Australia is positively engaged also in this area.[445] Indeed, in 2022, the ATO awarded 14 grants to support the National Tax Clinic programme. The National Tax Clinic programme is a government-funded initiative to help people who may not be able to afford professional advice and representation for their tax affairs. The tax clinics work in partnership with several Australian universities. Specifically, the ATO funds the universities through an open and competitive grant process and students from the funded universities provide free tax advice and assistance under the supervision of qualified clinic managers. Sessions are offered by telephone or web conferencing, as well as in person at some locations. The ATO has no power over how individual universities manage tax clinics.[446]

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442 In this respect, further information is available at https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Small-business-litigation-funding/.

443 *See* DK: OPTR Report (2022) (Taxpayers/Tax Practitioners, Tax Administration), Questionnaire 2, Question 54.

444 *See* SKM 2022.608 H, available at https://domstol.dk/media/kvtns1ze/10210-2021-anonym-dom.pdf (accessed 21 Feb. 2023).

445 *See* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2, Question 55.

446 Information about the National Tax Clinic program is available at https://www.ato.gov.au/General/Gen/National-Tax-Clinic-program/?=redirected_nationaltaxclinic (accessed 21 Feb. 2023).

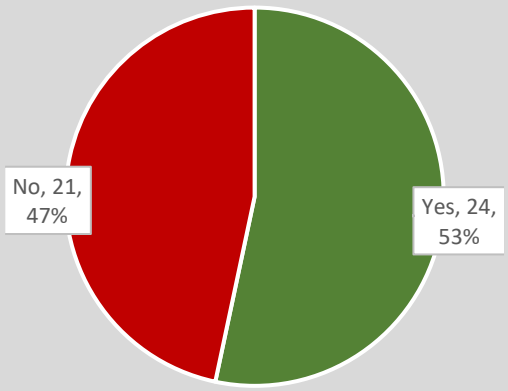
A shift towards this best practice has been reported also in **Chile**. As mentioned in section 2. of this Yearbook, during 2022, Chile started to operate Law 21.210 of 2020 on tax modernization,[447] which introduced the Public Defender's Office of Taxpayers (DEDECON). Although the DEDECON (tax ombudsman) does not possess representation faculties in judicial matters, it supports taxpayers in the compliance of their obligations and offers them assistance through mediation processes with the Chilean tax.[448]

Moreover, although the national report does not mention this circumstance as a step forward, it seems worth recalling that in **Mexico**, following an amendment published on 27 December 2021[449] to the relevant Guidelines, the powers of *Procuradurìa de la Defensa del Contribuente* (PRODECON) have been further extended to facilitate its tax ombudsperson function and its work as mediator between taxpayers and the Mexican revenue authority.[450]

On the other hand, negative developments have been reported in **Bolivia**, as this jurisdiction does not provide for legal assistance to taxpayers that may not be able to afford professional advice and representation for their tax affairs.[451]

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

53 responses



Source: OPTR: Questionnaire 1, Question 51

Yes: Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Germany, Guatemala, Ireland, Italy, Lithuania, Luxembourg, Mauritius, Netherlands, Norway, Poland (1), Poland (2), Portugal, Serbia, Slovenia, Spain, Switzerland, Türkiye, Venezuela (1), Venezuela (2)

No: Austria, Bolivia, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Honduras, India, Japan, Kazakhstan, Kenya, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), South Africa, Sweden, Chinese Taipei, United States, Uruguay

[447] *See* Ley 21.210 of 2020 that *moderniza la legislación tributaria*, available at http://bcn.cl/2f9fr (accessed 10 Feb. 2023).

[448] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 9 and Question 55. *See also* J. Kokott & P. Pistone, *supra* n. 236, p. 297.

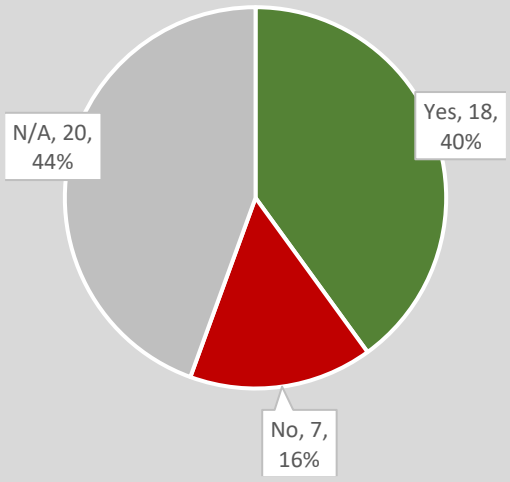
[449] The amendment is available at https://www.dof.gob.mx/nota_detalle.php?codigo=5639421&fecha=27/12/2021#gsc.tab=0 (accessed 10 Feb. 2022).

[450] *See* sec. 2.; *see also* MX (2): OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 9.

[451] *See* BO: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 55.

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

53 responses



Source: OPTR: Questionnaire 1, Question 52

Yes: Argentina, Australia, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Germany, Guatemala, Italy, Lithuania, Luxembourg, Mauritius, Norway, Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Chinese Taipei

No: Bosnia and Herzegovina, Chile, Ireland, Netherlands, Slovenia, Türkiye, Venezuela (1), Venezuela (2)

Not applicable: Austria, Bolivia, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Honduras, India, Japan, Kazakhstan, Kenya, Mexico (1), Mexico (2), New Zealand, Peru (1), Peru (2), Sweden, Switzerland, United States, Uruguay

6.7. Public hearings

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

By investigating facts and circumstances relevant for tax purposes, the administration will inevitably discuss matters of considerable sensitivity to the taxpayer. This is, in itself, an invasion of their affairs and – if not handled properly – may even affect the taxpayers' right to privacy by revealing delicate information or industrial secrets (*see* section 3. of this Yearbook).

No developments were reported regarding this best practice in 2022. However, there are some points worthy of attention.

The COVID-19 pandemic has been transforming the dispute resolution landscape, and various jurisdictions are increasingly permitting virtual hearings. This shift, to some extent, helps maintain the confidentiality and secrecy of the proceedings.

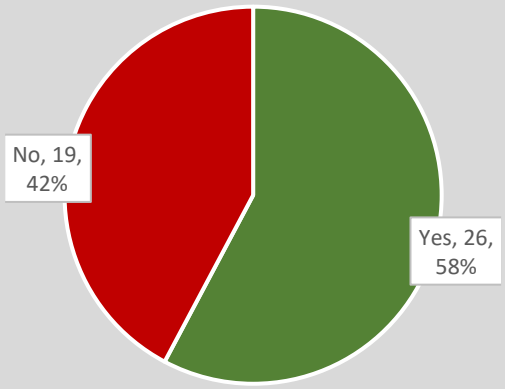
In particular, by comparing the national reports of 2021 with those of 2022,[452] it can be noted that in 2022 at least three jurisdictions (**Argentina**, **Japan** and **Peru**) have allowed taxpayers to request a hearing in camera (*see* Chart 53).

In **Italy**, Law 130/2022 made fully operational the possibility of requesting remote hearings and made remote hearings mandatory for precautionary proceedings and proceedings before the monocratic judge (i.e. disputes with a value less than or equal to EUR 3,000).[453]

Finally, in **China (People's Rep.)** local governments, apart from opening on-line administrative review service platforms on their official website (*see* above), have also allowed some steps of review and judicial procedures to be made online during the COVID-19 pandemic.[454]

Chart 53. If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?

53 responses



Source: OPTR: Questionnaire 1, Question 53

Yes: Argentina, Australia, Austria, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Colombia (2), Croatia, Denmark, Germany, Honduras, Ireland, Italy, Japan, Kazakhstan, Lithuania, Mauritius, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, South Africa, Sweden, United States, Uruguay

No: Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, Czech Republic, Finland, Guatemala, India, Kenya, Luxembourg, Mexico (1), Mexico (2), Netherlands, New Zealand, Slovenia, Spain, Switzerland, Chinese Taipei, Türkiye, Venezuela (1), Venezuela (2)

[452] *See* Questionnaire 1, Question 53.

[453] *See* art. 4, comma 4, L. No. 133/2022, available at https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2022-09-01&atto.codiceRedazionale=22G00141&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=2352e5b2-6e23-4c62-97dd-8f03be6fe5e2&tabID=0.4133369960267521&title=lbl.dettaglioAtto (accessed 10 Feb. 2023).

[454] *See* CN: OPTR Report (2022) (Academia), Questionnaire 2, Question 49. Following COVID-19, the virtual handling of hearings seems to be a general trend in China, also in other fields of the law: *see* Kai-Shen Huang et al., *COVID-19 and Dispute Resolution in China: Trends in Arbitration and Litigation*, in Asian Journal of Comparative Law, 2023, also published online by Cambridge University Press available at https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/abs/covid19-and-dispute-resolution-in-china-trends-in-arbitration-and-litigation/F1A575F8AD6F64F6A7CC90A70F33229A.

6.8. Publication of judgments and privacy

Minimum standard: Tax judgments should be published.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile, Serbia, Guatemala	None

For transparency and certainty, awareness of how the tax rules are interpreted and applied in practice is pivotal.[455] As part of this, the publication of tax judgments is an important measure to provide clarity for taxpayers and decrease disputes with the tax administration.

In 2022, several steps were adopted towards the fulfilment of the best practice.

Chile has continued its positive development towards this minimum standard from previous years. In 2021, the *Servicio de Impuestos* (SII), with Circular Letter 12 (already mentioned above)[456], expressly provided for the mandatory publicity of all judicial decisions in tax matters and mandated for the confidentiality of all acts during the proceedings. In 2022, the SII, with Circular Letter 35 of 4 August 2022,[457] offered further guidance on the publication of tax judgments and on the related reflections involving the confidentiality of taxpayers' data.[458]

In **Serbia**, starting from 2021, the judgments of the Administrative Court are published on the Court's website, which also offers an efficient database available to interested citizens.[459]

Also, a best practice in this area is reported from **Guatemala**[460], where tax judgments are publicly made available by the tax administration.

Chart 54. Are judgments of tax tribunals published?	
53 responses **Source:** OPTR: Questionnaire 1, Question 54	**Yes:** Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China

[455] In general, on the notion of transparency and its different declinations, *see* A. Turina, "*Visible though not Visible in Itself." Transparency at the Crossroads of International Financial Regulation and International Taxation*, in World Tax J. 3, pp. 384 ss (2016).

[456] *See* Circular Letter No. 12, that "Imparte instrucciones sobre derechos de los contribuyentes, comparecencia, notificaciones, procedimientos administrativos y judiciales de impugnación que establece la Ley N° 21.210, que moderniza la legislación tributaria", available at https://www.sii.cl/normativa_legislacion/circulares/2021/circu12.pdf (accessed 21 Feb. 2023); and Ley 21.210, que moderniza la legislación tributaria, 2020, available at http://bcn.cl/2f9fr (accessed 18 Feb. 2023).

[457] *See* Circular Letter No. 35, that "Imparte instrucciones acerca del cumplimiento del deber de mantener la reserva de la información que el Servicio recopila respecto de los contribuyentes", available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu35.pdf (accessed 22 Feb. 2023).

[458] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 57.

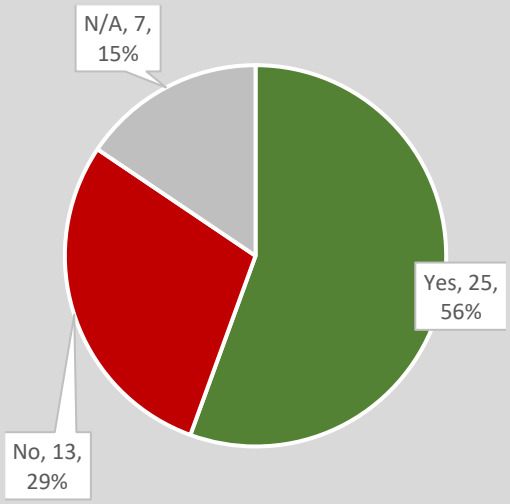
[459] The database is available at http://www.up.sud.rs/latinica/sudska-praksa-upravnog-suda (accessed 18 Feb. 2023) and in English at http://www.up.sud.rs/english/jurisprudence-of-the-administrative-court (accessed 18 Feb. 2023). *See* RS: OPTR Report (2022) (Academia), Questionnaire 2, Question 57.

[460] *See* GT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 57.

	(People's Rep.), Colombia (1), Colombia (2), Czech Republic, Denmark, Germany, Guatemala, India, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, United States, Uruguay, Venezuela (1), Venezuela (2)
	No: Bosnia and Herzegovina, Croatia, Finland, Honduras, Kazakhstan, Serbia, Chinese Taipei, Türkiye

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

53 responses



Source: OPTR: Questionnaire 1, Question 55

	Yes: Australia, Austria, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Czech Republic, Denmark, Germany, Ireland, Italy, Japan, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Switzerland, Chinese Taipei
	No: Argentina, Belgium, Bolivia, Brazil (1), Brazil (2), China (People's Rep.), Colombia (1), Colombia (2), Guatemala, India, Kenya, Sweden, United States, Uruguay, Venezuela (1), Venezuela (2)
	Not applicable: Bosnia and Herzegovina, Croatia, Finland, Honduras, Kazakhstan, Serbia, Türkiye

7. Criminal and Administrative Sanctions

7.1. The general framework

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

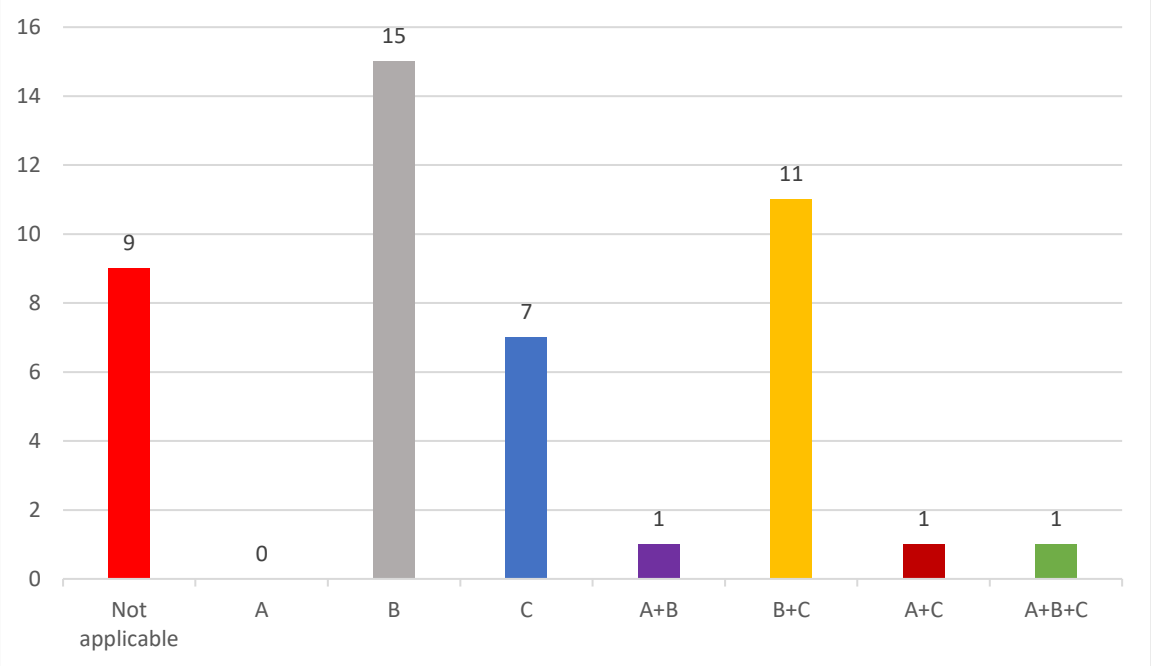
Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Belgium, Bolivia, Colombia, Mexico, United States	Lithuania

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	Netherlands

Chart 56. Does the principle *ne bis in idem* apply in your country to prevent either: (a) the imposition of a tax penalty and tax liability; (b) the imposition of more than one penalty for the same conduct; or (c) the imposition of a tax penalty and criminal liability?

53 responses



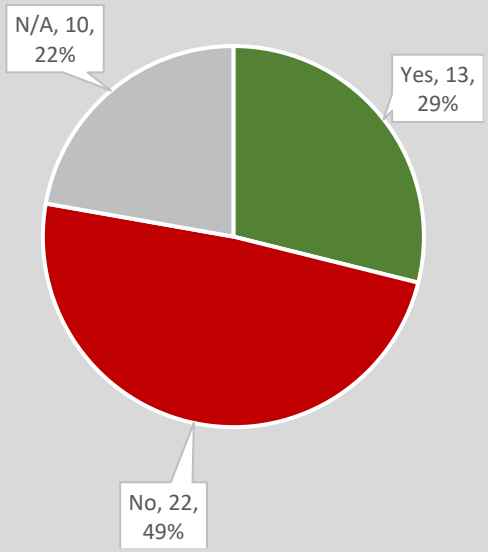
Source: OPTR: Questionnaire 1, Question 56.

The principle does not apply (Not applicable):	The imposition of a tax penalty and the tax liability; The imposition of more than one tax penalty for the same conduct (A + B):
Denmark, Germany, India, Japan, Mauritius, South Africa, Türkiye, United States, Uruguay	Spain
The imposition of a tax penalty and the tax liability (A):	**The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (B + C):**
none	Belgium, Bolivia, China (People's Rep.), Honduras,
The imposition of more than one tax penalty for the	

same conduct (B): Argentina, Austria, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Croatia, Czech Republic, Ireland, Lithuania, Mexico (1), Mexico (2), Peru (1), Peru (2), Portugal, Switzerland, Venezuela (1), Venezuela (2) **The imposition of a tax penalty and criminal liability (C):** Australia, Bosnia and Herzegovina, Colombia (2), Finland, New Zealand, Slovenia, Sweden, Chinese Taipei	Italy, Kazakhstan, Luxembourg, Netherlands, Norway, Poland (1), Poland (2), Serbia **The imposition of a tax penalty and the tax liability; The imposition of a tax penalty and criminal liability (A + C):** Kenya **The imposition of a tax penalty and tax liability; The imposition of more than one tax penalty for the same conduct; The imposition of a tax penalty and criminal liability (A+B+C):** Guatemala **Reports with diverging opinions:** Colombia

Chart 57. If *ne bis in idem* is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?

53 responses



Source: OPTR: Questionnaire 1, Question 57

Yes: Bolivia, Bosnia and Herzegovina, Guatemala, Honduras, Ireland, Lithuania, Netherlands, New Zealand, Norway, Peru (1), Peru (2), Spain, Sweden, Chinese Taipei

No: Argentina, Australia, Austria, Belgium, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Finland, Italy, Kazakhstan, Kenya, Luxembourg, Mexico (1), Poland (1), Poland (2), Portugal, Serbia, Slovenia, Switzerland, Venezuela (1), Venezuela (2)

Not applicable: China (People's Rep.), Denmark, Germany, India, Japan, Mauritius, Mexico (2), South Africa, Türkiye, United States, Uruguay

Reports with diverging opinions: Mexico

2022 Relevant Case Law – European Court of Human Rights

Case	***Krayeva v. Ukraine*, No. 72858/13**[461]	
Date	31 January 2022	
ECHR Articles	Article 1 of Protocol No. 1	
Facts	**Decision**	**Comments**
The case concerns an alleged breach of customs regulations by the applicant while conducting the customs clearance of imported goods and the sanction imposed on her in that connection, namely a fine in an amount equal to the value of the imported goods. It raises an issue under article 1 of Protocol No. 1 to the Convention.	There has been a violation of article 1 of Protocol No. 1 to the Convention.	The applicant complained in substance that, under article 1 of Protocol No.1 to the Convention, the fine imposed on her in the administrative proceedings had been unlawful and disproportionate.

2022 Relevant Applications - European Court of Human Rights

Case	***Josip Klemm v. Croatia***[462]
Date	Application No. 16272/21 lodged on 15 March 2021 and communicated on 22 November 2022
ECHR Articles	Article 4§1 of Protocol No. 7
Facts	In 2012 the applicant was found guilty and convicted to pay a fine in the amount of 10,000 Croatian kunas (HRK) in administrative tax proceedings for the minor offence under the VAT Act of deducting VAT for fictitious services by third companies in 2006 and 2007. In the subsequent criminal proceedings, in respect of which the investigation had started in 2014, on 3 July 2017 the applicant was found guilty and sentenced to 1 year's imprisonment for abuse of trust in business dealings and damaging his own company by paying fictitious services to third companies between 2005 and 2007. The applicant complained, under article 4 of Protocol No. 7 to the Convention, that he was punished twice for the same offence.
Comments	The issues raised in the case in question are similar to those already addressed by the ECtHR in the cases *A and B v. Norway* [GC], Nos. 24130/11 and 29758/11, 15 November 2016; *Jóhannesson and Others v. Iceland*, No. 22007/11, 18 May 2017; and *Milošević v. Croatia*, No. 12022/16, 31 August 2021.

[461] *See* UA: ECtHR, 13 Jan. 2022, No. 72858/13, *Krayeva v. Ukraine*, available at https://hudoc.echr.coe.int/fre?i=001-214758 (accessed 23 Feb. 2023).

[462] *See* HR: ECtHR, No. 16272/21, *Josip Klemm v. Croatia*, available at https://hudoc.echr.coe.int/eng?i=001-221848 (accessed 23 Feb. 2023).

Case	***S.C. Zorina International s.r.l. v. Romania***[463]
Date	Application No. 15553/15 lodged on 23 March 2015 and communicated on 20 November 2019 and 1° March 2022
ECHR Articles	Article 1 of Protocol No. 1
Facts	The applicant company complained that the sanctions imposed on it for having failed to issue receipts were disproportionate and thus did not strike a fair balance between the public interest and its property rights, as provided in article 1 of Protocol No. 1.

2022 Relevant Case Law – Court of Justice of the European Union

Case	**C-570/20, BV**[464]	
Date	**25 May 2022**	
EU Charter Articles	**49, 50, 52(1)**	
Facts	**Decision**	**Comments**
BV, a sole trader, practised as an accountant and was subject to VAT. Following a tax audit, criminal procedures for tax evasion (VAT and income tax) were initiated and the taxpayer was convicted. The taxpayer claimed that his criminal conviction was contrary to the principle of *ne bis in idem* enshrined in article 50 of the Charter, on the ground that he had already been the subject of a tax adjustment procedure in respect of the same acts which resulted in the imposition of final tax penalties amounting to 40% of the charges evaded.	The *ne bis in idem* principle (article 50 of the Charter read in conjunction with article 52(1) thereof), must be interpreted as meaning that it does not preclude a situation whereby the limitation of the duplication of proceedings and penalties of a criminal nature in the event of fraudulent concealment or omissions from a return relating to VAT provided for by national legislation to the most serious cases is based only on settled case law restrictively interpreting the legal provisions laying down the conditions for the application of that duplication, provided that it is reasonably foreseeable, at the time when the offence is committed, that that offence is liable to be the subject of a duplication of proceedings and penalties of a criminal nature,	The case in question relates to the issue of the compatibility with the EU Charter of the duplication of administrative and criminal penalties that are imposed on the same person, in relation to the same acts, in order to punish (simultaneously or consecutively) tax offences related to, inter alia, VAT. In essence, this case follows principles set out in the judgment of the ECJ in the case *Garlsson Real Estate and Others* of 20 March 2018 (C-537/16).

[463] *See* RO: ECtHR, 23 Mar. 2015, No. 15553/15, *S.C. Zorina International s.r.l. against Romania*, available at https://hudoc.echr.coe.int/eng?i=001-216635 (accessed 23 Feb. 2023).

[464] *See* FR: ECJ, 5 May 2022, Case C-570/20, *BV*, available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=258873&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1709066 (accessed 23 Feb. 2023).

Case	C-570/20, BV[464]	
Date	25 May 2022	
EU Charter Articles	49, 50, 52(1)	
Facts	Decision	Comments
	but it precludes national legislation which does not ensure, in cases of the combination of a financial penalty and a custodial sentence, by means of clear and precise rules, where necessary as interpreted by the national courts, that all of the penalties imposed do not exceed the seriousness of the offence identified.	

The drift towards the expansion of punitive tax law slowed significantly in 2022 compared to the situation in 2021. There was a notable trend among several countries – including Belgium, Bolivia, China (People's Rep.), Colombia, Mexico and the United States – towards the strengthening of the principle of proportionality in relation to tax penalties.

In **Belgium**, for example, in a judgment of 21 April 2022, the Belgian Court of Cassation applied the *ne bis in idem* case law of the ECtHR, as set out in the *A and B v. Norway* judgment, to the imposition of two administrative penalties for the same offence (late filing of an income tax declaration). Although the Court of Cassation ruled that it is up to the judge assessing the case to carry out the *A and B v. Norway* test (sufficiently close connection in substance and in time), it confirmed the assessment of the judge in question that there had been a violation of the *ne bis in idem* principle. The judge had ruled that the imposition by the tax authorities of a fixed fine "and" a tax surcharge for the same offence (late filing of an income tax declaration) did not meet the requirements of a sufficiently close connection in substance and in time. In a judgment of 11 March 2022, the Court of First Instance of Louvain ruled in the same way in a very similar case (imposition of a fixed fine "and" a tax surcharge for the late filing of a tax declaration). In addition, in a judgment of 17 November 2022, the Belgian Constitutional Court ruled that the imposition of a fixed fine "and" a tax surcharge for the same offence of non-declaration can be allowed, insofar as certain principles are observed in doing so.[465]

A similar pattern could be seen developing in **Mexico**. A decision by the Supreme Court of Justice of Mexico has invalidated the automatic preventive detention for a series of crimes, including tax fraud, sanctioning that it was an unconstitutional punishment, as it was not proportionate with respect to the offence in question.[466]

[465] *See* BE: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 58. *See also* BE: Cass., 21 Apr. 2022, F.20.0156.N, available at https://juportal.be/content/ECLI:BE:CASS:2022:ARR.20220421.1N.15/NL (accessed 24 Feb. 2023); BE: Trib. (Louvain), 11 Mar. 2022, judgment nr. 19/1259/A; and BE: C.C., 17 Nov. 2022, judgment No. 149/2022, available at https://www.const-court.be/public/n/2022/2022-149n.pdf (accessed 24 Feb. 2023).

[466] *See* MX: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 58.

The trend towards strengthening the principle of proportionality in matters of tax penalties is reported in **Bolivia** as well. Following the enactment of Law 1448 of 25 July 2022, tax penalties, originally provided at the amount of 100% of the charges evaded, have been reduced to 60%.[467]

A similar pattern is reported in **Colombia**. The introduction of article 651 of Law 2277 of 31 December 2022 led to a reduction of the amount of the penalty for not sending information (or doing it with errors or sending it out of time) requested by the tax administration.[468]

As concerns the **United States**, in 2022 the tax authorities continued to administer COVID-19 pandemic relief, although the number of communications and new guidance documents is far fewer than for 2021. In connection thereto, acknowledging backlogs in processing tax returns and correspondence, the IRS provided relief from late filing penalties for 2019 and 2020 tax returns filed on or before 30 September 2022.[469]

Supranational jurisprudence reinforces this trend, as is demonstrated by the case *Krayeva v. Ukraine*, decided by the ECtHR on 31 January 2022. The case concerned an alleged breach of customs regulations by the applicant while conducting the customs clearance of imported goods that determined the application of a fine in an amount equal to the value of the imported goods in addition to the confiscation of the imported goods, with no exceptions allowed. Consequently, the applicant complained before the ECtHR that such a fine violated article 1 of Protocol No. 1 to the Convention. The ECtHR recalled, in this regard, that the violation of the individual's right to property was the consequence of the fact that the national legislation left no room to the courts for the assessment of the individual situation of the applicant. Thus, domestic rules were inadequate to ensure an assessment of individual cases, and therefore such legislation was incapable of ensuring the requisite fair balance between the general interest of the community and the protection of an individual's right to property.[470]

Issues of compatibility of national punitive sanctions with fundamental rights enshrined in the ECHR continue to be raised to the ECtHR. As argued in the application in the case *S.C. Zorina International s.r.l. against Romania*, the compatibility of punitive sanctions of a high amount with the right to property, as provided in article 1 of Protocol No. 1, remains a matter of debate and the ECtHR will be called on again to strike a fair balance between the requirement of the protection of public interests of the state and the protection of an individual's right to property.[471]

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[467] *See* BO: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 58. *See also* BO: Law No. 1448/2022, 25 Jul. 2022, art. 2(I), available at http://www.gacetaoficialdebolivia.gob.bo/normas/listadonor/10 (accessed 24 Feb. 2023).

[468] *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 58. *See also* CO: Ley 2277 de 2022, por medio de la cual se adopta una reforma tributaria para la igualdad y la justicia social y se dictan otras disposiciones [Law No. 2277 of 2022], 13 Dec. 2022, available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883 (accessed 24 Feb. 2022).

[469] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 58. *See also* IRS Notice 2022-36 on Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020 (9 Sept. 2022), available at https://www.irs.gov/irb/2022-36_IRB#NOT-2022-36 (accessed 23 Feb. 2023).

[470] *See* UA: ECtHR, 13 Jan. 2022, No. 72858/13, *Krayeva v. Ukraine*, available at https://hudoc.echr.coe.int/fre?i=001-214758 (accessed 23 Feb. 2023).

[471] *See* RO: ECtHR, 23 Mar. 2015, No. 15553/15, S.C. *Zorina International s.r.l. against Romania*, available at https://hudoc.echr.coe.int/eng?i=001-216635 (accessed 23 Feb. 2023).

Regimes aimed at mitigating the imposition of penalties in the case of cooperation by the taxpayer are also acquiring more relevance. In **Italy**, following the enactment of a cooperative compliance programme aimed at increasing communication and cooperation between the tax authorities and large taxpayers, the tax authorities have updated the form to be used by qualifying taxpayers to apply to the cooperative compliance programme.[472]

At the same time, the countering of tax fraud remains a key element of the activity of law enforcement agencies, and joint investigations with competent authorities of other countries with the assistance of EU-based agencies, are acquiring growing importance. In this regard, it is reported that **Italy** and **Bulgaria** conducted an investigation of an illegal tax scheme that resulted in tax avoidance amounting to EUR 69 million. The investigation uncovered that the offenders administratively changed the registration of enterprises from Italian into Bulgarian hands without genuinely handing over ownership, and led to the identification of 26 offenders, seizure of properties and other assets, freezing of bank accounts and suspension of ownership. It also revealed that the offenders have been employing this scheme since 2013 and have been able to avoid paying millions in taxes[473].

The changes determined by the evolution of the digital economy, along with new regulations aimed at taxing related profits, push legislators to introduce penalties for taxpayers' non-compliance in providing information on third parties. **Türkiye**, for example, has issued a communiqué that clarifies an obligation to provide information on Internet advertisements for tax purposes. In this connection, besides giving information on procedures and principles regarding the receipt of certain information related to advertisements published on the Internet, the communiqué gives instructions on the liability and penalties in the case of non-compliance by relevant taxpayers.[474]

Increasing the certainty and foreseeability of the application of punitive sanctions constitutes an important part of the activities of tax authorities in 2022 as well. South Africa's Revenue Service has published a guide on taxation in **South Africa**, which aims to provide a general overview of the most significant tax legislation administered in South Africa. Within this document, a chapter is dedicated to the description of relevant regimes concerning interest, administrative non-compliance and tax penalties, as well as criminal offences for non-compliance with tax legislation.[475] To facilitate taxpayers' navigation of South Africa's tax system, the South African Revenue Service has also published a tax guide for small businesses. This guide, which describes specifically tax rules for small businesses such as sole proprietors, partnerships and companies not part of large groups, also contains a part

[472] *See* G. Gallo, *Tax Authorities Update Form for Applications to Cooperative Compliance Programme* (4 May 2022), News IBFD. *See also* Protocol No. 153271/2022 of the Italian Tax Authorities (4 May 2022), available at https://www.informazionefiscale.it/IMG/pdf/provvedimento_del_4_maggio_2022_modifica_modello_adempimento_collaborativo.pdf (accessed 23 Feb. 2023).

[473] *See* K. Ilieva, *Joint Cooperation Between Bulgaria and Italy Leads to Dismantling of EU 69 Million Tax Scheme* (11 May 2022), News IBFD.

[474] *See* S. Özgenç, *Turkey Clarifies Obligation to Provide Information on Internet Advertisements for Tax Purposes* (31 May 2022), News IBFD.

[475] *See* L. Mvovo, *South Africa Revenue Service Issues Guide on Taxation in South Africa* (28 Sept. 2022), News IBFD.

dedicated to the description of the tax penalty regime that applies to violations committed by small businesses operating in South Africa.[476]

Other countries continue to follow a pattern similar to the one that was already visible in 2021, without significant changes in relation to tax penalties.

It is reported that **Malta,**[477] the **United Arab Emirates,**[478] **Uganda,**[479] **Russia**[480] and **Spain**[481] continue to expand the scope of punitive tax law.

The drift towards the expansion of punitive tax law is however significant in certain countries. In **Lithuania**, for example, article 139 of the Law on Tax Administration was amended in 2022, and the amount of the fine was increased from the range of 10-50% to the range of 20-100% of the charges evaded. It was also established that the calculated fine is doubled if a repeated

[476] *See* L. Mvovo, *South Africa Issues Tax Guide for Small Businesses* (13 Oct. 2022), News IBFD.

[477] In Malta, Act VIII of 2021 clarifies that, in certain circumstances, taxpayers found guilty of tax evasion will receive a fine, further clarifying that such penalties will be regarded as criminal in nature. *See* MT: Act No. VIII of 2021, to amend the Income Tax Act, Cap. 123, the Duty on Documents and Transfers Act, Cap. 364, the Income Tax Management Act, Cap. 372, and the Value Added Tax Act, Cap. 406, 12 Mar. 2021, available at https://legislation.mt/eli/act/2021/8/eng (accessed 10 Feb. 2022). *See also* T. Borg Olivier*, Malta Amends Tax Penalty Regime* (17 Mar. 2021), News IBFD.

[478] The United Arab Emirates increased the penalties applicable to VAT and excise taxes. *See* AE: Cabinet Resolution No. (49) of 2021 Amending Some Provisions of Cabinet Resolution No. (40) of 2017 On Administrative Penalties Imposed for Violating the State's Tax Law, 28 Apr. 2021, available at https://www.saifaudit.com/blog/wp-content/uploads/2021/05/2021-Tax-Penalties-Law.pdf (accessed 10 Feb. 2022). *See also* M.F. Charfeddine, *United Arab Emirates Amends VAT and Excise Tax Administrative Penalties* (20 May 2021), News IBFD.

[479] Uganda enacted legislation increasing the pecuniary and imprisonment penalties for various tax offences by up to 500%. *See* UG: Tax Procedures Code (Amendment) Bill 2021, 1 July 2021, available at https://tjau.org/download/the-tax-procedure-code-amendment-bill-2021/ (accessed 10 Feb. 2022). *See also* R.B. Mbabazi, *Uganda { XE "Uganda" } Revises Tax Offenses and Penalties* (21 June 2021), News IBFD.

[480] In an interesting case, given the contingent nature of tax penalties as a matter of principle, the tax authorities of Russia clarified their intention to impose penalties for the late filing of tax returns, even though the tax assessed in this way has been paid in a timely manner. *See* RU: Department of Tax Policy of the Ministry of Finance Letter N 03-02-11/31931, *On responsibility for failure to submit a tax return on personal income tax* (26 Apr. 2021), available at https://base.garant.ru/400833421/#friends (accessed 11 Feb. 2022). *See also* K. Trouch, *Minister of Finance Clarifies Penalty for Failure to File Individual Income Tax Return* (10 June 2021), News IBFD.

[481] In Spain, the Supreme Court has declared it appropriate to initiate the enforcement process for joint and several liability of third parties before the act imposing the penalties on the taxpayer becomes final. According to the court, there is no legal impediment to transferring to the person declared jointly and severally liable a penalty that has not become final in administrative proceedings because it has been challenged and, therefore, automatically suspended, without prejudice to the fact that the penalty cannot be enforced and must continue to be suspended until it becomes final in administrative proceedings. In cases in which an appeal for reconsideration or any other legally appropriate appeal is lodged against the decision imposing the sanction, the enforcement period shall begin with the finality of the sanction in administrative proceedings, which shall be determined by the body competent to issue the decision assigning liability. *See* ES: TS, 8 Apr. 2022, STS 487/2021, available at https://www.poderjudicial.es/search/sentence.jsp?reference=9503450&optimize=20210428 (accessed 14 Feb. 2022). *See also* L. Campanon Galiana, *Las derivaciones de responsabilidad de sanciones que no han adquirido firmeza en la vía administrativa* (11 May 2021), available at https://www.politicafiscal.es/equipo/laura-campanon-galiana/las-derivaciones-de-responsabilidad-de-sanciones-que-no-han-adquirido-firmeza-en-la-via-administrativa?utm_source=newsletter_170&utm_medium=email&utm_campaign=taxlandia (accessed 14 Feb. 2022); and N. Puebla Agramunt, *Responsable por Sanción No Firme* (7 May 2021), available at https://www.nuriapuebla.com/blog/responsable-por-sancion-no-firme/ (accessed 14 Feb. 2022).

violation of the same tax is committed within a 5-year period (while previously it was a 3-year period).[482]

At the same time, the concurrence of criminal and administrative sanctions in respect of substantially identical facts remains a matter of debate. It is recognized that the *ne bis in idem* rules are being loosened and it is now settled that the concurrence of administrative and criminal proceedings over the same facts, through their "close connection in space and time", as well as the presence of so-called indirect penalties, do not run counter to the *ne bis in idem* principle. In practical terms, this trend does not seem to prevent the carrying out of two parallel sets of proceedings arising from the same factual circumstances and the imposition, eventually, of two sets of sanctions. This has been strengthened through jurisprudential interpretations that ratify that the only remedy to *ne bis in idem* seems to be the proportionality of the concurrently applicable sanctions.[483]

A good example is the recent case *BV - Direction départementale des finances publiques de la Haute-Savoie* decided by the ECJ on 5 March 2022, in which the Court of Justice reiterated that the duplication of administrative and criminal penalties that are imposed (simultaneously or consecutively) on the same person in relation to the same acts do not violate the principle of *ne bis in idem* enshrined in Article 50 of the EU Charter, provided that the competent authorities ensure that the severity of all of the penalties imposed does not exceed the seriousness of the offence identified. In this regard, the ECJ signalled, in line with the settled case law,[484] that the latter requirement applies, without exception, to all the penalties imposed cumulatively and, therefore, to both the duplication of penalties of the same kind and the combination of penalties of a different kind, such as financial penalties and custodial sentences. The mere fact that the competent authorities intend to impose penalties of a different kind cannot exempt them from the obligation to ensure that the severity of all the penalties imposed does not exceed the seriousness of the offence identified, failing which the principle of proportionality would be infringed. That, in other terms, implies that competent authorities shall not limit themselves to evaluating the proportionality of the combined penalties only with respect to sanctions that are reflected in a monetary amount but shall also take into consideration and combine with the former such form of punishment which derives from a custodial sentence.[485]

The complexity deriving from the application of the *ne bis in idem* principle is also witnessed

[482] *See* LT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 60. *See also* LT: Law on Tax Administration No. IX-2112, 13 Apr. 2004, as amended by Law No XIV-1658, 13 Dec. 2022, version in force from 1° May 2023, art. 139, available at https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.231855/xwJUVoVLfO (accessed 24 Feb. 2023).

[483] *See* C.E. Weffe, *Taxpayers' Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting Project*, 74 Bull. Intl. Taxn. 2 (2020), Journal Articles & Opinion Pieces IBFD. *See also* A. Del Sole, *Liquidity crisis, criminal sanctions and non-payment of VAT according to the Court of Justice of the European Union*, 177 Crónica Tributaria 4, pp. 39-68 (2020), available at https://www.ief.es/vdocs/publicaciones/1/177/2.pdf (accessed 10 Feb. 2022).

[484] *See* IT: ECJ, 20 Mar. 2018, Case C-537/18, *Garlsson Real Estate and Others*, available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=200402&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1709995 (accessed 23 Feb. 2023).

[485] *See* FR: ECJ, 5 May 2022, Case C-570/20, *BV*, available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=258873&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1709066 (accessed 23 Feb. 2023).

at the level of the case law of the ECtHR.

Notwithstanding existing settled case law of the ECtHR, which concluded that the *ne bis in idem* principle does not prevent the carrying out of two parallel sets of proceedings arising from the same factual circumstances and the imposition, eventually, of two set of sanctions, applications continue to be filed to the ECtHR questioning the compatibility of the concurrence of criminal and administrative sanctions in respect of substantially identical facts with respect to Article 4 of Protocol No. 7 to the Convention. The application lodged before the ECtHR in the case of *Josip Klemm against Croatia* is an example in point. In that case, the applicant was found guilty and convicted to pay a fine in the amount of HRK 10,000 in administrative tax proceedings for the minor offence of deducting VAT for fictitious services by third companies in 2006 and 2007. In the subsequent criminal proceedings, in respect of which the investigation had started in 2014, on 3 July 2017 the applicant was found guilty and sentenced to one year's imprisonment for abuse of trust in business dealings and damaging his own company by paying fictitious services to third companies between 2005 and 2007. [486]

The uncertain scope of application of the principle of *ne bis in idem* emerges from the analysis of national provisions as well.

For example, the case law of certain countries has drifted away from the application of the *ne bis in idem* principle. In the **Netherlands**, the Supreme Court has ruled that an administrative penalty may be followed by criminal prosecution for a more severe offence (in that decision, the administrative penalty had been imposed for the late submission of a tax return, while the criminal prosecution involved an intentional violation).[487]

On the contrary, in certain countries courts apply the *ne bis in idem* principle in a broader way. **Brazil,** for example, continues to favour a heightened standard for the application of the *ne bis in idem* principle, in line with the case law of the Federal Administrative Council of Tax Appeals (*Conselho Administrativo de Recursos Fiscais*), which had declared inadmissible the tax authorities' claim to punish concurrently the non-payment of monthly advance payments and the final corporate tax debt of the same taxpayer, as it violated the guarantee of substantive *ne bis in idem*.[488]

In other instances, uncertainties remain, and national legislation continues to expand the scope of punitive tax law vis-à-vis a broad application of the *ne bis in idem* principle and of the principle of proportionality.

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[486] *See* HR: ECtHR, 15 Mar. 2021, No. 16272/21, *Josip Klemm v. Croatia*, available at https://hudoc.echr.coe.int/eng?i=001-221848 (accessed 23 Feb. 2023). As it appears, this case raises similar issues to the ones already addressed by the ECtHR in the cases ECtHR [GC], 15 Nov. 2016, *A and B v. Norway*, nos. 24130/11 and 29758/11; ECtHR, 18 May 2017, *Jóhannesson and Others v. Iceland*, No. 22007/11; and ECtHR, 31 Aug. 2021, *Milošević v. Croatia*, No. 12022/16.

[487] *See* NL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 59. *See also* NL: HR [Supreme Court], 15 Mar. 2022, No. 19/02761, available at https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2022:364 (accessed 24 Feb. 2023).

[488] *See* BR: CARF-CSRF-CARF-MF-DF (Prim. Turma), 5 Apr. 2021, Acórdão No. 9101-005.080, VCB Transportes Ltda., available at https://carf.fazenda.gov.br/sincon/public/pages/ConsultarJurisprudencia/listaJurisprudencia.jsf?idAcordao=8636248 (accessed 14 Mar. 2023). *See also* BR: OPTR Report (2022) (Academia), Questionnaire 2, Question 58.

Under **United States** legislation, for example, there are very limited restrictions on imposing multiple penalties for the same conduct.[489]

This trend of the **United States** is consistent with the practice witnessed in 2021 and is in line with the approach taken by US courts as regards the application of the proportionality principle to punitive tax sanctions. In connection therewith, it is reported that US courts have held proportionate the application of the 50% maximum penalty against taxpayers for wilful failure to file a timely Report of Foreign Bank and Financial Accounts (FBAR), since it represents a careless disregard of a known or obvious risk, as well as a violation of a known legal duty.[490] It is also reported that a tax court has held that a taxpayer's filing of income tax returns did not trigger the statute of limitations for tax assessment by the IRS if the taxpayer fraudulently under-reported his income on a FBAR form with the intent to evade tax, a decision that seems to call into question the proportionality of criminal prosecution for tax offences. In this way, the statute of limitations is inapplicable, in practice, to this tax offence.[491] Furthermore, it appears that the relevance of the principle of *ne bis in idem* is not significantly applied by US courts as it is inferred from a decision of another court that sentenced a Florida resident for his failure to report foreign financial accounts and for evading millions of US dollars in taxes on income earned in accounts held in several countries. The taxpayer will serve 24 months of imprisonment, along with 2 years of supervised release, and pay approximately USD 2,789,538 in restitution to the Treasury.[492]

7.2. Voluntary disclosure

Best practice: Voluntary disclosure should lead to a reduction of penalties.

Shifted towards/matched the best practice:	Shifted away from the best practice:
Brazil, Bolivia, Chile, Mauritius	Lithuania

Minimum standard: Sanctions should not be increased simply to encourage taxpayers to make

[489] *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 58. *See also* US: Internal Revenue Code, Subtitle F, Chapter 68, Subchapter A, Part II, § 6662 Imposition Of Accuracy-Related Penalty On Underpayments, available at https://irc.bloombergtax.com/public/uscode/doc/irc/section_6662, (accessed 23 Feb. 2023).

[490] *See* US: CAFC (Eleventh Circuit), 23 Apr. 2021, No. 19-14464, *United States of America v. Said Rum*, available at https://media.ca11.uscourts.gov/opinions/pub/files/201914464.pdf (accessed 10 Feb. 2022); and US: USCFC, 19 Apr. 2021, No. 18-365, *Leon Landa v. United States*, available at https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2018cv0365-58-0 (accessed 10 Feb. 2022). *See also* W. Choi, *Court Upholds 50% Penalty for Wilful Failure to Disclose Swiss Bank Account for Taxpayer's Family* (22 Apr. 2021), News IBFD; and W. Choi, *Another Court of Appeals Affirms 50% Penalty for Reckless Failure to Disclose Foreign Bank Account* (26 Apr. 2021), News IBFD.

[491] *See* US: USTC, 26 July 2021, Memo. 2021-95, Docket No. 135331-18, *George S. Harrington v. Commissioner of Internal Revenue*, available at https://casetext.com/case/harrington-v-commr-21 (accessed 11 Feb. 2022). *See also* W. Choi, US Tax Court Denies Limitation Periods for Fraudulent Tax Returns (28 July 2021), News IBFD.

[492] *See* US DoJ, *Florida Man Sentenced for Evading Taxes on Millions in Secret Offshore Bank Accounts* (14 May 2021), available at https://www.justice.gov/opa/pr/florida-man-sentenced-evading-taxes-millions-secret-offshore-bank-accounts (accessed 10 Feb. 2022). *See also* W. Choi, *Florida Resident Dusko Bruer Receives Prison Sentence for Tax Evasion through Secret Offshore Bank Accounts* (17 May 2021), News IBFD.

voluntary disclosures.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

As a counterbalance to the expansion of characterized criminal and administrative sanctions (as can be inferred in section 7.1.) that, in a way, seems to go against the minimum standard (according to which sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures), voluntary disclosure regimes continued to flourish in 2022, apparently due to the lengthening of the effects of the COVID-19 pandemic. It could also be argued that the dire global economic situation, and the need for countries to raise revenue, contributed to this trend.

In **Mauritius**, for example, a Tax Arrears Settlement Scheme was reintroduced. It allows for full waiver of penalties and interest, provided that tax arrears due as of 7 June 2022 under the Income Tax Act 1995, the Value Added Tax Act 1998, and the Gambling Regulatory Authority Act 2007 are paid in full by 31 March 2023 and provided that the taxpayer makes an application to the MRA by 31 December 2022.[493]

Other countries follow a similar pattern, aiming to strengthen existing voluntary disclosure schemes that lead to a reduction of tax penalties or proposing the introduction of new ones.

While **Bolivia** extended the voluntary disclosure period from 10 business days to 20 calendar days pursuant to Law 1448 of 25 July 2022,[494] it is reported that in **Chile** the legislature is debating a tax reform establishing that voluntary disclosure in a criminal case might reduce criminal liabilities.[495]

In addition, in **Brazil**, at the end of 2022, the Provisional Measure n. 1152 was published, which aligned the Brazilian transfer pricing rules with the OECD Guidelines. In this context, it was established that, if the tax authority disagrees with the method applied by the taxpayer, the latter will be able to voluntarily adjust its assessment and pay the assessed differences, without any penalty. For this provision to apply, one of the requirements is cooperative behaviour by the taxpayer.[496]

Certain countries, nevertheless, have drifted away from the best practice. For example, in **Lithuania** the Law on Tax Administration, besides having increased the amount of punitive sanctions (especially in cases of repeated tax violations committed over a 3-year period), has

[493] *See* MR: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 60. *See also* MR: Explanatory notes on the main provisions to be included in the Finance (Miscellaneous Provisions) Bill 2022, sec. A4, available at https://budgetmof.govmu.org/documents/2022_23Annex_Budget_Speech.pdf (accessed 23 Feb. 2023).

[494] See BO: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 60. *See also* BO: Law n. 1448/2022, 25 Jul. 2022, art. 2(II), available at http://www.gacetaoficialdebolivia.gob.bo/normas/listadonor/10 (accessed 24 Feb. 2023).

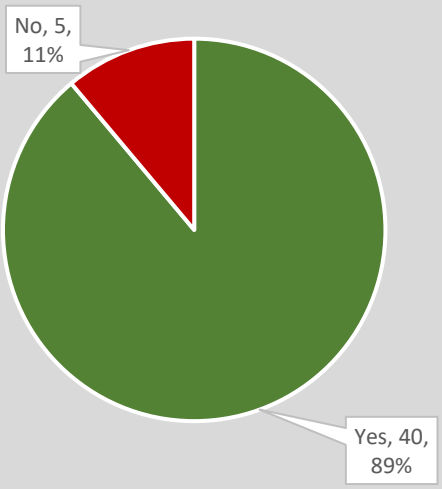
[495] *See* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 60.

[496] *See* BR: OPTR Report (2022) (Academia), Questionnaire 2, Question 60. *See also* BR: Presidência da República, Medida provisória nº 1.152, 28 Dec. 2022, available at http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2022/Mpv/mpv1152.htm (accessed 23 Feb. 2023).

provided that, even in the case of voluntary disclosure, the tax penalty due by the taxpayer cannot be reduced for an amount lower than 20% of calculated unpaid taxes.[497]

Chart 58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?

53 responses



Source: OPTR: Questionnaire 1, Question 58

Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, Ireland, Italy, Japan, Kazakhstan, Kenya, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States

No: India, Lithuania, Luxembourg, Uruguay, Venezuela (1), Venezuela (2)

As reported above, many countries have extended the scope of voluntary disclosure regimes in the wake of the COVID-19 pandemic emergency.

Argentina is a good example. In view of the COVID-19 pandemic, the tax authorities extended to 31 July 2022 the validity of the instalment scheme applicable to micro, small and medium-sized enterprises (this scheme, originally introduced by General Resolution 4268, and extended in scope by General Resolution 4992, establishes a permanent instalment agreement regime to settle pending tax and social security obligations and related interest and fines).[498]

In **Italy**, tax authorities launched implementing rules on the voluntary disclosure procedure that may be activated by taxpayers who unduly benefitted from tax credits for investments in R&D activities accrued between the fiscal years 2015 and 2019.[499] In addition, the Italian government published the bill of the Budget Law for 2023 that introduced a set of rules for the taxation of cryptoassets. Among others, this legislation provides for a voluntary disclosure programme for taxpayers that did not report in their annual tax return the holding of

[497] *See* LT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 60. *See also* LT: Law on Tax Administration No. IX-2112, 13 Apr. 2004, art. 139, as amended on 13 December 2022 by LT: Law No XIV-1658, 13 Dec. 2022, version in force from 1° May 2023, available at https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.231855/xwJUVoVLfO (accessed 24 Feb. 2023).

[498] E.O. Meloni, *COVID-19 Pandemic: Tax Authorities Extend Validity of Instalment Agreement Regime to Regularize Tax and Social Security Obligations* (31 May 2022), News IBFD.

[499] G. Gallo, *Tax Authorities Launch Consultation on Voluntary Disclosure Procedure for Undue R&D Incentives* (16 May 2022), News IBFD.

cryptoassets and related income (if any) as of 31 December 2022. Where the taxpayer realized income from the unreported cryptoassets, the voluntary disclosure programme provides for the payment of a 3.5% substitute tax to be applied on the value of the undisclosed cryptoassets at the end of each year or at the date of disposal.[500]

Türkiye also introduced a voluntary disclosure scheme. Under Omnibus Law No. 7417, companies and individuals may declare to the tax administration assets (including immovables) in Türkiye that were not included in their statutory records. These assets will be taxed at a rate of 3% and the taxes must be paid by the end of the month following that in which the assessment is imposed. No tax audit will be performed concerning declared assets, nor will any additional tax assessment be imposed. These assets (excluding immovables) must be deposited at a bank or brokerage house deposit account. Banks and brokerage houses must issue documents demonstrating that the assets have been deposited.[501]

It should be noted that many countries had already adopted voluntary disclosure regimes back in 2021. Among others, **China (People's Rep.)**,[502] **Dominican Republic**,[503] **Spain**[504] and

[500] *See* IT: Law 197/2022, 29 Dec. 2022, arts. 126-147, available at https://www.gazzettaufficiale.it/eli/id/2022/12/29/22G00211/sg (accessed 23 Feb. 2023).

[501] *See* E. Ferhatoğlu & E. Osmangaz, *Türkiye Seeks Public Input on New Voluntary Disclosure Scheme* (11 Jul. 2022), News IBFD. *See also* E. Ferhatoğlu & E. Osmangaz, *Türkiye Enact New Voluntary Disclosure Scheme* (9 August 2022), News IBFD.

[502] In China (People's Rep.), the revised Law on Administrative Penalties provides for voluntary disclosure as one of the main grounds for exclusion of liability for tax offences. *See* CN: Law of the People's Republic of China on Administrative Penalties, 2021, available at https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzAzYWRkMjAxNzczNzNkZjZhNDNlMzM%3D (accessed 15 Feb. 2022); and CN: Rules on the Exercise of Discretionary Power of Administrative Punishment in Taxation (State Administration of Taxation Announcement No. 78 of 2016), available at http://www.chinatax.gov.cn/chinatax/n810341/n810765/n1990035/201612/c2506180/content.html (accessed 15 Feb. 2022).

[503] The Dominican Republic's voluntary disclosure regime, reinstated in 2021, seeks to create the conditions for taxpayers to voluntarily disclose all of their undeclared movable and immovable assets to the Directorate General of Internal Taxes, as well as to revalue them according to current market prices. The regime reduces taxes over the disclosed assets to a one-off tax of 2% of their market value. The regime was extended until December 2021. *See* DO: Ley No. 46-20 sobre Transparencia y Revalorización Patrimonial, G. O. No. 10972, 21 Feb. 2020, available at https://dgii.gov.do/legislacion/leyesTributarias/Documents/Leyes%20sobre%20Tenencia,%20Transferencia%20y%20Organizaci%C3%B3n%20de%20Patrimonio/46-20.pdf (accessed 16 Feb. 2022); DO: Ley No. 07-21, que Reincorpora las Disposiciones de la Ley No. 46-20, del 19 de febrero de 2020, sobre Transparencia y Revalorización Patrimonial y sus disposiciones, y le introduce otras disposiciones, 20 Jan. 2021, available at https://dgii.gov.do/legislacion/leyesTributarias/Documents/Leyes%20sobre%20Tenencia,%20Transferencia%20y%20Organizaci%C3%B3n%20de%20Patrimonio/07-21.pdf (accessed 16 Feb. 2022); and DO: Prórroga de pago automático declaraciones de transparencia, revalorización patrimonial y amnistía fiscal en virtud de la ley núm. 46-20, reintroducida por la ley núm. 07-21, 12 July 2021, available at https://dgii.gov.do/publicacionesOficiales/avisosInformativos/Documents/2021/17-21.pdf (accessed 16 Feb. 2022). *See also* M. Corral, *Dominican Republic Issues Automatic Extension under Voluntary Disclosure Regime* (19 July 2021), News IBFD; M. Corral, *Dominican Republic Issues New Automatic Extension under Voluntary Disclosure Regime* (19 Oct. 2021), News IBFD; M. Corral, *Dominican Republic Provides Guidance on Voluntary Disclosure Regime* (24 Feb. 2021), News IBFD; and M. Corral, *Dominican Republic Extends Voluntary Disclosure of Assets* (4 Feb. 2021), News IBFD.

[504] In Spain, a decision of the Central Economic-Administrative Court (Tribunal Económico-Administrativo Central) deemed it appropriate to maintain the 25% reduction in the penalties imposed for late payment when the interested parties request and obtain a deferment or payment in instalments, in those cases in which such deferments or payment in instalments are exempt from the obligation to provide a guarantee, i.e. because the person liable for payment does not have sufficient assets to guarantee the debt and the enforcement of their assets could substantially affect the maintenance of the productive capacity and the level of employment of the

Paraguay.[505] The 2022 national reports do not suggest that any of the regimes had in the meanwhile been suspended or discontinued.

respective economic activity or could cause serious losses to the interests of the Public Treasury. In addition, Law 11/2021 of July 9, on prevention and anti-fraud measures, introduces greater reductions in the sanction in cases of agreement and voluntary payment. *See* ES: TEAC, 16 Feb. 2021, Resolution No. 0/06542/2019/00/00, available at https://www.iberley.es/resoluciones/resolucion-teac-0-06542-2019-00-00-16-02-2021-1532087 (accessed 15 Feb. 2022); and ES: Law 11/2021 of 9 July on measures to prevent and combat tax fraud, transposing Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, amending various tax and gambling regulations (BOE-A-2021-11473), available at https://www.boe.es/eli/es/l/2021/07/09/11 (accessed 15 Feb. 2023).

[505] Paraguay suspended until 31 August 2021 the application of the penalty for the late filing of the tax on dividends and profits informative affidavit. *See* PY: Resolución General N° 91 por la cual se Suspende la Aplicación de la Sanción de Multa por Contravención por la Presentación Fuera de Plazo de la Declaración Jurada Informativa del Impuesto a las Utilidades o Dividendos (IDU) con vencimiento en el mes de junio de 2021, 10 June 2021, available at https://www.set.gov.py/portal/PARAGUAY-SET/detail?folder-id=repository:collaboration:/sites/PARAGUAY-SET/categories/SET/Normativas/resoluciones/2021&content-id=/repository/collaboration/sites/PARAGUAY-SET/documents/2021/normativas/Resoluci%C3%B3n%20General%20N%C2%BA%2091-21 (accessed 15 Feb. 2022). *See also* E. Bañuelos, *Paraguay Suspends Application of Penalty for Late Filing of Dividends and Profits Informative Tax Affidavit* (18 June 2021), News IBFD.

8. Enforcement of Taxes

Minimum standard: Collection of taxes should never deprive taxpayers of their minimum necessary for living.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Colombia, Lithuania, United States	None

In order to provide the necessary financial foundation for a society, efficient tax enforcement is both necessary and key, entailing both an efficient collection of taxes and a balanced protection of taxpayers. Enforcement entails greater powers for the tax administration in the collection of taxes due,[506] and the greater the tax administration's powers, the greater the risks for practices that can potentially be harmful to the taxpayers. Balancing against this power of tax collection for the state is the taxpayer's human dignity, which limits the state's power as it ensures the taxpayer the right to a dignified existence (*minimum vitale*), defined as the minimum necessary for living. Consequently, this is an area in need of strong safeguards.[507]

Coming out of a global pandemic and economic crisis, funds have been scarce for most states for the last 3 years. To mitigate the negative economic consequences of this, many countries have introduced postponements on collecting taxes, reducing interest rates for late payment of taxes, and some extension in due dates for compliance.

These efforts have been continued in 2022 for several countries, also considering the complex economic environment caused by the conflict in Ukraine and the consequent spiralling of energy and commodity prices worldwide. However, a downward trend can be witnessed, with the overall number of measures enacted in 2022 greatly lower than in previous years.

Colombia is one of the countries that has provided relief for taxpayers following previous years' practice. Article 81 of Law 2277 of 2022 temporarily establishes a significant reduction in the amount of sanctions and in the interest rate due for the late payment of tax obligations, provided that the tax charge is paid in full or on a deferral basis.[508] The government, in addition, extended the validity of the tax measures taken in view of the COVID-19 pandemic until 30 June 2022, including, among others, rules on temporary exemptions from VAT on the

[506] The ECJ decision in Case C-95-19, *Agenzia delle Dogane v. Silcompa SpA* is a very interesting development in this regard. It prevents the possibility of multiple tax recovery procedures within the European Union for the same excise taxes due. As stated by the decision, "[i]n the light of the foregoing considerations, the answer to the question referred is that Article 12(3) of Directive 76/308, read in conjunction with Article 20 of Directive 92/12, must be interpreted as meaning that, in the context of an action disputing enforcement measures taken in the Member State in which the requested authority is situated, the competent body of that Member State may refuse to grant the request to recover excise duties submitted by the competent authority of another Member State in respect of goods which irregularly departed from a suspension arrangement, for the purposes of Article 6(1) of Directive 92/12, where that request is based on the facts relating to the same export transactions which are already subject to excise duty recovery in the Member State in which the requested authority is situated". ES: ECJ (Fifth Chamber), 24 Feb. 2021, Case C-95-19, *Agenzia delle Dogane v. Silcompa SpA*, available at https://www.courthousenews.com/wp-content/uploads/2021/02/silcompa-ECJ.pdf (accessed 5 Mar. 2021).

[507] Baker & Pistone, *supra* n. 340, at sec. 5.1.

[508] *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 62. *See also* CO: Law No. 2277 of 2022 "por medio de la cual se adopta una reforma tributaria para la igualdad y la justicia social y se dictan otras disposiciones", 13 Dec. 2022, available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883 (accessed 24 Feb. 2022).

purchase of raw materials for the production of medicines, on services under franchise agreements and hotel and tourism services.[509]

From a different perspective, **Lithuania** enacted a measure to ensure that, considering the rising cost of living, tax collection does not deprive taxpayers of the minimum necessary for living. In this regard, rules were introduced that increase the tax-free income by 15.7% to an amount that currently is set at EUR 625.[510]

In the **United States**, from a different perspective, tax authorities introduced administrative guidance aimed at speeding up rules on refunds for taxpayers requesting an offer in compromise.[511]

A few countries introduced or continue to extend the validity of existing measures to support taxpayers as a consequence of the COVID-19 emergency pandemic situation and in light of the energy crisis.

Among others, **Argentina** extended the validity of an existing instalment agreement regime to regularize tax and social security obligations to micro, small and medium-sized enterprises.[512] In addition, tax authorities adopted administrative measures aimed at increasing the threshold of income tax that triggers prepayment obligations for corporate and individual taxpayers.[513]

China, in view of supporting enterprises and business activities, extended its 50% deferral of tax and fee payments for medium-sized enterprises and its 100% deferral for small and low-profit enterprises in the manufacturing industry[514] and introduced several tax reliefs in order to support financial institutions and financial asset management companies in settling the distressed debts of borrowers.[515]

In **Germany**, the parliament approved a draft bill containing a relief package for taxpayers against the backdrop of sharply rising prices for energy. Key elements of the relief package are an increase of the basic allowance for all taxpayers and an increase of the standard lump-

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509 *See* M. Bocachica, *COVID-19 Pandemic: Colombia Extends Emergency Tax Measures Through June 2022* (11 May 2022), News IBFD.

510 *See* LT: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 62. *See also* LT: Law on Tax Administration No. IX-2112, of 13 April 2004, as amended on 13 December 2022 by Law No XIV-1658, art. 20, version in force from 1° May 2023, available at https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.231855/xwJUVoVLfO (accessed 24 Feb. 2023).

511 *See* US: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 62. *See also* US: Internal Revenue Code, § 6343(a)(1)(D) of Subtitle F, available at https://irc.bloombergtax.com/public/uscode/doc/irc/section_6343 (accessed 24 Feb. 2023).

512 *See* E.O. Meloni, *COVID-19 Pandemic: Tax Authorities Extend Validity of Instalment Agreement Regime to Regularize Tax and Social Security Obligations* (31 May 2022), News IBFD. The measure was established under General Resolution 5178, published in the Official Gazette of 31 March 2022 and in force from that date; *see* AR: General Resolution 5178, 31 Mar 2022, available at https://www.boletinoficial.gob.ar/web/utils/pdfView?file=%2Fpdf%2Faviso%2Fprimera%2F260121%2F20220331 (accessed 24 Feb. 2022).

513 Ibidem.

514 *See* S. Ma, *China Extends Tax and Fee Deferral for Manufacturing Enterprises* (15 Sept.0 2022), News IBFD. *See also* S. Ma, *China Extends Period of Deferral of Tax Payments for Small and Medium-Sized Manufacturing Enterprises* (2 Mar. 2022), News IBFD.

515 *See* S. Ma, *China Announces Reliefs for Settlement of Debts* (11 October 2022), News IBFD.

sum deduction for employees.[516] A subsequent relief package included, inter alia, a one-time lump-sum payment of EUR 300 for pensioners and EUR 200 for students; an increase of the monthly child relief for the first and second child by EUR 18; the prolonged application of the reduced VAT rate of 7% for food supplies in restaurants; the postponement of the planned increase of the CO2 levy from 1 January 2023 to January 2024; the application of the reduced VAT rate of 7% on the consumption of natural gas until 31 March 2024; and the adjustment of the income tax brackets in order to reduce the inflation-driven cold progression in taxation.[517]

Italy introduced further measures to mitigate the effects of the COVID-19 pandemic and support affected enterprises, including the extension of targeted tax incentives and the suspension of certain tax payments. Further measures were introduced to support taxpayers affected by the increase of energy prices. This includes the extension of targeted tax credits and the reduction of excise duties on fuels.[518]

In **Portugal**, new measures have also been adopted with a view to mitigating the effects of the continuous increase in fuel prices and inflationary pressures stemming from the Russian invasion of Ukraine.[519]

Türkiye also increased the maximum tax-free compensation that an employer may grant an employee in respect of daily food and transportation costs; up to the provided amounts, no personal income tax is levied.[520]

Best practice: **Authorization by the judiciary should be required before seizing assets or banking accounts**

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

Chart 59. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	
53 responses	**Yes:** Austria, Chile, Guatemala, Ireland, Luxembourg, Norway, Uruguay

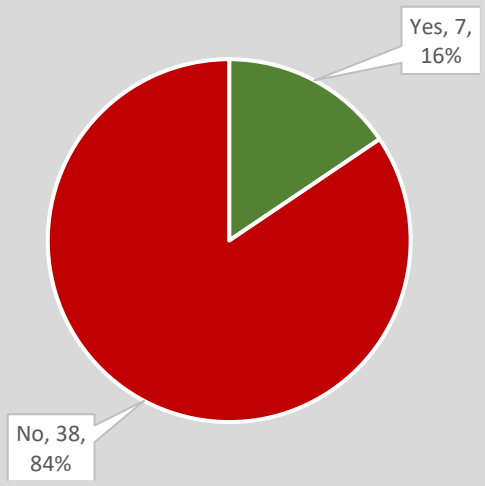
[516] *See* A. Perdelwitz, *Parliament Approves Relief Package for Taxpayers* (13 May 2022), News IBFD.

[517] *See* A. Perdelwitz, *EUR 65 Billion Third Relief Package Brings Greater Help to Taxpayers* (5 Sept. 2022), News IBFD.

[518] *See* G. Gallo, *COVID-19 Pandemic: Parliament Enacts Further Support Measures* (11 Apr. 2022), News IBFD. *See also* G. Gallo, *Italy Enacts Further Urgent Measures to Support Taxpayers Affected by Increased Energy Costs* (18 Nov. 2022), News IBFD.

[519] *See* R. Castro Mendonça, *Portugal Extends Tax Measures to Compensate for Continued Fuel Price Increases* (5 Sept. 2022), News IBFD.

[520] *See* E. Ferhatoğlu & E. Osmangazi, *Türkiye Increases Tax-free Compensation Amounts for Employee Food and Public Transportation Costs* (8 July 2022), News IBFD.



Source: OPTR: Questionnaire 1, Question 59

No: Argentina, Australia, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Venezuela (1), Venezuela (2)

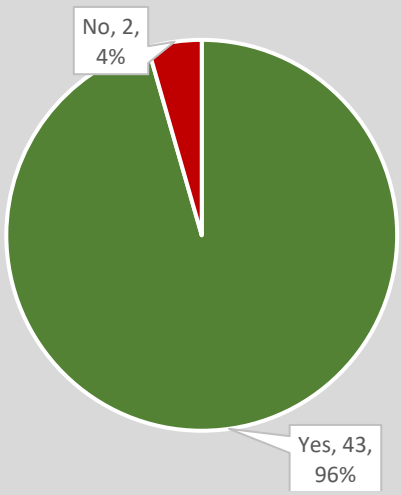
No surveyed jurisdiction reported measures impacting judicial authorities' powers of review of decisions made by tax administrations to seize assets or bank account deposits.

Minimum standard: Taxpayers should have the right to request delayed payment of arrears.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Colombia, Sweden	None

Chart 60. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?

53 responses



Source: OPTR: Questionnaire 1, Question 60

Yes: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Chile

As described at the beginning of this section, means have been scarce for several taxpayers for the years 2020-2022 due to the pandemic and the economic crisis resulting from it. The energy crisis has worsened the situation. Consequently, several countries introduced, on top of existing COVID-specific measures, new measures to aid taxpayers in 2022, including extensions of payment of taxes and of deadlines for reporting obligations.

In **Colombia**, for example, in accordance with article 81 of Law 2277 of 2022 that modified the regulation of the deferral of payments, deferrals are now granted without the need for a guarantee when the term is not greater than one year, and provided that the taxpayer has not failed to comply with a deferral of payment during the former year.[521]

It is also reported that in **Sweden**, due to the recession, the possibilities to request deferred payment of arrears have generally increased and tax authorities are more willing to grant such requests. In addition, the Ministry of Finance has proposed that deferment of payment of preliminary tax, employer contributions and VAT whose accounting period is 1 calendar month may be granted for a maximum of 12 accounting periods each. For VAT whose accounting period is a calendar quarter, deferment may be granted for a maximum of four accounting periods.[522]

Best practice: Bankruptcy of taxpayers should be avoided by partial remission of the debt or structured plans for deferred payment.

Shifted towards/matched the best practice:	Shifted away from the best practice:
Colombia, Guatemala, Netherlands	

To prevent taxpayer bankruptcy during the hardship of the pandemic, several countries have introduced specific measures in line with the best practice. Ideally, these interim measures could provide inspiration for how to further prevent taxpayer bankruptcy and insolvency.

In **Colombia**, article 85 of Law 2277 of 2022 provides that in business restructuring processes, the priority of tax obligations will not prevent the achievement of the reorganization agreement, when a real guarantee or insurance policy is constituted, for the value of the debt. This provision intends to correct situations in which the unjustified obstruction of the reorganization agreement by the tax administration led to the liquidation of companies.[523]

It is also reported that in **Guatemala** new rules have clarified that municipalities and other government entities will participate in the bankruptcy procedure for the credits that such entities have with the debtor and can intervene in the procedures and reorganization plans,

[521] *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 64. *See also* CO: Law No. 2277 of 2022 "por medio de la cual se adopta una reforma tributaria para la igualdad y la justicia social y se dictan otras disposiciones", 13 Dec. 2022, available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883 (accessed 24 Feb. 2022).

[522] *See* SE: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 64.

[523] *See* CO: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 65. *See also* CO: Law No. 2277 of 2022 "por medio de la cual se adopta una reforma tributaria para la igualdad y la justicia social y se dictan otras disposiciones", 13 Dec. 2022, available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=199883 (accessed 24 Feb. 2022).

but certificates or documents that prove that the debtor is in full compliance with its tax obligations will not be required and the absence of such certificates and documents would not constitute an obstacle to the liquidation of assets during bankruptcy procedures.[524]

In the **Netherlands**, as of the end of 2022, many taxpayers still receive extensions for COVID-19-related tax debts. The tax authority seems very willing to agree on payment terms.

Minimum standard: Temporary suspension of tax enforcement should follow natural disasters.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Belgium	None

Natural disasters are extraordinary situations calling for higher protection of citizens , including flexibility in tax payments. The COVID-19 pandemic has been a truly unique situation because all countries have suffered from it, and whether or not this is defined as a “natural disaster” in the respective jurisdictions, it is clear that the situation has prompted the states to promptly relieve their citizens of their tax and reporting obligations.

Though the effect of the pandemic emergency waned in 2022, some countries continued their policy of extending deadlines for filing tax returns and providing information, as happened in 2020 and 2021. That occurred, for example, in the case of **Belgium**, as with Law of 26 December 2022, the Belgian legislator instituted a possibility for employers to be exempted from the payment of withholding tax on wages in certain cases of natural disasters. On the initiative of the competent region, the federal tax authority can allow an employer who has one or more establishments affected by natural disasters recognized by the region to withhold the entire withholding tax from the wages of employees employed in their establishment(s), but only pass on part of it to the tax authorities.[525]

[524] *See* GT: OPTR Report (2022) (Taxpayers /Tax Practitioners), Questionnaire 2, Question 65. *See also* GT: Decreto número 8-2022, 1 Mar. 2022, arts. 50 and 55, available at http://jurisprudencia.oj.gob.gt/frmprincipal.aspx (accessed 24 Feb. 2023).

[525] *See* BE: OPTR Report (2022) (Taxpayers /Tax Practitioners, Academia), Questionnaire 2, Question 66. *See also* BE: Law of 26 December 2022, available at https://www.ejustice.just.fgov.be/mopdf/2023/01/13_1.pdf#Page94 (accessed 24 Feb. 2023).

9. Cross-Border Situations

Cross-border procedures are becoming increasingly common and, presumably, this trend will only continue. As a result of this development, taxpayers' rights are weakened in practice, as they are generally not involved in the cross-border procedures carried out between states. This situation entails the risk of taxpayers not effectively exercising and protecting their rights in the procedures. However, positive developments have also occurred in the systems to ensure taxpayers' legal standing in terms of access to mutual agreement procedures in article 16(1) of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)[526] and mandatory arbitration in Article 19(1).

In the same vein, rules on the mandatory disclosure of tax minimization arrangements were introduced broadly to grant the tax authorities early access to "timely, comprehensive and relevant information on aggressive tax planning strategies" so that they may "quickly respond to tax risks through informed risk assessments, audits, or changes to legislation or regulations".[527] Essentially, this measure served an objective similar to other forms of information gathering and exchange of information, namely to enable the tax administrations to use the information as an early warning system to highlight the issues they want to address. However, the analysis and legal prequalification applied to the collected facts by the tax administration included an inherent risk that indicia of a potential tax offence could be derived, providing the information with a probative value.[528] If the disclosed information may give rise to liability for the taxpayer or the advisers under punitive law, this also raises the question about the right not to self-incriminate (*nemo tenetur se detegere*),[529] as described in section 5.2. of this Yearbook.

The surveyed jurisdictions only reported a few developments in 2022 regarding the exchange of information benchmarks monitored by the OPTR. The findings mostly related to the overall trends, as will be analysed in this section. Probably the most significant developments regarding the matter were the introduction of new reporting obligations in the **European Union** for cryptocurrencies and the implementation by several Member States of Council Directive 2021/514 of the European Union on 22 March 2021 (DAC7).[530]

Regarding cryptocurrencies in the European Union, the rules of the existing framework of administrative cooperation in the field of taxation were adopted by the proposal of the seventh amendment to the Directive on Administrative Cooperation (2011/16), approved by the Council of the European Union on 8 December 2022 (DAC8).[531] DAC8 will expand the automatic exchange of information and reporting obligations to cover the gains and profits

[526] *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (24 Nov. 2016), Treaties & Models IBFD.

[527] OECD/G20, *Mandatory Disclosure Rules – Action 12: Final Report* (OECD 2015), Primary Sources IBFD.

[528] C.E. Weffe H., *Mandatory Disclosure Rules and Taxpayers' Rights: Where Do We Stand?*, 4 Intl. Tax Stud. 1, p. 3 (2021), Journal Articles & Opinion Pieces IBFD.

[529] Id.

[530] Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, Primary Sources IBFD.

[531] Proposal for a Council Directive COM (2022)707 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

made from crypto-transactions by EU users[532].

DAC7 has been either implemented or governments have already drafted its implementation by **Austria,**[533] **Belgium,**[534] **Bulgaria,**[535] **Denmark,**[536] **Germany,**[537] **Finland,**[538] **Hungary**,[539] **Italy**,[540] **Latvia**,[541] **Luxembourg**,[542] **the Netherlands**,[543] **Slovak Republic**[544] and **Spain**.[545]

9.1. Exchange of information

9.1.1. Exchange of information on request: The right of the taxpayer to be informed and to challenge exchange of information

Minimum standard: The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer, unless it has a reasoned request from the requesting state that the taxpayer should not be informed on the grounds that it would prejudice the investigation.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	Honduras

Best practice: The taxpayer should be informed that a cross-border request for

[532] *See* C. Valério, *European Commission Adopts DAC8 to Cover Cryptoassets, Feedback Period Open* (8 Dec. 2022), News IBFD.

[533] A. Perdelwitz, *Austria Implements DAC7 and Other Amendments to Tax Laws* (25 July 2022), News IBFD.

[534] R. Offermanns, *Belgium Implements DAC7* (30 Dec. 2022), News IBFD.

[535] S. Krastanov, Bulgaria Publishes Consultation Document on Implementation of DAC7 (29 Aug. 2022), News IBFD.

[536] K. Ilieva, *Denmark - Government Implements DAC7 Directive* (22 June 2022), News IBFD.

[537] A. Perdelwitz, *Germany - Parliament Approves Draft Bill on Implementation of DAC7* (14 Nov. 2022), News IBFD.

[538] L. Ambagtsheer-Pakarinen, *Finland; European Union - Government Submits Bill Implementing DAC 7 Directive* (07 Nov. 2022), News IBFD.

[539] G. Antal, *Hungary - Hungary Implements DAC 7* (15 Nov. 2022), News IBFD.

[540] G. Gallo, *Italy - Italy Launches Consultation on Legislative Decree Implementing DAC7* (1 July 2022), News IBFD (accessed 12 Feb. 2023).

[541] L. Gerzova, Latvia - Latvia Implements DAC7 (29 Dec. 2022), News IBFD.

[542] R. Offermanns, Luxembourg; European Union - Council of Ministers Approves DAC7 Bill (3 June 2022), News IBFD.

[543] R. Offermanns, Netherlands; European Union - Netherlands Implements DAC7 (27 Dec. 2022), News IBFD.

[544] X. Yeroshenko, *Slovak Republic; European Union - Slovak Republic Implements DAC7 Into National Legislation* (7 July 2022), News IBFD.

[545] A. De Juan Ledesma, *Spain; European Union - Spanish Government Initiates Procedure to Implement Directive on Automatic Exchange of Information for Digital Platforms (DAC7)* (24 Feb. 2022), News IBFD.

information is to be made.

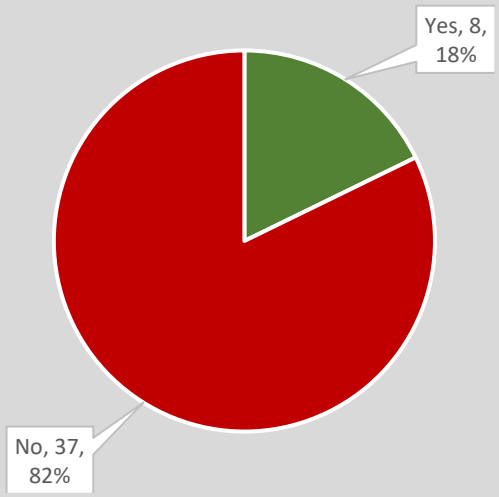
Shifted towards/matched the best practice:	Shifted away from the best practice:
México (2)	Honduras

Only **Honduras**,[546] following the tendency initiated in 2021, reports developments that shift away from the minimum standard. Even though the right to be informed in exchange of information cases was not explicitly contemplated in the Tax Code, it was a common practice of the tax administration. However, during the review of the exchange of information questionnaire required for the signature of the Convention on Mutual Administrative Assistance in Tax Matters, it was suggested to abandon such practice and only inform the taxpayers about the exchange of information during a tax audit. Procedurally, they can access their audit file.[547]

Nevertheless, on the positive side, **México**[548] reports the approval of the MLI signed on 7 June 2017, even though the instrument will enter into force in January 2024.[549]

Chart 61. Does the taxpayer have the right to be informed before information relating to them is exchanged in response to a specific request?

53 responses



Source: OPTR: Questionnaire 1, Question 61

Yes: Bosnia and Herzegovina, China (People's Rep.), Germany, Ireland, Slovenia, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Sweden, Chinese Taipei, Türkiye, United States

[546] *See* HN: OPTR (Taxpayers/Tax Practitioners, Academia) Report, Questionnaire 2, Question 67.

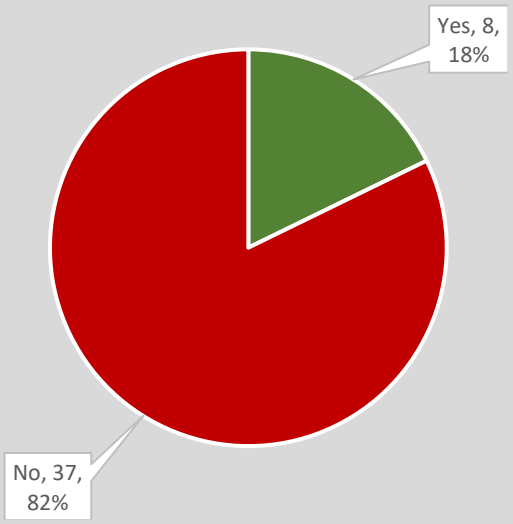
[547] *See* HN: SAR - Nota de Prensa SAR RRPP 034-2022 Gobierno de Honduras firma convención que permitirá investigar defraudación en paraísos fiscales, 11 July 2022, available at https://www.sar.gob.hn/2022/07/gobierno-de-honduras-firma-convencion-que-permitira-investigar-defraudacion-en-paraisos-fiscales/ (accessed 11 Feb. 2022).

[548] *See* MX: OPTR (Taxpayers/Tax Practitioners, Academia) Report, Questionnaire 2, Question 67.

[549] It must be clarified that this positive development was only reported by the representatives of Taxpayers/Tax Practitioners (México 2); the other reporters from México (México 1) did not consider the simple approval of the MLI by the Senate as a relevant legislative modification that took effect in 2022.

Chart 62. Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for exchange of information?

53 responses



Source: OPTR: Questionnaire 1, Question 62

Yes: Bosnia and Herzegovina, China (People's Rep.), Germany, Ireland, Slovenia, Switzerland, United States, Venezuela (1), Venezuela (2)

No: Argentina, Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Sweden, Chinese Taipei, Türkiye, Uruguay

As a key element of a democratic state, the rule of law prescribes that a taxpayer must be informed in advance of any governmental attempt to exercise its public powers. In an ideal world, the fact that a taxable event comprises a cross-border element should strengthen the protection of the taxpayers' rights corresponding to the situation. Best practice should include specific provisions regulating the time, form and conditions for the notification, and also allow the exchange of information to be used as evidence to benefit the taxpayer.

Best practice: **Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer.**

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

No developments were reported in this regard in 2022.

Best practice: **Provisions should be included in tax treaties setting specific conditions for exchange of information.**

Shifted towards/matched the best practice:	Shifted away from the best practice:
Brazil (2)	None

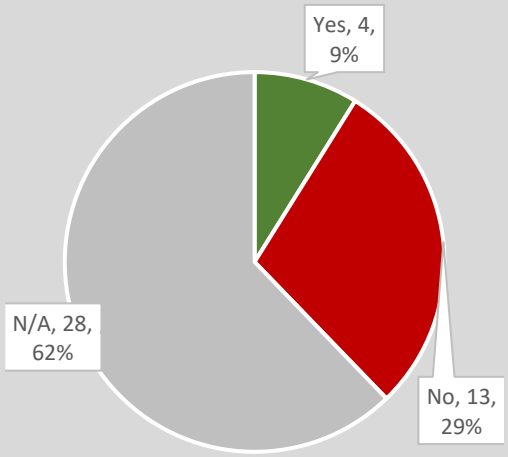
Only **Brazil**[550] has reported a positive development regarding the inclusion of provisions setting specific conditions for exchange of information in tax treaties, since the tax treaty with Singapore ratified in 2022 distinguishes between a provision for mutual agreement procedures (Article 26) and a specific provision for exchange of information (Article 27).[551]

9.1.2. A disturbing development: The removal of the right of the taxpayer to be notified in certain states under international pressure

Since the OECD Forum on Transparency and Exchange of Information applied pressure on countries to repeal the taxpayer's right to be informed prior to the exchange of information in 2015, numerous countries have unfortunately removed this right. However, 2022 brings good news on the matter, with some jurisdictions indicating a shift towards access to information by taxpayers, as is the case with **Chile**[552] and access to MAP information.

Chart 63. If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?

53 responses



Yes: Honduras, Luxembourg, Netherlands, Uruguay

No: Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Colombia (1), Colombia (2), Finland, Japan, Kazakhstan, Lithuania, Mexico (2), Norway, Peru (1), Portugal, Sweden, Switzerland, United States

Not applicable: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Chile, China (People's Rep.), Croatia, Czech Republic, Denmark, Germany, Guatemala, India, Ireland, Italy, Kenya, Mauritius, Mexico (1), New Zealand, Peru (2), Poland (1), Poland (2), Serbia, Slovenia, South Africa, Spain, Chinese Taipei, Türkiye, Venezuela (1), Venezuela (2)

[550] BR: OPTR (Taxpayers/Tax Practitioners, Judiciary, Academia) Report, Questionnaire 2, Question 69.

[551] It must be mentioned that this is a divergent opinion between the participants in the questionnaire. Members of the academia (Brazil 1) do not share the opinion that there has been an improvement. On the contrary, they consider that the indicated practice of inclusion of exchange of information provisions in the tax treaties has remained the same.

[552] *See below* after best practice: "The taxpayer should be given access to information received by the requesting state".

Source: OPTR: Questionnaire 1, Question 63	**Reports with diverging opinions:** Mexico, Peru

9.1.3. Additional safeguards in connection with exchange of information on request

Minimum standard: If information is sought from third parties, judicial authorization should be necessary.

Shifted towards/improved the minimum standard:	**Shifted away from the minimum standard:**
None	None

No developments were reported in this regard in 2022. Nonetheless, relevant ECJ case law developments were observed:

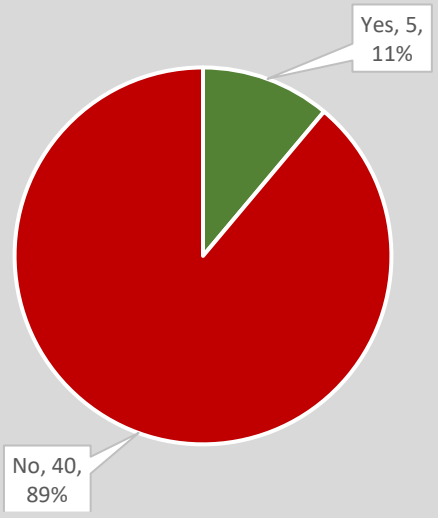
Case	***SIA 'SS' v. Valsts ieņēmumu dienests, C-175/20***[553]	
Date	24 February 2022 (Referral to the fifth Chamber 14 April 2020)	
GDPR Articles	Articles 5 § 1	
Facts	**Decision**	**Comments**
SS is an Internet advertisement services provider with a registered office in Latvia. The Latvian tax authorities requested SS to disclose information on the sellers of cars and on the cars that were put up for sale on the site operated by the company. This request specified that this information, including the link to the advertisement, the text of the advertisement, the make, model, chassis number and price of the vehicle, as well as the telephone number of the seller, should be provided electronically, in a format that allows the data to be filtered or selected. Considering that the Latvian tax administration's request for information was not in accordance with the principles of proportionality and minimization of personal data set forth in Regulation 2016/679 (GDPR), SS filed an administrative appeal	**Articles 5 § 1**: Article 5 § 1 of the GDPR applies also to the collection of information by the tax authorities. Applicability of Article 5§1: The collection, by the tax administration of a Member State, of information involving a considerable amount of personal data from the hands of an economic operator is subject to the requirements of the GDPR and particularly those set out in article 5§1. For this reason, tax authorities cannot derogate from the provisions of article 5§1 of the GDPR unless it is specifically granted such a right by law, in accordance with article 23 of the GDPR. Article 5§1 must be interpreted in the sense that tax authorities may request information concerning taxpayers who have published online advertisements provided that such data is necessary for the purposes for which they are	Although not directly involving a Charter article, the decision is important mainly because it helps clarify the relationship between the GDPR and the powers of the tax authorities. Nonetheless, the case is also (indirectly) relevant for foreseeable relevance purposes. On the one hand, the sentence clarified that the collection, by the tax administrations, of information involving a considerable amount of personal data from the hands of an economic operator is subject to the requirements of the GDPR. Mainly, this case law contributes to shape that information required by the Latvian tax authorities should not surpass the limits of what is strictly necessary. Even though it is not the purpose of the prejudicial questions to enter into the analysis of the foreseeable relevance of the information, the case ends up, indirectly, clarifying the foreseeable relevant nature of

[553] *See* LV: ECJ, 24 Feb. 2022, Case C-175/20, *SIA 'SS' v Valsts ieņēmumu dienests*, available at https://curia.europa.eu/juris/document/document.jsf?mode=lst&pageIndex=0&docid=254583&part=1&doclang=ES&text=&dir=&occ=first&cid=1154614 (accessed 18 Feb. 2023).

Case	*SIA 'SS' v. Valsts ieņēmumu dienests, C-175/20*[553]	
Date	24 February 2022 (Referral to the fifth Chamber 14 April 2020)	
GDPR Articles	Articles 5 § 1	
Facts	**Decision**	**Comments**
against such request before the acting director general of the Latvian tax administration. The appeal was dismissed, stating that the Latvian tax administration was exercising the powers conferred on it by law when carrying out the processing of personal data at issue in the main proceeding. SS filed an appeal against this decision before the Administrative Court. In addition to the arguments raised in its administrative appeal, the company additionally claimed that the said decision neither specified the specific purpose of the processing of personal data contemplated by the Latvian tax administration nor the amount of data necessary for that purpose, which created a breach of article 5§1 of the GDPR.	collected and the period covered by the collection of data does not exceed what is strictly necessary to achieve the public interest objective pursued.	certain specific data belonging to the Internet advertising business field. Therefore, the sentence reinforces the principle of legal certainty, since in order to respect article 5.1, and proportionately, require the strictly necessary information, the sentence requires that the domestic legislations must indicate under which circumstances and conforming to which requirements a taxpayer, in this case an Internet service provider, is obliged to facilitate the personal data of its users.

Chart 64. Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to them with another country?

53 responses



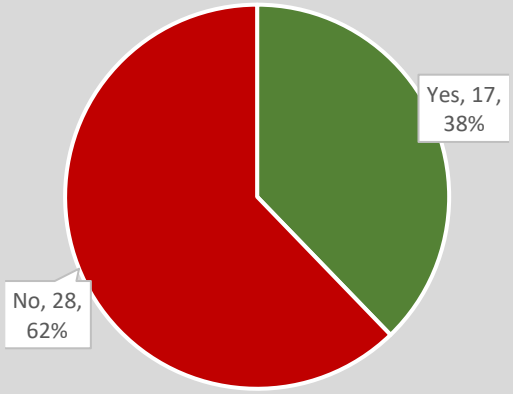
Source: OPTR: Questionnaire 1, Question 64

Yes: Germany, Ireland, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Chinese Taipei, Türkiye, United States

Chart 65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to them with another country?

53 responses



Source: OPTR: Questionnaire 1, Question 65

Yes: Belgium, Bolivia, Brazil (1), Brazil (2), Chile, Denmark, Germany, Ireland, Kazakhstan, Lithuania, New Zealand, Portugal, Serbia, Slovenia, South Africa, Spain, Switzerland, Venezuela (1), Venezuela (2)

No: Argentina, Australia, Austria, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Finland, Guatemala, Honduras, India, Italy, Japan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Sweden, Chinese Taipei, Türkiye, United States, Uruguay

Best practice: **The taxpayer should be given access to information received by the requesting state.**

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile	None

Chile[554] updated its tax authorities' approach to the administrative interpretation of taxpayers' rights within mutual agreement procedures. As explained in Section 9.2, Chile grants taxpayers the possibility to present a request for access to a mutual agreement,[555] which entails access to information on the MAP.

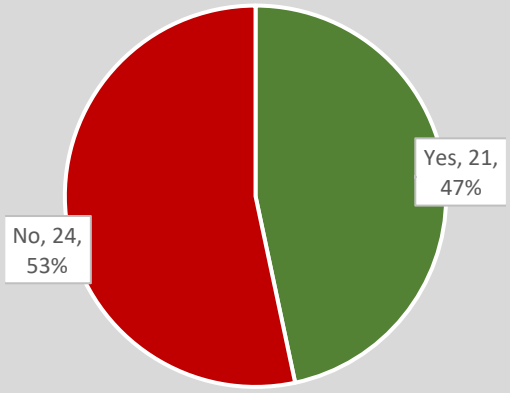
Chart 66. Does the taxpayer have the right to see any information received from another country that relates to them?

53 responses

Yes: Argentina, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), Czech Republic, Denmark, Finland, Germany, India, Ireland, Lithuania, Netherlands, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Serbia, Slovenia, Spain, Sweden, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

[554] CH: OPTR (Taxpayers/Tax Practitioners) Report, Questionnaire 2, Question 71

[555] *See* CL: Departamento de Normas Internacionales, Subdirección Normativa Oficina de Gestión y Apoyo en Jurisprudencia Subdirección Jurídica, Circular Letter No 13 of 2022, 18 Mar. 2022, available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu13.pdf.



Source: OPTR: Questionnaire 1, Question 66

No: Australia, Austria, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Guatemala, Honduras, Italy, Japan, Kazakhstan, Kenya, Luxembourg, Mauritius, Mexico (1), Mexico (2), New Zealand, Portugal, South Africa, Chinese Taipei, Türkiye, United States

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

No developments were reported in this regard in 2022.

Best practice: **A requesting state should provide confirmation of confidentiality to the requested state.**

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

No developments were reported in this regard in 2022.

Minimum standard: **A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection.**

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

No developments were reported in this regard in 2022. However, it is worth mentioning that **Chinese Taipei** has clarified that no changes occurred. However, such a rule regarding data protection during exchange of information procedures does not exist in its tax legislation,[556] which indicates that there is still room for improvement regarding the right to data protection of taxpayers' data.

It is also relevant to know that the OECD upgraded **Poland**'s[557] and **Portuga**l's[558] rating on the exchange of information as they have improved the availability, access and exchange of relevant information for tax purposes in accordance with the international standard of exchange of information upon request. Notably, the improvement in both countries is related to information about trustees, beneficiaries of foreign trusts and beneficial ownership.[559]

9.1.4. Automatic exchange of financial information: The different issues of taxpayer protection

Best practice: **For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights.**

Shifted towards/matched the best practice:	Shifted away from the best practice:
None	None

No developments were reported in this regard in 2022.

Against this background, it might nonetheless be interesting to recall that in 2021 the Report by the European Court of Auditors affirmed that EU Member States only make limited use of the information exchanged automatically, due to either (i) weaknesses related to the timeliness, accuracy and completeness of automatic exchange of information; (ii) DAC2 information exchange functions generally on time, but still lacking in data quality and completeness; (iii) Member States receiving huge volumes of information, with information generally underused; (iv) DAC1 and DAC2 information not being rigorously exploited; or (v) exchanges of information having increased, but some information still not being reported, among other reasons. As a result, less than a third of the items of information received under

[556] TW: OPTR (Academia) Report, Questionnaire 2, Question 75.

[557] *See* Global Forum on Transparency and Exchange of Information for Tax Purposes, *Poland 2022 (Second Round, Phase 1): Peer Review Report on the Exchange of Information on Request* (OECD 2022), available at https://doi-org.mu.idm.oclc.org/10.1787/3d2ee45c-en (accessed 12 Feb. 2023).

[558] *See* Global Forum on Transparency and Exchange of Information for Tax Purposes, *Portugal 2022 (Second Round): Peer Review Report on the Exchange of Information on Request* (OECD 2022), available at https://doi-org.mu.idm.oclc.org/10.1787/a47c34f6-en (accessed 12 Feb. 2023).

[559] *See* N.N. Machiri, *Poland - OECD Praises Poland's Exchange of Information Procedures but Says Further Improvements Needed to Identify Bearer Share Holders, Beneficial Owners* (18 Aug. 2022), News IBFD. *See also* N.N. Machiri, *Portugal - OECD's Global Forum Upgrades Portugal's Rating on Exchange of Information* (17 Aug. 2022), News IBFD.

DAC1 and DAC2, for example, resulted in further tax-related actions.[560]

9.2. Mutual agreement procedure

Minimum standard: Taxpayers should have a right to request initiation of mutual agreement procedure.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Chile	None

Chile[561] updated its tax authorities' approach to the administrative interpretation of taxpayers' rights within mutual agreement procedures. In that sense, Chile allows taxpayers to present a request for access to a MAP.[562] For this reason, Circular Letter No. 13 of 2022 was issued to let taxpayers know how to access a MAP. It develops a detailed explanation of how to proceed to request a MAP from the competent Chilean authorities and a detailed description of the MAP itself.[563]

It is also worth mentioning that on the negative side, even though no changes occurred in the legislation of **Chinese Taipei**,[564] it is reported that taxpayers have no rights regarding participation in the exchange of information procedures of any kind, which continues to confirm the potential need for improvement in line with this minimum standard.

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

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile	None

One of the great advances for taxpayers' rights in cross-border situations in recent years has been the widespread ratification of the MLI and its introduction of MAP and mandatory binding

[560] *See* European Court of Auditors, *Exchanging tax information in the EU: solid foundation, cracks in the implementation* (2021), available at https://www.eca.europa.eu/lists/ecadocuments/sr21_03/sr_exchange_tax_inform_en.pdf (accessed 12 Feb. 2023).

[561] CH: OPTR (Taxpayers/Tax Practitioners) Report, Questionnaire 2, Question 76.

[562] *See* CL: Departamento de Normas Internacionales, Subdirección Normativa Oficina de Gestión y Apoyo en Jurisprudencia Subdirección Jurídica, Circular Letter No. 13 of 2022, 18 Mar. 2022, Point 2, available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu13.pdf.

[563] *See* Departamento de Normas Internacionales, Subdirección Normativa Oficina de Gestión y Apoyo en Jurisprudencia Subdirección Jurídica, Circular Letter No. 13 of 2022, 18 Mar. 2022, points 1 and 3, available at https://www.sii.cl/normativa_legislacion/circulares/2022/circu13.pdf.

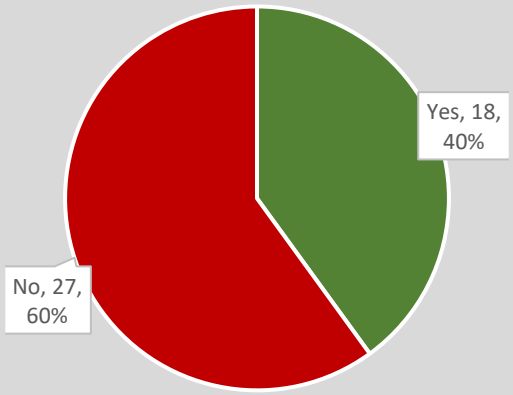
[564] TW: OPTR (Academia) Report, Questionnaire 2, Question 76.

arbitration. In the same vein, the EU Tax Dispute Resolution Mechanism[565] also provides better taxpayer protection in this regard at EU level. Again **Chile**, with the introduction of Circular 13 2022,[566] made a significant step in favour of taxpayers' right to participate in MAP since the circular explains how taxpayers can access a MAP. The report from **Chinese Taipei**[567] also informs about the lack of taxpayers' rights in the MAP.

Following the same clarifying intention, the **United States**[568] reporter informed that, even though no changes were developed in this matter, it is relevant to let the reader know that US residents can request assistance from the US competent authorities if they think that there are possibilities of double taxation within the framework of double tax treaties signed by the United States.[569]

Chart 67. Does the taxpayer have the right in all cases to require a mutual agreement procedure to be initiated?

53 responses



Source: OPTR: Questionnaire 1, Question 67

Yes: Austria, Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), India, Ireland, Italy, Kazakhstan, Lithuania, Luxembourg, Mauritius, Mexico (2), Poland (1), Poland (2), Serbia, Slovenia, South Africa, Sweden, Türkiye

No: Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil (1), Brazil (2), China (People's Rep.), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, Japan, Kenya, Mexico (1), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Portugal, Spain, Switzerland, Chinese Taipei, United States, Uruguay, Venezuela (1), Venezuela (2)

Reports with diverging opinions: Mexico

Chart 68. Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure?

53 responses

Yes: Argentina, Chile, Denmark, Ireland, Slovenia, Sweden, Venezuela (1), Venezuela (2)

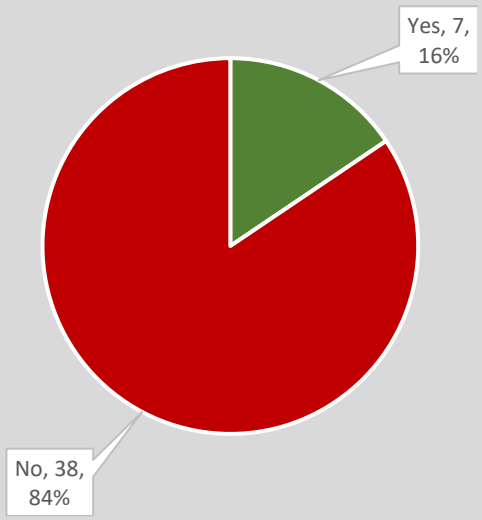
[565] Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, Primary Sources IBFD.

[566] *See* CH: OPTR (2022) (Taxpayers/Tax Practitioners) Report, Questionnaire 2, Question 77.

[567] TW : OPTR (Academia) Report, Questionnaire 2, Question 77.

[568] US: OPTR (Taxpayers/Tax Practitioners/Academia) Report, Questionnaire 2, Question 77.

[569] *See* IRS Rev. Proc. 2015-40, 2015-35 IRB 236, available at https://www.irs.gov/pub/irs-irbs/irb15-35.pdf and https://www.irs.gov/pub/irs-drop/rp-15-40.pdf.



Source: OPTR: Questionnaire 1, Question 68

No: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Finland, Germany, Guatemala, Honduras, India, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, South Africa, Spain, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay

While there is still room for improvement in this area, and some positive developments were recorded in 2021, during 2022, no further developments were reported.

10. Legislation

10.1. The general framework

In a democratic state, taxes must be based on a legal source, which results from the will of the people expressed through its political representation in the legislature. It is not sufficient for tax law to formally comply with the issuing state's legal order to safeguard taxpayers' rights; rather, taxes must be the outcome of the citizens' consent.

Ideally, taxpayers should be involved in shaping the legislation via public consultation that is adequate in communication, accessibility and duration for the deadline to reply. Besides, tax legislation should regulate taxable events *ex nunc* (from the moment of its enactment).

In practice, a fair amount of tax legislation will be enacted to prevent certain taxpayers' behaviours, for example to close loopholes in the legislation. To do so without providing taxpayers opportunities to rearrange their affairs, legislators sometimes deem it necessary to enact the amendments – to a certain extent – retroactively. However, this should be the last resort and done only exceptionally under circumstances explicitly stated, narrowly drafted and interpreted. Nonetheless, this is not always the case for different reasons, which will be analysed further below.

Perhaps because of the "hardening" of soft law and the progressive intervention of multilateral bodies in the legislative processes in tax matters, and probably in response to doubts about the democratic legitimacy of the rule-making processes carried out by such bodies, 2022 continued to be the scene of a growing trend towards public consultation. This is particularly notable with respect to the European Union, where the European Commission confirmed a steady and growing movement towards greater citizen participation in EU regulatory processes in general. In this regard, the Commission follows in the footsteps of the OECD, which maintained, in 2022, its policy of public consultation on several of its proposals. This process is described in more detail in section 10.3.

10.2. Constitutional limits on tax legislation: Retroactive legislation

Minimum standard: Retrospective tax legislation should only be permitted in limited circumstances, which are spelt out in detail.

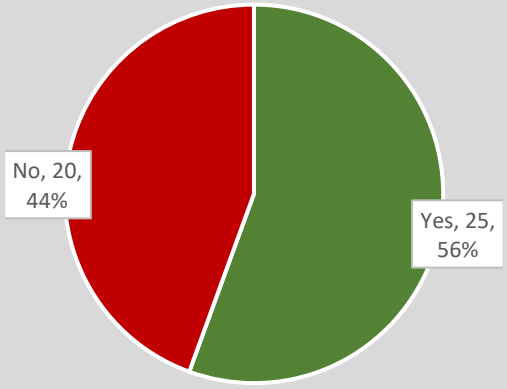
Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Spain	New Zealand

Best practice: Retrospective tax legislation should ideally be banned completely.

Shifted towards/matched the best practice:	Shifted away from the best practice:
Bolivia	Argentina, Poland and Chinese Taipei

Chart 69. Is there a prohibition on retrospective tax legislation in your country?

53 responses



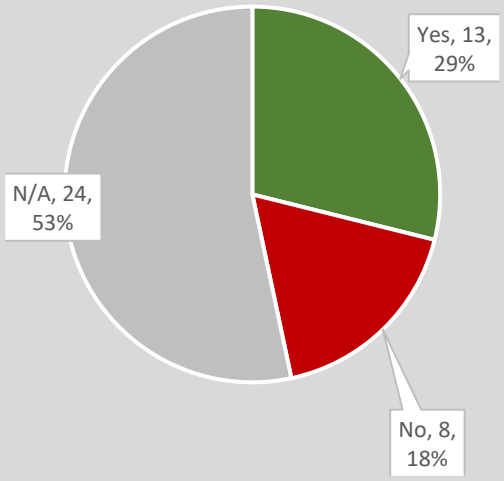
Source: OPTR: Questionnaire 1, Question 69

Yes: Bolivia, Brazil (1), Brazil (2), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Guatemala, Honduras, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Poland (1), Poland (2), Serbia, Slovenia, Sweden, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Denmark, Finland, Germany, India, Kazakhstan, Mauritius, Netherlands, New Zealand, Portugal, South Africa, Spain, Chinese Taipei, Türkiye, United States

Chart 70. If no, are there restrictions on the adoption of retrospective tax legislation in your country?

53 responses



Source: OPTR: Questionnaire 1, Question 63

Yes: Argentina, Austria, Belgium, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Denmark, Germany, Luxembourg, Mauritius, Netherlands, New Zealand, Portugal, Spain

No: Australia, Finland, India, Kazakhstan, South Africa, Chinese Taipei, Türkiye, United States

Not applicable: Bolivia, Brazil (1), Brazil (2), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Guatemala, Honduras, Ireland, Italy, Japan, Kenya, Lithuania, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Poland (1), Poland (2), Serbia, Slovenia, Sweden, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

Positive developments have been reported in this area in **Spain**, where the Supreme Court (*Tribunal Supremo*) decided, on 3 February 2022, to reinforce the principle of non-retroactivity

of tax law unless a specific legal provision regulates the opposite.[570] On the other hand, the effectiveness of the shift towards the minimum standard in this case may need further scrutiny in light of the circumstance that it appears that the Court ruled against the taxpayer because there was no constitutional parameter (a procedure issue), and the retrospective argument was not properly analysed.

In the same way, in **Bolivia**, the tax authority (*Autoridad de Impugnación Tributaria*) confirmed the prohibition of retrospective tax legislation regarding the statute of limitations. This understanding follows the previous decision of the Bolivian Constitutional Court (*Tribunal Constitucional Plurinacional de Bolivia*) that defined the prohibition of retrospective legislation as a taxpayers' guarantee against the State. Furthermore, concerning the statute of limitations, the court established that the tax rule, in force at the time of the beginning of the limitation period, is the norm with which it must be carried out, without considering subsequent normative changes, except in the case of a better treatment for taxpayers, such as when the rule determines more benign penalties or shorter or more beneficial terms.[571]

Besides, in the **United States**, some retroactive tax laws have been struck down under the due process clause of the US Constitution, but Congress routinely makes retroactive changes of 1-2 years.[572]

On the other hand, negative developments have been reported in **New Zealand**, where more statements have been made of proposed legislative changes well ahead of any draft legislation being made public and eventually enacted.[573]

Similarly, in **Argentina**, the administrative General Resolution No. 5248/2022 unexpectedly introduced an extraordinary payment on account of the corporate income tax (*impuesto a las ganancias*), which is computed as the payment of income tax. The extraordinary payment is calculated based on 25% of the tax or 15% of the tax result of the previous year, without applying the deduction of tax losses from previous years. In practice, it is a way of creating tax liability without law, hence it affects the principles of legal certainty, legality, ability to pay and reasonableness.[574]

In the view of the taxpayers/tax practitioners and academia reporters, in **Poland (2)**, a precedent-setting amendment to the Polish Personal Income Tax (PIT) Act provisions took

[570] *See* ES: https://www.poderjudicial.es/search/AN/openDocument/c1e32edf48377cf3/20220222 (accessed 20 Feb. 2023). *See also* ES: OPTR Report (2022) (Taxpayers/Tax Practitioners, (Tax) Ombudsperson, Academia), Questionnaire 2, Question 78.

[571] *See* BO: https://servicios.ait.gob.bo/admin/docres/AGIT-RJ-0621-2022.pdf (accessed 20 Feb. 2023). *See* BO: https://jurisprudenciaconstitucional.com/resolucion/38006-sentencia-constitucional-plurinacional-0012-2019-s2 (accessed 20 Feb. 2023). *See also* BO: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

[572] *See* E.K. Lunder et al., *Constitutionality of Retroactive Tax Legislation*, Congr. Rsch. Serv. R42791 (25 Oct. 2012), available at https://perma.cc/5VYB-ZBY (accessed 20 Feb. 2023). *See also* US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

[573] *See* NZ: OPTR Report (2022) (Academia), Questionnaire 2, Question 78.

[574] *See* AR: https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-5248-2022-369721/texto (accessed 20 Feb. 2023). *See also* AR: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

place. The relief, introduced half a year earlier, was abolished, and the lowest 17% PIT rate was reduced to 12%. At first glance, it seems that no constitutional principles were violated in this case, as these modifications should not have adverse effects on taxpayers (due to the mechanism of refunding tax resulting from the difference between the taxation under the rules in force to 30 June and after this date). Nevertheless, the amendments in 2022 caused significant uncertainty and exposed many taxpayers (mainly entrepreneurs) to additional costs, e.g. in the field of tax advisory and modification of HR and payroll systems, which infringes the principle of low-cost taxation.[575] The judiciary and academia reporter, however, did not share a similar view in **Poland (1)**.[576] These different opinions may arise from distinct understandings about the scope of the principle of non-retroactivity of tax law, mainly considering costs not directly related to the tax itself.

In addition, in **Chinese Taipei**, new legislation regarding controlled foreign company (CFC) rules will become effective from 1 January 2023.[577] However, the recent CFC regime and real estate transaction gain tax regime were questioned for their retrospective effects.

10.3. Public consultation and involvement in the making of tax policy and tax law

Best practice: Public consultation should precede the making of tax policy and tax law.

Shifted towards/matched the best practice:	Shifted away from the best practice:
Chile, Colombia, Lithuania, and United States	Bolivia and New Zealand

An effective legislative protection of taxpayers' rights requires an effective public participation in the legislative process to ensure the *no-taxation-without-representation* principle, as introduced in section 10.1. It also involves the constitution's integrity as tax codes may be ruled to contradict general codes and violate taxpayers' rights.

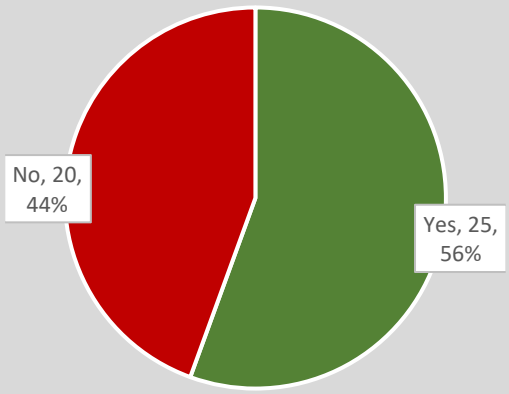
Most surveyed jurisdictions provide public consultation (56%), as evidenced by Chart 71.

Chart 71. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	
53 responses	**Yes:** Austria, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Croatia, Czech Republic, Denmark, Finland, Germany, India, Ireland, Kazakhstan, Kenya, Netherlands, New Zealand, Norway, Poland (1), Poland (2), Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Venezuela (2)

[575] *See* PO: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

[576] *See* PO: OPTR Report (2022) (Judiciary, Academia), Questionnaire 2, Question 78.

[577] *See* TW: Income Tax Act, 28 Apr. 2021, art. 4-4, available at https://law.moj.gov.tw/ENG/LawClass/LawHistory.aspx?pcode=G0340003 (accessed 22 Mar. 2022). *See also* TW: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.



Source: OPTR: Questionnaire 1, Question 71

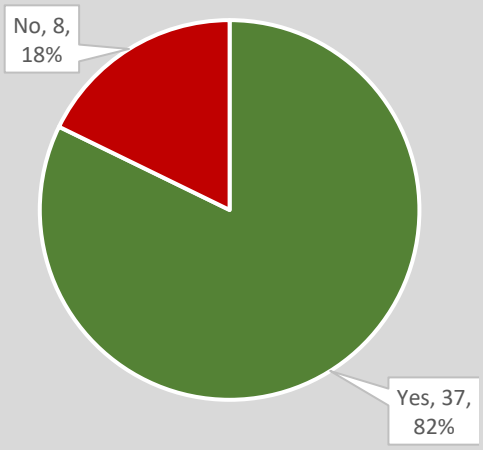
No: Argentina, Australia, Belgium, Bolivia, Brazil (1), Brazil (2), Colombia (1), Colombia (2), Guatemala, Honduras, Italy, Japan, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Peru (1), Peru (2), Portugal, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1)

Reports with diverging opinions: Venezuela

The vast majority (82%) also stated that judicial review is part of their constitutional systems, as Chart 72 shows.

Chart 72. Is tax legislation subject to constitutional review which can strike down unconstitutional laws?

53 responses



Source: OPTR: Questionnaire 1, Question 72

Yes: Argentina, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Germany, Guatemala, India, Ireland, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: China (People's Rep.), Finland, Honduras, Kazakhstan, Netherlands, New Zealand, Sweden, Switzerland

Overall, 2022 continued to be the scene of significant growth in the public consultation of tax matters. A noteworthy number of countries brought the discussion of a wide range of regulatory reforms to the public arena. A good example is **Chile** where, in 2022, relevant circular letters of the Chilean tax authorities were issued for public consultation, such as Circular Letter No. 4/2022 (taxpayers' representation before tax authorities) and Circular Letter

No. 35/2022 (tax authorities' duty of confidentiality).[578]

Still on the brighter side, a positive development has been reported in **Colombia**, where a tax reform project presented during the first quarter of 2021 (Draft Bill 594-2020C) was withdrawn from Congress by the National Government due to strong social protests of disagreement. In the second half of 2021, consultations and public sessions were held from which Act No. 2,277/2022 was built.[579] Continuing this process, in 2022, before the approval of the Act, there were public sessions to disseminate the tax reform project in different regions of the country. The tax reform was discussed with various sectors of the economy and other actors such as academia. Because of that, the government made some modifications to the initial text of the tax reform considering the proposals of business sectors, tax practitioners and academia.[580]

That is also the case in the **United States**, as there is no special public comment procedure for tax legislation, but bills must go through the legislative process which provides the public with some opportunity to weigh in with their representatives. In 2022, courts showed greater willingness to scrutinize IRS guidance for compliance with the public notice and comment process in the Administrative Procedure Act (APA). This is an evolving and disputed area of law. Moreover, following losses in *Mann Construction v. United States* (6th Cir. Docket No. 21-1500) and *Green Valley Investors LLC v. Commissioner* (Tax Court Docket No. 17379-19), the IRS and Treasury Department issued proposed regulations with a public comment period, seeking to implement a disclosure regime for syndicated easements that would unquestionably comply with the APA.[581]

In **India**, most of the changes in the tax law are effected through the budget. A finance bill is prepared and the same is then debated in the Parliament. There is a time gap between the presentation of the finance bill and its final passing by the Parliament, during which the public can and do air their grievances, if any. In that sense, there is a public consultation. Besides, in a further example, the government often releases consultation documents before finalizing guidelines on important issues.[582]

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[578] *See* CL: https://www.bcn.cl/leychile/navegar?i=1171671&f=2022-01-22 (accessed 20 Feb. 2023). *See* CL: https://www.sii.cl/normativa_legislacion/circulares/2022/circu35.pdf (accessed 20 Feb. 2023). *See also* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 78.

[579] *See* CO: Proyecto de Ley 594-2020C, Por medio de la cual se consolida una infraestructura de equidad fiscalmente sostenible para fortalecer la política de erradicación de la pobreza, a través de la redefinición de la regla fiscal, el fortalecimiento y focalización del gasto social y la redistribución de cargas tributarias y ambientales con criterios de solidaridad y que permitan atender los efectos generados por la pandemia y se dictan otras disposiciones, available at https://cijuf.org.co/sites/cijuf.org.co/files/activos/imagenes/P.L.594-2020C%20(SOLIDARIDAD%20SOSTENIBLE).pdf (accessed 10 Mar. 2022); CO: Ley 2155 de 2021, por medio de la cual se expide la Ley de Inversión Social y se dictan otras disposiciones, available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=170902 (accessed 10 Mar. 2022); J.D. Quesada, *Duque cede a las protestas y retira la reforma tributaria de Colombia*, El País (2 May 2021), available at https://elpais.com/internacional/2021-05-02/el-presidente-de-colombia-retira-la-reforma-tributaria.html (accessed 10 Mar. 2022). *See also* CO: OPTR Report (Tax (Ombudsperson)), Questionnaire 2 (2021), Question 79.

[580] *See* CL: OPTR Report (2022) ((Tax) Ombudsperson), Questionnaire 2, Question 78. *See also* CL: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

[581] *See* S. Galvin, *Year in Review - Administrative Procedure Act*, Procedurally Taxing (29 Dec. 2022), available at https://perma.cc/L8GH-R9SY (accessed 20 Feb. 2023). *See* IRS REG-106134-22, 87 Fed. Reg. 75,185. *See also* US: OPTR Report (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

[582] *See* IN: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2, Question 78.

In **Lithuania**, amendments to the law were enacted by waiving the mandatory coordination of the summarized explanations (comments) prepared by the tax administrator with the Ministry of Finance of the Republic of Lithuania. Instead of that and pursuant to said amendments, before issuing the summarized explanations (comments), the tax administration is obliged to discuss with the public.[583]

It should also be reported that the EU Commission launched other public consultation initiatives in 2022, covering topics such as VAT in the digital age,[584] the improvement of the withholding tax procedures for non-resident investors,[585] the minimum excise duty rates for alcohol and alcoholic beverages,[586] the role of enablers that contribute to tax evasion and aggressive tax planning (SAFE),[587] and a common set of rules for EU companies to calculate their taxable base while ensuring a more effective allocation of profits between EU countries (BEFIT).[588]

Regardless of this intense consultation activity, a few jurisdictions have reported a shift away from the best practice. Also, despite what appears to be intense consultation activity,[589] **New**

[583] LT: Law on Tax Administration.

Article 12. Interpretation of the tax law

"1. Summarized explanations of tax laws are provided and published by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania after consulting the public. Summarized explanations of tax laws administered by the Ministry of the Environment or its authorized institution, the Ministry of Customs and Agriculture of the Republic of Lithuania or its authorized institution, after consultation with the public, are provided and published respectively by the Ministry of the Environment, the Customs Department under the Ministry of Finance of the Republic of Lithuania (hereinafter - the Customs Department) and Land Ministry of Agriculture.

2. The summary explanation of the tax law to the taxpayer does not have the force of a legal act and expresses the opinion of the competent state authority on issues regulated by tax laws.

3. The tax administrator, when educating, advising and controlling taxpayers on tax payment issues, must take into account the content of the relevant explanation of the generalized tax law." (Unofficial translation provided by the Lithuanian national reporters.)

[584] *See* European Commission, *Public Consultation: VAT in the digital age*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13186-VAT-in-the-digital-age/public-consultation_en (accessed 20 Feb. 2023).

[585] *See* European Commission, *Public Consultation: Withholding taxes – new EU system to avoid double taxation*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation/public-consultation_en (accessed 20 Feb. 2023).

[586] *See* European Commission, *Public Consultation: Excise duty on alcohol and alcoholic beverages – evaluation of excise duty rates and tax*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13249-Excise-duty-on-alcohol-and-alcoholic-beverages-evaluation-of-excise-duty-rates-and-tax-structures/public-consultation_en (accessed 20 Feb. 2023).

[587] *See* European Commission, *Public Consultation: Tax evasion and aggressive tax planning in the EU-tackling: The role of enablers*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13488-Tax-evasion-aggressive-tax-planning-in-the-EU-tackling-the-role-of-enablers/public-consultation_en (accessed 20 Feb. 2023).

[588] *See* European Commission, *Public Consultation: Business in Europe: Framework for Income Taxation (BEFIT)*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13463-Business-in-Europe-Framework-for-Income-Taxation-BEFIT-_en (accessed 20 Feb. 2023).

[589] *See* NZ: Inland Revenue PUB00330: GST – goods purchased on deferred payment terms (24 Dec. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub0330 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00357: GST and finance leases (17 Dec. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00357 (accessed 10 Mar.

Zealand reported minimal use of public consultation, even setting aside the usual tax policy process.[590] Similarly, in **Bolivia,** there was no public consultation.[591]

2022); NZ: Inland Revenue ED0235: Reporting requirements for domestic trusts (30 Nov. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/ed0235 (accessed 10 Mar. 2022); NZ: Inland Revenue ED0234: Amortisation Rates for Landfill Cell Construction Expenditure (30 Nov. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/ed0234 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00411: Income tax – application of the land sale rules to changes to co-ownership, subdivisions, and changes of trustees (9 Nov. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00411 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00401: Foreign exchange rates (11 Oct. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/pub00401 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00370: Income tax – foreign tax credits – how to calculate a foreign tax credit (28 Sept. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00370 (accessed 10 Mar. 2021); NZ: Inland Revenue PUB00376: Loss carry-forward - continuity of business activities (28 Jun. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00376 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00305: Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (31 Mar. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00305 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00305 QB 1: Income tax: scenarios on tax avoidance – reissue of QB 14/11 scenario 1 and QB 15/11 scenario 2 (31 Mar. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00305-qb-1 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00305 QB 2: Income tax: scenarios on tax avoidance – reissue of QB 15/11 – scenarios 1 and 3 (31 Mar. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00305-qb-2 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00256: When does s 5(23) of the Goods and Services Tax Act 1985 apply to shift GST liability to the purchaser of land? (31 Mar. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00256 (accessed 10 Mar. 2022); NZ: Inland Revenue PUB00359a: Charities business exemption – when it must be used (1 Feb. 2021), available at https://www.taxtechnical.ird.govt.nz/consultations/draft-items/expired-items/pub00359a (accessed 10 Mar. 2022). Please note that some of the hereby referred links may expire over time in connection with the concerned public consultations. *See also* K. Holmes, *Inland Revenue Seeks Public Comment on Draft Non-Resident GST Registration Statement* (16 Feb. 2021), News IBFD.

[590] *See* NZ: OPTR Report (2022) (Academia), Questionnaire 2, Question 78.

[591] *See also* BO: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2, Question 78.

11. Revenue Practice and Guidance

11.1. The general framework

Transparency is usually associated in the taxation field with ending bank secrecy and tax evasion.[592] However, transparency has become a keyword for contemporary governance and accountability, as it implies accessing public information.[593] The more information, the more certainty citizens have regarding their governments' compliance. This same approach applies to taxpayers and their tax obligations. The more legal material taxpayers can access, the better they will comprehend the object of tax law. Therefore, the awareness of legal material improves legal certainty and, thus, increases the protection of taxpayers' rights. For this reason, accessing tax authorities' binding guidance regarding the interpretation of legal material boosts legal certainty[594] and becomes a sign of good governance.[595]

11.2. The publication of all relevant materials

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

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
Colombia, Mauritius, Netherlands, Poland	None

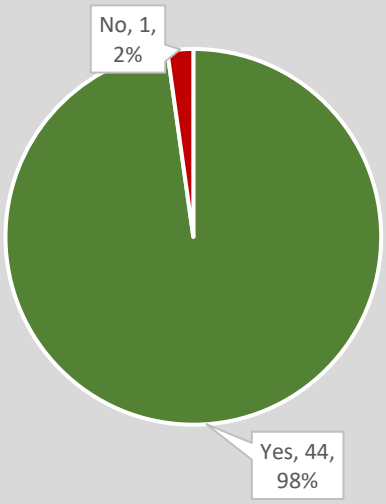
Chart 73. Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	
53 responses	**Yes:** Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Portugal, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

[592] OECD/G20, *Tax Transparency*, available at https://www.oecd.org/tax/beps/tax-transparency/ (accessed 6 Feb. 2023).

[593] T. Erkkilä, *Transparency in Public Administration*, in *Oxford Research Encyclopedia of Politics*, available at https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1404 (accessed 6 February 2023).

[594] *See* Baker & Pistone, *supra* n. 340, at 68.

[595] *See* A. Pham et al., *Tax Literacy: A Canadian Perspective*, 64 Canadian Tax Journal/Revue fiscale canadienne 4, pp. 987-1007 (2020), available at https://ssrn.com/abstract=3766406 (accessed 6 Feb. 2023).



Source: OPTR: Questionnaire 1, Question 73

No: Argentina

The general tendency towards compliance with this minimum standard, underpinned by the digitalization of tax administrations, continued in 2022. States have continued taking measures to improve the minimum standards regarding access to relevant materials. Some positive developments have been reported. **Colombia**[596] and **Poland**[597] have centralized all the types of legal material in one single database, which supposes a more comfortable way to access tax information for taxpayers. As of October 2022, the Colombian Tax Authorities made available a new service for taxpayers to consult all regulations, doctrine and jurisprudence, permanently updated with the newest rulings, case law and regulations.[598]

In the same way, **Poland** has merged both binding guidance (public and private advance rulings, general tax explanations, statistical classifications for VAT and excise purposes) and non-binding guidance (information on issuance and denial of protective opinions against the application of GAAR, brochures, guidelines/directions, communications, press releases and replies to parliamentary questions and questions submitted by the press) into one single platform, the EUREKA System of Tax and Customs Information, which includes different sorts of binding and non-binding guides.[599] In the case of **Mauritius**,[600] the rulings and decisions of the Assessment Review Committee have been published since 2016 onwards,[601] which

[596] CL: OPTR Report (2022) (Tax Ombudsperson), Questionnaire 2 (Development Survey), Question 80. It shall be disclosed that there is a discrepancy on this matter between the representatives of the Tax Ombudsperson (Colombia 1) from the representatives of Taxpayers/Tax Practitioners/Academia).

[597] PL: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2 (Development Survey), Question 80. It shall be disclosed that there is a discrepancy on this matter between the representatives of Tax Judiciary/Academia (Poland 1) and the representatives of Taxpayers/Tax Practitioners, Academia (Poland 2).

[598] *See* DIAN, Compilación Jurídica, available at https://normograma.dian.gov.co/dian/ (accessed 6 Feb. 2023).

[599] The platform is accessible at the following link: https://eureka.mf.gov.pl/ (accessed 28 Feb. 2023).

[600] MU: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 80.

[601] ARC, Latest Rulings/Decisions, available at https://arc.govmu.org/arcfront/pages/welcome.xhtml (accessed 6 Feb. 2023).

facilitates taxpayers to consult all decisions. As of January 2023, **the Netherlands**[602] tax authorities' expert group will publish all their official opinions, as was announced by the State Secretary of Finance last 16 September 2022.[603]

It is also worth mentioning that there are no changes for 2022 for **Chinese Taipei**.[604] Yet, even though most of the legal materials are available, including rulings, other types of materials, such as manuals or other guidance made by the bureau, are often considered classified material, which indicates that there is no full disclosure of all the relevant material to the general public.

The general move towards making available any guidance also continued in 2022, leaving just **Argentina**[605] as the only country reporting no publication of guidance compared to the 2021 OPTR Yearbook.[606]

Minimum standard: Where legal material is available primarily on the Internet, arrangements should be made to provide it to those who do not have access to the Internet.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

As can be observed, all the advancements in the availability of relevant legal material are done through online databases. Changes have yet to be reported regarding the provision of those databases to those who do not have access to the Internet. In the previous edition of the Yearbook, only **Guatemala** informed that there are almost no options to access information for taxpayers who do not have Internet access.[607] Nevertheless, it is essential to note that approximately 35% of the world's population still doesn't have access to the Internet,[608] which means that a high percentage of taxpayers might not be able to access relevant legal material with the same ease as those who can easily access a database that gathers all types of relevant information via the Internet.

11.3. Binding rulings

Minimum standard: Binding rulings should only be published in anonymized form.

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

[602] NL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 80.

[603] NL: Letter of the State Secretary of Finance to the Parliament (in Dutch), available at https://www.rijksoverheid.nl/documenten/kamerstukken/2022/10/21/antwoorden-op-kamervragen-over-het-niet-publiceren-van-kennisgroepstandpunten (accessed 18 Feb. 2023).

[604] TW: OPTR Report (2022) (Academia), Questionnaire 2 (Development Survey), Question 80.

[605] *See* AR: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 1, Question 73.

[606] *See* OPTR Yearbook (2021), supra n. 173, sec. 11.2, p. 196.

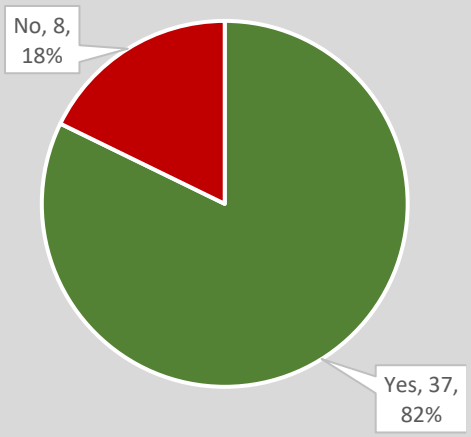
[607] *Ibidem.*

[608] *See* Datareportal, *Digital around the world*, available at https://datareportal.com/global-digital-overview#:~:text=There%20are%205.16%20billion%20internet,higher%20in%20many%20developing%20economies (accessed 6 Feb. 2023).

None	None

Chart 74. Does your country have a generalized system of advance rulings available to taxpayers?

53 responses



Source: OPTR: Questionnaire 1, Question 74

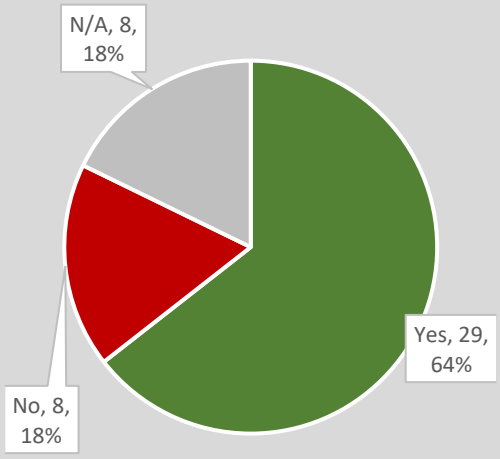
Yes: Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Chile, Colombia (2), Croatia, Czech Republic, Denmark, Finland, Germany, Guatemala, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico (2), Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Uruguay, Venezuela (1), Venezuela (2)

No: Argentina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Honduras, Mexico (1), Peru (1), Peru (2), Serbia

Reports with diverging opinions: Colombia, Mexico

Chart 75. If yes, is it legally binding?

53 responses



Source: OPTR: Questionnaire 1, Question 75

Yes: Australia, Austria, Belgium, Bolivia, Czech Republic, Denmark, Finland, Germany, Guatemala, India, Japan, Kazakhstan, Kenya, Luxembourg, Mauritius, Mexico (2), Netherlands, New Zealand, Norway, Poland (1), Poland (2), Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, United States, Uruguay, Venezuela (1),

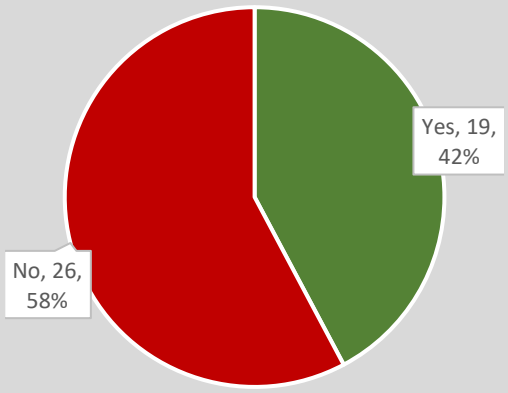
No: Bosnia and Herzegovina, Chile, Colombia (2), Croatia, Ireland, Italy, Lithuania, Türkiye, Venezuela (2)

Not applicable: Argentina, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), China (People's Rep.), Colombia (1), Honduras, Mexico (1), Peru (1), Peru (2), Serbia

Reports with diverging opinions: Colombia, Mexico, Venezuela

Chart 76. If a binding ruling is refused, does the taxpayer have a right to appeal?

53 responses



Source: OPTR: Questionnaire 1, Question 76

Yes: Argentina, Australia, Austria, Belgium, Brazil (1), Brazil (2), Colombia (1), Colombia (2), Denmark, Germany, Honduras, India, Ireland, Italy, Kazakhstan, Kenya, Lithuania, Poland (1), Poland (2), Portugal, Slovenia, Uruguay, Venezuela (2)

No: Bolivia, Bosnia and Herzegovina, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Croatia, Czech Republic, Finland, Guatemala, Japan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Serbia, South Africa, Spain, Sweden, Switzerland, Chinese Taipei, Türkiye, United States, Venezuela (1)

Reports with diverging opinions: Venezuela

No changes to report compared to last year's position regarding the anonymization of binding rulings when published.

A multitude of circulars, rulings and further guidance were issued by several jurisdictions in 2021. This tendency already started in 2020 considering the unprecedented, specialized tax rules implemented due to the COVID-19 pandemic. This is the case for **Austria**,[609] which updated COVID-19 guidance on the application of tax treaties. However, the vast majority of guidelines published in 2022 were not linked to the special circumstances surrounding the pandemic anymore, but they are linked to a wide range of tax-related topics.

Jurisdictions such as the **Czech Republic**[610] and **France**[611] have updated their guidelines regarding exchange of information obligations.

[609] R. Offermanns, *Austria Updates COVID-19 Guidance on Tax Treaty Issues* (23 June 2022), News IBFD. *See* AT: Circular No. (2022-0.433.029) of 17 June 2022, available at https://findok.bmf.gv.at/findok/resources/pdf/3cd9ffb2-f064-4185-931e-8de84fe770e9/81233.1.1.pdf (accessed 10 Feb. 2023).

[610] F. Krajcuska, *Tax Authority Further Clarifies Reportable Cross-Border Arrangements (DAC6)* (23 June 2022), News IBFD. *See also* CZ: Generální finanční ředitelství, Č. j.: 36004/22/7100-40112-050510, available at https://www.financnisprava.cz/assets/cs/prilohy/ms-prime-dane/otazky-a-odpovedi-k-DAC6_doplneni.pdf (accessed 10 Feb 2023).

[611] *See* FR: E. Joannard-Lardant. *France - Tax Authorities Publish Updated Administrative Doctrine on Trustees' Reporting Obligations* (31 Mar. 2022), News IBFD. *See* FR : PAT - DJC - Précisions relatives aux obligations déclaratives à la charge de l'administrateur d'un trust, 30 Mar. 2022, available at https://bofip.impots.gouv.fr/bofip/13272-PGP.html/ACTU-2021-00243 (accessed 10 Feb. 2023).

Guidance continues to be issued in relation to the application of transfer price rules in jurisdictions such as **Italy**[612] or regarding the application of withholding tax, as is the case with **France**.[613]

The taxation of the digital economy has also represented an area of attention, as **France**[614] and **Germany**[615] published new guidelines on different areas of the digital economy.

In the area of VAT and customs some new guidelines have also been issued. This is the case with **France**[616] and **Slovenia**.[617]

Guidelines to simplify bureaucratic procedures have been issued in **Brazil**[618] with the aim of bringing citizens and public bodies closer.

Other measures of interest have been also been issued in **Italy**.[619]

11.4. Non-binding guidance

Minimum standard: Where a taxpayer relies on published guidance of a revenue authority that subsequently proves to be inaccurate, changes should apply only prospectively.

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

[612] G. Gallo, *Tax Authorities Clarify Application of Arm's Length Principle* (7 June 2022), News IBFD. *See also* IT: Circolare No. 16/E, 24 May 2022, available at https://www.agenziaentrate.gov.it/portale/documents/20143/4419702/Circolare+N.+16+del+2022+intervallo+di+libera+concorrenza+vers+20+05+2022_.pdf/37198d96-e49a-64be-a62b-45d3cc9f44d0 (accessed 10 Feb. 2023).

[613] P. Burg, *Tax Authorities Clarify Recently Introduced Withholding Tax Reductions* (30 June 2022), News IBFD. *See also* FR: Bulletin Officiel des Finances Publiques, ACTU 2022-00113, 29 June 2022, available at https://bofip.impots.gouv.fr/bofip/13667-PGP.html/ACTU-2022-00113 (accessed 10 Feb. 2023).

[614] E. Joannard-Lardant, *Tax Authorities Clarify Optional VAT Election for Banking and Financial Sector* (30 June 2022), News IBFD. *See also* FR: Bulletin Officiel des Finances Publiques, BOI-TVA-SEC-50-10-30-10, available at https://bofip.impots.gouv.fr/bofip/7180-PGP.html/identifiant=BOI-TVA-SECT-50-10-30-10-20220622 (accessed 10 Feb. 2023).

[615] A. Perdelwitz, *Ministry of Finance Issues Guidance on Tax Treatment of Virtual Currencies and Other Tokens* (12 May 2022), News IBFD.

[616] E. Joannard-Lardant, *Tax Authorities Update Guidelines on VAT Treatment of Operations between Head Office and Branches*, News IBFD. *See* https://bofip.impots.gouv.fr/bofip/13437-PGP.html/ACTU-2021-00316 (accessed 10 Feb. 2023).

[617] N. Ovcar, *Slovenia Exempts Personal Assistance Services to Handicapped Persons from VAT* (11 Apr. 2022), News IBFD. *See* the guideline (only in Slovenian) at https://www.fu.gov.si/podjetja/novice-stran/2?type=%3D8b79b09613ca367322153a1a63971862%3D679eb03a2e0a6c00512324c1f200dc65%2F#newsList (accessed 10 Feb. 2023)

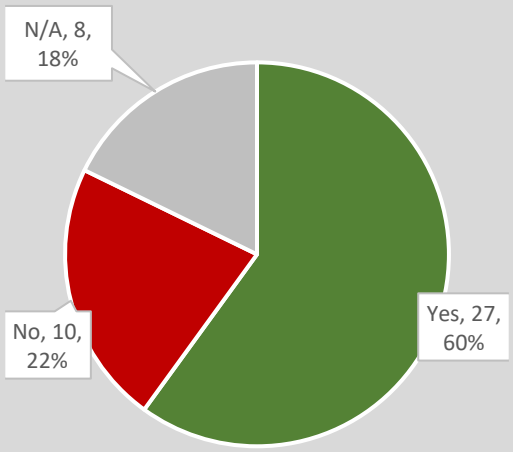
[618] D. Canen, *Tax Administration Removes Obligation to Provide Original Documents or Certified Copies in Order to Request Services* (30 June 2022), News IBFD. *See also* BR: Instrução Normativa n2088, de 15 de junho de 2022, available athttp://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=124499 (accessed 10 Feb. 2023).

[619] S. La Grutta, *Tax Authorities Clarify Calculation of Taxable Amount for Supplies of Non-Performing Loans* (24 Jan. 2022), News IBFD. *See* IT: Resoluzione nº. 79/E, 31 Dec. 2021, available at https://www.agenziaentrate.gov.it/portale/documents/20143/4002796/Risoluzione+79+del+2021.pdf/85061abe-dcd8-58a6-24f5-451a93166c2f (accessed 14 March 2023).

None	México (2)

Chart 77. If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?

53 responses



Source: OPTR: Questionnaire 1, Question 77

Yes: Australia, Austria, Brazil (1), Brazil (2), Chile, China (People's Rep.), Colombia (1), Colombia (2), Czech Republic, Denmark, Finland, Germany, Guatemala, Honduras, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Lithuania, Netherlands, Norway, Poland (1), Poland (2), Portugal, Slovenia, Chinese Taipei, Uruguay, Venezuela (1), Venezuela (2)

No: Belgium, Bosnia and Herzegovina, Croatia, Luxembourg, Mauritius, New Zealand, Serbia, Sweden, Switzerland, United States

Not applicable: Argentina, Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Mexico (1), Mexico (2), Peru (1), Peru (2), South Africa, Spain, Türkiye

The principle of good faith is a cornerstone in all legal relations, as it is "a sense of loyalty to and respect for the law".[620] It becomes especially relevant in a relationship where one of the parts is a public administration, and the other is an individual or an entity due to the lack of balance between the powers of the parts. This is the case with the relationship between tax administrations and their taxpayers. As part of the principle of legal certainty, taxpayers have the right to rely on the guidance provided by the tax authorities. Therefore, considering the minimum standard, whenever a revenue authority publishes guidance that is proven inaccurate, it should subsequently apply only prospectively.

It is essential to highlight **Mexico**'s[621] amendment of the tax authorities' guidelines, whose acronym is RMF.[622] According to rule 3.13.19 of 2022 RMF, individuals and legal entities that apply the RESICO regime (simplified fiscal regime) are relieved from complying with the

[620] E. Smith & N. Barber, *Good Faith in Public Law*, University of Oxford – Faculty of Law (20 Jan. 2022), available at https://www.law.ox.ac.uk/news/2022-01-20-good-faith-public-law (accessed 6 Feb. 2023).

[621] It shall be highlighted that there are discrepancies between the different national reporters. This particular amendment was suggested by the Mexican reporters representing taxpayers and tax practitioners. Meanwhile, reporters representing academia have not indicated further changes to take into account regarding this matter.

[622] The specific guidelines are called *Resolución Miscelania Fiscal* (RMF). This is a yearly valid document that gathers the guides dictated by the tax authorities. *See* MX: Resolución Miscelánea Fiscal para 2022 y su anexo 19, 27 Dec. 2021, available at https://www.dof.gob.mx/nota_detalle.php?codigo=5639466&fecha=27/12/2021 (accessed 6 Feb. 2023).

following obligations: sending electronic accounting and entering their accounting information monthly. However, the writing of the precept is inaccurate. It generated doubts about the correct application of the tax rules,[623] which means that for the upcoming year, this guideline will increase the levels of legal uncertainty for those taxpayers subject to RESICO.

On the positive side, even though there are no changes in the United States legislation, it is worth mentioning that since 2018, the United States has been engaged in defending against accuracy-related penalties. This approach is especially relevant for FAQs. If an FAQ turns out to be an inaccurate statement of the law when applied to a particular case, then taxpayers who, in good faith, relied on that FAQ will not be subject to a penalty when their reliance was reasonable based on all the facts and circumstances. However, this does not prevent the assessment of additional tax.[624]

It is also worth mentioning the Belgian Supreme Court decision of 21 April 2022[625] that has changed the tax landscape. The Court ruled for the first time that taxpayers can rely on positions taken by the tax authorities even if the position is *contra legem.* The Flemish Tax Authorities (VlaBel) took a "new" view in an administrative decision different from the text of the relevant legal provision in the Flemish Tax Code. Based on this "new" position, VlaBel taxed the beneficiaries more burdensomely.[626] The Supreme Court confirmed that the "new" taxation was contrary to the principle of legal certainty and issued a reminder that the general principles of good administration include the right to legal certainty and that these principles also apply to tax administration.[627] The right to legal certainty implies that the taxpayers must be able to rely on what they cannot interpret otherwise than as a fixed rule of conduct or policy of the government. Therefore, under the principles of good faith and legal certainty, the defendants were entitled to rely on the application of the law. Thus, it becomes a particularly relevant case for the tax scenario since it becomes irrelevant whether tax authorities are correct or not in their interpretations.

[623] *See* MX: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2 (Development Survey), Question 83.

[624] *See* IRS, *General Overview of Taxpayer Reliance on Guidance Published in the Internal Revenue Bulletin and FAQs*, IRS (19 Aug. 2022), available at https://perma.cc/8YNC-G7BR (accessed 6 Feb. 2023).

[625] *See* BE: Cass., 21 Apr. 2022, *VLAAMS GEWEST contra F.*, F.20.0150.N, available at https://juportal.be/content/ECLI:BE:CASS:2022:ARR.20220421.1N.7/NL (accessed 6 Feb. 2023).

[626] *See* J. Van Cauwergerghe, *Legal certainty prevails even if position of the Tax Authorities was contra legem*,

Linklaters (13 May 2022), available at https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2022/may/13/supreme-court-confirms-the-principle-of-legal-certainty-even-if-the-position-of-the-tax-authorities (accessed 6 Feb. 2023).

[627] BE: Cass., 21 Apr. 2022, *VLAAMS GEWEST contra F.*, F.20.0150.N, point 2, available at https://juportal.be/content/ECLI:BE:CASS:2022:ARR.20220421.1N.7/NL (accessed 6 Feb. 2023).

12. Institutional Framework for Protecting Taxpayers' Rights

12.1. The general framework

In practice, an institutional framework is needed when states enact their powers towards taxpayers. In doing so, states must adhere to legality, meaning that they must enact their powers and, at the same time, meet their obligations. The necessary framework can be shaped in different ways to ensure the adequate protection of taxpayers' rights.

12.2. Statements of taxpayers' rights: charters, service charters and taxpayers' bills of rights

Minimum standard: Adoption of a charter or statement of taxpayers' rights should be a minimum standard.

Shifted towards/improved the minimum standard:	Shifted away from the minimum standard:
None	None

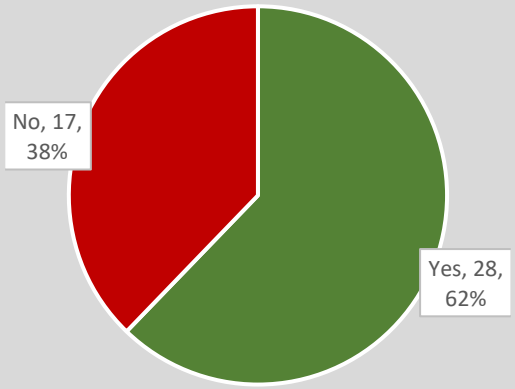
Best practice: A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited.

Shifted towards/matched the best practice:	Shifted away from the minimum standard:
None	None

Enacting a set of norms identifying taxpayers' rights can take various forms, such as a taxpayers' bill of rights or taxpayers' charters. They may also have different normative statuses (e.g. constitutional and statutory levels). These different types of norms provide an institutional framework of certainty regarding the scope of taxpayers' rights and the tax authorities' powers and obligations, which can also be defined through service charters.

As illustrated by Chart 78, 62% of the surveyed jurisdictions have taxpayers' charters or bills of rights.

Chart 78. Is there a taxpayers' charter or taxpayers' bill of rights in your country?	
53 responses	**Yes:** Australia, Austria, Belgium, Bolivia, Brazil (1), Brazil (2), Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Croatia, Guatemala, Honduras, India, Ireland, Italy, Kenya, Mauritius, Mexico (1), Mexico (2), New Zealand, Norway, Peru (1), Peru (2), Serbia, South Africa, Spain, Chinese Taipei, Türkiye, United States, Venezuela (2)
	No: Argentina, Bosnia and Herzegovina, Czech Republic, Denmark, Finland, Germany, Japan, Kazakhstan, Lithuania, Luxembourg, Netherlands, Poland (1), Poland (2), Portugal, Slovenia, Sweden, Switzerland, Uruguay, Venezuela (1)



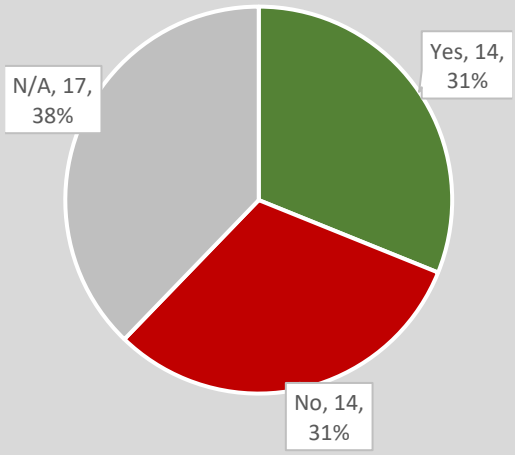
Source: OPTR: Questionnaire 1, Question 78

Reports with diverging opinions: Venezuela

However, 31% of them have reported that these provisions are not legally effective, as illustrated by Chart 79, which is a great improvement compared to 54% in 2021.

Chart 79. If yes, are its provisions legally effective?

53 responses



Source: OPTR: Questionnaire 1, Question 79

Yes: Belgium, Brazil (1), Brazil (2), Chile, China (People's Rep.), Colombia (2), Guatemala, Honduras, Italy, Mexico (1), Mexico (2), Norway, Peru (1), Peru (2), Spain, Chinese Taipei, United States, Venezuela (2)

No: Australia, Austria, Bolivia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Colombia (1), Croatia, India, Ireland, Kenya, Mauritius, New Zealand, Serbia, South Africa, Switzerland, Türkiye

Not applicable: Argentina, Bosnia and Herzegovina, Czech Republic, Denmark, Finland, Germany, Japan, Kazakhstan, Lithuania, Luxembourg, Netherlands, Poland (1), Poland (2), Portugal, Slovenia, Sweden, Uruguay, Venezuela (1)

Reports with diverging opinions: Colombia, Venezuela

In 2022, there was no change in the number of countries to adopt a charter or statement of taxpayers' rights. Besides, as in 2021, **Australia** and **Chile** continued to shift towards this minimum standard, while **Poland** shifted away from it.

A good example is **Australia**, where the Australian Taxation Office has established and maintained a taxpayers' charter since 1993, following a Parliamentary Committee report. In 2021, there were recommendations for changes to the charter to enhance enforceability,

awareness and status. For that, the Australian House of Representatives Standing Committee on Tax and Revenue recommended "that the Australian Taxation Office develops and promotes an Australian Taxpayers' Bill of Rights that clearly outlines taxpayers' rights and obligations".[628] Continuing this process, in 2022, there was a public consultation for reviewing the taxpayers' charter to ensure its contemporary nature and that it continues to meet the expectations of taxpayers and tax authorities.[629]

Since 2021, **Chile** has reported a general improvement in the regulation of taxpayers' rights, due to the issuance of Letter 12/2021 by the tax authorities.[630]

On the other hand, **Poland** reports that, after 3 years, the parliament has still not dealt with a draft of the Bill of Taxpayers' Rights, developed by representatives of tax academia at the University of Łódź and introduced to parliament by an opposition group in December 2019.[631]

12.3. Organizational structure for protecting taxpayers' rights

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

Shifted towards/matched the best practice:	Shifted away from the minimum standard:
Chile	None

Best practice: **The organizational structure for the protection of taxpayers' rights should operate at a local level as well as nationally.**

Shifted towards/matched the best practice:	Shifted away from the minimum standard:
United States	None

[628] *See* House of Representatives Standing Committee on Tax and Revenue, *2018-19 Commissioner of Taxation Annual Report* p. 40 (2021), available at https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024470/toc_pdf/2018-19CommissionerofTaxationAnnualReport.pdf;fileType=application%2Fpdf (accessed 15 Mar. 2022). *See also* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2 (2021), Question 84.

[629] *See* Australian Taxation Office, *Our Taxpayers' charter is open for consultation* (26 Sept. 2022) available at https://www.ato.gov.au/Media-centre/Media-releases/Consultation-is-now-open-for-the-Taxpayers--Charter-review/ (accessed 7 Feb. 2023). *See also* AU: OPTR Report (2022) ((Tax) Ombudsperson, Academia), Questionnaire 2 (2022), Question 84.

[630] *See* secs. 1.4., 1.5., 1.6., 3.8., 4.1., 4.2., 4.3., 4.4., 4.5. and 5.3.; and CL: Circular Letter No. 12, 2022, *supra* n. 456 at sec. V. *See also* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners) Questionnaire 2 (2021), Question 84.

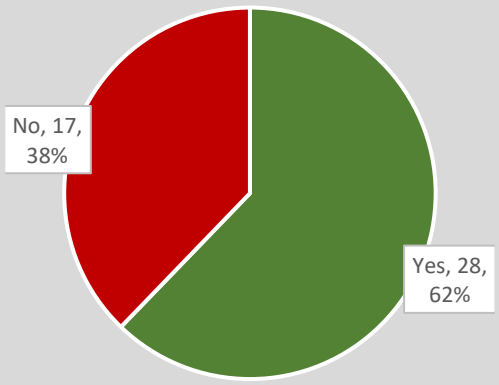
[631] PL: Draft Bill No. 137 – Taxpayers' Bill of Rights, available at https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=137 (accessed 15 Mar. 2022). *See also* PL: OPTR Report (2022) (Taxpayers/Tax Practitioners, Academia), Questionnaire 2 (2021), Question 84.

One way for the state to further fulfil its obligations to protect taxpayers' rights is through a specialized body, preferably independent from the tax authorities. The idea is to have an institution with the power to ensure the conditions for the highest protection of taxpayers. This idea is also the rationale behind a taxpayer advocate or tax ombudsman.

As illustrated by Chart 80, 62% of the surveyed jurisdictions have such an institution. As depicted by Chart 81, 44% of these are empowered to intervene in ongoing disputes between tax authorities and taxpayers, which is a significant improvement compared to 39% in 2021. Moreover, as illustrated by Chart 82, 47% of the ombudspersons are independent.

Chart 80. Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?

53 responses



Source: OPTR: Questionnaire 1, Question 80

Yes: Australia, Austria, Belgium, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, China (People's Rep.), Colombia (1), Colombia (2), Czech Republic, Denmark, Finland, Honduras, Ireland, Italy, Japan, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), South Africa, Spain, Chinese Taipei, Türkiye, United States

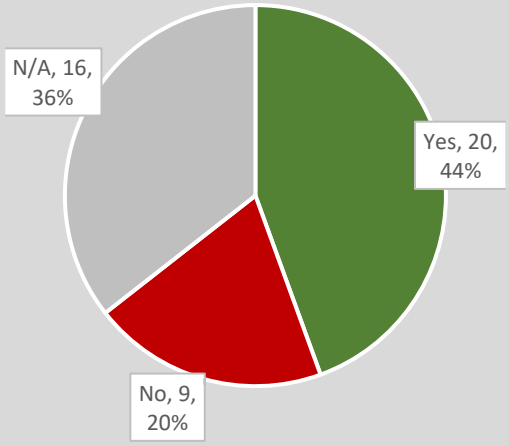
No: Argentina, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Croatia, Germany, Guatemala, India, Kenya, Lithuania, Portugal, Serbia, Slovenia, Sweden, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

Chart 81. If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?

53 responses

Yes: Belgium, Chile, China (People's Rep.), Colombia (1), Colombia (2), Czech Republic, Denmark, Honduras, Ireland, Italy, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Norway, Poland (1), Poland (2), South Africa, Spain, Chinese Taipei, Türkiye, United States

No: Australia, Austria, Bulgaria (1), Bulgaria (2), Bulgaria (3), Finland, Guatemala, Japan, Netherlands, New Zealand, Peru (1), Peru (2)

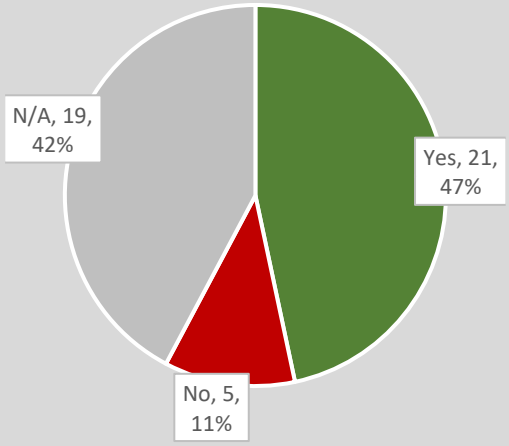


Source: OPTR: Questionnaire 1, Question 81

Not applicable: Argentina, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Croatia, Germany, India, Kenya, Lithuania, Portugal, Serbia, Slovenia, Sweden, Switzerland, Uruguay, Venezuela (1), Venezuela (2)

Chart 82. If yes to a (tax) ombudsman, are they independent from the tax authority?

53 responses



Source: OPTR: Questionnaire 1, Question 82

Yes: Australia, Bulgaria (1), Bulgaria (2), Bulgaria (3), Chile, Colombia (1), Czech Republic, Denmark, Finland, Honduras, Ireland, Kazakhstan, Luxembourg, Mauritius, Mexico (1), Mexico (2), Netherlands, New Zealand, Norway, Peru (1), Peru (2), Poland (1), Poland (2), Spain, Türkiye, United States

No: Belgium, China (People's Rep.), Colombia (2), Italy, Japan, South Africa

Not applicable: Argentina, Austria, Bolivia, Bosnia and Herzegovina, Brazil (1), Brazil (2), Croatia, Germany, Guatemala, India, Kenya, Lithuania, Portugal, Serbia, Slovenia, Sweden, Switzerland, Chinese Taipei, Uruguay, Venezuela (1), Venezuela (2)

Reports with diverging opinions: Colombia

As mentioned before, **Chile** continues its positive path towards the fulfilment of the best practices since the introduction of an ombudsman in 2020. In 2021, a decentralized public service office called *Defensoría del Contribuyente* (DEDECON) was created to assist

taxpayers and provide them with legal assistance. DEDECON is independent from the Chilean tax authorities[632] and is operational since 2022.[633]

In the **United States**, the Taxpayer Advocate Service (TAS) continued to maintain offices in each state. While access to TAS assistance improved in 2022 over 2021 as pandemic restrictions and backlogs eased, and as TAS implemented new efficiencies in its intake and Operations Assistance Request processes, more progress is needed.[634]

Regretfully, the example set in previous years in **Mexico,** the *Procuraduría para la Defensa del Contribuyente* (PRODECON), appears to have suffered a few setbacks. An amendment to the Federal Tax Code has effectively limited PRODECON's powers, as it restrains the duration of the alternative mediation process. According to the amendment, the "conclusive agreement" cannot exceed 12 months from the filing of the request.[635]

[632] *See* Ministry of Finance Press Release, *Defensoría del Contribuyente (DEDECON) comienza sus funciones con designación del Defensor Nacional* (12 Nov. 2021), available at https://www.hacienda.cl/noticias-y-eventos/noticias/defensoria-del-contribuyente-dedecon-comienza-sus-funciones-con-designacion-del (accessed 15 Mar. 2022); and the website of Defensoría del Contribuyente, available at https://dedeconchile.cl/ (accessed 15 Mar. 2022). *See also* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2 (2021), Question 85.

[633] *See* website of Defensoría del Contribuyente, available at https://www.atta.gov.cl/defensoria-contribuyente/ (accessed 14 Feb. 2023). *See also* CL: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2 (2022), Question 85.

[634] *See* IRS 2022 NTA ARC 200-01. *See also* US: OPTR Report (2022) (Taxpayers/Tax Practitioners/Academia), Questionnaire 2 (2022), Question 85.

[635] *See* MX: *Código Fiscal de la Federación* (Federal Tax Code), art. 69-C, D.O.F. 12 Nov. 2021, available at http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Fiscal_de_la_Federacion.pdf (accessed 15 Mar. 2022). *See also* MX: OPTR Report (2022) (Taxpayers/Tax Practitioners), Questionnaire 2 (2021), Question 85.

13. Country index

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Appendix A: 2022 topical highlights

The following is a summary of the contents explained in detail in the main text of the 2022 IBFD Yearbook on Taxpayers' Rights. Accordingly, it is not advisable to interpret the content expressed in this table separately from the explanations contained in the main text of this document.

Taxpayers' right	Shift towards	Shift away from
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers		
Identification of taxpayers	• **Australia**: Established the Australian Business Registry Service, a single business registry service. • **Mexico**: Introduced the requirement for the Mexican tax authorities to issue a taxpayer identification number in order to prevent identity theft.	
Information supplied by third parties and withholding obligations	• **Lithuania:** Modified its Law on Tax Administration to include provisions on data protection standards to be respected by data controllers.	
The right to access (and correct) information held by tax authorities	• **Chile:** A tax reform is currently under discussion that aims to update the rights of taxpayers, granting them tools to oppose requests of personal information in the context of tax audits. New restrictions have been introduced on the use of personal banking information, and administrative guidance was issued on the interpretation of the duty of confidentiality. • **Colombia**: A total of 4.8 million pre-filed income tax returns were made available, subject to modification by the taxpayer. VAT returns were also prepared by the tax administrated based on information obtained from electronic invoicing. • **Lithuania:** Modified its Law on Tax Administration to include provisions on data protection standards to be respected by data controllers. • **Spain:** The Tax Ombudsman has proposed including the right to correct errors in Spanish tax legislation. • **United States**: The IRS made additional (though still limited) information available through taxpayer	• **Mexico**: Several failures with pre-populated tax returns were reported.

Taxpayers' right	Shift towards	Shift away from
	online accounts and through online tools. The IRS also promoted those tools through press releases and social media.	
Communication with taxpayers	• **Australia:** A significant upgrade to myGovID was introduced, including a face verification service. • **Belgium**: In order to prevent phishing, all contacts with the taxpayer will have to take place via a central telephone number or through the official platform. • **Honduras**: The tax administration has implemented electronic notification with digital signature to prevent interception or impersonation. • **Switzerland**: An increase was reported of tax authorities using highly protected communication forms. • **United States**: The IRS announced that taxpayers would not have to provide biometrical data to establish an online account. Increased methods to detect potentially fraudulent tax returns.	
Cooperative compliance	• **Brazil:** In the context of changes to the Brazilian transfer pricing rules, the right of taxpayers to request an advance pricing agreement was assured. • **Chile:** A new cooperative compliance system was established.	• **Honduras**: The cooperative compliance pilot project was discontinued.
Assistance with compliance obligations	• **Chile**: New tax reform includes requirements for tax authorities as to support for taxpayers who lack technological means to file their tax returns. • **Honduras**: Improvements have been made in respect of social media campaigns and the installation of temporary service desks in remote areas of the country. • **Mauritius**: Taxpayers can now receive assistance in filing tax returns through a WhatsApp video call. • **New Zealand**: Additional support and relief as a result of restrictions in place during lockdowns under COVID. • **Poland**: General incentives to improve interaction between persons with special needs and the public administration. Guidance on personal income tax in Ukrainian is provided to Ukrainian citizens. Certain non-	

Taxpayers' right	Shift towards	Shift away from
	resident taxpayers are no longer required to appoint a resident tax representative. • **United States**: Taxpayer Assistance Centers (TACs) are available during certain months, where taxpayers can receive help without an appointment	
2. The issuance of a tax assessment		
Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on the equality of arms	• **Brazil**: At the end of 2022, Provisional Measure n. 1152 was published, which aligned the Brazilian transfer pricing rules with the OECD Guidelines. In this context, it was established that if the tax authority disagrees with the method applied by the taxpayer, the latter will be able to voluntary adjust its position, without any penalty. • **Chile**: In 2022, Law 21.210 of 2020 started to operate, which established the Public Defender's Office of Taxpayers (tax ombudsmen, DEDECON). • **Guatemala**: The tax administration published a report regarding the types of schemes that were put in place in 2021 and 2022 for evading the payment of capital gains tax in real estate transactions. In the same report, taxpayers were informed that the tax administration has implemented new technologies and information systems that will significantly facilitate the fight against similar evasive strategies in the future. • **Honduras**: During 2022, there were several forums regarding tax policy and other public discussions, especially on exemptions and other tax breaks, which signalled an improvement in the communication between the government, academia and the private sector as to the discussion of new tax policies. • **Mexico:** At the end of December 2021, an amendment to the PRODECON's (tax ombudsmen's) guidelines was published. Following this amendment, the PRODECON's powers were further extended to facilitate its tax ombudsperson function and its work as mediator between taxpayers and the Mexican revenue authority.	• **Bolivia**: Administration practices avoid constructive dialogue with taxpayers, mostly because tax audits and assessments are notified by email or website to taxpayers without an actual notice of the situation.

Taxpayers' right	Shift towards	Shift away from
	• **United States**: At the start of 2022, pandemic-related service reductions continued to jeopardize taxpayers' rights due to delays in processing tax returns and correspondence. However, in February 2022, the IRS suspended its automated levy programme and many automated collection notices.	
Use e-filing to speed up assessments and the correction of errors	• **Australia**: The Australian Taxation Office (ATO) strengthened the use of data matching and prefilling to assist with lodgement and other compliance activities. • **Denmark**: The ombudsman performed several investigations as to the compliance of digital solutions with the principles of general administrative law and tax procedures. • **Japan**: From January 2022, according to the revised Electronic Book-Keeping Act, taxpayers are required to save their transactional data (receipts, etc.) received via the Internet in the form of electronic data. Moreover, according to an announcement of the National Tax Agency of August 2022, the percentage of tax returns using the Internet (e-Tax) slightly increased in 2021 compared to 2020 • **Mauritius**: There is in place a new legislative framework regulating the electronic service to taxpayers of correspondence, notice of assessments and any other notices or documents, as well as the electronic payment of taxes and the e-filing of tax returns.. • **United States**: The IRS created an automated tool to correct Recovery Rebate Credit errors, which had been manually processed in 2021 due to the pandemic crisis. It also automated correction of advance child tax credit reconciliation errors.	None
3. Confidentiality		
Guarantees of privacy in the law	• **Brazil**: The Superior Court of Justice denied the exchange of information from tax authorities to criminal prosecutors without prior and specific judicial authorization. In addition, the Federal Revenue Service refused the exchange of some information (such as lists of employees) with other	

Taxpayers' right	Shift towards	Shift away from
	departments of federal and local administrations, qualifying such as a breach of tax secrecy. • **Chile**: Taxpayers have been granted tools to oppose requests of personal information in the context of a tax audit. Legal restrictions on the use of personal banking information were introduced. A circular letter on the administrative interpretation of taxpayers' right to confidentiality was published. • **China**: A new law has imposed confidentiality obligations on the administration and officials, along with sanctions for illegal disclosure of confidential information. • **Chinese Taipei**: A tax official was prosecuted due to negligence with personal information.	
Encryption – Control of access	• **Chile**: A circular letter on the administrative interpretation of taxpayers' right to confidentiality was published. • **Guatemala**: The tax administration implemented a requirement regarding access to the information of the taxpayer. • **United States**: Continued implementation of the Secure Access Digital Identity Platform.	
Administrative measures to ensure confidentiality	• **Brazil**: The Federal Revenue Service refused the exchange of information with other departments of federal and local administrations. • **Chile**: A circular letter on the administrative interpretation of taxpayers' right to confidentiality was published, and taxpayers have been granted tools to oppose requests for personal information in the context of a tax audit. • **Colombia**: As a result of continuous internal monitoring carried out by the tax administration, events of unauthorized access and collection of information were identified, which lead to judicial measures. • **Guatemala**: The tax administration receives an audit periodically, and an officer in the tax administration is now in charge of data protection.	• **Bolivia**: In practice, no cases in which a breach of confidentiality occurred were investigated, and it appears to be a common practice for the tax administration to disclose confidential information.

Taxpayers' right	Shift towards	Shift away from
Exceptions to confidentiality	• **Australia:** The Commissioners' tax information reporting threshold was lowered. • **Brazil**: The Superior Court of Justice denied the exchange of information from tax authorities to criminal prosecutors without prior and specific judicial authorization. In addition, the Federal Revenue Service refused the exchange of some information (such as lists of employees) with other departments of federal and local administrations, qualifying such as a breach of tax secrecy. • **Chile**: A circular letter on the administrative interpretation of taxpayers' right to confidentiality was published. A proposed tax reform introduces a new naming and shaming procedure. • **Spain**: The Supreme Court ruled that if tax information is exchanged, the data should in principle be used for tax purposes.	• **Australia**: The Standing Committee on Tax and Revenue, which previously had oversight of the Australian Taxation Office and other taxation matters, ceased to exist. • **Mexico**: Personal information relating to a journalist was disclosed without prior authorization. • **United States**: Taxpayer information relating to former president Trump was released to the public. • **Finland:** Adjustments to final tax assessment will be published as of January 2023.
The interplay between taxpayer confidentiality and freedom-of-information legislation		
Anonymized judgments and rulings	• **Chile**: A circular letter imposes data anonymization on tax courts. • **Colombia**: An electronic consultation service for regulations, general tax rulings and judicial rulings related to tax, customs and exchange matters were made available. These documents are published on an anonymous basis.	• **Guatemala**: The tax administration is required to publish tax judgments containing the taxpayer's name.
4. Normal audits		
Audits follow all the four principles	• **Belgium:** Recent legal amendments allow tax officials to join mixed multidisciplinary investigation teams, including police officers. The law grants 25 tax officials judicial police officer status, enabling them to assist in criminal investigations, such as house searches, interrogations, and data analysis. The evidence collected can be used for criminal investigations and determining tax debts, preventing duplicate	• **Uruguay:** The High Administrative Court distinguished between tax and criminal procedures and emphasized that pointing out to the right to remain silent is only necessary in criminal proceedings. Consequently, due to taxpayers' duty to cooperate during audits, warnings as to this right are no longer required.

Taxpayers' right	Shift towards	Shift away from
	evidence gathering.	
Ne bis in idem	• **Belgium:** A company underwent a tax audit by the Special Tax Inspectorate (STI) of Ghent, resulting in an agreement on tax assessment. However, after a subsequent audit by the STI of Brussels on the same issue, the agreement was disregarded, and a new assessment was imposed. The Court of First Instance of Antwerp ruled that the STI of Brussels must honor the agreement, concluding that the taxpayer could trust the settled tax issue from the previous agreement, even if from a different territorial division of the STI.	
Principle of proportionality	• **Chile**: A new tax reform has been proposed, aiming to establish further rights of taxpayers with respect to the amount of information they need to provide in tax audits.	• **Bulgaria**: Tax authorities often request significant amounts of information during audits, even if it is irrelevant or already available to them. These requests burden taxpayers, as preparing and submitting documents requires considerable time and effort. • **Chinese Taipei**: Chinese Taipei's Ministry of Finance (MOF) has asked banks to gather and produce quarterly reports on personal accounts with high-frequency transactions, which may indicate involvement in online selling activities. However, the legal basis for such information requests remains vague.
Audi alteram partem (right to be heard)	• **Chile**: An updated administrative interpretation of the right to be heard was provided. • **Spain**: Per a Supreme Court judgment, the tax administration must communicate any scope extension of a limited audit with reasons before opening the allegations period. If not done so, the audit procedure's final act becomes null and void for uncommunicated elements. • **United States**: After a shift away in 2020, in 2022, in-person meetings with tax examiners resumed, following updated guidelines on	

Taxpayers' right	Shift towards	Shift away from
	locations and timings. While taxpayers can request meetings with tax officers, most audits are conducted via correspondence, making in-person meetings less feasible for the majority.	
Nemo tenetur se detegere (right to remain silent)		• **Belgium:** A new law allows the tax administration to impose incremental penalty payments on taxpayers or third parties who fail to cooperate during tax audits. The Belgian government asserts that enforcing cooperation through penalties does not violate the nemo tenetur principle, according to recent European Court of Human Rights case law.
The structure and content of tax audits	• **Chile**: Proposed tax reforms aimed to improve taxpayers' rights during audits. • **Spain**: The General Directorate of Tax Administration approved the 2022 Annual Audit Plan for Taxes and Customs, offering clarity and certainty to taxpayers regarding policy objectives, risk analysis systems, and opportunities for collaboration between taxpayers and tax authorities.	• **Colombia**: A new tax reform enables income tax determination through an invoice issued by the tax administration for taxpayers who fail to submit a tax return. If the taxpayer does not explicitly state that they accept or reject the assessment, it becomes final and enforceable without a prior audit or meeting, and there is no appeal. The rule also applies to VAT and consumption tax determination
Time limits for tax audits	• **Mexico**: In foreign trade tax audits involving cross-border information exchange, the audit period may be extended to 2 years from the initial information request. • **Colombia**: The Supreme Administrative Court ruled that a tax inspection notice alone does not suspend the statute of limitations for income tax returns. The court emphasized that an effective tax inspection must be carried out for the statute of limitations to be suspended, meaning tax auditors must actively initiate inspection activities.	• **Belgium**: A new law significantly alters the time limits for income tax audits and tax imposition, effective from assessment year 2023. The legislation generally extends time limits for audits and taxes, particularly in cases of non-reporting, fraud, and complex cross-border situations or non-cooperative jurisdictions. The law also extends time limits for VAT.
Tax audit report		• **Chinese Taipei**: The audit report is classified as a confidential internal official document, which shall not be available to the audited taxpayer.

Taxpayers' right	Shift towards	Shift away from
5. More intensive audits		
The implication of the *nemo tenetur* principle	• **Chile:** A proposed tax reform allows taxpayers to provide information in the context of a criminal case in order to reduce their tax liability.	• **Colombia**: During the audit process, taxpayer statements are used even if a crime may have been committed. The 2022 reduction in minimum values for tax evasion as a criminal offense could lead to an increase in audits that do not meet the minimum standard.
Court authorization or notification	• **Chile:** A new law allows the request of bank account balances, while at the same time adding additional requirements and rights to taxpayers regarding this matter.	• **Argentina:** In late 2022, Argentina signed a bilateral government agreement with the USA for FATCA implementation. The agreement takes effect in 2023, with the first automatic exchange of financial information anticipated in September 2024. • **Bolivia:** Since 2003, the Bolivian Tax Code and regulations authorize full access to taxpayers' bank account records. • **Belgium:** The law requires tax authorities to obtain a judge's authorization to access private homes for income tax and VAT investigations. While the Ghent Court of Appeal ruled that evidence collected without authorization could not be used for tax purposes, the Belgian Court of Cassation overturned the decision, stating that illegally obtained evidence should be evaluated on a case-by-case basis according to good administration principles and the right to a fair trial. • **Mexico:** Pursuant to a decision by the Mexican Supreme Court, the tax authorities could request the Banking National Commission to supply the statements of account of taxpayers without any judicial order or authorization. • **Poland:** In 2022, tax authorities gained expanded access to bank information for tax purposes. They can now request information about a specific taxpayer's account from a bank, on suspicion of a tax crime, during the "in rem" phase. This allows for reviewing a taxpayer's bank information without their knowledge or judicial authorization, as long as preparatory proceedings or explanatory activities are initiated.

Taxpayers' right	Shift towards	Shift away from
6. Reviews and appeals		
The remedies and their function	• **Spain (MS)**: The Supreme Court ruled that it is not necessary to exhaust administrative reviews to access the special process for the protection of fundamental rights.	• **Bolivia (BP)**: E-filling of requests for internal review is not available.
Length of the procedure		• **Guatemala (BP)**: Appeals are taking longer than usual and more than 2 years. • **Italy (BP)**: On 22 June 2022, the Italian Ministry of Finance published a report on tax litigation showing that the average length of tax disputes in 2021 is 1,080 days before second-tier Tax Courts (with an increase of 2.5% as compared to 2020) and 652 days before first-tier Tax Courts (with an increase of 3.4% as compared to 2020).
Audi alteram partem and the right to a fair trial		
Solve et repete	• **Honduras (BP)**: Before 2022, according to article 206 of the Tax Code, for the admission of a claim before the courts of the Administrative Litigation Jurisdiction in tax and customs matters, a sufficient guarantee in favour of the state was required from taxpayers. This practice has been abolished, as the requirement of the guarantee had a statute of limitations of 5 years that expired in January 2022.	• **Argentina (BP)**: General Resolution No. 5248/2022 unexpectedly provided for an extraordinary advance of the income tax payable by corporations (in addition to those already established for the year 2022), which is computed as payment on account of the tax finally determined for the year 2022. Due to its nature as a payment on account of the tax, the appeal of this advance does not have suspensive effect.
Cost of proceedings	• **Australia (BP2)**: The ATO awarded 14 grants to support the National Tax Clinic programme. The National Tax Clinic programme is a government-funded initiative to help people who may not be able to afford professional advice and representation with their tax affairs. • **Chile (BP2)**: The tax ombudsperson (DEDECON) started functioning in 2022, providing legal assistance to taxpayers.	• **Bolivia (BP2)**: There is no legal assistance to taxpayers who cannot afford the costs of an appeal.
Public hearing	n.a.	n.a.
Publication of judgments and privacy	• **Chile**: Chile has continued its positive development towards this minimum standard from previous years. In 2021, the Servicio de Impuestos (SII), with Circular Letter No. 12, expressly provided for the mandatory publicity of all judicial decisions in tax matters and	

Taxpayers' right	Shift towards	Shift away from
	mandated for the confidentiality of all acts during the proceedings. In 2022, the same SII, with Circular Letter No. 35 of 4 August 2022, offered further guidance in this respect. • **Guatemala**: Tax judgments are now published by the tax administration. • **Serbia**: Starting from 2021, the judgments of the Administrative Court are published on the Court's website, which also offers an efficient database available to interested citizens.	
7. Criminal and administrative sanctions		
The general framework	• **Belgium**: A decision of the Belgian Court of Cassation has upheld the *ne bis in idem* principle in line with the *A and B v. Norway* judgment of the ECtHR with reference to the imposition of a fixed fine and a tax surcharge for the same offence (late filing of income tax declaration). • **Bolivia**: Newly enacted provisions mitigate the proportional rate for tax penalties. • **Colombia**: Legislative enactment reduce the tax penalty due for not sending information requested by the tax administration. • **Mexico**: A decision by the Supreme Court of Justice of Mexico has invalidated automatic preventive detention for a series of crimes, including tax fraud, sanctioning that it was an unconstitutional punishment. • **United States**: Acknowledging backlogs in processing tax returns and correspondence, the IRS provided relief from late filing penalties for 2019 and 2020 tax returns filed on or before 9/30/22.	• **Lithuania**: Introduced a measure that amended the Law on Tax Administration. It provides an increase in the amount of fine and establishes that the fine is doubled if a repeated violation of the same tax rule is committed within a 5-year period. • **Netherlands**: The Supreme Court ruled that an administrative penalty imposed for the late submission of a tax return may be followed by criminal prosecution for a more severe offence.
Voluntary disclosure	• **Bolivia:** Pursuant to Law 1448 of 25 July 2022, a voluntary disclosure period was extended from 10 business days to 20 calendar days. • **Brazil:** There are new provisions according to which, if the tax administration disagrees with the transfer pricing method applied by the taxpayer, the taxpayer is entitled to voluntarily adjust its assessment	• **Lithuania**: Introduced a measure that amends the Law on Tax Administration. It provides that sanctions cannot be lower than 20% of the unpaid taxes in cases of voluntary disclosure by the taxpayer.

Taxpayers' right	Shift towards	Shift away from
	without any penalty due. • **Chile:** A proposed reform aims to establish that voluntary disclosure in criminal cases might reduce criminal liabilities. • **Mauritius:** A tax arrears settlement scheme was introduced. It allows for full waiver of penalties and interest for tax arrears that are due on 7 June 2022 and are paid in full by 31 March 2023, provided that the taxpayer makes an application to the tax administration by 31 December 2022.	
8. Enforcement of taxes		
Collection of taxes should never deprive taxpayers of their minimum necessary for living.	• **Colombia**: Article 81 of Law 2277 of 2022 temporarily establishes a significant reduction of the amount of sanctions and of the late-payment interest rate applicable to tax obligations, provided that taxes are paid in full or a deferral of payments is approved within the terms established therein. • **Lithuania**: New rules increase the amount of tax-free income by 15.7%. This amendment reduces the tax burden on taxpayers with a monthly income of up to one average wage. • **United States**: The IRS published procedures for offset bypass refunds for taxpayers requesting an offer in compromise, implementing a policy change from the fall of 2021.	
Authorization by the judiciary should be required before seizing assets or bank accounts	n.a.	n.a.
Taxpayers should have the right to request delayed payment of arrears	• **Colombia**: In accordance with article 81 of Law 2277 of 2022, which modified the regulation of the deferral of payments, these will be granted without the need for a guarantee when the term is not greater than 1 year and the taxpayer has not failed to comply with a deferral of payment during the former year. • **Sweden**: It is reported that, due to the recession, the possibilities to request deferred	

Taxpayers' right	Shift towards	Shift away from
	payment of arrears have increased.	
Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment.	• **Colombia**: Article 85 of Law 2277 of 2022 provides that, in business restructuring processes, the priority of tax obligations will not prevent the achievement of the reorganization agreement, when a real guarantee or insurance policy is constituted, for the value of the debt. This provision is intended to correct situations in which the unjustified obstruction of a reorganization agreement by the tax administration, led to the liquidation of companies. • **Guatemala**: In March, a new law regarding bankruptcy was introduced.	
Temporary suspension of tax enforcement should follow natural disasters	• **Belgium**: With the Law of 26 December 2022, the Belgian legislator has created a possibility for employers to be exempted from payment of withholding tax on wages in certain cases of natural disasters. On the initiative of the competent region, the federal tax authority can allow an employer who has one or more establishments affected by natural disasters recognized by the region to withhold the entire withholding tax from the wages of employees employed in that establishment(s) but only pass on part of it to the tax authorities.	
9. Cross-border procedures		
Additional safeguards in connection with EoIR	• **Brazil (2):** The tax treaty with Singapore ratified in 2022 does provide for an exchange of information provision. • **Chile:** Circular Letter No 13 of 2022 updates administrative interpretation of taxpayers' rights in the context of a mutual procedure under a tax treaty • **México (2)**: In October 2022, the Senate's joint committee of the Ministries of Foreign Affairs and Treasury approved the Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent Base	• **Honduras**: The right to be informed in exchange of information cases was not explicit in the Tax Code, but it was a common practice of the tax administration as a matter of transparency. However, during the review of the exchange of information questionnaire required for the signature of the Convention on Mutual Administrative Assistance in Tax Matters (MAC), it was suggested to abandon this practice. It is important to mention that the taxpayer will know about the exchange of information and have access to these documents

Taxpayers' right	Shift towards	Shift away from
	Erosion and Profit Shifting (the MLI), which Mexico signed on 7 June 2017.	when it has access to the audit file. • **Brazil:** The tax treaty with Singapore ratified in 2022 does provide for an exchange of information provision.
Mutual agreement procedure	• **Chile**: Circular Letter No 13 of 2022 updates administrative interpretation of taxpayers' rights in the context of a mutual agreement procedure under a tax treaty.	
10. Legislation		
Constitutional limits to tax legislation: retrospective laws	• **Bolivia:** The tax authority (Autoridad de Impugnación Tributaria) confirmed the prohibition of retrospective tax legislation regarding the statute of limitations. • **Spain:** The Supreme Court (Tribunal Supremo) decided to reinforce the principle of non-retroactivity of tax law unless a specific legal provision regulates the opposite.	• **Argentina:** General Resolution No. 5248/2022 unexpectedly introduced an extraordinary payment on account of the corporate income tax (*impuesto a las ganancias*), which is computed as payment of the income tax. The extraordinary payment is calculated based on 25% of the tax or 15% of the tax result of the previous year, without applying the deduction of tax losses from previous years. In practice, this is a way of creating tax liability without law, hence it affects the principles of legal certainty, legality, ability to pay and reasonableness. • **Poland:** An amendment to the Polish Personal Income Tax (PIT) Act provisions was made. The relief, introduced half a year earlier, was abolished, and the lowest 17% PIT rate was reduced to 12%. At first glance, it seems that no constitutional principles were violated in this case, as these modifications should not have adverse effects on taxpayers (due to the mechanism of refunding tax resulting from the difference between taxation under the rules in force to 30 June and after this date). Nevertheless, the amendments in 2022 caused significant uncertainty and exposed many taxpayers (mainly entrepreneurs) to additional costs, e.g. in the field of tax advisory and modification of HR and payroll systems, which infringes the principle of low-cost taxation. • **New Zealand**: More statements have been made regarding proposed legislative changes well ahead of any draft legislation being made public and eventually enacted.
Public consultation	• **Chile:** Relevant circular letters of the	• **Bolivia:** There was no public

Taxpayers' right	Shift towards	Shift away from
and involvement in the making of tax policy and law	Chilean tax authorities were issued for public consultation, such as Circular Letter No. 4/2022 (taxpayers' representation before tax authorities) and Circular Letter No. 35/2022 (tax authorities' duty of confidentiality). • **Colombia:** A tax reform project presented during the first quarter of 2021 was withdrawn from Congress by the National Government due to strong social protests of disagreement. In the second half of 2021, consultations and public sessions were held, from which Act No. 2,277/2022 was built. Continuing this process, in 2022, before the approval of the Act, there were public sessions to disseminate the tax reform project in different regions of the country. The tax reform was discussed with various sectors of the economy and other actors such as the academy. Because of that, the government made some modifications to the initial text of the tax reform considering the proposals of business sectors, tax practitioners and academia. • **United States:** Courts showed greater willingness to scrutinize IRS guidance for compliance with the public notice and comment process in the Administrative Procedure Act (APA). This is an evolving and disputed area of law. Moreover, following losses in *Mann Construction v. United States* (6th Cir. Docket No. 21-1500) and *Green Valley Investors LLC v. Commissioner* (Tax Court Docket No. 17379-19), the IRS and Treasury Department issued proposed regulations with a public comment period, seeking to implement a disclosure regime for syndicated easements that would unquestionably comply with the APA.	consultation. • **New Zealand**: Minimal use of public consultation, even setting aside the usual tax policy process.
11. Revenue practice and guidance		
	• **Colombia (1):** In October 2022, the tax administration made available to individuals an electronic consultation service for all regulations, doctrine and jurisprudence related to tax, customs and exchange matters. • **Mauritius:** Rulings and decisions of the Assessment Review Committee	• **México (2):** The tax authorities published some frequent questions that often are not binding.

Taxpayers' right	Shift towards	Shift away from
	are now published online, albeit they relate to the year 2016 onwards. • **Netherlands:** As of 2023, official opinions of the tax authority's expert groups will be published automatically on a publicly available website. • **Poland (2):** The creation of a single open access online database (the EUREKA System of Tax and Customs Information) improved the accessibility of guidance. Previously, various forms of guidance were published in different databases/on different websites.	
12. Institutional framework for protecting taxpayers' rights		
Statement of taxpayers' rights: Charters, service charters and taxpayers' bills of rights	• **Australia**: The ATO has maintained a Taxpayers' Charter since 1993, following a Parliamentary Committee report. In 2021, there were recommendations for changes to the charter to enhance enforceability, awareness and status. In 2022, there was a public consultation for reviewing the Taxpayers' Charter to ensure its contemporary nature and that it continues to meet the expectations of taxpayers and tax authorities.	• **Poland**: For 3 years, the parliament has not addressed the draft of the Bill of Taxpayers' Rights developed by representatives of tax academia at the University of Łódź and introduced to the parliament by a group of opposition in December 2019.
Organizational structures for protecting taxpayers' rights	• **Chile**: A decentralized public service office called *Defensoría del Contribuyente* (DEDECON), independent of the Chilean tax authorities, was created to assist taxpayers and to provide them with legal assistance. It began operating in 2022. • **United States**: The Taxpayer Advocate Service (TAS) continues to maintain offices in each state. While access to TAS assistance improved in 2022 over 2021 as pandemic restrictions and backlogs eased, and as TAS implemented new efficiencies in its intake and Operations Assistance Request processes, more progress is needed.	• **Mexico**: An amendment to the Federal Tax Code effectively limited the tax ombudsman's powers, as it restrains the duration of the alternative mediation process. According to the amendment, the "conclusive agreement" still cannot exceed 12 months from the filing of the request.

Appendix B: The protection of taxpayers' rights per country (2022)

The following are the answers provided in all national reports to the questions regarding the effective implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights in 82 specific situations, as identified in Questionnaire #1 and explained in detail in the main text of this Yearbook. Accordingly, it is not advisable to interpret the content expressed in these charts separately from the explanations in the text

above.

B.1. Argentina-Denmark

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R...)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers																			
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	In your country, is there a system of "cooperative compliance"/ "enhanced relationship"	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R...)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	which applies to some taxpayers only?																		
6	If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/ non-discriminatory/non-arbitrary basis?	N/A	Yes	Yes	No	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A	Yes	N/A	Yes	Yes	N/A	No
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?	No	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Yes	Yes	Yes	No	No	Yes
2. The issue of a tax assessment																			
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment	No	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	in order to reach an agreed assessment ?																		
9	If yes, can the taxpayer request a meeting with the tax officer?	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes
10	If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?	No	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No	Yes	No	Yes
3. Confidentiality																			
11	Is information held by your tax authority automatically encrypted?	Yes	No	Yes	No	Yes	No	Yes	Yes	No	No	No	Yes	Yes	No	No	No	Yes	Yes
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s)	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	dealing with that taxpayer's affairs?																		
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	Yes	N/A	Yes	Yes	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes	N/A
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	Yes	Yes	Yes	No	No	No	Yes	Yes	No	No	No	No	Yes	No	No	No	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	No	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No	No
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. *habeas data* or freedom of information)?	No	Yes	No	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	No	Yes
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisers?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	N/A	No	No	No	No	No	No	No	No	No	No	No	No	Yes	Yes	No	N/A	No
4. Normal audits																			

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
21	Does the principle *ne bis in idem* apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	No	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
22	If yes, does this mean only one audit per tax per year?	N/A	N/A	Yes	N/A	Yes	No	N/A	N/A	No	No	No	No	Yes	Yes	Yes	N/A	No	N/A
23	Does the principle *audi alteram partem* apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	No	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
25	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	No	No	No	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
26	If yes, what is the normal limit in months?	No limit	No limit	No limit	No limit	10-12	No limit	No limit	No limit	4-6	4-6	4-6	7-9	1-3	>24	>24	No limit	>24	No limit
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes	No	No	No	No	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	different periods or different taxes)?																		
5. More intensive audits																			
31	Is the principle *nemo tenetur* applied in tax investigations (i.e. the principle against self-incrimination)?	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No	Yes	No	No	Yes	Yes	Yes
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	N/A	N/A	N/A	No	N/A	No	No	N/A	N/A	N/A	N/A	Yes	N/A	N/A	No	Yes	Yes
33	If yes to *nemo tenetur*, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	N/A	N/A	N/A	N/A	No	No	N/A	N/A	N/A	N/A	No	N/A	N/A	Yes	No	No
34	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognized?																		
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	No	N/A	N/A	N/A	N/A	Yes
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No	No	No	No	No
37	May the tax authority enter and search the dwelling places of individuals?	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	No	No	No	No	Yes
38	Is a court order required before the tax authority can use interception of	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	communications (e.g. telephone tapping or access to electronic communications)?																		
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	Yes	Yes	No	No	Yes	No	No	No	No	No	No	No	Yes	Yes	No	Yes	Yes
6. Reviews and appeals																			
40	Is there a procedure for an internal review of an assessment/ decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No	Yes
43	Is it necessary for the taxpayer to	Yes	No	Yes	No	No	Yes	No	No	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	bring its case first before an administrative court to quash the assessment/ decision before the case can proceed to a judicial hearing?																		
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	Yes	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	4-6	No limit	No limit	No limit	> 24	No limit
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	Yes	No	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes	No	Yes	No	No	No
47	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file,	No	Yes	No	No	No	No	No	No	Yes	Yes	Yes	No	Yes	No	No	No	No	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	or by e-filing)?																		
48	Is the principle *audi alteram partem* (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
49	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. *solve et repete*)?	Yes	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	No	No	No	No	No
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A	Yes	Yes	Yes	N/A	Yes	N/A	N/A	N/A	N/A	N/A
51	Does the loser have to pay the costs of a tax appeal?	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
52	If yes, are there situations recognized where the loser does not need to pay the costs (e.g. because of the conduct	Yes	Yes	N/A	Yes	N/A	No	Yes	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A	N/A	N/A	N/A

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	of the other party)?																		
53	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes
54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	No	Yes	Yes	No	No	N/A	No	No	Yes	Yes	Yes	Yes	No	No	No	N/A	Yes	Yes
7. Criminal and administrative sanctions																			
56	Does the principle *ne bis in idem* apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	B	C	B	B, C	B, C	C	B	B	B	B	B	B	B, C	B	C	B	B	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
57	If *ne bis in idem* is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	No	No	No	No	Yes	Yes	No	No	No	No	No	No	N/A	No	No	No	No	N/A
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
8. Enforcement of taxes																			
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	Yes	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R...)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	with a guarantee)?																		
9. Cross-border situations																			
61	Does the taxpayer have the right to be informed before information relating to it is exchanged in response to a specific request?	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes	No	No	No	No	No
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	No	No	No	No	Yes	No	No	No	No	No	No	Yes	No	No	No	No	No
63	If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and	N/A	N/A	N/A	N/A	N/A	N/A	No	No	No	No	No	N/A	N/A	No	No	N/A	N/A	N/A

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	Exchange of Information?																		
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to it with another country?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to it with another country?	No	No	No	Yes	Yes	No	Yes	Yes	No	No	No	Yes	No	No	No	No	No	Yes
66	Does the taxpayer have the right to see any information received from another country that relates to it?	Yes	No	No	Yes	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	No	No	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	No
68	Does the taxpayer have the right to see the communications	Yes	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's Rep.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	exchanged in the context of the mutual agreement procedure?																		
10. Legislation																			
69	Is there a prohibition on retrospective tax legislation in your country?	No	No	No	No	Yes	No	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	Yes	No	Yes	Yes	N/A	Yes	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A	N/A	N/A	N/A	Yes
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	No	Yes	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
11. Revenue practice and guidance																			
73	Does the tax authority in your country publish guidance (e.g.	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	revenue manuals, circulars, etc.) as to how it applies your tax law?																		
74	Does your country have a generalized system of advance rulings available to taxpayers?	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	No	No	Yes	Yes	Yes	Yes
75	If yes, is it legally binding?	N/A	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A	N/A	N/A	No	N/A	N/A	No	No	Yes	Yes
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	Yes	Yes	No	No	Yes
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	N/A	Yes	Yes	No	N/A	No	Yes	Yes	N/A	N/A	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes
12. Institutional framework for protecting taxpayers' rights																			
78	Is there a taxpayers' charter or taxpayers'	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No

#	Question	Argentina	Australia	Austria	Belgium	Bolivia	Bosnia and Herzegovina	Brazil (1)	Brazil (2)	Bulgaria (1)	Bulgaria (2)	Bulgaria (3)	Chile	China (People's R.)	Colombia (1)	Colombia (2)	Croatia	Czech Republic	Denmark
	bill of rights in your country?																		
79	If yes, are its provisions legally effective?	N/A	No	No	Yes	No	N/A	Yes	Yes	No	No	No	Yes	Yes	No	Yes	No	N/A	N/A
80	Is there a (tax) ombudsman /taxpayers' advocate/equivalent position in your country?	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	N/A	No	No	Yes	N/A	N/A	N/A	N/A	No	No	No	Yes	Yes	Yes	Yes	N/A	Yes	Yes
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	N/A	Yes	N/A	No	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	No	Yes	No	N/A	Yes	Yes

B.2. Finland-Norway

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers																			

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A	Yes	N/A	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	In your country, is there a system of “cooperative compliance”/ “enhanced relationship” which applies to some taxpayers only?	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes	Yes	Yes
6	If yes, are there rules or	No	N/A	N/A	No	N/A	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	N/A	N/A	No	No	N/A

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/ non-discriminatory/non-arbitrary basis?																		
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
2. The issue of a tax assessment																			
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9	If yes, can the taxpayer request a	N/A	No	Yes	No	N/A	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	meeting with the tax officer?																		
10	If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?	No	Yes	No	No	No	Yes	Yes	No	No	No	No	No	No	No	No	No	No	Yes
3. Confidentiality																			
11	Is information held by your tax authority automatically encrypted?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes	Yes	Yes	No	Yes	No
13	If yes, must the tax official identify	No	Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	N/A	N/A	Yes	Yes	Yes	No	Yes	N/A

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	himself/herself before accessing information held about a specific taxpayer?																		
14	Is access to information held about a taxpayer audited internally to check if there has been any unauthorized access to that information?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	Yes	Yes	No	Yes	No	Yes	Yes
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	No	Yes	No	Yes	No	No	No	No	No	No	No	Yes	No	No	No	Yes	Yes	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	No	Yes	No	No	No	Yes
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	Yes	No	No	No	No	Yes	No	No	Yes	No	No	No	Yes	Yes	Yes	No	No	No

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. *habeas data* or freedom of information)?	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes	Yes	No	Yes	No
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisers?	No	Yes	No	Yes	No	No	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	N/A	Yes	No	No	N/A	N/A	No	N/A	No	No	N/A	No	No	N/A	Yes	Yes	No	No
4. Normal audits																			
21	Does the principle *ne bis in idem* apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same	No	No	No	Yes	No	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	No	No	No

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	taxable period)?																		
22	If yes, does this mean only one audit per tax per year?	N/A	N/A	N/A	Yes	N/A	N/A	N/A	No	N/A	N/A	Yes	No	N/A	Yes	Yes	N/A	N/A	N/A
23	Does the principle *audi alteram partem* apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalized)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	No	No	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	No	No	No	No	Yes	No
25	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	No	No	No	Yes	Yes	No	No	No	Yes	No	No	No	No	Yes	Yes	No	No	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
26	If yes, what is the normal limit in months?	No limit	No limit	No limit	7-9	19-21	No limit	No limit	No limit	10-12	No limit	No limit	No limit	No limit	10-12	10-12	No limit	No limit	>24
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	No	No	No	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No
5. More intensive audits																			
31	Is the principle *nemo tenetur* applied in tax investigations (i.e. the	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	principle against self-incrimination)?																		
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	No	No	N/A	N/A	N/A	N/A	N/A	No	Yes	Yes	N/A	N/A	N/A	N/A	No	Yes	N/A	No
33	If yes to *nemo tenetur*, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	No	Yes	N/A	N/A	N/A	No	N/A	N/A	Yes	No	N/A	N/A	N/A	N/A	No	No	N/A	Yes
34	Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate	No	Yes	No	No	Yes	No	No	No	Yes	No	No	Yes	No	No	No	Yes	Yes	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	is recognized?																		
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	N/A	Yes	N/A	N/A	No	N/A	N/A	N/A	Yes	N/A	N/A	Yes	N/A	N/A	No	Yes	No	Yes
36	Is authorization by a court always needed before the tax authority may enter and search premises?	Yes	Yes	Yes	No	No	Yes	No	Yes	No	Yes	Yes	No	No	No	No	No	No	Yes
37	May the tax authority enter and search the dwelling places of individuals?	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No	Yes	No
38	Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
39	Is there a procedure in place to ensure that legally privileged	No	No	No	No	No	Yes	Yes	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	material is not taken in the course of a search?																		
6. Reviews and appeals																			
40	Is there a procedure for an internal review of an assessment/ decision before the taxpayer appeals to the judiciary?	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	Yes	Yes	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No
43	Is it necessary for the taxpayer to bring its case first before an administrative court to quash the assessment/ decision before the case can proceed to a judicial hearing?	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	Yes	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	22-24	No limit	No limit	No limit	No limit	10-12	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	No	Yes	No	No	No	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes
47	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e-filing)?	No	Yes	No	Yes	No	No	Yes	No	No	No	Yes	No	No	No	Yes	No	No	No
48	Is the principle *audi alteram partem* (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
49	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. *solve et repete*)?	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No	No	Yes	No	Yes
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	Yes	Yes	N/A	N/A	Yes	No	Yes	N/A	N/A	N/A	N/A	Yes	Yes	N/A	N/A	Yes	N/A	Yes
51	Does the loser have to pay the costs of a tax appeal?	No	Yes	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	Yes	No	Yes
52	If yes, are there situations recognized where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	N/A	Yes	Yes	N/A	N/A	No	Yes	N/A	N/A	N/A	Yes	Yes	Yes	N/A	N/A	No	N/A	Yes
53	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public)	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	No	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	to preserve secrecy/confidentiality?																		
54	Are judgments of tax tribunals published?	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	N/A	Yes	No	N/A	No	Yes	Yes	Yes	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7. Criminal and administrative sanctions																			
56	Does the principle *ne bis in idem* apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	C	No	A, B, C	B, C	No	B	B, C	No	B, C	A, C	B	B, C	No	B	B	B, C	C	B, C
57	If *ne bis in idem* is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a	No	N/A	Yes	Yes	N/A	Yes	No	N/A	No	No	Yes	No	N/A	No	N/A	Yes	Yes	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	tax court and a criminal court)?																		
58	If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
8. Enforcement of taxes																			
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	Yes	No	No	Yes	No	No	No	No	No	Yes	No	No	No	No	No	Yes
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9. Cross-border situations																			
61	Does the taxpayer have the right to be informed before information relating to it is	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	exchanged in response to a specific request?																		
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information?	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No
63	If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?	No	N/A	N/A	Yes	N/A	N/A	N/A	No	No	N/A	No	Yes	N/A	N/A	No	Yes	N/A	No
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to it with another	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	country?																		
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to it with another country?	No	Yes	No	No	No	Yes	No	No	Yes	No	Yes	No	No	No	No	No	Yes	No
66	Does the taxpayer have the right to see any information received from another country that relates to it?	Yes	Yes	No	No	Yes	Yes	No	No	No	No	Yes	No	No	No	No	Yes	No	Yes
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	No	No	No	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	No	No
68	Does the taxpayer have the right to see the communications exchanged in the context of the mutual agreement procedure?	No	No	No	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No	No
10. Legislation																			
69	Is there a prohibition on retrospective tax	No	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	legislation in your country?																		
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	No	Yes	N/A	N/A	No	N/A	N/A	N/A	No	N/A	N/A	Yes	Yes	N/A	N/A	Yes	Yes	N/A
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	Yes	Yes	No	No	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes
72	Is tax legislation subject to constitutional review which can strike down unconstitutional laws?	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
11. Revenue practice and guidance																			
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	Does your country have a generalized system of advance	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	rulings available to taxpayers?																		
75	If yes, is it legally binding?	Yes	Yes	Yes	N/A	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes	Yes	Yes	Yes
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	N/A	N/A	Yes	No	Yes
12. Institutional framework for protecting taxpayers' rights																			
78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes
79	If yes, are its provisions legally effective?	N/A	N/A	Yes	Yes	No	No	Yes	N/A	N/A	No	N/A	N/A	No	Yes	Yes	N/A	No	Yes
80	Is there a (tax) ombudsman /taxpayers' advocate/equivalent	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Finland	Germany	Guatemala	Honduras	India	Ireland	Italy	Japan	Kazakhstan	Kenya	Lithuania	Luxembourg	Mauritius	Mexico (1)	Mexico (2)	Netherlands	New Zealand	Norway
	position in your country?																		
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	No	N/A	No	Yes	N/A	Yes	Yes	No	Yes	N/A	N/A	Yes	Yes	Yes	Yes	No	No	Yes
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	Yes	N/A	N/A	Yes	N/A	Yes	No	No	Yes	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes

B.3. Peru (1)-Venezuela (2)

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers																		
1	Do taxpayers have the right to see the information held about them by the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	If yes, can they request the correction of errors in the information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
3	Is it possible in your country for taxpayers to communicate electronically with the tax authority?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	If yes, are there systems in place to prevent unauthorized access to the channel of communication?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	In your country, is there a system of “cooperative compliance”/“ enhanced relationship” which applies to some taxpayers only?	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes
6	If yes, are there rules or procedures in place to ensure this	N/A	N/A	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	No	N/A	N/A	Yes	N/A	Yes	Yes

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	system is available to all eligible taxpayers on a non-preferential/non-discriminatory /non-arbitrary basis?																	
7	Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations?	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No
2. The issue of a tax assessment																		
8	Does a dialogue take place in your country between the taxpayer and the tax authority before the issuing of an assessment in order to reach an agreed assessment?	Yes	Yes	No	No	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9	If yes, can the taxpayer request a meeting with the tax officer?	Yes	Yes	N/A	N/A	No	N/A	No	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
10	If a systematic error in the	No	No	No	No	No	No	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them?																	
3. Confidentiality																		
11	Is information held by your tax authority automatically encrypted?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	No	No	No
12	Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs?	Yes	Yes	No	No	No	Yes	No	No	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes
13	If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer?	Yes	Yes	N/A	N/A	N/A	Yes	N/A	N/A	Yes	N/A	No	Yes	Yes	Yes	N/A	No	No
14	Is access to information	Yes	Yes	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	held about a taxpayer audited internally to check if there has been any unauthorized access to that information?																	
15	Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorized access to taxpayers' data?	No	No	No	No	No	No	No	No	No	Yes	No	Yes	No	Yes	No	No	No
16	Is information about the tax liability of specific taxpayers publicly available in your country?	Yes	Yes	No	No	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	No	No	No
17	Is "naming and shaming" non-compliant taxpayers practised in your country?	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No
18	Is there a system in your country by which the courts may authorize the public disclosure of information held by the tax authority about specific taxpayers (e.g. *habeas data* or freedom of information)?	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No	Yes	No	Yes	Yes

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
19	Is there a system of protection of legally privileged communications between the taxpayer and its advisers?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No
20	If yes, does this extend to advisers other than those who are legally qualified (e.g. accountants or tax advisers)?	No	No	No	No	No	Yes	No	No	Yes	No	N/A	N/A	No	Yes	Yes	Yes	N/A
4. Normal audits																		
21	Does the principle *ne bis in idem* apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)?	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes	Yes
22	If yes, does this mean only one audit per tax per year?	No	No	N/A	N/A	Yes	Yes	No	N/A	N/A	N/A	No	N/A	N/A	Yes	No	Yes	Yes
23	Does the principle *audi alteram partem* apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	to object and be heard before the decision is finalized)?																	
24	Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)?	No	No	No	No	Yes	Yes	No	Yes	No	No	No	No	No	No	Yes	No	No
25	Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)?	Yes	Yes	No	No	Yes	No	Yes	No	Yes	No	No	No	Yes	Yes	No	Yes	Yes
26	If yes, what is the normal limit in months?	10-12	10-12	No limit	No limit	4-6	No limit	4-6	No limit	16-18	No limit	No limit	No limit	10-12	>24	No limit	1-3	1-3
27	Does the taxpayer have the right to be represented by a person of its choice in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	May the opinion of independent experts be used in the audit process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
29	Does the taxpayer have the right to receive a full	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	report on the conclusions of the audit at the end of the process?																	
30	Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
5. More intensive audits																		
31	Is the principle *nemo tenetur* applied in tax investigations (i.e. the principle against self-incrimination)?	No	No	Yes	Yes	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes	No	No
32	If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure?	N/A	N/A	Yes	No	Yes	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A	No	No	N/A	N/A
33	If yes to *nemo tenetur*, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority?	N/A	N/A	No	No	No	N/A	No	No	N/A	N/A	N/A	N/A	N/A	No	Yes	N/A	N/A
34	Is there a procedure	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognized?																	
35	If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination?	N/A	N/A	Yes	Yes	N/A	Yes	Yes	No	Yes	Yes	Yes	N/A	N/A	Yes	No	No	N/A
36	Is authorization by a court always needed before the tax authority may enter and search premises?	No	No	No	No	No	No	Yes	Yes	No	Yes	No	Yes	Yes	No	No	No	No
37	May the tax authority enter and search the dwelling places of individuals?	No	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
38	Is a court order required before the tax authority can use	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	interception of communications (e.g. telephone tapping or access to electronic communications)?																	
39	Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search?	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	No
6. Reviews and appeals																		
40	Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
41	Does the taxpayer need permission to appeal to the first instance tribunal?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
42	Does the taxpayer need permission to appeal to the second or higher instance tribunals?	No	No	No	No	No	No	No	No	No	Yes	No	Yes	No	No	No	No	No
43	Is it necessary for the taxpayer to bring its case first before an administrative	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
	court to quash the assessment/decision before the case can proceed to a judicial hearing?																	
44	Are there time limits applicable for a tax case to complete the judicial appeal process?	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	No	No
45	If yes, what is the normal time it takes for a tax case to be concluded on appeal?	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	No limit	7-9	No limit	No limit	No limit	No limit	22-24
46	Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary?	No	No	Yes	Yes	No	No	No	Yes	No	No	No	Yes	No	Yes	No	Yes	Yes
47	Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e-filing)?	No	No	Yes	Yes	No	No	No	Yes	No	No	No	No	Yes	Yes	No	No	No
48	Is the principle *audi alteram partem* (i.e. each party has a right to a hearing) applied in all tax appeals?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes

#	Question	Peru (1)	Peru (2)	Poland (1)	Poland (2)	Portugal	Serbia	Slovenia	South Africa	Spain	Sweden	Switzerland	Chinese Taipei	Türkiye	United States	Uruguay	Venezuela (1)	Venezuela (2)
49	Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. *solve et repete*)?	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No	No	No	No
50	If yes, are there exceptions recognized where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)?	N/A	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A
51	Does the loser have to pay the costs of a tax appeal?	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No	No	Yes	Yes
52	If yes, are there situations recognized where the loser does not need to pay the costs (e.g. because of the conduct of the other party)?	N/A	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	N/A	N/A	Yes	No	N/A	N/A	No	No
53	If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	Yes	Yes	No	No

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54	Are judgments of tax tribunals published?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
55	If yes, can the taxpayer preserve its anonymity in the judgment?	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	No	Yes	Yes	N/A	No	No	No	No
7. Criminal and administrative sanctions																		
56	Does the principle *ne bis in idem* apply in your country to prevent (A) the imposition of a tax penalty and the tax liability; (B) the imposition of more than one tax penalty for the same conduct; and/or (C) the imposition of a tax penalty and a criminal liability?	B	B	B, C	B, C	B	B, C	C	No	A, B	C	B	C	No	No	No	B	B
57	If *ne bis in idem* is recognized, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)?	Yes	Yes	No	No	No	No	No	N/A	Yes	Yes	No	Yes	N/A	N/A	N/A	No	No
58	If the taxpayer makes a	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No

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	voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty?																	
8. Enforcement of taxes																		
59	Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets?	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No
60	Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9. Cross-border situations																		
61	Does the taxpayer have the right to be informed before information relating to it is exchanged in response to a specific request?	No	No	No	No	No	No	Yes	No	No	No	Yes	No	No	No	Yes	Yes	Yes
62	Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific	No	No	No	No	No	No	Yes	No	No	No	Yes	No	No	Yes	No	Yes	Yes

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	request for exchange of information?																	
63	If no to either of the previous two questions, did your country previously recognize the right of taxpayers to be informed, and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information?	No	N/A	N/A	N/A	No	N/A	N/A	N/A	N/A	No	No	N/A	N/A	No	Yes	N/A	N/A
64	Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to it with another country?	No	No	No	No	No	No	No	No	No	No	Yes	No	No	No	Yes	Yes	Yes
65	Does the taxpayer have the right to challenge, before the judiciary, the exchange of information relating to it with another country?	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	No	Yes	Yes
66	Does the taxpayer have the right to see any information received from another country that	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes

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	relates to it?																	
67	Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated?	No	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	No	Yes	No	No	No	No
68	Does the taxpayer have the right to see the communications exchanged in the context of the mutual agreement procedure?	No	No	No	No	No	No	Yes	No	No	Yes	No	No	No	No	No	Yes	Yes
10. Legislation																		
69	Is there a prohibition on retrospective tax legislation in your country?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes	Yes
70	If no, are there restrictions on the adoption of retrospective tax legislation in your country?	N/A	N/A	N/A	N/A	Yes	N/A	N/A	No	Yes	N/A	N/A	No	No	No	N/A	N/A	N/A
71	Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation?	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes
72	Is tax legislation subject to constitutional review which can strike down	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes

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	unconstitutional laws?																	
11. Revenue practice and guidance																		
73	Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	Does your country have a generalized system of advance rulings available to taxpayers?	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
75	If yes, is it legally binding?	N/A	N/A	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No
76	If a binding ruling is refused, does the taxpayer have a right to appeal?	No	No	Yes	Yes	Yes	No	Yes	No	No	No	No	No	No	No	Yes	No	Yes
77	If your country publishes guidance as to how it applies your tax law, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)?	N/A	N/A	Yes	Yes	Yes	No	Yes	N/A	N/A	No	No	Yes	N/A	No	Yes	Yes	Yes
12. Institutional framework for protecting taxpayers' rights																		

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78	Is there a taxpayers' charter or taxpayers' bill of rights in your country?	Yes	Yes	No	No	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	Yes
79	If yes, are its provisions legally effective?	Yes	Yes	N/A	N/A	N/A	No	N/A	No	Yes	N/A	No	Yes	No	Yes	N/A	N/A	Yes
80	Is there a (tax) ombudsman/taxpayers' advocate/equivalent position in your country?	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No
81	If yes, can the ombudsman intervene in an ongoing dispute between the taxpayer and the tax authority (before it goes to court)?	No	No	Yes	Yes	N/A	N/A	N/A	Yes	Yes	N/A	N/A	Yes	Yes	Yes	N/A	N/A	N/A
82	If yes to a (tax) ombudsman, is he/she independent from the tax authority?	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No	Yes	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A