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Towards greater fairness in taxation

A Model Taxpayer Charter

Presentation to the members of the
Platform for Tax Good Governance
February 2014

The Model Taxpayer Charter project

- The status quo
 - The dilemma
 - EU/OECD initiatives to reinforce mutual trust
 - Taxpayer Charters at national level
- Taxpayer Charter survey 2011/2012
- The draft Model Taxpayer Charter
- Striking a balance
 - Fairness in tax legislation
 - Fairness in procedures
 - Tax avoidance and evasion
- The consultation process
 - Consultation with the European Commission
 - Consultation with other organisations
 - Distribution
 - Next steps

The status quo: the dilemma

To protect their tax bases, revenue authorities...

- Take unilateral measures
- Extend criminal liability of tax advisers
- Enact duties to disclose tax avoidance schemes
- Carry out risk assessment of taxpayers /advisers
- Introduce ever more complex tax rules
- Change tax laws ever more rapidly



Risks for taxpayers and advisers:

- Double taxation
- Lack of legal certainty
- Liability of advisers
- Increase of compliance burden

The status quo: EU/OECD initiatives to reinforce mutual trust

OECD:

- 1990: „Taxpayers’ Rights and obligations – a survey of the legal situation in OECD countries“
- 2003: „Taxpayers’ Rights and Obligations - Practice note” ([link](#))
- 2008: Tax Intermediaries study dealing with the role of tax advisers -> „enhanced relationship“ ([link](#))
- 2013: Cooperative Compliance report ([link](#))

European Commission:

- 2012: Action plan against tax fraud and evasion: idea of „An EU Taxpayer’s Code“ ([link](#))
- 2014: Publication of EU Taxpayer’s Code (planned)

The status quo: Taxpayer Charters at national level

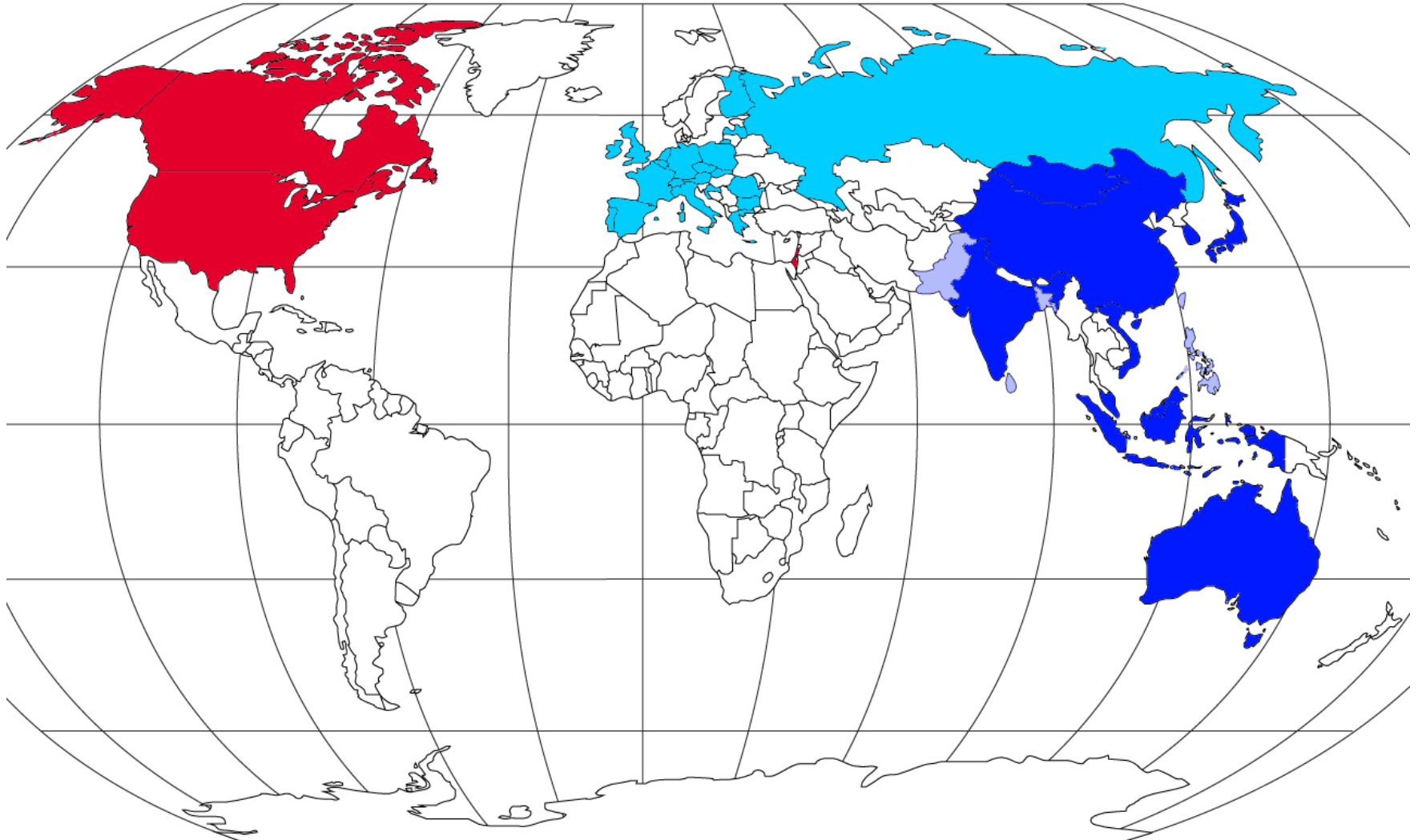
- Australia, Canada, France, India, New Zealand, South Africa, United States and others
- Many charters are not legally binding
- In many countries, taxpayer rights and obligations are in case-law or different pieces of legislation but not in a comprehensive document
- Overview on existing charters: CFE 50th Anniversary book (2009)

Taxpayer Charter survey 2011/2012

- Scientific basis for the Model Taxpayer Charter
- Aims:
 - to examine status quo of taxpayer rights and obligations in national laws and practice: which rights/obligations are commonplace, which are more ambitious?
 - to find out what should be included in a model taxpayer charter of global remit

Taxpayer Charter survey: 37 participating countries

(22/28 EU countries, 24/34 OECD countries, 16/20 of the world's largest economies)



Red (3): results collected by STEP

light blue (24): results collected by CFE

dark blue (10): results collected by AOTCA;
lilac (6): AOTCA countries not participating

Draft Model Taxpayer Charter presented 13 May 2013 ([link](#))



Responsible for Australasia; founded 1992; 20 member organisations in 16 countries representing > 330,000 individual tax practitioners, Headquarters: Sydney



Responsible for Europe; founded 1959; 32 member organisations in 25 countries representing > 180,000 individual tax practitioners, Headquarters: Brussels



Responsible for the Americas; founded 1991; 18,000 individual members in 80 countries; Headquarters: London

A Taxpayer Charter: A balanced document

Article 1 (5)

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

Purposes of a Taxpayer Charter

Article 1 (6):

„The overriding purposes of this Charter are to foster a relationship of mutual trust, respect and responsibility between Taxpayers and the State – to ensure Taxpayers fulfil their obligations to the State, and that the State’s position as to the rights of Taxpayers and the behaviour and duties of the Tax Administration is codified.

Through these means the costs of compliance should be reduced, voluntary compliance increased, and all Taxpayers treated equally, without bias or preference.”

Draft Model Taxpayer Charter: Contents I

Article 1. Introduction and Purpose

Article 2. Definitions

Article 3. What is covered?

Article 4. Who is covered?

Article 5. General Provisions (*presumption of honesty and truthfulness, basic obligations of the taxpayer, non-discrimination*)

Article 6. Filing of Tax and Information Returns (*responsibility for providing the correct information*)

Article 7. Assessment Process (*transparency of the tax computation; information on remedies*)

Article 8. Audit Process (*fair play provisions; duty of the taxpayer to cooperate*)

Article 9. Appeals Process (*possibility of an internal appeal with an independent tax officer*)

Article 10. Taxpayer Assistance (*provision of sufficient and up-to-date information to the taxpayer to enable compliance*)

Article 11. Service Standards (*tax authorities should work towards customer satisfaction*)

Article 12. Rulings and Interpretations (*possibility of taxpayers to ask for a binding interpretation*)

Article 13. Taxpayer Records (*keeping of records by the taxpayer, search and seizure*)

Article 14. Confidentiality (*safeguards to ensure taxpayer information remains confidential*)

Article 15. Tax Administration generally (*sound tax administration, responsiveness, publication of statistics*)

Article 16. Burden of Proof (*general rule and circumstances justifying a reversal*)

Draft Model Taxpayer Charter: Contents II

- Article 17. Drafting Standards for Tax Legislation (*ensuring that tax legislation is clear, unambiguous and understandable*)
- Article 18. Retroactivity of Legislation (*limits to retroactive taxation*)
- Article 19. Double Taxation and Relief (*relief mechanism*)
- Article 20. Interest and Penalties (*interest for late payment and overpayment; penalties and fault*)
- Article 21. Voluntary Disclosure (*possibility of the taxpayer to correct deficiencies in past filings*)
- Article 22. Legislative Process and Consultation (*possibility of interested parties to be heard*)
- Article 23. Tax Levied Only by Virtue of Law
- Article 24. Equality of Taxpayers
- Article 25. Matters concerning Tax Advisors (*Right of taxpayer to be represented by a tax adviser*)
- Article 26. Breach of Charter Rights (*Enforcement of Charter rights at national level*)
- Article 27. Enforcement and Collection of Tax, Interest and Penalties (*financial hardship of the taxpayer*)
- Article 28. Tax Avoidance (*measures of the state to prevent tax avoidance*)
- Article 29. Tax Evasion and Dishonesty (*prosecution of illegal activity*)
- Article 30. Special European Union Provisions (*respect for the Internal Market freedoms*)
- Article 31. Enabling Legislation
- Article 32. Implementation and Transition issues
- Article 33. Amendments to Charter
- Article 34. Concluding matters

Striking a balance I: Fairness in tax legislation

Taxpayer complies with the tax law...

- Taxpayer respects the state's sovereignty to levy taxes
- Taxpayer does not invoke his rights for frivolous purposes
- Taxpayer has to know the law and observes due diligence
- Taxpayer remains responsible for the correctness of a tax filing
- Taxpayer observes state enacted anti abuse and anti avoidance laws

...in return for legal certainty.

- Tax shall be levied only by virtue of law
- Taxpayer has to pay only the amount required by law
- Tax legislation has to be clear, understandable and unambiguous
- Underlying tax policy shall be included in legislation if necessary for interpretation
- Derogations from tax law must be based in the law
- No retroactive legislation unless relieving
- If retroactive effect, tax law should provide for transitional rules
- Legislation should grant double taxation relief
- Tax administration shall publish its positions and interpretations
- Taxpayer may obtain a ruling
- No penalties if error/omission in good faith and due diligence has been observed

Striking a balance II: Fairness in procedures

Taxpayer cooperates with the tax administration...

- Provide timely and complete information to the tax administration
- Use of the forms and instructions provided
- Timely payment of taxes
- Responsibility for correctness of the filing
- Respect and courtesy towards tax officers
- Keep sufficient records

And in doing so observes all enacted anti abuse and anti avoidance laws.

...in return for fair and transparent treatment and good service

- Presumption of honesty
- Provision of clear instructions, forms, information
- Reasonable assistance
- Decisions within a reasonable time
- Provides clear and reasoned assessments
- Information on procedural rights
- Transparency on the purpose of measures taken/questions asked
- Internal review process by independent tax officer
- Right to choose tax adviser, legal privilege
- Tax administration service standards
- Possibility of voluntary disclosure to correct deficiencies (not equivalent to tax amnesty)

Striking a balance III: Tax avoidance and evasion

Obligations

Art.28 Tax avoidance:

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

Art. 29 Tax evasion and Dishonesty:

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

Rights

Art.28 Tax avoidance:

(2) Such measures need to recognise both that the purpose of many provisions of taxation law that afford taxation relief to Taxpayers who enter into transactions acts as an incentive for them to do so, and the legitimacy, within clearly defined limits, of Taxpayer choice as to the form of transactions and business structures that the Taxpayer will adopt.

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

The consultation process:

Consultation with the European Commission

- **January 2013:** Meeting with DG TaxUD and presentation of the project
- **May 2013:** Participation in the Commission's public consultation on „A European Taxpayer's Code“
- **May 2013:** Publication of the draft Model Taxpayer Charter
- **June 2013:** Distribution to the countries in the Commission's Taxpayer's Code working group
- **June 2013:** Meeting with the Cabinet of Commissioner Šemeta
- **August 2013:** Distribution to the members of the *Platform for Tax Good Governance*
- **February 2014:** Introduction of the Model Taxpayer Charter at the 3rd *Platform* meeting

The consultation process: Other organisations (OECD/UN/ifa)

- **September 2013:** Meeting with the OECD
- **October 2013:** Distribution to the members of the UN *Committee of Experts on International Cooperation in Tax Matters*
- **October 2013:** Presentation of the Model Taxpayer Charter to the UN Committee of Experts
- **November 2013:** Distribution to the IFA (International Fiscal Association) country rapporteurs preparing the IFA congress 2015

The consultation process: Further distribution

(selection)

- EU: Commission (including working groups), Parliament, Council, Court of Justice
- OECD
- United Nations
- IMF
- World Bank
- National Ministries of Finance / Tax administrations
- Professional bodies (national and supranational; tax, law, accounting)
- Business organisations
- NGOs
- Leading international tax academics, IFA (International Fiscal Association)
- Media
- Interested public (through website)

The consultation process: Next steps

- Consideration of the Commission publication on a „EU Taxpayer’s Code“ and the feedback received from OECD and other commentators (in the course of 2014)
- Drafting and publication of final Model Taxpayer Charter
- Conferences and events
- Further monitoring of countries’ compliance with the Charter provisions