



LAWYERS

FRAUD TAX INSOLVENCY

Dick Barmiento | TTN Conference Amsterdam 2018

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Taxpayer Charter Project

- Collaboration of three organizations: CFE, AOTCA, STEP
- Preliminary report and final report
- Result: a Model Taxpayer Charter
- Principle based approach of rights and responsibilities of tax payers



**TOWARDS GREATER
FAIRNESS IN TAXATION**

A MODEL TAXPAYER CHARTER

Michael Cadesky, Ian Hayes, David Russell



Fundamental principles

- 20 Principles
- Taxpayers are entitled to ten rights
- Taxpayers have ten responsibilities
- Examples:
 - Rights: proportionality, honesty
 - Responsibilities: provide information, be cooperative

<u>Taxpayer Rights</u>	
1. Integrity and equality	The tax system shall be designed and administered fairly, honestly and with integrity, according to the law, without bias or preference.
2. Certainty	The Tax system will be designed and administered to provide as far possible certainty, clarity and finality in one's tax affairs.
3. Efficiency and effectiveness	The tax system will be designed and administered fairly and cost effectively taking into account the attainment of its purposes.
4. Appeal and the right to dispute resolution	<p>In cases of disputes as to tax liability an independent, objective, speedy and cost effective appeal process.</p> <p>Disputes as to actions of the Tax Authority will be followed up without fear of reprisal under independent oversight.</p>

<u>Taxpayer Rights</u>	
5. Appropriate assistance	Taxpayers who face difficulties in carrying out their responsibilities as taxpayers will be given appropriate assistance by the tax administration.
6. Confidentiality and privacy	A taxpayer's affairs and records will be kept confidential and private except in the case of public hearings in litigation or criminal prosecutions.
7. Pay correct amount of tax	A taxpayer is required to pay not more than the amount of tax based on tax laws.
8. Representation	A taxpayer may be represented by a person of the taxpayer's choosing.
9. Proportionality	Enforcement action including audits, collections, reassessment, penalties and prosecution will be proportionate to the circumstances.
10. Honesty	In the absence of any evidence to the contrary to be presumed honest.

<u>Tax Responsibilities</u>	
1. Be truthful	Be truthful in all tax matters including legally required disclosures.
2. Provide information	Provide information on a timely basis as and when reasonably required.
3. Be cooperative	Be cooperative in dealing with the tax administration, filing tax returns and information reporting, the conduct of an audit, and payment of taxes.
4. Make payment	Pay tax on time without deduction or offset subject to the right to appeal.
5. Comply with the law	Comply with tax responsibilities and seek assistance if necessary.

<u>Tax Responsibilities</u>	
6. Maintain records	Maintain accurate financial records and supporting information for such period as may be reasonably required.
7. Take due care	Exercise an appropriate degree of care and diligence in taxation matters.
8. Retain responsibility for advisors	Be held accountable for the correctness and completeness of the information supplied to the tax administration whether or not another person has been engaged to prepare, assemble and/or submit the information on your behalf.
9. Show courtesy	Treat tax officers with courtesy and respect, no abuse of tax officers in performance of their duties is ever acceptable.
10. Comply cross border	Ensure that all legitimate cross border compliance requirements are met.

Tax certainty

- Increased attention for tax uncertainty:
 - OECD /IMF Report on Tax Certainty presented to the G20 in March 2017
 - European Commission Taxation Paper entitled ‘Tax Uncertainty: Economic Evidence and Policy Responses’
 - Opinion Statement by CFE (<https://taxadviserseurope.org/blog/portfolio-items/cfe-opinion-statement-fc-072017-on-tax-certainty/>)
- Tax certainty in the Model Taxpayer Charter:
- *“The Tax system will be designed and administered to provide as far possible certainty, clarity and finality in one's Tax affairs.”*

Tax certainty

Tax certainty in the Model Taxpayer Charter:

- Publicise schemes that will be challenged and publish interpretations
- Provide assessment and show tax calculation (and interest and penalties, if any)
- Tax authorities are responsible for written information, response to be given within reasonable time
- Rulings should be binding for tax authorities
- Retrospective legislation is not allowed

CFE's view on Tax good governance

- EC: code or charter can enhance efficiency and effectiveness of a tax system and it can also increase the tax morale
- Exchange of information: quickly changing fields
- Rights of confidentiality, privacy and data protection need protection

Dutch tax legislation

- In accordance with Model taxpayer charter?
- Project of Dutch Association of tax advisers
- Findings (top 3):
 - Interest rules
 - No transparency in tax audits or investigations
 - Inadequate right to dispute resolution in international exchange of information

Model taxpayer charter

- Taking the model further
- Assess national tax legislation
- Global standard
 - UN initiatives, especially towards developing countries
 - IBFD assessed tax systems worldwide: Observatory on the Protection of Taxpayers' Rights
https://www.ibfd.org/sites/ibfd.org/files/content/pdf/OPTR_General-Report.pdf
- Code of conduct for tax advisers?



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