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Strengthening Tax Governance Through Legal Design

Lydia Sofrona, Christophe Waerzeggers and Brendan Crowley

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Legal Department

Strengthening Tax Governance Through Legal Design

Prepared by Lydia Sofrona, Christophe Waerzeggers and Brendan Crowley

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ABSTRACT: Well-functioning tax systems anchor their governance arrangements in law. This paper develops an analytical framework from which the core legal principles for sound tax governance can be derived to inform the design of countries' legal frameworks for administration and tax procedure. It then applies this analytical framework to derive key legal features that should be embedded in laws for tax administration—including additional considerations for semi-autonomous revenue authorities— and tax procedure, to ensure a balance between tax administration powers and adequate taxpayer protections.

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WORKING PAPERS

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Introduction

Deriving from the Greek '*kubernan*' ('to steer'),[1] the term 'governance' has various meanings depending on the context in which it is used. In the context of public administration, 'governance' is generally used to refer to the combination of institutions, rules, mechanisms, and established practices through which a government authority exercises its powers and functions, discharges its responsibilities, and manages its public resources. In turn, 'good governance' is a more qualitative concept, as it implies that the quality of governance impacts its effectiveness.[2] Economic aspects of good governance include administrative efficiency and policy effectiveness. They also include notions of fairness and equity, since serious shortcomings in the evenhandedness of the implementation of a governance regime—as distinct from the social or political preferences that it embodies—can undermine trust and compliance with institutions, laws, and policies to the detriment of economic goals over the medium to long term.[3] Good public governance also has an important fiscal component as it relates to how public monies are raised, managed, and spent.

In a system of government that is based on the rule of law, governance arrangements need to be supported by well-designed and comprehensive legal frameworks. This is particularly important in the context of designing and implementing reforms, as governance arrangements are often key to ensuring that reforms appropriately interact with existing rules, structures and institutions. In environments where rule of law is weak and corruption is systemic and pervasive, adopting strong legal frameworks can help as part of broader efforts to mitigate those challenges. This paper focuses primarily on country contexts where the rule of law is relatively robust.

Levying and enforcing taxes are amongst the core manifestations of sovereignty and exercise of public authority. To ensure that the powers associated with that authority are exercised in a transparent and evenhanded way, appropriate governance arrangements must be in place to ensure that taxpayers' rights are respected, voluntary compliance is promoted, and appropriate taxpayer safeguards are in place when enforced compliance action needs to be undertaken.

Conversely, governance vulnerabilities in the tax system weaken a government's ability to collect revenues and create opportunities for corruption. Poor revenue collection in turn creates or exacerbates fiscal imbalances, deficit and debt accumulation and undermines public services.[4] Poor governance of the tax system also has more implicit and perhaps more insidious consequences, linked to behavioral aspects: it can give rise to an engrained culture of 'creative compliance' and low tax morale,[5] with corrupt practices further eroding general trust in government. To reduce opportunities for corruption, institutions need to be upgraded continuously, to keep pace with new challenges as technologies and opportunities for wrongdoing evolve, and to ensure integrity of processes, especially in higher-risk areas (for example, procurement, tax administration, public enterprises), and to promote effective internal

[1] Oxford Advanced Learners Dictionary (10th edition).

[2] According to UN ESCAP, good governance has eight major characteristics: It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. See UN ESCAP, 2009.

[3] See IMF, 2017, where a review of the various definitions introduced by International Organizations for the terms "governance" and "good governance" is presented.

[4] See IMF, 2018.

[5] Whereas strong governance, ensuring that resources are used transparently, efficiently, and effectively, would support tax morale. See IMF, 2020a.

controls.[6] A key component to encourage tax compliance is to foster taxpayer's trust in the tax system. For this to happen, the tax administration[7] needs to be—and must be perceived to be—a rules-based, transparent, fair and accountable institution.

Where governance vulnerabilities in the tax system exist, they can often be traced back to weaknesses in the legal framework underpinning the tax system, including institutional and procedural aspects.[8] Weak tax law design in these areas can facilitate corruption by promoting a state of 'corrupt legality': legal gaps, unnecessary complexity and ambiguity present ample opportunities to tax officials for 'negotiated interpretations' and 'creative enforcement' of tax laws against taxpayers who in turn comply 'creatively' with their tax obligations.

Strengthening the legal framework is therefore necessary—although not in itself sufficient—to address governance vulnerabilities in the tax system. The chances of success are higher where corruption is not systemic[9] and when countries improve several, mutually supporting institutions. For example, reforms to tax administration will have greater payoff if tax laws are simplified and the scope for discretion by tax officials is reduced.[10] This paper presents an analytical framework on the key legal design features necessary for good governance of the tax system, with a particular focus on necessary legal arrangements to support the operation of the tax administration and how it interacts with taxpayers. It does not deal with broader tax policy, institutional and operational issues, which can also have important bearings on the governance of the tax system.

This paper is structured around the following sections: Section I outlines some broader tax governance considerations and presents a set of core governance principles in tax administration and tax procedure. Sections II and III apply these core principles to derive key legal principles that strengthen governance arrangements for tax administration (section II) and tax procedure (section III). Finally, section VI offers some conclusions.

I. Tax Governance: Concept and Core Principles

A. Tax Governance: Concept and General Principles

Tax governance can be defined as a coherent set of rules and institutions that comprehensively govern the tax system. It includes but goes beyond just the institutional governance of the tax administration, and cuts across other major aspects of the tax system: tax policy and legal design, the lawmaking process, tax

[6] IMF 2019a.

[7] The term "tax administration" is used generically to refer to the administrative function tasked within the executive branch of national government with the administration and collection of (most) taxes and duties, as well as any other public revenue collected on behalf of the state or its subdivisions. Unless otherwise specified, it also includes Semi-Autonomous Revenue Authorities (SARAs) further discussed below.

[8] While the focus of this paper is on the latter aspects of the tax law framework, systemic vulnerabilities can arise elsewhere—such as from weaknesses in substantive tax laws giving rise to interpretation difficulties and avoidance opportunities. While acknowledged here, such other areas are not the main focus of this paper.

[9] The corruption vulnerabilities of a jurisdiction need to be considered from the beginning to determine which reforms are consistent with the operative political incentives and organizational competencies. See IMF, 2023b.

[10] IMF 2019a.

procedure, oversight structures, the judiciary, the international tax framework,[11] and even extends to taxpayers.[12] All these aspects must effectively interact on the basis of a comprehensive and coherent legal framework that ensures the respect of fundamental legal principles, most notably, legal certainty, equity and fairness, and proportionality. This may imply, for instance, that the judiciary is empowered to address governance shortcomings in the design or administration of tax laws based on general principles of administrative or constitutional law to ensure legal certainty and adherence to the rule of law.[13]

Well-functioning tax systems anchor their governance arrangements in law. Such systems are built on key principles, promoting the rule of law[14] −which has historically been conceived as a cornerstone of legitimate government− through the design of proper governance structures.[15] A carefully designed legal framework can promote improvements in tax policy and administration, which strengthen state accountability and responsiveness to its citizens. In turn, better political governance is achieved, with the aim to achieve efficient and effective revenue collection that will support the implementation of government policies.

Conceptually, tax law frameworks can be divided in three types of rules: substantive tax rules (*what is being taxed*), procedural (sometimes referred to as 'formal') tax rules (*how are taxes collected*), and institutional rules and arrangements (*who administers taxes*). While the remainder of this paper focuses on the latter two,[16] certain overarching legal design principles and considerations apply across all three —interrelated— types of rules to strengthen governance arrangements:

- *Reducing uncertainty*, through: (i) identifying obsolete provisions and arrangements; (ii) untangling dysfunctional tax provisions; (iii) introducing comprehensive, clear and simple rules in substantive and procedural tax legislation; and (iv) reducing bureaucracy through clear and transparent procedures.
- *Aiming for structure*, through: (i) consolidating fragmented tax provisions under tax codes; (ii) legislating for changes to tax law on a periodic basis using specific tax bills rather than making tax changes via other non-tax specific legislation; and (iii) developing an impact assessment framework, including implementation considerations, revenue impact and ex post evaluation.

[11] See European Commission, 2020, where international tax good governance is seen to encompass tax transparency, fair tax competition, the absence of harmful tax measures and the application of internationally agreed standards. On the expansion of the good governance concept to (international) taxation see González de Frutos, U., 2019. The role of soft law instruments such as codes of conduct should also be acknowledged.

[12] The Australian Tax Office (ATO) has compiled a set of seven principles of effective tax governance for corporate taxpayers: (1) Accountable management and oversight; (2) Recognize tax issues and risks; (3) Seek advice; (4) Integrity in reporting; (5) Professional and productive working relationship; (6) Timely lodgments and payments; and (7) Ethical and responsible behavior. https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/privately-owned-and-wealthy-groups/tax-governance/tax-governance-guide-for-privately-owned-groups/corporate-governance-and-tax-governance/seven-principles-of-effective-tax-governance#ato-Coreelementsofeffectivetaxgovernance

[13] See for example, Supreme Court of Pakistan decisions CP No.398-L, CP No.584-L and CP No.674-L of 2018, according to which the further delegation of powers and functions by the Commissioner of Inland Revenue to his subordinate Officers of Inland Revenue (OIRs) under the Sales Tax Act 1990 was unlawful and void; also Greek Supreme Administrative Court Decision 681/2020 which ruled that the tax authorities must grant the taxpayer access to the electronic file held about him, including any information about unauthorized access by third persons.

[14] Such as adherence and accountability to the law, equality before the law, fairness in the application of the law, separation of powers, legal certainty, avoidance of arbitrariness, procedural and legal transparency. See https://www.un.org/ruleoflaw/what-is-the-rule-of-law/, Pistone, P., Roeleveld, J., Hattingh, J., Pinto Nogueira, J. and West, C., 2019, at ch. 2.3.

[15] For a detailed analysis of the origins and correlation between tax and good governance (and further references) see European Parliament, 2015.

[16] While not the focus of this paper, substantive tax rules such as the denial of deduction for bribery payments, and the design of tax preferences or incentives, are also important from a tax governance perspective.

- *Ensuring transparent and effective implementation of tax rules and tax reforms*, through: (i) access to justice and enforcement of relevant court decisions; (ii) sequenced application of reforms, based on an assessment of the administrative capacity to implement them.
- *Getting 'buy in'*: Ensuring a fair and inclusive discussion on proposed tax policies and measures, engaging all key stakeholders, through a formal and inclusive public consultation process.
- *Administering taxes 'well'*, by: (i) strengthening tax administration institutional arrangements that provide for sufficient autonomy balanced with transparency and accountability mechanisms; (ii) ensuring efficient and effective interaction with the tax policy function; and utilizing secondary instruments (e.g., regulations) or administrative actions (e.g., guidance) to enhance flexibility and provide for clear implementation arrangements.
- *Ensuring taxpayer fairness*, through: (i) transparent and well governed implementation of tax laws including in an international context; (ii) enhancing effectiveness of dispute prevention and dispute resolution mechanisms; (iii) establishing strong confidentiality and data governance to ensure data reliability and integrity; (iv) minimizing discretion in the application of tax laws; and (v) addressing equality and equity concerns in taxation (for example, gender discriminatory policies).

B. Governance in Tax Administration and Tax Procedure: Core Principles

There is no "one size fits all" institutional model for tax administration. This is because of country specificities, such as broader policy considerations, socioeconomic circumstances, degree of administrative (in)efficiency, and disparities across national legal systems. Nevertheless, various attempts have been made to identify good practices or key attributes for a sound tax administration[17] or its institutional design,[18] while less so with regard to tax procedure[19] or the underpinning legal frameworks.

This paper attempts to compile and analyze a set of core legal principles for sound governance arrangements in tax administration and tax procedure, to inform the design of countries' tax law frameworks. These guiding principles for designing the structure and operations of the tax administration—regardless of its specific institutional setup—are reflected in the tax procedure legal framework. They can broadly be grouped under the following categories:

(a) Transparency and accountability;

(b) Sound decision-making structures;

(c) Fairness; and

(d) Effectiveness and efficiency.

While the first two principles mainly inform the design of tax administration legal frameworks and the latter two as mainly applying to tax procedures, synergies exist between them. For example, fairness, effectiveness and efficiency are 'communicated' to the taxpayer through procedural safeguards but also inform internal

[17] Some landmark technical standards have been developed for tax administration, namely the TADAT framework. See also CIAT, 1996, USAID, 2004, where a set of best practices in the establishment of SARAs is proposed, European Commission, 2007.

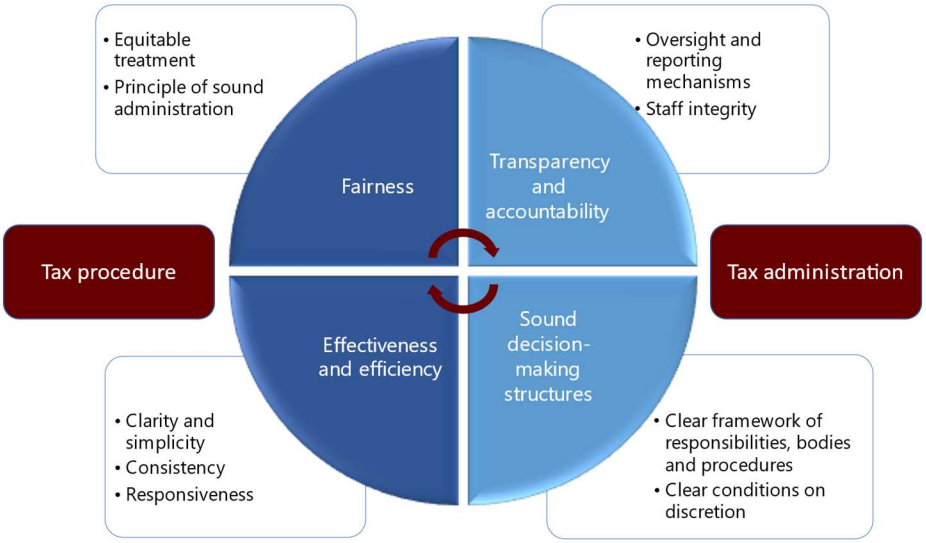
[18] See IMF, 2010a, 2010b and 2010d, World Bank, 2019, Asian Development Bank, 2020, Box 3.1, which attempts to codify and present a set of good practices on institutional setups for revenue administration, based on IOs' existing literature.

[19] See Pistone, P., 2019, at sec. 1.2. The author argues that the tax procedural principles have a universal vocation, which the author intends to address across their main sources in search of a common dimension, or at least common standards.

arrangements in the tax administration, such as the staff integrity framework, and are often reflected in tax administrations' mission statements (see Sec. II.B, below). On the other hand, while transparency and accountability, and sound decision-making structures are key considerations in designing tax administration frameworks, they also significantly impact tax procedures, for example in the way the tax administration applies discretionary powers awarded to it.

Figure 1 presents the above set of core governance principles in tax administration and tax procedure, further discussed in sections II and III respectively.

Figure 1. Core Governance Principles in Tax Administration and Tax Procedure



II. Governance Arrangements in Tax Administration

This section discusses key institutional design considerations for enhancing governance in tax administrations. These are derived from the above core governance principles (i.e., transparency and accountability and sound decision-making structures), and are complemented by a series of particular design considerations for semi-autonomous revenue authorities (SARAs), which raise specific issues.

Tax administrations are complex organizations that play a key role in supporting government fiscal policies.[20] They have a wide array of functions and powers, with critical macroeconomic and developmental roles.[21] Tax administrations are also often large organizations with unique features. They closely interact with other fiscal and state institutions and the efficient and effective execution of their mandate is critical to

[20] IMF, 2019a, Annex 2.3.

[21] In the sense that the tax receipts they manage are critical to stability and growth. See IMF, 2015a, OECD, 2014b. On broader considerations on how promoting good governance is one of the basic elements that contributes to economic growth see IMF, 1997.

countries' stability and growth. They require large and specialized workforces often supported by extensive office networks through which they interact with taxpayers and a complex network of stakeholders. They typically play a role in enforcing a wide range of diverse legislation in relation to which they may have intrusive legal powers.[22] Their operation relies on a multitude of core business processes, including and increasingly digital systems capable of holding and analyzing vast amounts of confidential or sensitive information. Their performance is increasingly monitored against performance targets, including in relation to revenue collection. Through their technical expertise tax administrations typically also have a policy advisory role. Their public facing role requires them to be directly accountable not only to the government and/or parliament but also to taxpayers.

Achieving good governance in tax administration has proven challenging in many countries. Tax administrations often face governance vulnerabilities, regardless of their institutional model: their organizational structure has often remained too complex and non-transparent, with high compliance and administration costs and wide discretionary powers. These challenges, which may also often be caused by corrupt interests, may lead to—real or perceived—corrupt behavior and poor service delivery standards, in turn jeopardizing taxpayer compliance and undermining overall public trust and confidence in government. Absent a robust or effective accountability framework administrative autonomy may be misunderstood or misused.

The tax administration legal framework needs to reflect certain core governance features to help address these challenges. Tax administrations' institutional arrangements differ widely across countries, depending on their level of institutional autonomy (see below).[23] Such arrangements may be found in a general Tax Administration and Procedures Act (TAPA), usually in a dedicated tax administration section. In other cases, most commonly when a (semi-autonomous) revenue authority exists, a stand-alone law is adopted such as a Tax Administration Act (TAA). Conversely, for tax administrations operating as a (or multiple) ministerial department(s), the relevant legal framework may be based on secondary law or other subsidiary instruments (for instance, ministerial decree or regulation on Ministry of Finance organization). Regardless of the institutional arrangements—and of the nature of the legal instruments on which these are based—the following core governance features need to have a solid basis in law to ensure proper governance in tax administration.

A. Core Governance Principles for Tax Administration

Accountability and transparency

The relevant legal framework should provide for robust accountability and transparency arrangements for tax administration, in line with the broader legal, political and socioeconomic country context.[24,25]

Accountability

[22] See for example art. 7 of Egyptian Unified Tax Procedures Law (Law 206/2020): "Persons in charge of managing any funds, and companies, authorities, establishments, and commercial and non-commercial professions, and any other taxpayers or taxable persons, shall be required to provide the Authority's employees *having the powers of law enforcement officers*, at every request, with the books they are obliged to keep…" under the Trade Law or any other laws, along with other relevant instruments, books and documents, and revenue and expenditure documents, be they in a paper or electronic format, in order to ascertain that all provisions established by the Taxation Law are complied with, either for them or for other taxpayers or taxable persons."

[23] These arrangements often reflect a country's approaches to public administration as well as cultural norms affecting the shape and organization of government.

[24] A related issue is that addressing pervasive corruption and broader governance weaknesses, can help the effectiveness of good legal frameworks but full consideration of this is outside the scope of this paper.

[25] See IMF, 2019c, which sets out a Public Accountability Index, asking a number of questions concerning public accountability.

Accountability in tax administration is required both at the level of the organization (under the ultimate responsibility of the head of the organization) and of its staff. Key features of a comprehensive accountability framework include:

- Robust internal and external audit mechanisms, such as a separate internal audit function that reports directly and regularly to the Head,[26] and strong oversight provided by external authorities or bodies, such as the Auditor-General or Court of Auditors.
- Clear rules for oversight by, and accountability to, a relevant minister or executive authority (finance, treasury, or revenue), and/or parliament, including through periodical reporting (on revenue data or other performance metrics).
- Clear rules for the use of and control over financial resources, including transparency and reporting mechanisms.
- A clear framework for integrity of staff conduct, supported by systems and procedures, including effective criminal enforcement for fraud and corruption. Box 1 sets out the key legal design elements of a comprehensive staff integrity framework.

Box 1. Basic Design Elements of a Staff Integrity Framework

- Proper internal and external audit and reporting requirements.[27] These should be complemented by a sound delegation framework and operational governance arrangements, such as the application of the 'two pairs of eyes' principle.
- Merit-based recruitment and employment frameworks based on clearly defined competencies, competitively remunerated—including good work benefits—to reduce temptation for officials to accept bribes, complemented by mandatory ethics training and a code of conduct for tax officials.[28]
- Corporate governance principles applicable to staff and management organs, for example fit and proper assessments for the Head (and, where relevant, members of the Board) and establishment of ethics and social responsibility committees, in addition to internal audit committees.[29]
- Comprehensive staff disciplinary framework (including criminal liabilities) to address breaches of tax officials' duties, including breaches of confidentiality, abuse of powers and corrupt practices, consistently enforced including through criminal prosecution and punishment upon conviction, where relevant.
- Mandatory disclosure requirements to detect and address conflicts of interest situations.
- Appropriately calibrated, regularly updated and publicly accessible asset declarations for elected officials, or political appointees and senior staff, including for gifts.[30]

[26] See TADAT Indicator P9-26.

[27] See TADAT Performance Outcome Area (POA) 9.

[28] Depending on its level of autonomy a tax administration may not have (full) control over some or all of these elements (see below). For an example of a code of conduct, see the CIAT Model Code of Conduct, developed by members of the CIAT Working Group on the Promotion of Ethics in Tax Administration and presented in Buenos Aires, Argentina, at the 39th CIAT General Assembly, (April 18-21, 2005). The CIAT Model Code of Conduct is part of the CIAT Ethics Toolkit.

[29] OECD, 2015.

[30] See OECD, 2011.

- Whistleblower framework to enable staff to report wrongdoing in the workplace, with appropriate safeguards against reprisals.

Source: Authors' compilation

Transparency

Transparency arrangements should be provided for with respect to organizational matters and matters concerning individual taxpayers, particularly in the following areas:[31]

- Regular public reporting on the operations and finances of the tax administration, including assessments against performance objectives.
- Publication of (anonymized) private tax rulings,[32] in addition to their exchange with relevant competent authorities based on exchange of information (EOI) networks,[33] and publication of administrative appeal decisions (in anonymized form).
- When a system of individual tax waivers is in place, reduced discretion, transparent procedures for granting those waivers and regular publication of waivers granted (on an anonymized basis).

Sound Decision-Making Structures

Sound decision-making structures require a clear and transparent legal framework to underpin responsibilities and procedures. This includes clear rules for delegation of powers, complemented by appropriate internal checks and balances.[34] It also includes the functional segregation of duties and responsibilities (for example, the internal administrative review or objection function should be totally separate from the audit function to ensure independence of the review process) and an escalation system for more complex decisions.

A sound legal basis for the delegation of powers system is of particular importance. Depending on the context and legal tradition, the delegation of powers mechanism may be set out in primary legislation, based on a broad delegation power to the head of the tax administration who in turn is empowered to set out detailed arrangements in subsidiary legislation or administrative rules for sub-delegation to tax officials. In any case, a clear statutory basis is necessary. This issue becomes particularly relevant, for instance, in the context of audits and reassessments, which must be validly signed by officials with the proper authority.

Similarly important from a governance perspective are clear conditions and safeguards on the application of discretionary powers. While tax administrations have varying degrees of discretion in the application of tax laws—ultimately constrained by the rule of law—instances where the law explicitly provides for discretionary powers (for instance, the power to reduce or waive taxes or related amounts such as interest and penalties, or to award tax incentives) should generally be constrained to reduce corruption vulnerabilities and risks. While a minimum level of discretion in the application of administrative powers is unavoidable, appropriate legal and procedural safeguards should be in place, such as: clear rules and guidance on when and how discretion will be exercised;[35] internal systems to enable cross-checking of discretionary decisions, including through regular audits, and public reporting of

[31] Another area where greater transparency could be considered is transparency in collection seen in some Nordic countries. Such an approach however is not widely adopted and may pose privacy concerns.

[32] See TADAT Indicators P3-8 and P6-17; see also IMF, 2016b.

[33] Background information and a detailed consideration of the key concepts of exchange of information for tax purposes can be found in OECD (2021c).

[34] For an analysis of the decision-making framework for Central Banks see IMF, 2019d.]

[35] See above on transparency regarding waivers and rulings.

cases where discretionary power is exercised.[36] Figure 2 presents common areas where discretionary powers are explicitly provided in tax legislation or where discretion is exercised in the absence of a clear legal framework.

Figure 2. Common areas of discretionary powers in tax legislation

B. Legal Design Considerations

The legal design of the tax administration institutional framework is informed by a series of policy choices that determine the administration's core institutional and operational features.[37] These choices can be grouped along the following categories of issues:

Institutional Model

Various institutional alternatives for tax administration exist. The three main alternative models are tax administrations operating as a directorate of the responsible ministry, tax administrations as separate government department within a responsible ministry, traditionally the Ministry of Finance (MoF) or Treasury, and semi-autonomous revenue authorities (SARAs), established as a structure or body that is separate from any ministry or government department.

[36] For example, in Jamaica details of the waivers granted each month are published on the MoF website. https://mof.gov.jm/tax/

[37] See IMF, 2010d.

Within these three broad models, further variations exist, on which basis four broad institutional design variations have been identified:[38]

- A single directorate/department within the MoF;[39]
- Multiple directorates or units within the MoF;
- A unified semi-autonomous body, where tax administration and support functions are the responsibility of a Commissioner or Director General who reports to a government minister (typically the MoF); and
- A unified semi-autonomous body with a board, where tax administration and support functions are the responsibility of a Commissioner or Director General who reports to an oversight body/board of management that may include external members. The management board may either be decision-making or advisory.[40]

The choice of institutional model has important organizational consequences. Institutional autonomy enables the tax administration to manage its day-to-day operations free of political interference and other undue influence. A greater degree of institutional autonomy also offers a greater degree of flexibility in organization, management and resources, which in turn may improve effectiveness and efficiency of the tax administration.

Under the ministerial directorate model, the tax administration falls under the direct control of the MoF; working practices are aligned with public service standards; and centralized services are shared with other ministries and departments. Under the separate government department model, staff report to a single head of the tax administration who will have powers specified in law and maybe subject to a performance agreement with the MoF.

SARAs are generally established as operationally independent organizations, reducing opportunities for unwarranted political influence[41] and allowing—but not requiring—greater operational independence from standard civil service rules (in terms of legal form and status, funding, and human resources).[42] They may combine tax and customs administrations into a single organizational entity, or may be separate, in which case tax and customs administrations function separately from each other.

Regardless of their institutional model, tax administrations need a solid legal basis that is integrated in the country's broader fiscal and public law governance framework. This is of particular importance for SARAs, as all key organizational and operational aspects enabling them to fulfill their public sector role must have a basis in their foundational legal instrument. For example, whether they are awarded legal personality

[38] See OECD, 2024, IMF, 2019c, and IMF 2021b. The International Survey on Revenue Administration (ISORA), which is administered by the IMF Fiscal Affairs Department (FAD), analyses revenue administrations across a broad range of dimensions. The 2018 survey included 159 participating administrations, slightly less than half of which (74 of 159) self-identified as semi-autonomous organizations.

[39] Or its equivalent, commonly the Ministry for Treasury.

[40] There are some exceptions to these categories. For example, in Switzerland, responsibility for tax administration largely occurs at a sub-national level and the "cantons" undertake collection activity on behalf of the federal government; in Germany, the responsibility of collecting taxes is largely devolved to regional (i.e. Länder) administrations, while a relatively small central body exercises a high-level co-ordination role; in Greece, the Independent Authority for Public Revenue enjoys operational independence, administrative and financial autonomy and is only subject to parliamentary scrutiny.. See OECD, 2024, at p. 139. For detailed and updated information on the semi-autonomous revenue authority (RA) governance model for revenue administration see IMF, 2024a.

[41] However, perceptions of political and ministerial interference ranked rather low as a reason for establishing an RA, see *IMF Survey on Revenue Authorities,* in IMF, 2010b.

[42] See IMF, 2015d.

may determine their judicial standing and ability to own property. Section C below discusses additional design considerations for SARAs.

Mandate

The mandate of the tax administration is to collect the right amount of tax at the right time in accordance with the rule of law, using resources as efficiently as possible with the least possible burden to taxpayers—regardless of their institutional model. Depending on the range of taxes and duties collected by the tax administration, they may have a broader or more narrow mandate.[43] Over the past decades unified integrated revenue authorities, charged with administering both tax and customs laws and, in some cases, also social security contributions and other public revenue collected on behalf of the state and its subdivisions have become less of an exception.[44] In some countries, tax administrations are also responsible for conducting criminal tax investigations, including parallel investigations into tax offenses and money laundering.[45] The tax administration may also have a policy advisory role that is an integral part of the tax policy formulation process, which the relevant legal framework may not explicitly provide for or recognize.

The mandate of tax administrations is often not explicitly expressed in law—but can be implicitly derived from its functions and powers. Depending on the institutional model, the mandate may be reflected differently, and may not always be explicitly reflected in the legal framework. For tax administrations that are structures within the MoF, it may be identified as a simple clause in the organizational document (or even the website) of the MoF or appear as a dedicated article in the tax administration section of the tax procedure code. For SARAs, on the other hand, an explicit mandate provision can usually be found in their constituting act. However, even in the absence of an explicit reference, the mandate is implied in the functions and powers of the tax administration, which are in turn reflected in the legal framework that by nature of the rule of law needs to underpin their operations and tools at their disposal. Some aspects of the mandate may also be reflected in the objectives of tax administrations reflected in their mission and/or vision statements, setting out strategic goals, aspirations, expected benefits for society,[46] including references to core governance features discussed in this paper. These mission statements are usually not legal instruments (for example, they can be found in the annual report or in the tax administration's site). In any case, making the mandate explicit is a useful tool to guide accountability. Examples of mandates and mission statements are presented in Annex II.

Autonomy

To effectively perform their mandate, tax administrations need an adequate degree of autonomy.[47] The degree of autonomy provided to tax administrations varies across country contexts and also depends on wider

[43] A somewhat special case is that of jurisdictions that do not levy broad-based taxes but still had to introduce some form of tax administration to manage international tax cooperation obligations such as under the automatic exchange of financial account information standard (the AEOI Standard). See for example the Department for International Tax Cooperation in the Cayman Islands. https://www.ditc.ky/

[44] See World Bank, 2019, at p. 2. The responsibility for non-revenue services, such as securing borders and facilitating the flow of legitimate trade and travel, both typically customs responsibilities, has been identified as a key challenge for the integration of the tax and customs functions under a single organization, see World Bank, 2010.

[45] See Asian Development Bank, 2020, Table 3.4: Roles of Revenue Bodies in Providing Tax Policy Advice and Conducting Criminal Tax Investigations (2018), at p. 25, and IMF, 2023a.

[46] See Alink, M. and Van Kommer, V., 2015, at sec. 2.3.4.

[47] According to IMF, 2010d, "*Autonomy can mean many things, including independence or even self-government, but in the context of public sector administration it usually refers to …. the degree to which a government department or agency is able to operate*

(continued…)

political and socioeconomic circumstances.[48] While institutional autonomy *per se* is not the predominant feature for tax administrations —unlike for central banks, financial supervisory bodies or other regulatory agencies;[49] they need an adequate degree of functional, operational and financial autonomy regardless of their institutional model. The degree of autonomy across these dimensions also varies according to the wider fiscal and public law framework in which they operate. For example, flexibility in HR policies may be limited by constitutional and general administrative law constraints (for instance, public sector hiring procedures), and budget flexibility may be limited by the general public financial management framework. Some key aspects of adequate functional, operational and financial autonomy are discussed below.

Functional autonomy

Generally, tax officials must be empowered to carry out their duties with a high degree of independence against undue political and private interference. Key legal design considerations for ensuring adequate functional autonomy include: (i) a robust delegation of powers system; (ii) decision making on a person's tax affairs independent of political direction; (iii) robust information and enforcement powers, including the power to handle administrative appeals and complaints and to impose penalties and other sanctions according to the law;[50] (iv) personal autonomy arrangements, for example, a framework for the protection of staff from personal liability (except in the cases of willful default or gross negligence)[51]; and (v) the authority to provide tax law interpretations, both in the form of public and private rulings, of how tax laws will be interpreted, subject to review by judicial bodies.[52]

Operational autonomy

Operational autonomy ensures that the tax administration is unhindered in conducting everyday operations. It requires the necessary flexibility to design and implement operational policies, including internal organizational structures. In effect, it ensures that senior officials have the freedom to choose an appropriate internal structure and assign responsibilities to organizational units. In its more enhanced form, operational autonomy may result in true independence from standard public service policies. Key features of operational autonomy include: (a) the ability to administer its own in-house IT systems; (b) discretion to determine the internal organizational structure and set administration performance standards; (c) ability to formulate strategic and business plans; and (d) a degree of autonomy to HR policies (recruitment, career development and remuneration, including incentives).

Financial autonomy

Financial autonomy ensures that a tax administration has the necessary financial resources to carry out its operations. It also enables the tax administration to hire the best person for the job, to provide

independently from government, in terms of legal form and status, funding and budget, and financial, human resources and administrative practices."

[48] See Végh, G. and Gribnau, H., 2018, at sec. 3.1.

[49] Jenkins, G., 1994, refers to autonomous Central Banks as pivots for building autonomous revenue bodies in terms of human resources policies, budget resources, and lack of political interference.

[50] This is an area closely linked to tax procedure. For the design of interest and penalty regimes see IMF, 2019e. On tax administration's powers see Alink, M. and Van Kommer, V., 2015, at ch. 2.6.

[51] For analogy, protections are offered in the banking and corporate governance framework. See BIS, 2012, at sec. 2.9, where it is suggested that laws should provide protection to the supervisor and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. On a different note, OECD, 2015, refers to the duty of care which requires board members to act on a fully informed basis, in good faith, with due diligence and care (Part VI.A). Depending on the legal system, the concepts of willful default or gross negligence may be provided in the legislation (rather than good faith).

[52] See IMF, 2010d.

adequate and appropriate wages and other employment conditions to attract and retain qualified staff, and reduce the likelihood of tax officials engaging in corrupt behavior. Financial autonomy must be supported by a framework of adequate public financial management rules (for instance, provision of budget estimates, performance-based incentives, etc.). Key features of financial autonomy include sufficient flexibility to allocate resources within the budget, budget security (for instance, through a "safety net" on a yearly allocated budget), and operational flexibility in spending, which may be supported by its own financial services office (usually in the case of SARAs).[53]

Interaction with Other Legal Frameworks

The effectiveness of any particular tax administration institutional framework further depends on its close interaction with other relevant tax and non-tax legal frameworks.[54] To ensure effective interaction with the broader domestic legal framework, including non-tax legislation, other key areas of law need to be reviewed, indicatively:

- *Constitutional law:* for instance, to ensure consistency of the legal form and status of the tax administration within the broader public sector framework;
- *Tax procedures law:* to ensure that the tax administration has sufficient powers, supported by a clear and transparent framework for delegation of powers;
- *Public procurement law:* to ensure that the tax administration is subject to an appropriate framework for procurement of resources (for instance, IT infrastructure);
- *Fiscal law:* to ensure consistency of the tax administration's budget and fiscal oversight;
- *Civil service law:* to ensure consistency of the tax administration's human resources policies;
- *Privacy law:* to ensure that taxpayer information is appropriately safeguarded;
- *General administrative law:* to ensure that the operational independence of the tax administration is supported (for instance, power of sub-delegation).
- *Criminal law:* to support accountability of the tax administration and its leadership, and to prevent abuse of power and misuse of tax confidentiality.

Figure 3 summarizes the key considerations to ensure successful integration of the tax administration framework.

[53] Considerable autonomy in budget, financial administration, procurement, and asset management is typically awarded in SARAs. See IMF, 2006, Annex IV (Revenue Authorities−Design and Scope Considerations).

[54] Each of these frameworks may also include accountability aspects, for example the administrative law framework may comprise transparency and access to information provisions.

Figure 3. Tax Administration Legal Framework: Ensuring Functionality

C. Additional Considerations in Semi-Autonomous Revenue Authorities

An increasing number of jurisdictions have established SARAs to take over most tax administration functions from traditional line departments within the Ministry of Finance. The greater degree of autonomy that this model affords is believed to improve the level and efficiency of revenue collection in a jurisdiction.[55] While there is a wide spectrum of design choices for SARAs[56], they are commonly enabled to set their own operational policies to ensure freedom from political interference. In addition, while SARA officials are public servants, SARAs often have greater flexibility than the general public service in such areas as HR policies and procurement procedures. They are almost always accountable to a ministry and/or the parliament for delivery against their statutory mandate. In some cases, fully autonomous revenue authorities are established, which enjoy complete independence from public service rules, including budgeting and HR, despite still being under close control of the government and subject to robust oversight and accountability mechanisms.[57]

In addition to the general institutional design considerations set out above, additional legal design considerations apply to SARAs, particularly in light of their enhanced institutional autonomy.

[55] For further information about SARAs see IMF, 2010b, IMF, 2010b, IMF, 2006, Annex IV (Revenue Authorities−Design and Scope Considerations). However, some commentators have observed that this has not necessarily been proven to be the case in practice – see e.g., USAID, 2004.

[56] On design options for SARAs see IMF, 2010d, Box 1 (Design considerations in Revenue Authorities).

[57] For example, Canada Revenue Agency (CRA), Kenya Revenue Authority (KRA) and the Peruvian Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT). See World Bank (2019), at p. 9. See also Annex III, on the oversight and accountability framework for the CRA.

Quite often a stand-alone legal framework is created usually in the form of a Tax Administration Act (TAA), upon establishment of a SARA. Key considerations in the design of such a framework include the following:

Institutional Autonomy

Institutional autonomy is typically achieved by a legal framework that establishes the SARA as a separate entity separate from the MoF. Specific institutional arrangements depend on the legal framework governing the nature and type of public sector entities. For example, in some cases, independent administrative authorities are created, which may be largely aligned with existing constitutionally protected authorities.

Legal Character

Depending on the legal system, SARAs may be awarded separate legal personality, while others may not.[58] Other issues closely linked to the issue of legal personality are judicial standing (i.e. the right to sue and be sued) and representation (for instance to enter into contractual obligations), as well as procurement and ability to own and dispose of property. Box 2 presents some examples of provisions for the awarding of legal personality.

Box 2. Examples of Provisions for the Awarding of Legal Personality

Inland Revenue Authority of Singapore Act[59]

Article 3 — Establishment and incorporation of Inland Revenue Authority of Singapore

There is hereby established a body to be known as the Inland Revenue Authority of Singapore which shall be a body corporate with perpetual succession and a common seal and shall, by that name, be capable of —(a) suing and being sued; (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable; and (c) doing and suffering such other acts or things as bodies corporate may lawfully do and suffer.

Liberia Revenue Authority Act[60]

Section 4 — Establishment of the Authority

(1) There is established the Liberia Revenue Authority as a body corporate with perpetual existence and a common seal. It may sue and be sued in its own name, and subject to the provisions of this Act perform such acts as bodies corporate may lawfully perform; …

(4) The Authority may, for the performance of its functions, acquire and hold movable and immovable property and may enter into contracts or any other transaction that a state-owned enterprise may enter into.

Mandate

[58] In some cases, constitutional constraints may point to retaining the collection of taxes −a critical fiscal function− within the exclusive domain of core government (for example, the Greek Independent Authority for Public Revenue is established as an independent administrative authority outside the MoF, without legal personality, see Box 3, below).

[59] Chapter 138A, Act 25 of 1992.

[60] Act to establish the Liberia Revenue Authority, approved September 19, 2013.

SARAs generally have a mandate that is explicitly prescribed in legislation, either as a standalone provision or a set of provisions in their founding law on core functions and powers (and sometimes even objectives). (See *Mandate* section above and Annex II).

Interaction with the Tax Policy Function

While ultimate responsibility for tax policymaking appropriately rests with the MoF or Treasury, tax administrations, regardless of their institutional model, typically play at least a supportive role in this respect in recognition of their technical expertise.[61] However, in the case of SARAs—given that they are deliberately created to be independent from the MoF or Treasury—it is common for their role in tax policy making to be more explicitly defined in law. In addition, aggregate taxpayer data necessary for policy analysis and revenue is held and must be provided by the tax administration to the relevant tax policy function in the MoF. Tax administrations are also often well placed to identify other trends and issues that are relevant for policy makers. In turn, the administrative feasibility of policy options is best understood by the tax administration therefore informing policy decisions. In particular in the context of a newly established SARA, it may therefore be advisable to formalize this collaborative relationship in the relevant legal framework (see for example Greece, in Box 3, below).[62]

Box 3. Greece: A Statutory Framework for the Relationship between the MoF and the Independent Authority for Public Revenue (IAPR)

Greece's tax administration has transitioned from a structure within the Greek Ministry of Finance (General Secretariat for Public Revenue) to a SARA, established as an independent administrative authority outside the MoF without legal personality. The reform was introduced through a separate tax administration act[63], effective as of January 1, 2017. A key feature of the reform was the design of a clear statutory framework of the new authority's relations with the executive power.

A framework which defines the IAPR's relations with the MoF and other government bodies has been prescribed in its founding legislation, along the following main elements[64]:

- The IAPR is not subject to hierarchical control or administrative supervision by the MoF, government bodies or other administrative authorities or any other public or private organization;
- The MoF's role is clearly defined: the MoF is awarded the power to submit strategic proposals and issue strategic directives to the IAPR for the purposes of implementing government policies, though they may not extend to organizational or operational aspects of the IAPR, nor on staff matters;
- The IAPR must provide the MoF with periodical updates on activities and performance. The IAPR is also required to provide the MoF with aggregate data needed for tax and customs policy purposes; however, the MoF may not submit a request for information for specific cases.
- The IAPR may propose to the MoF legislative provisions on matters within its remit.

[61] See for example Asian Development Bank, 2020, Table 3.4, at p. 25: Roles of Revenue Bodies in Providing Tax Policy Advice and Conducting Criminal Tax Investigations, 2018, and European Commission, 2007, *Fiscal Blueprints,* where it is proposed that the tax administration has a clear and acknowledged role in the development and preparation of tax legislation.

[62] See also Qatar, Emiri Decree No 77 of 2018 (on mandates and functions of the General Tax Authority), which includes proposing draft legislative instruments and policies relating to taxation and expressing views on them as one of the functions of the Qatari General Tax Authority.

[63] Articles 1-43 of Greek Law 4389/2016.

[64] Article 5 of Greek Law 4389/2016.

- The MoF must notify legislative provisions on matters pertaining to tax and customs policy and the implementation of tax and customs policy, before submitting them to Parliament. The IAPR may provide give a non-binding opinion on the legislative proposals, within a prescribed deadline; [65]
- The IAPR must notify regulatory decisions and interpretative guidelines (circulars) to the minister, who may provide a non-binding opinion, within a prescribed deadline.

Governance Organs

The governance organs and structure of SARAs should be clearly set out in legislation. In addition to general personal autonomy arrangements (for instance, protection from personal liability; see above), specific governance arrangements for SARAs include:

- **A Head of the SARA responsible for the day-to-day operations.** Basic issues include: (i) *Selection and appointment*: Selected through a transparent process (run by the Board, if there is a Board structure), and appointed by Parliament, Government, Minister for Finance or President; (ii) *Tenure*: Fixed term, with the possibility of a one-time renewal for another fixed term; (iii) *Removal:* Clear stipulation of circumstances (for instance, acts of fraud and gross negligence, or underperformance as stipulated in the performance contract, where applicable)[66] and, if there is a Board structure, requisite votes from Board members needed for removal; (iv) *Integrity:* minimum professional qualifications and/or sufficient relevant experience in tax or wider public administration, and a clear framework of conflicts of interest for appointment and possibly a cooling-off period after end of term in line with rules pertaining to other senior public officials; and (v) *Functions and Powers:* A clear framework of functions and powers, as well as the authority to delegate these powers must be defined, especially in cases where there is a Management Board structure. Importantly, any regulatory powers awarded to the Head (for instance, the power to issue secondary legislation on procedural matters)[67] should be explicitly prescribed in law.
- **A Management Board**. The Management Board option is often chosen as an enhanced governance feature, to ensure internal checks and balances so that the powers vested in the authority are used appropriately, and to offer protection from political interference in operational decision making. The Management Board is generally designed to provide institutional oversight and strategic guidance or even decision making[68], by approving administrative policies in key areas, such as human resources, the drafting and implementation of the strategic and operational plans, performance management, organizational changes and budget execution. Basic features of the Management Board structure are: (i) *Composition*: Number of ex-officio members from the public sector (for instance, MoF and ministers from other key ministries) and possibly ex officio representatives from the private sector;[69] (ii) *Selection and appointment*: The power to select non ex-officio members should be vested in an independent committee and approved by the President/Parliament or the MoF; (iii) *Tenure:* Fixed term with the

[65] This provision is also extended to legislative initiatives by other ministries if these pertain to matters within the remit of the IAPR.

[66] This is perhaps a difference with the removal grounds for other administrative agencies.

[67] See, for example, New Zealand Tax Administration Act 1994,

[68] However, the Management Board should not exercise operational decision making in respect of a person's tax affairs.

[69] In some cases (e.g., Guatemala) the MoF is the Head of the Board.

possibility of a one-time renewal for another fixed term or a rolling tenure[70]; and (iv) *Functions and Powers*: a clear framework would define the role of the Board, in relation to the Head, as well as oversight and decision making tasks.

Institutional Oversight

Clear institutional oversight arrangements are a key feature of SARAs. This is because they are not subject to the standard oversight mechanisms that otherwise exist in a ministry structure. While institutional oversight arrangements may vary according to the specific institutional model chosen as well as the country's legal system,[71] in most cases, the SARA maintains a direct relationship with the government, through the ministry with overall responsibility for revenue[72] (typically the MoF). The SARA is generally accountable to the MoFfor effectively administering the revenue laws, and doing so within the rules and authorities that govern tax administration operations. However, it is essential that there is no political involvement in specific cases nor in the day-to-day management operations. In any case, such arrangements must be explicitly prescribed in law, for example the oversight role of the MoF.[73] Institutional oversight arrangements are complemented by supreme audit institutions oversight tasks (for instance, the Auditor General), either as part of their regular assessments within the PFM framework or through targeted reviews, parliamentary oversight arrangements (such as the submission of the annual corporate plan, budget and the annual report to Parliament, and appearance of the Head in public parliamentary hearings) and the taxpayer ombudsperson function (see section III.C, below). They may also be complemented by management board oversight arrangements in case a board structure is chosen (see above). Annex III presents an illustrative example of institutional oversight and accountability provisions.

Enhanced Accountability and Transparency

The enhanced autonomy provided to SARAs also requires enhanced accountability and transparency arrangements. Basic design features to support such enhanced arrangements include: (i) KPIs to be reported on a regular basis to the MoF and made publicly available; (ii) Depositions of the Management Board and/or the head of the Authority before the Parliament; (iii) Submission of the annual report and strategic and business plans to the MoF and the Parliament; (iv) Submission of periodical reports to the MoF and special reports to the MoF and the Parliament, on key issues; and (v) Publication of a strategic plan, an annual business plan, monthly progress reports and monthly reports on expenditure, as part of budget execution.

[70] See Canada Revenue Agency Act (S.C. 1999, c. 17 L.C, current to September 11, 2021), sec. 15(1) - Appointment and tenure of directors: "Each director [of the Board of Management], other than the Commissioner and the Chair, must be appointed by the Governor in Council to hold office during pleasure for any term of not more than three years that will ensure, as far as possible, the expiry in any one year of the terms of office of not more than one half of the directors."

[71] For example, while internal oversight of SARAs is often provided by a Board, details such as Board composition, term of office, rotation of membership, sub-committee structures and formal reporting requirements may vary significantly.

[72] Commonly the MoF or the Minister for Treasury. This is the case in Westminster model parliamentary systems. Under presidential systems, accountability is directly to the President and Congress.

[73] See for example Somaliland Revenue Act. No. 72/2016, sec. 190: (1) There is established an authority to be known as the Somaliland Revenue Authority. (2) The Authority shall be a body corporate with perpetual succession ... (3) The Authority shall be an agency of the Government and shall be under the general supervision of the Minister [responsible for Finance].

III. Governance Arrangements in Tax Procedure

Weak governance arrangements can also exist in all stages of tax procedure: from taxpayer registration to tax assessments (including in relation to the application of exemptions, tax reductions, reliefs and waivers), audit, enforcement and dispute resolution. Especially whenever there is direct interaction between taxpayers and tax officials (for example in the course of the audit and collection process), corrupt behavior of tax officials can result in 'creative enforcement'. Tax officials can also improperly confer tax benefits by: (a) abusing discretionary and/or enforcement powers that are expressly vested on them by the tax laws; (b) exercising excessive latitude in the interpretation of tax laws, which is exacerbated when laws are drafted in a complex or ambiguous manner; or (c) willfully disregarding what the tax laws actually provide for. Weak governance arrangements in tax procedure also account for uncertainty, due to the lack of adequate safeguards for taxpayers, thus negatively affecting trust and in turn voluntary compliance.

This section presents a set of core governance principles that guide the design of the tax procedure framework and discusses on how these principles are reflected in legal design considerations, focusing of the main stages and aspects of tax procedure, to ensure adequate taxpayer protections.

A. Core Governance Principles

Fairness[74]

Policies that are based on principles of equity and neutrality should be complemented by an enabling legal framework that provides adequate safeguards to taxpayers to ensure that they receive fair treatment in all stages of tax procedure.[75] Key considerations when designing frameworks that promote fairness include:

Equitable treatment

- Structured interaction between the tax authority and taxpayers through, for example self-assessment backed by audit (as opposed to administrative assessments)[76] to ensure a level playing field through consistent enforcement of tax obligations for all taxpayers and use of IT for taxpayer services to the widest extent possible;[77]
- Reducing opportunities for arbitrary interpretation by tax officers through, for example, minimizing deductions and exemptions, and ensuring clearly prescribed criteria for the exercise of discretionary powers.

Principle of sound administration

[74] For the purposes of this paper, the term "fairness" is understood to refer to *procedural fairness*, rather than in relation to tax policy considerations, in terms of distribution of tax burdens, etc.

[75] See, for example, Mongolia General Tax Law, art. 5.1, where fairness is mentioned as a specific principle in tax procedure: "The following principles shall be adhered to in creating, setting, and imposing, and payment of taxes, tax audits, tax collection, credits and exemptions: 5.1.1. to be mandatory; 5.1.2. to be clear; 5.1.3. to be fair 5.1.4. to be efficient."

[76] For an overview of the self-assessment system see IMF, 2014.

[77] See, for example, the medium-term revenue reform strategy for Myanmar, which includes the introduction of a new IT system for the tax administration. Although the IT reform is funded by the World Bank, the Fund provides crucial support in tax administration, tax policy and legislation drafting, all of which are necessary to enable the IT infrastructure to effectively support the operations of the tax administration.

The principle of sound administration is a general principle of administrative law that is found in most legal systems. It generally builds upon the key principle that every person has the right to have their affairs handled impartially, fairly and within a reasonable time and it includes several features, such as the right to be heard before any individual measure is taken that might affect a person adversely, a person's right to access their file, the protection of legitimate expectations, and the obligation of the administration to give reasons for its decisions or actions.[78]

In the tax administration context, the principle of sound administration entails that adequate safeguards are provided to taxpayers in all stages of tax procedure,[79] such as:

- Adequate reasoning given for and the right to administrative review of decisions taken by the tax administration, particularly in response to taxpayers' requests or when issuing assessments/reassessments of taxes;
- Segregation of powers, e.g., ensuring that any objections against decisions by the tax administration are reviewed and decided by officials not responsible for the decision under objection;[80]
- Appointing a taxpayer ombudsperson to handle complaints;[81]
- Establishing a framework for the protection of basic taxpayer rights, e.g., the right to be heard, the right to information, the right to be protected against subsequent changes in tax law interpretations, etc.

Effectiveness and efficiency

Effective tax collection should be balanced with efficient services to taxpayers, manifested through clarity and simplicity, consistency, and responsiveness.[82] Key governance considerations include:

- Using clear and simple language in drafting tax legislation and issuing administrative decisions or interpretations;[83]
- Providing administrative and procedural laws that are simple and reliable and apply equally across all (main) tax types;[84]
- Issuing user-friendly guidelines and consistent interpretations to taxpayers on the application of tax legislation;
- Setting up clear and comprehensive timelines for responding to taxpayer requests and providing appropriate remedies in case of failure to do so (e.g. automatic denial/granting of requests when deadline for response is missed; providing interest on late refunds).

[78] For a codification of the principle at a regional level see art. 41 ("Right to good administration") of the Charter of fundamental rights of the European Union.

[79] See in detail at Sec. IV, below.

[80] See TADAT Indicator P7-19.

[81] See TADAT Indicator P9-26.

[82] For an analysis of these two principles in the tax administration context see Alink, M. and Van Kommer, V., 2015, at p. 194, where effectiveness is defined as measuring the outcome of the efforts of tax administration and indicating the extent to which the goals of the administration have been achieved ("doing the right things"). In turn., efficiency measures the costs related to the achievement of these goals, referring to the relationship between inputs and outputs ("doing things right").

[83] See IMF/OECD, 2017, p. 45, and IMF/OECD, 2019. See also IMF 2016a, and IMF 2016b, for examples of legislative provisions drafted in clear, simplified language.

[84] For more information on the design and drafting of a TAP law, see Gordon, R., 1996.

B. Legal Design Considerations

The legal framework for tax procedures follows two main approaches. In some countries, each substantive tax law contains a complete set of administrative provisions that apply to only that particular tax. Other countries have introduced a law or laws on tax administration and procedure that set out those common administrative procedures that apply to all or most of the substantive tax laws while leaving it to the substantive tax laws to provide those administrative provisions that are specific to a particular tax.[85] The following legal design considerations should inform the development of good governance arrangements in tax procedure legislation, where relevant in the context of a diagnostic exercise (see Box 4):

Box 4. Steps for Setting Up a Governance Framework in Tax Procedures Legislation

An important first step in setting up a governance framework in tax procedure is the assessment of existing arrangements and the identification of shortcomings, often as part of a wider governance 'diagnostic' exercise on fiscal or general public law structures and institutions.[86] As a next step, legal design will need to address the following questions:

- The *What*: What are the legal features that need to be introduced? What are the structures and arrangements that need to be adopted?
- The *How*: What legal instruments are going to be used? Can primary law instruments be combined with secondary law instruments? Can statutory law instruments be combined with soft law instruments? What are the necessary implementation arrangements? Are the arrangements designed as part of a wider tax reform?
- The *Where*: Where are the legal provisions going to be introduced? Are they going to amend existing substantive and/or procedural provisions or is there a need for new, stand-alone frameworks?
- The *When*: Are the necessary arrangements going to be introduced "all-at-once" in the context of a broad tax law reform or in a more sequenced manner?

Introducing a separate tax procedures law (TPL) offers several benefits to both taxpayers and the tax administration. The TPL —which sets out the common administrative provisions that apply to the main substantive tax laws— provides a firm foundation for modernizing tax administration. The consolidation and modernization of the legislative framework on tax procedure helps to strengthen tax administration management, improve the operational capacity and efficiency of the tax administration, support domestic revenue mobilization, and enhance governance in administering the tax system.

Removing tax administration provisions from the substantive tax laws also helps in streamlining and reducing complexity of those tax laws. Tax laws —for example income tax and value added tax acts— are notoriously long and complex. Removing tax procedural provisions from those pieces of legislation reduces that complexity and length and focuses substantive tax laws on defining the tax base. Also, a unified procedural framework promotes harmonization of tax procedure practices within the tax administration and between tax types—thus enabling modern tax administration practices where tax administration is organized on a functional basis. For example, tax audit and collection of all types of taxes can be administered in a unified way across

[85] At a regional level, some model tax procedures codes have been developed, such as the CIAT model tax procedure code. https://biblioteca.ciat.org/opac/book/5521,

[86] See NORAD, 2020, on various available diagnostic tools and frameworks to assess and support tax administrations and tax systems, of which the EU Fiscal Blueprints includes a tax legislation assessment component (Tax Legislation (FB 03)).

taxes. This reduces duplication and poorly coordinated actions which are a burden on taxpayers and reduce the efficiency of the tax administration.

Importantly, a unified tax procedures framework greatly enhances tax certainty. It allows tax officers to gain confidence with the legal framework, to transfer their administration knowledge and experience between taxes, and decreases frictions between tax administration provisions in different tax laws. Moreover, it provides easy access to the tax procedure framework for both taxpayers and tax administrators thus promoting voluntary compliance.[87] For example, taxpayers (including foreign investors) can easily determine the process required to challenge assessments or the books and records required to be kept.

Keeping tax procedural provisions together in one law facilitates future legislative reform. The TPL includes all the tax administration provisions that can be generalized to apply to all types of taxes. As a result, if new enforcement tools or approaches to tax reporting are developed, for example, a change to one piece of legislation can affect each of the existing substantive tax laws.

Taxpayer rights and obligations are also more transparent when set out in a TPL. Good governance requires that both taxpayers and the tax administration know and understand their rights and obligations. The TPL offers a clear framework, while providing adequate safeguards to taxpayers when properly designed: it ensures that taxpayer confidentiality is protected, that taxpayers have mechanisms to confirm their tax liabilities have been satisfied, that processes support taxpayers in times of hardship, that appeal rights are clear, and that taxpayers have mechanisms for obtaining advice about how particular transactions will be treated by tax authorities. This also facilitates the role of judges called upon to decide upon tax disputes often without deep expertise in tax matters, while allowing those disputes to focus on substantive rather than procedural issues.

Finally, introducing a separate tax administration and procedures law facilitates updating and modernizing the administrative legal framework. It is good practice to organize the TPL to reflect the tax administration life cycle – from fundamental obligations and powers, to obtaining advice about the effect of particular transactions, to registration, to record keeping and so on. The temporal organization of the legislation[88] enables gaps in the current regime to be filled and facilitates readability.

The key considerations in the design of a stand-alone TPL revolve around two main areas: enhancing governance arrangements in tax procedure and making the new framework functional. The TPL enhances governance both in relation to the various stages and aspects of tax procedure and in respect of the tax administration as an institution. Furthermore, steps must be taken to ensure the TPL's smooth integration into the tax law system and the effective interaction with the broader domestic legal framework, especially its fit into the larger body of administrative law, as well as identifying possible needs for regional harmonization.[89] Box 5 outlines some necessary steps for the successful introduction of a Tax Procedures Law.

Box 5. Necessary Steps for the Successful Introduction of a Tax Procedures Law

[87] Other mechanisms for improving voluntary compliance include cooperative compliance programs. See OECD, 2013. For an analysis of legal issues that may arise when establishing a co-operative compliance program, including considerations on enhancing the tax administration governance framework for administering a co-operative compliance program, see Owens, J., and Pemberton J.-L. (eds), 2021, at ch. 3.

[88] On the temporal organization of the TPL see Gordon, R., 1996.

[89] For example, as many CARICOM countries have introduced Tax Administration and Procedure Laws in recent years, it is important that these frameworks are considered in the design of TPLs in the CARICOM region, to ensure a framework that corresponds well with other similar frameworks in the CARICOM, especially for taxpayers that are active regionally. Starting with Saint Christopher and Nevis, where a Tax Administration and Procedures Act was introduced in 2003, a series of CARICOM countries have implemented such a framework, including Antigua and Barbuda, Anguilla, Belize, St. Kitts and Nevis, Grenada, and St. Vincent and the Grenadines.

- ***Undertake a careful review of substantive laws, to identify necessary redactions upon introduction of the TPL.*** A review of substantive tax laws and related amendments is necessary to identify overlap between the TPL and those provisions. Where such overlap exists, redacting the provision from the substantive tax law is proposed, with a view to ensure that there are not residual provisions that should be redacted or provisions that have been redacted that have a unique function within the specific substantive tax law and should therefore be maintained.
- ***Ensure alignment with related laws.*** Procedural tax laws interact with various domestic legal frameworks, for example civil procedure rules, company law, and court procedure. Effective interaction of those frameworks with the TPL needs to be ensured.
- ***Ensure any cross-references are adjusted.*** Many pieces of tax legislation include cross-references to other tax laws. Those cross-references will need to be adjusted to refer to the TPL.
- ***Consolidate the pieces of substantive tax legislation.*** As the new TPL will require redaction of significant portions of the substantive tax law, it is a good opportunity to streamline the substantive tax legislation. Publishing a revised consolidation of each of the substantive tax laws is also advised.
- ***Coming into force.*** A basic framework of transitional provisions needs to be introduced, while attention must be drawn to any specific transitional issues that need to be addressed (including deferred application of certain provisions), to ensure an effective transition from the current framework to the TPL.
- ***Educate tax administrators and taxpayers on the new law.*** Tax officers and taxpayers (including intermediaries) will need to be educated about the new law and its enforcement. Public awareness could begin by presenting the draft law for public consultation.
- ***Implementation.*** Key areas for which regulations and/or guidelines are required to support the implementation of the TPL need to be identified.

C. Ensuring Adequate Taxpayer Safeguards through Governance Arrangements in Tax Procedure

Trust comes on foot and leaves by horse

(Dutch proverb)

It is through the legal framework for tax procedures that governance arrangements are 'externalized' in the relationship between tax administration and taxpayers. As tax administrations generally have an array of often intrusive powers in their arsenal some of which directly impact on fundamental rights of taxpayers, legal safeguards are required to balance those powers with the interests and rights of taxpayers, including by providing appropriate remedies where those powers are misused. Examples of robust tax administration powers include broad powers to access taxpayer information directly from taxpayers or from third parties, enforced recovery of tax arrears including from third parties such as banks and financial institutions, and the power to impose penalties for violations of the tax laws. The digital transformation efforts in many tax administrations have underscored the need of transparency and accountability in processes and procedures.[90] Examples of taxpayer rights and safeguards include a well-functioning objections and appeals process, an efficient process for obtaining advance certainty on the application of tax laws through a rulings practice, and

[90] See for example the discussion on algorithmic governance for tax administrations drawing upon the Dutch childcare allowance scandal in Hadwick & Lan (2021).

accessible and efficient taxpayer services. Box 6 summarizes key tax administration powers and corresponding fundamental taxpayer rights or interests requiring safeguarding.

Box 6. Key Tax Administration Powers and their Impact on Fundamental Taxpayer Rights	
Tax administration powers	**Fundamental rights**
Compulsory registration/de-registration	Free exercise of profession – right of association
Power to enter into premises	Right to privacy
Departure prohibition orders	Freedom of movement
Information powers	Right to confidentiality
Enforced collection actions	Right to property
Default and protective assessments[91]	Right to be heard
Discretionary powers	Right to equal treatment
Tax audits	Right to due process
Reversal of the burden of proof	Presumption of innocence, right to due process
Objections and appeals	Right to review and (timely) remedy
Tax law interpretation and application	Right to good administration
"Naming and shaming"[92]	Right to privacy, right to due process

Good governance arrangements therefore require legislation that strikes a fair balance between the rights of taxpayers and tax administration powers, particularly in light of recent trends.[93] Tax administration powers have gradually expanded in recent times, in particular in the form of (automatic) access to taxpayer information,[94] stronger enforcement mechanisms (such as direct collection from bank accounts) and closer international cooperation networks. Coupled with increased digitalization of tax administration tools

[91] *Default assessments* allow the tax administration to make an assessment when the taxpayer fails to file a return. Because there is no return information available to the tax authority in such circumstances, the tax authority makes an assessment based on a reasonable determination of the liability from whatever information is available to it at the time it makes the assessment.

Protective (or jeopardy) assessments allow the tax administration to make an assessment of a taxpayer's liability before the time for filing of the taxpayer's return. Best practice is to provide for the tax authority to have the power to make such an assessment in extraordinary cases where the revenue would be at risk (for example, when there is reason to believe the taxpayer is about to leave the country or dispose of assets).

[92] On "naming and shaming" and the respect for private life see ECHR *L.B. v Hungary*- 36345/16, Judgement 12.1.2021. The Court ruled that although the applicant had referred to the general public-shaming effect of appearing on the tax administrations list of tax evaders (published in the tax administration's site), there had been no evidence or reference indicating that the publication of his personal data on the list had led to any concrete repercussions in his private life.

[93] IMF, 2019a.

[94] Including information by Financial Intelligence Units (FIUs). See IMF, 2023a.

and processes such as data mining and machine learning, this has enabled the development of even more intrusive and all-encompassing compliance strategies.

The legal framework for taxpayer rights is multi-layered and comprises foundational principles primarily expressed in constitutions, general principles of law and administration, tax administration and procedure laws and general legislations on administrative procedure. Since, at their core, taxpayer rights are human rights,[95] international conventions, for instance the EU Charter of Fundamental Rights[96], also shape the relationship between tax administration and taxpayers.

In addition to these traditional legal frameworks and principles, many countries have also developed taxpayers' charters or bills of rights. These instruments aim to group taxpayer rights and obligations in a single document for clarity and transparency purposes, and to assure taxpayers of the treatment and quality of service they are entitled to expect from their tax administration. These documents usually take the form of a thematic, principle-based list of overarching taxpayer rights and may either be legislated, commonly as part of the tax procedure or tax administration law, or simply documented in an administrative statement. Often these statements also include detailed service standards specifying the level of performance required by the tax administration and may also include obligations for taxpayers to contextualize the tax administration/taxpayer relationship.[97] An increasing number of countries have gone further by also establishing a taxpayer ombudsperson function to assist taxpayers in addressing any difficulties they may have in their dealing with the tax administration separate from and in addition to the normal administrative and judicial proceedings that may be available to the taxpayer.[98]

From a legal design perspective, it is good practice to organize all legal provisions guaranteeing procedural protections to taxpayers in a separate section of the tax administration law or to include them in the relevant places in a tax procedures law organized on temporal or functional lines. These span along the following main areas: (a) registration and taxpayer identification; (b) tax law interpretations; (c) tax administration information powers and confidentiality; (d) communications and notices; (e) right to information and access to file; (f) filing and tax assessments; (g) verification actions (tax audits and investigations); (h) refunds; (i) penalties and interest; (j) collection and enforcement; and (k) dispute resolution and judicial recourse.

It is important that the key functions and powers of the tax administration and governance arrangements in the exercise of those functions and powers be in primary legislation covering the main stages and aspects of tax procedure. Depending on legal tradition, such statutory protections may also be found in secondary legislation, for example in regulations or implementing ministerial decrees.[99] In any case, a

[95] https://www.irs.gov/advocate/taxpayer-rights

[96] See for example Article 41(2)(a) of the EU Charter of Fundamental Rights where the taxpayer's right to be heard during the audit procedure is safeguarded and, *inter alia*, ECJU cases C-129 and C/130/13, Kamino International Logistics, C-276/12, Jirì Sabou and C-349/07, Sopropé

[97] On taxpayer charters see indicatively AOTCA/CFE/STEP, 2016, European Commission, 2016, https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc17/taxpayer-bill-rights-guide-understanding-your-rights-a-taxpayer.html, https://www.irs.gov/taxpayer-bill-of-rights. Data on taxpayers' rights charters: Observatory on the Protection of Taxpayers' Rights, 2023, at p. 194. On a basic grouping of taxpayer rights and obligations see OECD, 2024, at p. 146.

[98] The organization of the taxpayer ombudsperson function is varied. It may be established as part of a broader civil ombudsperson authority, as a standalone authority, or even as a department within the tax administration (in which case its independence should be preserved, for instance by reporting directly to the Head or the Congress/Parliament. For example, the US Taxpayer Advocate is established as an independent organization within the IRS, submitting two reports to Congress each year, with no prior review or comment from the IRS Commissioner, the IRS Oversight Board, the Secretary of the Treasury, any other Treasury officer or employee, or the Office of Management and Budget. https://www.taxpayeradvocate.irs.gov/reports/. On ombudspersons see Observatory on the Protection of Taxpayers' Rights, 2023, at p. 33, OECD, 2024, at p. 148.

[99] For example, in the MENA region it is common practice to issue detailed regulations on the implementation of tax legislation.

comprehensive legal framework to promote uniform application of taxpayer protections is an important tax certainty tool.

Annex I attempts to consolidate the key governance features that should be present in the tax procedures legal framework to provide a basic framework of taxpayer safeguards.

IV. Conclusions

There can be no give and take on fundamentals. Certain core governance principles are foundational for building robust tax administrations operating through fair and effective tax procedure arrangements. This paper develops an analytical framework from which the core legal principles for sound governance arrangements in tax administration and tax procedure can be derived to inform the design of countries' tax law frameworks. These guiding principles for designing the structure and operations of the tax administration—regardless of its specific institutional setup—are reflected in the tax procedure legal framework.

Effective governance goes beyond legal design. Legal frameworks are crucial, but they alone are insufficient. While this paper outlines legal design considerations to establish sound governance arrangements for tax administration and tax procedure, any law is of value only if it is implemented —and effective implementation may also require mechanisms outside of the tax institutions, for example, SAIs, law enforcement, and the courts. The tax policy function should work closely with the tax administration function to implement tax laws in a transparent and effective way ensuring that mechanisms are in place that can facilitate a balanced implementation.

The tax administration is a key actor for promoting better tax governance. At the institutional level, an enabling legal framework, based on the core legal principles presented in this paper needs to be complemented by proper operational arrangements. Particular attention should be given to enhanced governance structures for SARAs in light of their greater institutional autonomy.

In the area of tax procedure, governance arrangements will assist in achieving the right balance. Policies that are based on principles of equity and neutrality should be complemented by a sound legal framework that provides adequate safeguards to taxpayers. This will ensure that they receive fair treatment and that their fundamental rights are respected, thus ensuring a level playing field that promotes trust and, in turn, compliance.[100]

[100] On the relationship between citizens' perceptions of trust in the tax authority and governments' efficiency, see IMF, 2024b.

Annex I. Ensuring Adequate Taxpayer Safeguards through Governance Arrangements in Tax Procedure; a Checklist

Registration and taxpayer identification

- ✓ Ensure that registration requirements and processing timelines are equal for all taxpayers, through clear deadlines for the tax administration to respond to requests/queries.
- ✓ Provide a clear framework for taxpayers' obligations to notify changes in registry, through explicit deadlines.
- ✓ Include a general requirement that Tax Identification Numbers (TINs) be used on all communications, including the filing of tax returns.
- ✓ Lay out clearly in legislation a framework for registration, liabilities and indemnities of withholding agents.
- ✓ Ensure that compulsory registration/de-registration powers are set out clearly in the law and are complemented by appropriate safeguards for taxpayers, for example an obligation to justify compulsory de-registration.
- ✓ Generally, ensure that whenever a deadline is prescribed appropriate consequences are specified in case the deadline is not met by either the tax administration or the taxpayer.

Tax law interpretations

- ✓ Provide a framework for timely and transparent tax law interpretations, through regularly updated and consolidated circulars or guidance.
- ✓ Ensure that changes in tax law interpretations that are to the detriment of taxpayers will not apply retroactively.
- ✓ Establish an advance tax rulings regime with specific rules governing its operation and provide for the publication of redacted versions of private advance rulings issued.

Tax administration information powers and confidentiality

- ✓ Provide that access to confidential information by tax officials is on a need-to-know basis and subject to strict confidentiality obligations, with exceptions to confidentiality clearly stipulated in the law[101] and adequate penalties and liabilities for breaches.
- ✓ Establish a clear statutory framework for collecting information from third parties, including (i) specifying the initial categories of third parties and reporting type (e.g., content, frequency and format) in the law;[102] and (ii) ensuring that, legally, persons required to report specific information are also legally required to collect that information in the first place.

[101] NZ tax administration Act: articles 18C-18K (permitted disclosures).

[102] Accompanied by a regulation making power to allow other categories of third parties and reporting types to be added in the future. Exceptions could include other government agencies, including Supreme Auditing Institutions (SAIs) and law enforcement agencies.

- ✓ Clearly define legal authority to request and receive information, support information sharing and administrative assistance with other government agencies[103] and foreign governments, including robust procedural arrangements and confidentiality requirements.
- ✓ Ensure confidentiality of taxpayer information by adopting provisions which legally obligate the tax administration to keep that information confidential unless disclosure is needed for the administration of the tax laws or specifically authorized by other legislation, complemented with serious penalties for breaches of confidentiality requirements.
- ✓ Apply the principle of proportionality in the collection and use of data, for example avoiding onerous information reporting requirements or the extra administrative burden on taxpayers when the requested data is already available to the tax administration from third parties.
- ✓ Provide taxpayers and third parties the option to challenge the exercise of any excessive information-gathering powers by way of administrative or judicial review.

Communications and notices

- ✓ Put in place a comprehensive set of procedural protections for taxpayers which support the commitment of the tax authorities to taxpayer service, including developing standards and timelines relating to taxpayer communications and notices.
- ✓ Those provisions should, at a minimum: (i) set out when notice is considered received by a taxpayer (e.g., rules of service); (ii) allow the tax authorities to produce forms and notices and to issue general guidelines and interpretations to the public; (iii) address when communication can be made electronically; and (iv) indicate the language of communication with the tax authority.
- ✓ Provide reasonable notice in writing of a requirement for a person—whether a taxpayer, withholding agent or other party—to furnish information about a taxpayer or to appear at a time and place identified in the notice for examination or to produce documents.

Right to information – Access to file

- ✓ Include provisions that provide for taxpayer rights to information, such as that taxpayers may request information about the status of their request/complaint/outstanding tax liabilities or generally access their administrative file, upon their request.[104]
- ✓ Provide timelines for the tax administration to grant access to file.
- ✓ Introduce an obligation to notify taxpayers on data collection and use.

Filing and tax assessments

- ✓ Establish a clear framework for e-filing and an obligation to provide proof of filing and/or a copy of any tax or information return filed by the taxpayer.
- ✓ Set out clear eligibility criteria for a simplified filing procedure, if applicable.

[103] On the importance of inter-agency collaboration in the fight against corruption see World Bank, 2020, at ch. 10 ("Exchange and Collaboration with Tax Administrations"). See also IMF, 2023a which underscores the mutually reinforcing synergies between tax and anti-money-laundering (AML) authorities. These include close institutional cooperation between the AML and tax authorities to pursue their mandates and tackle inherently related crimes more effectively.

[104] The Court of Justice of the European Union (CJEU) ruled in *SC C.F.* (Case C-430/19) that the right of access to the administrative file is a corollary of the right to be heard before any decision is taken.

- ✓ Allow taxpayers the possibility to file amending tax returns to correct submitted tax returns where they discover errors made, including the possibility of amending prepopulated returns.
- ✓ Establish a thorough framework on the different types of assessments, the conditions under which they may arise and the procedures through which they may be imposed.
- ✓ Notify the taxpayer in case of reassessment, especially if a result of cross-matching information available to the tax administration from third parties and ensure the right to be heard.
- ✓ Provide a clear framework of criteria for the extension of filing deadlines, minimizing discretion.
- ✓ Prescribe comprehensively in the law situations in which a prescription period is suspended or extended, including in case of fraud or to give effect to a decision of the administrative review unit or a court on a review or appeal that commenced before but was finalized after the expiry of the prescription period.

Verification actions: tax audits and investigations

- ✓ Ensure the taxpayer's right to be heard during the audit procedure, by providing reasonable timelines for the taxpayers to present their objections.
- ✓ Clarify the burden of proof framework, in accordance with general legal principles.
- ✓ Offer protection against legal presumptions, by establishing a framework for rebuttable presumptions.
- ✓ Ensure that all relevant minimum bookkeeping requirements are provided in legislation, including: (i) a definition of taxpayers required to keep books and records; (ii) a framework for keeping them in an electronic form; and (iii) the period of time for which they need to be preserved at the disposal of the tax administration (i.e., within the time limits for reassessment).
- ✓ Require auditors, when they assess additional tax, to prepare a report (and provide it to the taxpayer) that specifies in detail the reasons for the re-assessment and documents the taxpayers' response to these reasons.
- ✓ Provide that powers encroaching on personal and property rights (such as entry into premises) are exercised through clear due process safeguards.[105]
- ✓ Establish a framework for data integrity, including oversight arrangements behind automated decision making (e.g., risk assessment criteria) and an accountability mechanism for wrong use of data and/or algorithms.
- ✓ Ensure that powers under a general anti-avoidance rule are exercised by tax officials of sufficient seniority.
- ✓ Place appropriate time limitations and clear conditions on the ability of tax authorities to reexamine a tax return and issue a reassessment.
- ✓ Set out clear rules on tax audits process, such as, (i) risk assessment criteria; (ii) notification on the initiation of a tax audit; (iii) a framework for the conduct of on-site audits; (iv) taxpayer representation during a tax audit; and (v reasonable timeframes for a tax audit.[106]

[105] For example, provide that entry into premises is conducted by tax officers responsible for tax investigation, under the supervision and with the approval of senior tax investigators. It is noted that entry into premises requirements can vary according to the domestic constitutional protections of the right to privacy. For example, the presence of a police officer of member of a judiciary may be necessary – a court order may even be required.

[106] See French Conseil d' Etat decision 9ème / 10ème SSR, 23/06/2014, no. 35580123, which ruled that the right to legal certainty prevented the indefinite exposure of taxpayers to tax audits. https://www.legifrance.gouv.fr/ceta/id/CETATEXT000029124438/

Refunds

- ✓ Provide for clear and proportionate time limits for tax refunds based on objective and transparent criteria.
- ✓ Establish a framework for the payment of interest on behalf of the tax administration in case of late refunds and overpayments.

Penalties and interest

- ✓ Apply a penalty system commensurate with the gravity of the tax violations.
- ✓ Set up a system of non-punitive interest, specifying in the law (i) precisely how interest is to be calculated e.g., on daily or monthly balances;[107] and (ii) providing for the possibility to be adjusted periodically to reflect market developments.
- ✓ Issue internal guidance for the application of various penalties and make this information publicly available.
- ✓ Minimize discretion in the authority to apply and waive penalties and interest and issue criteria to explain how this discretion will be used.
- ✓ Include a provision which sets out the order of the application of payments in circumstances where a tax debtor makes a payment that is less than the total amount of tax, penalty and interest due.[108]
- ✓ Align the time period for imposing penalties to the different time periods for making assessments and set out a clear procedure for their imposition, including a provision requiring a notice of imposition of a penalty.

Collection and enforcement

- ✓ Set out in legislation the tax administration's collection enforcement powers and the general rules for their application.
- ✓ Provide for procedural protections to taxpayers (including third party debtors) by offering appropriate notice and appeal recourse.
- ✓ Provide legal safeguards against improper exercise of powers, e.g. require that at every escalation point in the collections process the taxpayer must be notified (in writing) and given the opportunity to pay prior to the implementation of harsher measures.
- ✓ and ensure the legislation includes due process safeguards such as requiring advance judicial clearance or judicial approval shortly after the tax authorities enter residential premises or issue a departure prohibition order.
- ✓ Extend third party liability to company managers and controlling members under clearly prescribed conditions.
- ✓ Provide for active internal oversight, especially where the collections action may have significant consequences (such as closing down a business or seizing /selling assets).
- ✓ Ensure compatibility between the administrative appeals process and any emergency judicial recourse against enforced collection action.

[107] See IMF 2019e.

[108] A provision of this kind is important for the purpose of determining the legal consequence of that underpayment. It is common for the payment to be apportioned in the following order: interest, penalty, and tax.

- ✓ Include an offsetting provision to enable any amounts owed to a tax debtor by the tax authorities to be applied or offset against the taxpayer's debt.
- ✓ Offer the possibility of settling tax debt in installments, while providing for clear and transparent eligibility and access criteria, minimizing discretion.
- ✓ Set up a framework to ensure that recovery powers do not lead to undue hardship for taxpayers, such as: (i) a minimum tax debt threshold before an act of distraint is taken; (ii) an ability for taxpayers to make an urgent application to the court for review of the distraint order; (iii) Ensuring the taxpayer's *minimum vitale*, by providing that a minimum amount is retained in their bank account; (iv) and/or the exclusion of certain properties from a distraint action (for example, basic household goods and assets that are jointly owned with another person).

Dispute resolution and judicial recourse

- ✓ Unify the dispute resolution process for all taxes.
- ✓ Create an independent administrative review function within the tax administration but separate from the audit function, providing for a framework of impartiality of tax officers and for segregation of powers.
- ✓ Make a judicial appeal dependent on a prior administrative appeal decision and allow judicial appeal where there is a failure by the tax administration to make an administrative review decision within a prescribed time period.
- ✓ Set out a process for seeking administrative review of assessments and clear time limits for doing so, running from the date on which the assessment was made and notice of the assessment given to the taxpayer.
- ✓ Require the tax authorities to consider the taxpayer's request and provide the taxpayer with a decision on the request, with reasons, and provide concrete timelines for reaching a (written) decision on administrative review.
- ✓ Offer the taxpayer the possibility to be heard/make submissions before the administrative review function.
- ✓ Clarify the approach taken to payment of (total or portion of) tax where there is a dispute about tax liability, while allowing the taxpayer to appeal in any case. Nonpayment of (a portion of) tax should not preclude the right for an appeal but rather be linked with suspension of collection for the rest of the debt.
- ✓ Establish reporting and transparency arrangements, such as an obligation to publish redacted versions of the administrative review unit's decisions and appeals statistics (for instance, number of appeals submitted, cases examined per type of tax, amount of tax disputed, amount of taxes waived, time taken to resolve cases etc.).
- ✓ If there is a quasi-judicial stage[109], minimum qualifications and conflicts of interest conditions for the members of the quasi-judicial body, as well as a transparent application and selection process should be provided in the law.

[109] While practice is varied, dispute resolution is commonly structured as a three-tiered process: (i) administrative review process within the tax administration; (ii) appeal to a quasi-judicial body or committee at the second level; and (iii) appeal to a judicial level concerning legal interpretation and facts. See TADAT POA-7, IMF/OECD, 2019, at p. 22. In some jurisdictions alternative dispute resolution (ADR) mechanisms are also available. See UN (2021).

Annex II. Examples of Mandate Provisions and Mission Statements

Canada Revenue Agency (CRA)

Mandate (CRA Act, section 5)

The Agency is responsible for:

(a) supporting the administration and enforcement of the program legislation;

(b) implementing agreements between the Government of Canada or the Agency and the government of a province or other public body performing a function of government in Canada to carry out an activity or administer a tax or program;

(c) implementing agreements or arrangements between the Agency and departments or agencies of the Government of Canada to carry out an activity or administer a program; and

(d) implementing agreements between the Government of Canada and an aboriginal government to administer a tax.

Mission statement (CRA website)[110]

CRA Mission: Administer tax, benefits, and related programs, and ensure compliance on behalf of governments across Canada, thereby contributing to the ongoing economic and social well-being of Canadians.

CRA Vision: Trusted, fair, and helpful by putting people first.

CRA Promise: Contributing to the well-being of Canadians and the efficiency of government by delivering world-class tax and benefit administration that is responsive, effective, and trusted.

CRA Values:

Integrity - We establish and preserve trust with all stakeholders by applying the law fairly and upholding our standards.

Professionalism - We are knowledgeable, accurate, conscientious, innovative, and service-oriented.

Respect - We interact with people in a way that makes them feel heard and valued. We listen and respond judiciously.

Collaboration - We recognize and act on opportunities to work together to deliver the Agency's mandate. We consult, and share ideas, fostering innovation to improve the service experience, both internally and externally.

South African Revenue Service (SARS)[111]

[110] https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/mission-vision-promise-values.html

[111] The SARS is established as an organ of state within the public administration, but as an institution outside the public service.

Mandate (Act 34 of 1997, sec. 3-5)[112]

Objectives

SARS's objectives are the efficient and effective –

(a) collection of revenue; and

(b) control over the import, export, manufacture, movement, storage or use of certain goods.

Functions

(1) To achieve its objectives SARS must –

(a) secure the efficient and effective, and widest possible, enforcement of –

(i) the national legislation listed in Schedule 1; and

(ii) any other legislation concerning the collection of revenue or the control over the import, export, manufacture, movement, storage or use of certain goods that may be assigned to SARS in terms of either legislation or an agreement between SARS and the organ of state or institution concerned;

(b) advise the Minister on –

(i) all matters concerning revenue; and

(ii) the exercise of any power or the performance of any function assigned to the Minister or any other functionary in the national executive in terms of legislation referred to in paragraph (a); and

(c) advise the Minister of Trade and Industry on matters concerning the control over the import, export, manufacture, movement, storage or use of certain goods.

(2) SARS must perform its functions in the most cost-efficient and effective manner and in accordance with the values and principles mentioned in section 195 of the Constitution.

Powers

(1) SARS may do all that is necessary or expedient to perform its functions properly, including to –

(a) determine its own staff establishment, appoint employees and determine their terms and conditions of employment in accordance with section 18;

(b) bargain collectively with the recognized trade unions representing SARS employees;

(c) obtain the services of any person, including any state department, functionary or institution, to perform any specific act or function;

(d) acquire or dispose of any right in or to movable or immovable property, which may include ownership;

(e) open and operate on its own bank accounts;

(f) insure itself against any loss, damage, risk or liability;

[112] There's no explicit reference to the Mandate in the law, but only in the SARS site: The mandate of the South African Revenue Service (SARS) is to collect all revenues due, ensure optimal compliance with tax and customs legislation, and provide a customs and excise service that will facilitate legitimate trade as well as protect the economy and society.

(g) perform any specific act or function within its competence on behalf of any other person, including any state department, functionary or institution;

(h) impose fees or charges when performing an act or function in terms of paragraph (g);

(i) perform legal acts, or institute or defend any legal action in its own name;

(j) engage in any activity, whether alone or together with other organizations in the Republic or elsewhere, to promote proper, efficient and effective tax administration, including customs and excise duty administration; and

(k) do anything that is incidental to the exercise of any of its powers.

Mission statement (SARS website)[113]

It is SARS' mission to optimize revenue yield, facilitate trade and enlist new tax contributors by promoting awareness of the obligation to comply with South African tax and customs laws, and to provide quality and responsive service to the public.

Inland Revenue Authority of Singapore (IRAS)[114]

Mandate (CAP. 138A of 2012, sec. 6-7)

Functions of the Authority

(1) The functions of the Authority are —

(a) to act as agent of the Government and provide service in administering, assessing, collecting and enforcing payment of income tax, property tax, estate duty, stamp duties, betting and sweepstake duties, private lotteries duty and such other taxes as may be agreed between the Government and the Authority;

(b) to advise the Government on matters relating to taxation and to liaise with the appropriate ministries and statutory bodies on such matters;

(c) to represent Singapore internationally in respect of matters relating to taxation;

(d) [Deleted by Act 10 of 2007]

(e) to provide service in respect of the granting of licenses or permits by the Comptroller of Property Tax or the Commissioner of Estate Duties under any written law;

(f) to provide service and advice to the Government and statutory bodies in respect of matters relating to the valuation of immovable properties; and

(g) to perform such other functions as are conferred on the Authority by any other written law.

(2) In addition to the functions imposed by this section, the Authority may undertake such other functions as the Minister may assign to the Authority and in so doing the Authority shall be deemed to be fulfilling the purposes of this Act and the provisions of this Act shall apply to the Authority in respect of such functions.

[113] https://nationalgovernment.co.za/units/view/40/south-african-revenue-service-sars

[114] The IRAS is established as body corporate.

Powers of Authority

(1) The Authority shall have power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without prejudice to the generality of subsection (1), the powers of the Authority shall include power —

(a) to enter into contracts;

(b) to form or participate in the formation of a company;

(c) to utilize all property of the Authority, movable and immovable, in such manner as the Authority may think expedient including the raising of loans by mortgaging such property;

(d) to engage in any activity, either alone or in conjunction with other organizations or international agencies, to promote better understanding of taxation;

(e) to provide technical advice or assistance, including training facilities, to tax authorities of other countries;

(f) to make charges for services rendered by the Authority;

(g) to grant loans to employees of the Authority for any purpose specifically approved by the Authority;

(h) to provide recreational facilities and promote recreational activities for, and activities conducive to, the welfare of employees of the Authority;

(i) to provide training for employees of the Authority and to award scholarships or otherwise pay for such training; and

(j) to do anything incidental to any of its powers.

Mission statement (IRAS website)[115]

Our Vision

The leading revenue authority in the world

A partner of the community in nation-building and inclusive growth

A dynamic team of competent and committed people

Corporate goals and core values

Our *corporate goals* are to:

Foster an economic environment that supports inclusive growth

Provide excellent service

Maximize voluntary compliance

Enhance organizational and staff productivity and agility

Achieve a high level of staff competence, ownership and satisfaction

[115] https://www.iras.gov.sg/irashome/About-Us/Our-Organisation/Mission--Vision--Core-Values-and-Logo/

We are guided by these *core values*:

FAIRNESS

Treat everyone in the same circumstances equally

INTEGRITY

Do what is right without fear or favor in all circumstances

PROFESSIONALISM

Serve our nation responsively, with competence, pride, commitment and empathy

TEAMWORK

Work with one another with mutual trust and respect to achieve Whole-of-IRAS and Whole-of-Government outcomes

INNOVATION

Continuously seek new ways to do our work better

Directorate of Taxation, Republic of South Sudan[116]

The Taxation Act, 2009, Section 8. Guiding Principles and Values

The Directorate of Taxation (DT) shall observe the following guiding principles and values when exercising its functions and duties:

(a) ensure transparency in operations so that the level of government entitled to the revenue proceeds has complete information on revenue collections and can validate the calculations of its share;

(b) clearly enlighten the citizens on their rights and duties under this Act in a manner that is educating and permits the self-assessment of taxes;

(c) make easily understood forms and instructions freely available to the public;

(d) ensure that the law is applied uniformly to all taxpayers by publicizing explanations on how the DT will apply the law where such application may affect a number of taxpayers;

(e) through the selection, training, and promotion of revenue officers, encourage them to be honest, courteous, and fair and to apply the law, regulations and rulings to each case on the basis of the objective facts;

(f) apply sanctions and penalties that are clearly understood and are swiftly applied in a uniform manner;

(g) make educational visits to taxpayers to ensure that they understand their rights and duties; and,

(h) to reduce DT's reliance on sanctions that punish taxpayers for violations, develop programs and practices that encourage taxpayers to comply with the law.

[116] Republic of South Sudan, The Taxation Act, 2009. https://www.icnl.org/wp-content/uploads/South-Sudan_TaxationAct2009.pdf

Annex III. Institutional Oversight and Accountability Provisions in the Canada Revenue Agency Act

Relations with the Minister

Minister responsible

Sec. 6(2). The Minister is responsible for the Agency.

Minister may direct on exercise of powers

Sec. 9. The Minister may direct the Commissioner or any other person in the exercise of a power or the performance of a duty or function of the Minister that the Commissioner or the person is authorized to exercise or perform under subsection 8(1) or (4) or under the program legislation.

Directions to the Agency

Sec. 11(1). The Minister may issue a written direction to the Agency, addressed to the Chair of the Board, on any matter within the authority or responsibility of the Board that, in the Minister's opinion, affects public policy or could materially affect public finances.

Statutory instruments

Sec. 11(2). A direction issued under subsection (1) is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Compliance with directions

Sec. 12. Every person who is directed by the Minister under section 9 or 10 or subsection 11(1) must comply with the direction.

Commissioner to keep Minister informed

Sec. 38(1). The Commissioner must keep the Minister informed of any matter that could affect public policy or that could materially affect public finances, and any other matter that the Minister considers necessary.

Support to Minister

Sec. 38(2). The Commissioner must assist and advise the Minister in the exercise of the Minister's powers and in the performance of the Minister's duties and functions under any Act of Parliament or of a province and in the carrying out of the Minister's duties as a minister of the Crown.

Role of the Management Board

Sec. 31(1). The Board is responsible for overseeing the organization and administration of the Agency and the management of its resources, services, property, personnel and contracts.

Limitation Restriction

Sec. 34. The Board may not direct the Commissioner or any other person (a) in the exercise of a power or the performance of a duty or function conferred or delegated under the program legislation or the laws of a

province or authorized to be exercised or performed on the Minister's behalf under this Act; or (b) on the administration and enforcement of the program legislation.

Corporate business plan

Form and manner of submission

Sec. 47(3). The Agency must submit the corporate business plan in the form and manner and within the time specified by the Treasury Board[117] and provide any further information that the Treasury Board may require in respect of it.

Compliance with corporate business plan

Sec. 48. The Agency must act in a manner consistent with its most recent corporate business plan and comply with any terms and conditions specified by the Treasury Board.

Summary of corporate business plan

Sec. 49(1). After the Treasury Board approves the corporate business plan, the Agency must submit a summary of the plan to the Minister for approval.

Tabling in Parliament

Sec. 49(2). The Minister must cause a copy of the summary to be tabled in each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister approves it.

Audits

Sec. 87. The Auditor General of Canada is the auditor for the Agency and must

(a) annually audit and provide an opinion to the Agency and the Minister on the financial statements of the Agency; and (b) provide the Minister, the Commissioner and the Board with copies of reports of audits carried out under this section.

Annual report

Sec. 88(1). The Agency must, before December 31 of each year following the Agency's first full year of operations, submit an annual report on the operations of the Agency for the preceding fiscal year to the Minister, and the Minister must cause a copy of the report to be tabled in each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

Form and contents

Sec. 88(2). The annual report must include

(a) the financial statements of the Agency, prepared in accordance with accounting principles consistent with those applied in preparing the Public Accounts referred to in section 64 of the *Financial Administration Act*, and the Auditor General of Canada's opinion on them; (b) information about the Agency's performance with respect to the objectives established in the corporate business plan; (c) a summary statement of any assessment prepared under section 59; (d) any report made by the Public Service Commission under subsection 56(1); and (e) any other information that the Minister may require to be included in it.

[117] A committee of Ministers that act as the Government's management board.

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