CHAPTER 9

A MODEL OF TAXPAYERS' RIGHTS

INTRODUCTION

This Chapter provides a model of taxpayers' rights based on the analysis in Chapters 6-8. It is not designed as the basis for an international convention or instrument requiring ratification. The focus of this chapter is to provide a guide to best practice in tax administration along the lines of the OECD, General Administrative Principles – GAP001 Principles of Good Tax Administration and General Administrative Principles – GAP002 Taxpayers' Rights and Obligations.

The analysis in Chapters 6-8 provides the commentary on the model for the purposes of this thesis. Subsequent adoption and development of the model may see concurrent development of a more specific and agreed commentary.

As the aim is to provide a common standard of taxpayers' rights for inclusion in domestic legislation, it is unlikely that all rights in the model will be adopted as a separate code in most jurisdictions. It is only where reform of the tax system includes a new tax act that adoption of this kind will be feasible. However, elements of the model may be included as they stand into existing tax acts as a separate section.

For many jurisdictions the model will provide a standard to act as a form of quality control. Tax policy makers will be able to measure the quality of the rights afforded to taxpayers against an objective international standard. It will provide legitimacy and reassurance where policy makers are striving to achieve best practice. Domestically it will provide support for revenue authority compliance programs. It will also assist revenue authorities and the judiciary by allowing them to assess issues brought before them comparatively, taking account of decisions on similar issues elsewhere that may helpfully be decided on a uniform basis. It is likely that commonality of problems in the administration of tax systems will increase, even if the move towards harmonisation of substantive rules is slow.

Flowering from the analysis in Chapters 6-8 and the issues of interpretation identified in Chapter 3, it is clear that the model will need adapting to the context of each jurisdiction. States will need a degree of latitude in the implementation of the individual rights. This requires the model to remain relatively broad in its articulation of rules to maintain that flexibility. That said, the value of the model will depend upon a genuine attempt to implement the rights contained in it.

As indicated in Chapter 2 the model is two-tiered. This provides developing countries unable to comply with all rights contained in the model the opportunity to ensure that the basic rights at least are protected in their jurisdiction. The model therefore identifies the basic rights in each article, with a list of recommended rights, which should be present in all sophisticated tax systems.

In drafting the model it is useful to note the drafting principles applicable to tax rules generally. In particular, it should be understandable, which includes 'elegance, brevity and

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2. See, for example, V. Thuronyi, 'Drafting Tax Legislation' in V. Thuronyi (ed.) vol. 1, Tax Law Design and Drafting (Washington DC, IMF, 1996), ch. 3.
Clarity of expression but without being cryptic. Clarity is important given 'that considerable adaptation, if not wholesale revision, of the language of the model will likely be required in order to meet the particular needs of the country in question'.

Finally, it is important to note that much of the wording and ideas of the model is drawn from a range of sources clearly identified in preceding chapters. Although it is inappropriate to produce a heavily footnoted model, it is appropriate to acknowledge that the content relies heavily on a wide range of existing sources identified in the earlier analysis and commentary.

II MODEL OF TAXPAYERS RIGHTS

Chapter 1: Scope and Definitions

Article 1

This document sets out the rules governing the exercise of tax administration in the adopting state: to provide for tax law and tax administration that is certain, lawful, reasonable and procedurally fair; to promote effective and efficient administration and good governance; and to create a culture of accountability, openness and transparency in tax administration.

Article 2

1 Ibid., 73.
2 Ibid., 94.
Chapter 2: Parliamentary Protection and Judicial Interpretation

Article 3

(1) When legislation on matters affecting taxation is introduced into parliament, there shall be an accompanying statement identifying the potential impact, if any, of the proposed legislation on existing legislated rights or on existing administrative guidelines governing taxpayers’ rights.

(2) There shall be established a pre-legislative scrutiny committee to examine and report to parliament on bills affecting taxation to ensure that there is no contradiction, incompatibility or inconsistency between proposed legislation and the rights already enacted for the protection of taxpayers. The committee shall have the right to request information from the executive arm of government and from other parties at its absolute discretion. The reports of the committee shall be laid before parliament and shall be published.

(3) Any standing orders or guidelines for the drafting of legislation affecting taxation shall require consideration of the past reports of the relevant pre-legislative scrutiny committee when drafting new legislation.
Article 4

(1) So far as it is possible to do so, primary legislation and subordinate legislation governing the administration of taxation must be read and given effect in a way which is compatible with the rights contained in this [law].

(2) Where an appeal court is satisfied that a provision of primary or subordinate legislation is incompatible with a right contained in this [law], it may make a declaration of that incompatibility.

(3) A report containing all declarations of incompatibility shall be made annually to the Minister responsible for revenue and a copy of the report shall be laid before Parliament.

Chapter 3: Primary Legal Rights

Article 5

Explanation

Primary legal rights articulate the fundamental principles on which a tax system is based and shall apply to all tax rules, whether legislative or administrative.
Chapter 9

Article 6

(1) Taxes, duties, fees and charges shall be imposed by law.

(2) Where an administrative discretion is given it shall be authorised by law.

(3) A law authorising an administrative discretion shall provide criteria for, and limits on, its exercise where:

(a) the content and matter of the discretion is significant;

(b) the binding quality or effect is substantial; and

(c) the potential application is broad.

(4) The law shall be applied and administrative discretion shall be exercised:

(a) in a way that is appropriate and necessary to achieve the objectives legitimately pursued;

(b) so that where there is a choice between several appropriate measures recourse shall be had to the least onerous; and

(c) so that where disadvantages are caused they are not disproportionate to the aims pursued.

(5) Any exercise of discretionary powers shall be
(a) based on reasons, which shall be applied consistently, fairly, and impartially, and
(b) the reasons given for a decision shall be intelligibly related to a framework of equally intelligible standards which can be seen fairly to fall within and be the basis of the discretionary powers; and
(c) the exercise shall be fair and reasonable in matters of procedure and substance.

Article 7

(1) All rules applicable in the tax system shall be compiled and published accurately and in a form that is accessible to all users.

(2) Publication of tax rules or material relating to their interpretation by a government agency shall be impartial and unbiased.

Article 8

(1) Tax laws, delegated legislation and administrative discretion shall not have retroactive effect except to the extent that they are:

(a) reasonable, which may include consideration of one or more of:

(i) the limited consequences of retroactivity;

(ii) the error, lack of clarity or contradiction they aimed to correct;

(iii) urgent public interest;
(b) serving a legitimate purpose; and

(c) proportionate in striking a fair balance between the state and taxpayers.

(2) Where the Government announces that it intends to enact legislation that will take effect from the date of the announcement:

(a) it shall do so normally only to correct errors or anomalies, introduce concessions or to prevent tax avoidance or arbitrage;

(b) it shall provide sufficient detail in the announcement for taxpayers to order their affairs in accordance with the proposed laws;

(c) it shall provide appropriate transitional provisions if the subsequent legislation differs in substance from the announcement;

(d) it shall introduce legislation to give effect to the announcement within a reasonable time.

Article 9

(1) Tax rules shall be certain. If a provision is absurd, ambiguous, contradictory, or does not make sense, it shall apply to the taxpayer's benefit.

(2) If a tax provision or any part of it is so uncertain that it cannot be applied, the court or administrator responsible for its application shall not apply that provision or part of it.
(3) There shall be rules governing the interpretation of the tax rules where two or more laws contradict.

(4) Where taxpayers can show that there are genuine and reasonable circumstances that prevent them from complying with the terms of the law, the revenue authority shall have the discretion to grant appropriate relief.

Recommended Rights

(1) The revenue authority shall have responsibility for funding a test case litigation program to resolve taxation issues that are important to the general administration of the tax system.

(2) In respect of all its litigation, the revenue authority shall:

(a) Formulate a document that sets out its litigation philosophy, approach and policy;

(b) Provide oversight of litigation by a senior officer of the revenue authority to ensure consistency in management of the program;

(c) Apply risk management techniques to tax litigation issues;

(d) Provide for independent input into the litigation program;
Chapter 9

(e) Fund taxpayers' expenses in defending all cases where the revenue authority has been unsuccessful at any stage of the litigation; and

(f) Communicate the application of finalised court and tribunal decisions in a standard form.

Article 10

(1) Taxpayers shall pay only the amount of tax required by law.

(2) Taxpayers that overpay tax shall be entitled to a full refund or offset against other amounts owing.

(3) Except where specifically legislated, taxpayers shall pay domestic tax only once on the same components of the tax base and shall receive relief for tax already paid in the calculation of further tax on the same amount.

Article 11

(1) There is a presumption that the tax law shall not discriminate between taxpayers in the same position and shall allocate taxes fairly between people in different circumstances.

(2) Where the presumption is not met, in any action before it, a court shall nonetheless uphold the rule:
(a) where the treatment under the rule pursues a legitimate aim; and
(b) the means employed are proportionate to the legitimate aim.

Chapter 4: General Powers of Administration

Rights

Article 12

There shall be an administrative body charged with the administration of the tax system (the revenue authority). The revenue authority shall be structured and shall operate in accordance with principles of good governance. The revenue authority shall ensure compliance in all areas of its responsibility with the International Monetary Fund Code of Good Practices on Fiscal Transparency. The administrative application of the tax law and administrative rules shall be subject to procedural safeguards.

Article 13

(1) The revenue authority shall be independent in its exercise of the powers of administration, collection and enforcement from external influence, including but not limited to, other Government ministries or departments and Members of Parliament.
Chapter 9

(2) The head of the revenue authority shall have security of tenure, which shall extend beyond a single term of the body of elected representatives, and shall be removed from office only in the event of proven misbehaviour, physical or mental incapacity, or other circumstances that compromise her or his ability to act.

(3) The revenue authority shall be accountable. In addition to its annual reports to a Government minister responsible for the revenue authority, the designated head of the revenue authority shall provide annual reports to Parliament either directly or through the relevant Government minister responsible, which shall be published.

(4) The revenue authority shall develop administrative principles designed to ensure good administrative practices that shall govern its relations with taxpayers, its employees and other revenue authorities.

(5) Provision of adequate resources to enable the revenue authority to function properly shall be a budget priority.

(6) The revenue authority shall measure its performance through a transparent process of quality assurance based on published objective measures on which it shall report annually.

(7) The revenue authority shall be subject to annual audit by a national audit body or equivalent organization, which is independent of the executive and reports to the legislature and the public on the financial integrity of the revenue authority accounts.
(8) There shall be external oversight of the revenue authority, such as a parliamentary committee, or a governing or advisory board that has the power to report to the relevant minister and, if necessary, to parliament.

(9) The revenue authority shall publish a document setting out the administrative rights and obligations of taxpayers. (A model document is included at Appendix 1.)

(10) There shall be constituted a Revenue Ombudsman or similar office to investigate, in response to a complaint by a taxpayer or other interested party, where there is no practical alternative avenue for independent review, the conduct of the revenue authority and other government departments or public authorities responsible directly or indirectly for the administration of the taxation system.

(11) There shall be constituted a dispute resolution system designed to provide an informal mechanism for early resolution of disputes arising between taxpayers and the revenue authority. The system shall be based on the principles set out in ISO 10002:2004, the International Organization for Standardization Quality management – Customer satisfaction - Guidelines for complaints handling in organizations (as amended or updated from time to time) and shall incorporate the following elements:5

(a) Prevent unnecessary conflict through notification, consultation and feedback.

(b) Create ways of reconciling the interests of those in dispute.

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Adapted from W.L. Ury, J.M. Brett and S.B. Goldberg, Getting Disputes Resolved: Designing Systems to Cut the Cost of Conflict (Cambridge, MA, Program on Negotiation Books, 1993), ch. 3. Explained fully in Chapter 5, 'Enforcement'.

449
Chapter 9

(c) Build in 'loop-backs' to negotiation.
(d) Provide low-cost alternatives where negotiation fails.
(e) Create sequential procedures moving from low-cost to high-cost.
(f) Provide the necessary motivation, skills and resources to allow the system to work.
(g) Provide effective mechanisms for measuring qualitative success.
(h) Provide mechanisms for monitoring, review and continuous improvement both at individual and systemic levels.

Article 14

(1) The revenue authority shall establish a systematic approach to decision-making to ensure consistent, transparent, fair and impartial decisions can be made across the organisation at all levels. The system shall include but is not restricted to:

(a) The establishment of policies and procedures governing decision-making and the exercise of discretion;
(b) The development of internal manuals, check-lists and other aids;
(c) A clear policy governing escalation of decisions and procedures for checking and review;
(d) The development and implementation of quality assurance measures; and
(e) Regular review of the system with procedures to implement necessary changes.
(2) Whenever a taxpayer is entitled to a decision or action by the revenue authority, it shall occur either within a specified period or within a reasonable time.

(3) Whenever a taxpayer is required to do something, provide information, or otherwise assist the revenue authority, it shall be after the giving of reasonable notice, unless it is clear that such notice would reasonably impact on the success of the relevant administrative action.

(4) To give effect to procedurally fair administrative action, except where specific provision is made otherwise, revenue officers shall provide:

(a) adequate notice of the nature and purpose of proposed administrative action;

(b) a reasonable opportunity to make representations;

(c) a clear statement of the administrative action;

(d) adequate notice of any right of review or internal appeal, where applicable;

and

(e) adequate notice of the right to request reasons.

(5) Tax administration shall be conducted in accordance with the general principles that:

(a) There shall be publication and dissemination of a wide range of information in an appropriate form to assist taxpayers in understanding and complying with their full range of obligations; and
(b) There shall be a specific program of community education to develop and reinforce an understanding of the importance to the community of the tax system and compliance with the obligations imposed by it.

(6) There shall be provision made by the revenue authority to assist taxpayers in understanding and complying with their full range of obligations, including additional assistance for those with special requirements or needs, such as speakers of foreign languages, taxpayers with disabilities, ethnic minorities, and taxpayers living in remote areas.

(7) Revenue officers shall act ethically and professionally in the discharge of their duties in accordance with clear and well publicised standards of behaviour.

(8) Revenue officers shall not draw an adverse inference when a taxpayer chooses to exercise available legal or administrative rights.

Recommended Rights

(1) Individual taxpayers should have the right to judicial review of the application of rules that do not fall within designated exceptions on the basis of general principle.

(2) It shall be an offence for any person outside the revenue authority to interfere with an audit or an investigation of a taxpayer by the revenue authority. The offence shall include a request to commence or terminate an audit or investigation. Any revenue
officer approached by a third party with a request that might reasonably be construed to fall within the offence, shall report the matter immediately to her or his superior.

Chapter 5: Information Gathering

Article 15

Explanation

Officers of the revenue authority shall be subject to secrecy provisions. The content and extent of the secrecy provisions shall be articulated for the protection of both revenue officers and taxpayers. They shall include rules governing the collection, storage, security, access to, correction of, use and disclosure of information provided. They shall extend to third parties working for or contracted to the revenue authority.

Article 16

Rights

(1) Taxpayer information shall be treated as completely confidential.
Chapter 9

(a) Taxpayer information shall be used only for the assessment, enforcement and collection of tax, and for social security purposes.

(b) There shall be clear rules governing the disclosure of taxpayer information to other government departments, other taxpayers and third parties and the duties and responsibilities of those persons in relation to the taxpayer information.

(c) Officers of a revenue authority shall access taxpayer information only when required to do so in the performance of their duties.

(d) Unauthorised access to taxpayer information held by the revenue authority by any person, unauthorised browsing of such information and any unauthorised release of such information to a third party shall be an offence. Where the person is not a revenue officer, that person shall be personally liable, and when that person is acting for or on behalf of a company or organisation, that company or organisation shall also bear liability.

(e) Revenue officers, by virtue of their position, shall be personally liable for any misuse of information.

(f) Taxpayers shall have the right of access to information held about them by the revenue authority and the ability to correct that information except in limited circumstances, including:

(i) where release of the information would prejudice third parties, or

(ii) where release of the information would prejudice an ongoing investigation.

(2) The duty by a third party to report information for any purposes under the tax law shall be legislated:
(a) Where a third party wilfully provides fraudulent information about a taxpayer this shall constitute an offence; and

(b) The taxpayer may bring a civil action for damages or compensation.

(3) Information required by the revenue authority shall be restricted to that information relevant to the tax affairs of a taxpayer except to the extent that the revenue authority is required by law to perform other functions requiring additional information.

(4) Information exchange and mutual assistance agreements shall provide equivalent protection to that set out in Article 21 and Article 22 of the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters with the meaning given to each Article as set out in the Commentary on the provisions of the Convention.

(5) Exchanges of information and mutual administrative assistance in tax matters shall require approval by the most senior levels of the revenue authority.

(a) There shall be clear procedures and guidelines for all exchanges of information and mutual administrative assistance, which shall include the identification of the characteristics of matters of particular sensitivity or importance so that they can be escalated automatically for approval at higher levels of authority.

(b) Exchange of information or mutual administrative assistance relating to a taxpayer shall be foreseeably relevant to the determination, assessment and
collection of taxes covered by the relevant agreement, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.\(^6\)

(c) The approval procedures for an exchange of information or mutual administrative assistance shall set out clearly the information or action required by the revenue authority before a decision can be made.

(d) The revenue authority shall either adopt the OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes or develop guidelines that provide procedures to ensure equivalent taxpayer protection.

(e) There shall be regular audits and reviews of information exchange, particularly automatic and spontaneous exchanges of information to ensure compliance with procedures and guidelines.

**Recommended Rights**

(1) Before contacting any person other than the taxpayer to request additional information beyond that reported by law, the taxpayer shall be given reasonable notice prior to the contact, so that the taxpayer has an opportunity to provide the information required. This requirement shall not apply if a revenue officer has reasonable grounds to suspect that prior notification would result in the taxpayer obstructing the investigation, sets out those grounds in writing, and obtains approval from a senior revenue officer.

\(^6\) Taken largely from the 2012 OECD Model Agreement on Exchange of Information on Tax Matters, art. 1, [www.oecd.org], 1 November 2006.
(2) In matters involving trade, business, industrial, commercial or professional secrets or trade processes, where there is a request by another state under an exchange of information agreement for information that might affect such secrets or processes, the revenue authority shall notify the taxpayer before the information is given, to allow the taxpayer to make application, within a specified time, for the information not to be provided.

Chapter 6: Audit and Investigation

Article 17

Explanation

The revenue authority shall have the legal power to conduct wide-ranging audits and investigations, including powers of search and seizure, to ensure compliance with the tax law, but in doing so shall provide taxpayers with the protection set out in this Chapter.
Chapter 9

Article 18

Rights

AUDIT

(1) The revenue authority shall have a clear set of guidelines for its staff, setting out procedures to ensure consistent application of delegated authority, standards developed for audits, audit policies, audit procedures, and how and by whom interpretation of the law applicable to the audit will be carried out.

(a) Audit policies and procedures shall be based on principles of accuracy, efficiency, fairness, objectivity, transparency, completeness, consistency and defensibility. 7

(b) There shall be separate guidelines for revenue authority activities specifically authorised by law, to ensure that the legal requirements are met.

(c) Audit guidelines shall provide for conflict of interest.

(2) Taxpayers shall be given prior notification of an audit or a request to attend an interview, with brief details of the expected nature, scope and duration of the audit or interview, the information and records that will be required, and the names and contact details of the revenue officers managing the audit or interview.
(3) Taxpayers shall be given the opportunity to request postponement of the audit or interview if they have good reasons.

(4) Revenue officers shall always clearly identify themselves.

(5) The audit or interview process and timeframe shall be explained in detail to the taxpayer or its representatives before an audit or interview commences, with the opportunity for discussion and clarification, including:

(a) Any benefits of voluntary disclosure;

(b) The rights and duties of the taxpayer during an audit or interview;

(c) The settlement practices of the revenue authority; and

(d) The avenues for objection and appeal against assessments arising out of the audit.

(6) Taxpayers shall be advised of their right to have professional representation during an audit or interview.

(7) Audits shall not interfere unreasonably with the proper running of a taxpayer’s business or cause it to suffer commercial loss as a direct result of the audit activity.

OECD, *Strengthening Tax Audit Capabilities: General Principles and Approaches* (Paris, Centre for Tax Policy)
(a) Meetings or interviews shall take place, where possible, at mutually convenient times.

(b) Audits shall usually take place in normal business hours unless otherwise agreed.

(8) Taxpayers shall be given a reasonable time to collect information required unless search and seizure powers are exercised because the integrity or existence of documents is at risk.8

(9) Taxpayers shall have the right to take notes of any conversations or interviews.9

(10) Taxpayers shall have the right to request the recording of all interviews and be given a copy of the recording at the conclusion of the interview.10

(11) During the audit the taxpayer shall be given the opportunity to discuss matters arising in the audit with the tax auditor:

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8 ATO, Taxpayers' Charter: Explanatory Booklet 10, If you're subject to enquiry or audit, p. 5, <www.ato.gov.au>, 1 November 2006
9 Ibid.
10 Ibid.
(a) There shall be discussion of the final issues arising out of the audit that will affect any assessment raised as a result of the audit, including disputed facts and their legal consequences;

(b) Reasons shall be given for adjustments, and opportunity shall be given for the taxpayer to explain the circumstances that might justify a reduction of penalties or interest; and

(c) The outcome shall be documented and provided to the taxpayer in writing within a reasonable time, together with information concerning any rights of review and remedies that may be available to the taxpayer.

(12) Negotiations shall take place to settle the outcome of the audit where these are permitted by law:

(a) Negotiations shall take place in the context of proper, fair and consistently applied settlement processes; and

(b) The terms of any settlement agreement shall be documented and the taxpayer provided with a copy.

(13) Taxpayers shall be advised as early as possible of an intention to seek prosecution as a result of an audit or interview.

11 Ibid., p. 7.
(14) Where the revenue authority has a reasonable belief that for any purpose related to
the administration or enforcement of the tax law it is necessary to gain access to
premises for the purpose of searching those premises and/or seizing documents or
other property or information:

(a) a warrant provided at the discretion of a judicial officer is required if the access
is to a private dwelling, which discretion shall be exercised in light of Article 6;

(b) a warrant provided at the discretion of a judicial officer is required for any
criminal investigation,

(c) the decision to gain access in circumstances where no warrant is required will
be carried out in light of Article 6; and

(d) all powers related to access shall be used for their proper purpose.

(15) In conducting authorised searches, revenue authorities shall:

(a) normally inform the occupant before the search takes place unless this could
reasonably be expected to harm the investigation;

(b) normally conduct searches in business hours or by appointment;

(c) normally permit the taxpayer or occupier to attend the search together with a
representative;

(d) always provide the opportunity to claim privilege on documents or
information;
(c) always provide a detailed receipt for anything taken, with an indication of when it will be returned;

(f) normally take a copy of documents or information rather than the original unless the original is critical to the investigation;

(g) where the original document or information is seized, normally give the opportunity to copy the document or information before it is removed; and

(h) publish guidelines on how access powers involving access to premises, searches and seizure of information will take place, together with details of the rights and obligations of taxpayers.

**REPRESENTATION AND PRIVILEGE**

(16) In tax matters, taxpayers shall have the right to representation, be advised of that right and given the opportunity to exercise it.

(17) The law shall protect confidential communications between a lawyer and client, confidential communications between a lawyer and third parties when they are made for the benefit of a client, and confidential material that records the work of a lawyer carried out for the benefit of a client unless the client has consented to the disclosure.\(^\text{12}\)

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Chapter 9

Recommended Rights

(1) The revenue authority shall not conduct an audit on a non-business taxpayer for two years in a row where no additional taxes were payable after the first audit.

(2) The protection afforded to confidential communications in the relationship between a lawyer and client shall extend to similar confidential communications in the relationship between a tax practitioner and client.

(3) Information obtained in a tax investigation from a taxpayer shall not be used to incriminate the taxpayer in a subsequent criminal or civil proceeding arising from which criminal or civil penalties might apply.

Chapter 7: Assessment

Article 19

Explanation

The assessment process determines the amount of tax that taxpayers must legally pay. It is fundamental to the effective operation of the tax system. The following rights are designed to enhance voluntary compliance while maintaining the integrity of the tax system.
Article 20

Rights

(1) Revenue authorities shall provide advance rulings on how they will treat transactions or arrangements.

(2) Advance rulings shall be consistent in their interpretation and application of the tax rules both between taxpayers and to the same taxpayer over time.

(3) Where a revenue authority holds out a particular interpretation of the law to be correct, or follows specific procedures in implementing the law, and the taxpayer relies in good faith on the view of a revenue authority, a revenue authority shall be bound by its approach.

(4) An obligation to withhold tax shall be required only by legislation, which shall provide for the obligation and procedures for withholding and payment of the amount to the revenue authority.

(5) The revenue authority shall publish clear guidelines with reasonable timelines for any administrative process imposing an obligation on any person to pay or withhold tax, or to report information.
(6) Where information provided by someone other than the taxpayer is used in making an assessment, the taxpayer shall have the right to make sure the information provided is accurate.

(7) There shall be sufficient information given to a taxpayer on or with an assessment, so that the taxpayer can make an informed decision as to the accuracy of the assessment made.

(8) Where the revenue authority discovers within the relevant time limits that a taxpayer has failed to make a claim for any form of tax relief, deductions or refunds to which the taxpayer is entitled, the revenue authority shall amend the taxpayer's assessment to grant those entitlements.

(9) The revenue authority shall automatically refund overpayments of tax.

(10) Interest shall be paid on overpayments of tax.

(11) There shall be set time limits for the amendment of assessments except in cases of fraud or evasion.

(12) Time limits for the amendment of assessments shall coincide with the requirement for taxpayers to retain records.
A Model of Taxpayers' Rights

(13) The revenue authority shall identify and publicise in advance the procedures it will follow when assessing taxpayers where there is insufficient information to make a normal assessment.

Recommended Rights

(1) Advance rulings shall be legally binding on a revenue authority.

(2) There shall be a right of appeal against an adverse binding ruling.

Chapter 8: Sanctions and Enforced Collection

Article 21

Explanation

Sanctions and enforced collection are designed to reinforce the integrity of the tax system where voluntary compliance has failed. Clear procedural safeguards ensure that taxpayers' rights are protected in the face of legal and administrative action taken by the state to protect the revenue.
Rights

(1) There shall be a clear basis for the imposition of penalties and interest.

(a) Where there is discretion as to the level of penalties and interest, it shall be made clear how and why the discretion is exercised.

(b) In the exercise of discretion the principle of proportionality requires that a penalty should be proportionate to the offence.

(2) Criminal penalties shall be imposed in accordance with procedures applicable to other crimes of the same kind.

(a) The revenue authority shall set out the criteria it uses in deciding whether to recommend prosecution of a taxpayer.

(3) There shall be a clear basis for any decision to pursue collection through enforcement.

(a) Tax collection and enforcement procedures shall be documented clearly and simply, and provided to taxpayers affected.

(b) Taxpayers shall be given appropriate notice, and reasonable time to comply with demands for payment before enforcement measures are taken. All such
notices shall include details of the taxpayer’s rights and obligations in relation to enforcement, including the right to representation and the availability of legal aid.

(c) Where there is discretion to pursue collection through enforcement, it shall be made clear how and why the discretion is exercised.

(d) In the exercise of discretion the principle of proportionality requires that the means of enforcement should be proportionate to the tax payable.

(e) The revenue authority shall provide clear guidelines governing its exercise of enforcement powers.

(f) The revenue authority guidelines shall cover, in particular, how it will exercise its discretion to grant extensions of time to pay and to formulate tax payment arrangements. The onus of proving hardship in such cases must be reasonable.

(g) Agreements that allow a taxpayer to use payment methods that differ from normal collection requirements, such as instalment payments, shall be binding on the revenue authority. There shall be clear guidelines governing the operation of these methods.

(h) The revenue authority shall institute clear lines of authorisation for enforcement of tax debts and appropriate monitoring mechanisms.

(i) Children and those with disabilities shall be protected by law during enforcement proceedings.

(j) Release of restrictions over an asset once a debt is paid or other arrangements are made with the revenue authority, shall be effected within a specified time or compensation will be payable.
(1) Remission of penalties shall allow account to be taken of exceptional circumstances relevant to the taxpayer.

(2) There shall be clear and transparent guidelines governing waiver of penalties.

(3) There shall be a collection due process hearing by a tribunal or a court at the request of a taxpayer before enforcement proceedings commence.

Chapter 9: Objection and Appeal

Article 23

Explanation

This chapter sets out the basic rights and procedures that flow from the fundamental right of every taxpayer to object to and appeal against decisions and actions of the revenue authority. In doing so it acknowledges the limits applicable to taxpayers in certain situations in exercising these rights. It is important to note that protection for taxpayers in criminal proceedings is found in the laws governing criminal law and procedure.
Article 24

Rights

(1) Taxpayers shall have the right to object to assessments and to appeal to a court or administrative tribunal of independent status within a reasonable time.

(2) Any time limits on the right of appeal shall be reasonable.

(3) The right of appeal shall apply to all decisions and actions of the revenue authority except where this is specifically excluded.

(4) Taxpayers shall be informed clearly and have easy access to information about their rights of objection and appeal together with any time limits that apply.

(5) The conduct of the appeal should be subject to due process and a fair hearing, which shall include:

(a) An impartial hearing.

(b) A public hearing at one level of appeal, which may be waived on application by the taxpayer at the discretion of the court or tribunal.

(c) The right to representation.

(d) Procedural equality between the parties to the proceedings.
(e) An adversarial process with full disclosure of evidence, unless the court or tribunal specifically allows non-disclosure.

(f) The provision of reasons for a decision.

(g) The provision of facilities for taxpayers suffering from disabilities or other impediment to their effective participation.

(6) Where a taxpayer's appeal is successful, the revenue authority shall pay the taxpayer's appeal costs.

Recommended Rights

(1) There shall be a specialised tax court or tribunal at the first level of appeal.

(2) There shall be access to legal aid for those otherwise unable to appeal against a tax decision.

(3) There shall be suspension of tax payable during a review, on application to the review body at the commencement of proceedings, where the taxpayer has a prima facie case and can demonstrate hardship.

(4) Where a taxpayer suffers personal or economic loss as a direct result of the action of the revenue authority or its officers, the revenue authority shall be liable to pay compensation.
Chapter 10: A Statement of Goals

Article 25

The revenue authority shall publish a statement of administrative goals that will provide service standards for its dealings with taxpayers. Each goal will be supported by a performance indicator or other objective benchmark by which to measure performance against that goal. In its annual report to the minister the revenue authority will provide an analysis of its performance on each measure with an explanation for significant variances.
Appendix

Principles of Good Practice and an Example Administrative Charter

Whether in a charter or similar document, revenue authorities should adopt the following principles generally accepted as principles of good practice for revenue authorities:

1. Act professionally in all dealings with taxpayers.
2. Treat taxpayers with courtesy, consideration and sensitivity.
3. Listen to taxpayers' concerns.
4. Consult with key stakeholders or their representatives before significant changes are introduced.
5. Take account of a taxpayer's particular circumstances, especially individual, cultural and special needs, to the extent allowed by law.
6. Treat taxpayers as being honest in their tax affairs unless they act otherwise.
7. Minimise the costs of complying with tax obligations.
8. Provide assistance to taxpayers to help them understand and meet their tax obligations.
9. Make sure publications and other communications are clear, accurate, helpful and easy to understand.
10. Keep looking for new and better ways to give taxpayers advice and information.
11. Conduct general education programs for both existing and potential taxpayers.
12. Provide taxpayers with easy access to and identification of contact details.
13. Be accessible and attend to enquirers, whether by telephone, mail or in person, within specified times designed to minimise delay.
14. Deal with urgent requests without delay, whether by telephone, mail or in person.

15. Answer telephone calls promptly and without unnecessary transfer.

16. Make an effort to ensure the taxpayer is put in touch with the appropriate person the first time.

17. Try to get all aspects of interaction with taxpayers right first time by making best use of all of the information available.

18. Follow through on what they say they will do.

19. Ensure that their staff are well trained, competent and up-to-date with changes in the law that affect their roles.

20. Strive to provide quality service across the organisation.

21. Apologise for errors, fix them quickly and explain what went wrong and why.

22. Make it clear that taxpayers can question the information, advice and service they are given and inform them of options available for resolving disagreements.

23. Monitor its performance in living these principles through collection of information and regular surveys, which are made public and used internally for continual improvement.

The OECD Centre for Tax Policy and Administration has prepared an example taxpayers’ charter: General Administrative Principles – GAP002 Taxpayers’ Rights and Obligations.

Example Taxpayers’ Charter using the Basic Rights and Obligations in this Note

Note: This is only an example using elements that might be found in a taxpayers’ charter. It would need to be tailored to reflect the relevant policy and legislative environment, administrative practices and culture of a tax administration seeking to use it.
Chapter 9

The Taxpayers' Charter

Introduction

In our society our tax laws requires that we pay taxes and other charges in order to fund a range of government programs and community services, such as education, welfare, health, defence, law enforcement and transportation infrastructure, that help our society to function.

Your tax administration, in collecting these taxes and charges, operates on the fundamental principle that citizens and non resident taxpayers will act in accordance with the law when they are treated with respect and fairness and provided with all the information, advice, assistance and other services they need to comply with their obligations.

This Taxpayer Charter broadly summarises your important rights and obligations under the tax system. We have published it to help set in place the co-operative relationship we seek with the community -- one based on mutual trust and respect.

Your rights:

Your right to be informed, assisted and heard

We will treat you with courtesy and consideration at all times and will, in normal circumstances, strive to:
A Model of Taxpayers’ Rights

- help you to understand and meet your tax obligations;
- explain to you the reasons for decisions made by us concerning your affairs;
- finalise refund requests [within ... days]/[as quickly as possible] and, where the law allows, pay you interest on the amount;
- reply to written enquiries [within ... days]/[as quickly as possible];
- deal with urgent requests as quickly as possible;
- answer your telephone call promptly and without unnecessary transfer;
- return your telephone call as quickly as possible;
- keep your costs in complying with the law to a minimum;
- give you the opportunity to have your certified legal or taxation adviser present during any investigation;
- Send you, by the end of the investigation or [within ... days of]/[as quickly as possible after] its completion, the relevant minutes or a written advice of the result of that investigation and the reasons for the decisions we have taken;
- Send you, where an assessment has been issued, details of how the assessment was calculated.

Your right of appeal

We will, in normal circumstances, strive to:

- fully explain your rights of review, objection and appeal if you are unsure of them or need clarification;

13 Note: Jurisdictions having explicit taxpayer service time benchmarks may wish to insert their relevant time standard at this point, other Jurisdictions may prefer to use 'as quickly as possible' or 'in a reasonable time'.
14 Ibid.
15 Ibid.
• review your case if you believe that we have misinterpreted the facts, applied the law incorrectly or not handled your affairs properly;

• ensure that the review is completed in a comprehensive, professional and impartial manner by a representative who has not been involved in the original decision;

• determine your objection [within ... days]/[as quickly as possible] unless we require more information to do so, or the issues are unusually complex;

• give you reasons if your objection has been completely or partially disallowed;

• request further information from you only where it is necessary to resolve the issues in dispute.

Your right to pay no more than the correct amount of tax

We will:

• act with integrity and impartiality in all our dealings with you, so that you pay only the tax legally due and that all credits, benefits, refunds and other entitlements are properly applied.

Your right to certainty

We will, in normal circumstances, strive to:

• provide you with advice about the tax implications of your actions;

• let you know [at least ... days] /[as soon as possible] before the conduct of an interview or a request for the production of documents;

16 Ibid.

478
• advise you of the scope of an interview and our requirements;
• arrange a suitable time and place for the interview and allow you time to prepare your records.

Your right to privacy

We will:

• only make enquiries about you when required to check that you have complied with your tax obligations;
• only seek access to information relevant to our enquiries;
• treat any information obtained, received or held by us as private.

Your right to confidentiality and secrecy

We will:

• not use or divulge any personal or financial information about you unless you have authorized us in writing to do so or in situations where permitted by law;
• only permit those employees within the administration who are authorized by law and require your personal or financial information to administer our programs and legislation, to access your information.

And your obligations

17 Ibid.
Your obligation to be honest

We expect you to:

- provide complete and accurate information as and when required;
- declare all your assessable income in your income tax return;
- claim only deductions, rebates and credits to which you are entitled;
- answer questions completely, accurately and honestly;
- explain the full facts and circumstances when you seek tax advice or when you request a private ruling.

Your obligation to be co-operative

We expect you to:

- co-operate with tax administrators and treat them with courtesy, consideration and respect, as we do in our dealings with you.

Your obligation to provide accurate information and documents on time

We expect you to:

- file correct returns and documents within time limits specified;
- provide complete and accurate information by certain dates;
- take reasonable care in preparing your tax returns, documents and information;
• inform us of relevant events such as incorporation, opening a business, correspondence address changes, moving the place of business, ceasing business, with required taxpayer identifiers in a timely manner so that we can administer tax legislation properly, efficiently and effectively.

*Your obligation to keep records*

We expect you to:

• keep sufficient records and books to enable you to meet your tax obligations;
• keep sufficient records and books for the required retention period;
• take reasonable care in preparing your records and books;
• allow us access to records and books so that we can check your tax obligations.

*Your obligation to pay taxes on time*

We expect you to:

• pay the full amount of your taxes by the due dates;
• pay the full amount of any balance outstanding resulting from assessment or reassessment;
• help us develop a mutually acceptable payment arrangement if you cannot pay any outstanding balance in full and have exhausted all reasonable possibilities of obtaining the necessary funds by borrowing or re-arranging your financial affairs;
• withhold and remit by due dates all taxes withheld or collected on behalf of others;
advise us as soon as practical if some event beyond your control has affected your ability to pay your taxes on time so that appropriate arrangements can be put into place to assist you.

Risks of non-compliance with the obligations

*If you do not meet your tax obligations*

*the law may provide for penalties and/or interest to be imposed;*

*prosecution action may be taken in more serious cases.*