

Centre for Tax Policy and Administration

Tax guidance series

General Administrative Principles - GAP002 Taxpayers' Rights and Obligations

Taxpayers' Rights and Obligations – Practice Note

Prepared by the OECD Committee of Fiscal Affairs Forum on Tax Administration

Caveat

Each revenue authority faces a varied environment within which they administer their taxation system. Jurisdictions differ in respect of their policy and legislative environment and their administrative practices and culture. As such, a standard approach to tax administration may be neither practical nor desirable in a particular instance.

The documents forming the OECD Tax guidance series need to be interpreted with this in mind. Care should always be taken when considering a country's practices to fully appreciate the complex factors that have shaped a particular approach.

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INTRODUCTION

1. In any democratic society taxpayers citizens will have a number of basic rights as well as obligations in relation to their Government and its agencies. Revenue authorities are no exception and most countries have legislation governing taxpayer's rights and obligations in relation to taxation.

2. As would be expected, given the diversity of environments faced by revenue authorities around the world, the specific details of the rights and obligations vary somewhat by country. There are however a number of common threads that can be identified. In 1990 the OECD's Committee of Fiscal Affairs Working Party Number 8 published a document entitled "*Taxpayers' rights and obligations – A survey of the legal situation in OECD countries*"¹

3. The survey found that, while most countries at that time did not have an explicit Taxpayers' charter, the following basic taxpayer rights were present in all systems:

- The right to be informed, assisted and heard
- The right of appeal
- The right to pay no more than the correct amount of tax
- The right to certainty
- The right to privacy
- The right to confidentiality and secrecy

4. These basic taxpayer rights also imply basic obligations. There is a set of behavioural norms expected of taxpayers by Governments. These expected behaviours are so fundamental to the successful operation of taxation systems that they are legal requirements in many, if not most, countries. Without this balance of taxpayers' rights *and* obligations taxation systems could not function effectively and efficiently. These taxpayer obligations are:

- The obligation to be honest
- The obligation to be co-operative
- The obligation to provide accurate information and documents on time
- The obligation to keep records
- The obligation to pay taxes on time

5. Many countries have elaborated these basic rights and obligations into a taxpayers' charter. These documents often include statements about behaviours expected from officials and taxpayers. Some countries have chosen to consolidate the measures taken to protect taxpayers into a "taxpayers' charter" or "declaration". In some countries they have taken form of a general statement of the broad principles which

¹ Approved by OECD Council on 27 April 1990. Based on country replies to a questionnaire sent out in 1988.

should govern the relationship between the tax authorities and the taxpayer. In other countries, these documents provide a more detailed guide to the rights of taxpayers at each stage in the assessment process. Yet other countries have taken the approach of including statements about behaviours expected from officials and taxpayers in documents such as mission statements for the tax administration. Accordingly, it should be stressed that even countries without a taxpayer charter may, nevertheless, attach equal importance to taxpayers' rights and that in practice taxpayers in such countries have rights similar to those found in formal taxpayers' charter statements.

THE BASIC RIGHTS

6. The 1990 survey noted the following rights:

a) *The right to be informed, assisted and heard* (Paragraph 2.16²)

7. Taxpayers are entitled to have up-to-date information on the operation of the tax system and the way in which their tax is assessed. They are also entitled to be informed of their rights, including their rights of appeal. All taxpayers can expect that the information provided to them should reflect the complexity of the tax situation, thereby enabling them to understand better their tax affairs. The authorities may use a variety of means to fulfil this obligation: information pamphlets, taxpayers' charters, the telephone oral statements, video guides, *etc.*

b) *The right of appeal* (Paragraph 2.17)

8. The right of appeal against any decision of the tax authorities applies to all taxpayers, and to almost all decisions made by the tax authorities, whether as regards the application of the law or of administrative rulings, provided the taxpayer is directly concerned.

c) *The right to pay no more than the correct amount of tax* (Paragraph 2.20)

9. Taxpayers should pay no more tax than is required by the tax legislation, taking into account their personal circumstances and income. Thus whilst it is acceptable to reduce tax liability by legitimate tax planning, governments make a distinction between this form of tax planning and forms of tax minimisation which clearly go against the intent of the legislator. Taxpayers are also entitled to a reasonable measure of assistance from the tax authorities so that they receive all the reliefs and deductions to which they are entitled.

d) *The right to certainty* (Paragraph 2.21)

10. Taxpayers also have a right to a high degree of certainty as to the tax consequences of their actions. Of course, certainty is not always possible. For example, taxpayers may not always know in advance the effect of rules that are dependent on the facts and circumstances in a particular case. Also, tax authorities may not be obligated to provide the taxpayer with certainty in relation to the application of anti-abuse provisions aimed at taxpayers seeking to circumvent the intent of the legislation. However, it is clearly a goal that taxpayers should be able to anticipate the consequences of their ordinary personal and business affairs. Achieving this goal is often difficult because modern tax systems are complex and evolving.

² References to the 1990 document.

e) The right to privacy (Paragraph 2.25)

11. All taxpayers have the right to expect that the tax authorities will not intrude unnecessarily upon their privacy. In practice, this is interpreted as avoiding unreasonable searches of their homes and requests for information which is not relevant for determining the correct amount of tax due. In all countries very strict rules apply to the entry into a person's dwelling or business premises by a tax official in the course of a tax investigation and on obtaining information from third parties. In some countries visits to a taxpayer require the consent of the taxpayer; in the majority of countries a signed warrant is generally required to enter the home of a taxpayer who objects to a visit by the tax authority. Similarly, strict rules apply to obtaining information from third parties on the affairs of a taxpayer.

f) The right to confidentiality and secrecy (Paragraph 2.26)

12. Another basic taxpayers' right is that the information available to the tax authorities on the affairs of a taxpayer is confidential and will only be used for the purposes specified in tax legislation. Tax legislation usually imposes very heavy penalties on tax officials who misuse confidential information and the confidentiality rules that apply to tax authorities are far stricter than those applying to other government departments.

THE BASIC OBLIGATIONS

a) The obligation to be honest

13. If most taxpayers did not pay most of their taxes most of the time, a tax system would be placed under a severe compliance strain and governments would be unable to finance the expenditures voted for by their citizens. Taxpayer honesty is therefore fundamental to the operation of any tax system and all systems have investigatory powers with penalties and sanctions in place to cater for instances where a taxpayer does not comply. Accordingly taxpayers should always exercise reasonable care and diligence in attempting to honestly comply with their tax obligations.

14. The exercise of penalties and sanctions by a revenue authority should take into account any evidence as to the reasons for non-compliance. Errors can arise due from honest mistakes - particularly with complex tax requirements, from ignorance about tax obligations or, in some instances, from the taxpayer being prevented from complying by some event outside their control, such as a natural disaster.

15. Factors influencing levels of taxpayer honesty should be taken into account in the design and administration of a tax system. Perceptions about the fairness and equity of a tax system and a taxpayer's prior treatment by officials from the revenue authority can influence their future honesty.

b) The obligation to be co-operative

16. Modern tax systems can only function effectively if there is a high degree of voluntary compliance, keeping the need for enforcement activity to a minimum. Co-operative behaviour on the part of most taxpayers allows the Government to run the taxation system at a relatively low cost and minimises unnecessary intrusion into taxpayer affairs and those of third parties. Hence taxpayers are encouraged to co-operate with relevant revenue authorities in attempting to comply with their tax obligations.

c) The obligation to provide accurate information and documents on time

17. All taxation systems use information provided by taxpayers to identify the taxpayer and their address and to account for taxes paid or payable. Most tax systems are premised around taxpayers filing particular documents on time to enable taxes to be properly recorded and debits or credits to be issued. Thus taxpayers should provide accurate information to revenue authorities in accordance with the laws of relevant taxing jurisdictions. Taxpayers having difficulty in complying with this obligation should be encouraged to discuss their circumstances with their revenue authority, as it may be possible to allow additional time in some cases.

d) The obligation to keep records

18. To provide accurate information to the revenue authority taxpayers should keep reasonable contemporaneous records of their financial transactions. Such records also allow the revenue authority to verify that the information provided by a taxpayer is accurate. Most tax systems will broadly specify what records have to be kept and for what length of time so that transaction details can be traced and verified. Accordingly taxpayers should keep the records required by the laws of relevant taxing jurisdictions.

19. A side benefit is that record keeping also makes good business sense and assists taxpayers with their financial planning and decision making, increasing their likelihood of success. Some revenue authorities assist their small to medium business taxpayers by providing specific guidance and software to help them comply.

e) The obligation to pay taxes on time

20. Finally all tax systems require taxpayers to pay their taxes on time. Taxpayers should always endeavour to pay their taxes in accordance with the laws of relevant taxing jurisdictions. Taxpayers who are having difficulties in complying with this obligation should be encouraged to discuss their circumstances with their revenue authority as it may be possible to allow additional time for payment in some cases.

TAXPAYERS' CHARTER

21. The taxpayers' charter is an attempt to summarise and explain in plain language a taxpayers' rights and obligations in relation to their tax affairs, making such information much more widely accessible and understandable.

22. Most taxpayers' charters are a guide to the law and are not legal documents in themselves, although in some tax systems they may constitute a 'ruling'. Generally they would not provide additional rights or obligations other than those contained in relevant legislation.

23. An example of elements that might be found in a taxpayers' charter based on the discussion contained in this guidance note is appended. It should be stressed that the appended charter example, and the statements within it, may not be applicable for every tax administration. In drawing up a taxpayers' charter a jurisdiction must properly reflect their own policy and legislative environment and their own administrative practices and culture. It should also be noted that even countries without a taxpayers' charter attach equal importance to taxpayers' rights and that in practice taxpayers in such countries have rights similar to those found in formal taxpayers' charter statements.

GUIDANCE

1. Revenue authorities that have not already done so *may consider* issuing a taxpayers' charter outlining their taxpayers' rights and obligations.
2. Revenue authorities issuing a taxpayers' charter are encouraged to cover the basic taxpayers' rights and obligations outlined in this practice note in their charter.

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.

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:

- 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]³ and, where the law allows, pay you interest on the amount;
- reply to written enquiries [within ... days] / [as quickly as possible]⁴;
- 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]⁵ 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.

³ 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**”.

⁴ See footnote 3

⁵ See footnote 3

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;
- 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]⁶ 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]⁷ before the conduct of an interview or a request for the production of documents;
- 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;

⁶ See footnote 3

⁷ See footnote 3

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- 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

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;

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- 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.

HISTORY

1990: In 1990 the OECD's Committee of Fiscal Affairs Working Party Number 8 published a document entitled "*Taxpayers' rights and obligations – A survey of the legal situation in OECD countries*"

At the December 2000 meeting of the Forum on Strategic Management (FSM – now the Forum on Tax Administration) Steering Group the summary material from the 1990 document with examples of various taxpayer charter documents was suggested as a basis for a paper on Taxpayer rights and obligations as part of the FSM (now FTA) tax administration series.

At its meeting in December 2000 the FSM (now FTA) Steering group agreed to the tax administration papers series being made available as public documents. This was endorsed by the CFA at their meeting in January 2001.

January-March 2002: Exposure draft circulated to FSM (now FTA) members for comments.

October 2002: Revised draft circulated to FTA Bureau for final comments.

July 2003: A final draft goes to the CFA for approval.

August 2003: The paper is published as part of the "Tax Guidance Series" from the Centre for Tax Policy and Administration.

COMPATIBILITY

The principles in this document are compatible with those contained in:

- **GAP001 Principles of Good Tax Administration**

Centre for Tax Policy and Administration, OECD 2001. <http://www.oecd.org/pdf/M00017000/M00017627.pdf>

- **Taxpayers' rights and obligations – a survey of the legal situation in OECD countries**

Committee of Fiscal Affairs, OECD 27 April 1990. <http://www.oecd.org/pdf/M00023000/M00023881.pdf>

- **Administrative Responsiveness and the Taxpayer**

Public Management Studies No 2., PUMA, OECD 1988. <http://www.oecd.org/pdf/M00008000/M00008008.pdf>

- **Minimum necessary attributes for a sound and effective tax administration**

A charter-document approved by the Inter-American Centre of Tax Administrations/ Centro Interamericano de Administraciones Tributarias (CIAT) General Assembly held in the Dominican Republic on March 19, 1996
http://www.oecd.org/DAF/FSM/minimumatributesta_ciat.html

- **Handbook for Tax Administrations, Sections 1.2 and 1.3**

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