

# Taxpayer Charters and Rights

## *Discussion paper*

### ***Introduction***

In 2015 CFE, together with AOTCA and STEP, published a Model Taxpayer Charter.

The Model Taxpayer Charter spells out the guiding principles of such a Charter: these are contained in 10 Taxpayer Rights and 10 Taxpayer Responsibilities which underpin the more detailed provisions which are also part of the Model Taxpayer Charter publication. These are reproduced in the final section of this discussion paper.

The CFE Professional Affairs Committee (CFE PAC) is continuing its project to investigate the use of Taxpayer Charters and their potential role in safeguarding taxpayers' rights.

An [initial survey](#), undertaken in 2019, covered European countries and has identified EU member states with, or without, a Taxpayer Charter as well as identifying other relevant characteristics of their tax systems.

### ***Putting fundamental rights on the tax agenda***

Taxpayer rights and obligations are often only set out in legislation. Such legislation needs to be detailed but this in turn makes comparisons between countries difficult, complex and lengthy. Furthermore, in the absence a Taxpayer Charter, there are no guiding principles for legislators, tax administrations and tax courts. The average taxpayer will not find the tax law easy to access, read or interpret and it will be difficult for them to understand it's practical impact for them. It is also often quite difficult for tax administration and tax advisers to apply the law in a fair and equitable way.

CFE PAC believes that adopting and communicating the fundamental principles would provide clarity and be helpful for taxpayers, as well as providing structure for political debates, devising tax laws and the interpretation of tax laws by tax advisers and tax and other courts.

CFE PAC realises that the fundamental principles, as laid down in a Taxpayer Charter, do not usually have the power of law so that they are not in legislation which can be enforced in the courts. However, CFE PAC feels that if countries are able, and prepared, to set out some of

the overarching principles which underpin their tax system and the interactions between tax administrations, taxpayer and tax advisers then those tax systems will work better and will benefit all the participants in tax systems.

Tax systems impact every business and citizen in a particular country and the tax law will sometimes result in unintended consequences so there needs to be some flexibility in any tax system in order to end up with fair and reasonable results. The guiding principles contained in a Taxpayer Charter can be an important element in any country's attempt to create a fair and equitable tax system. We believe that tax law should contain a discretionary power for the tax administration to ensure it and the (tax) courts can apply the fundamental principles when the outcome for the taxpayer is not fair and equitable.

CFE PAC believes that a Taxpayer Charter, containing fundamental principles, can provide guidance to government, tax administrations and courts, as to how to realise better outcomes within their tax systems.

CFE PAC feels that if the only protection for individuals is in the courts then this will not be sufficient, not least because of the often costly and lengthy procedures in the court system.

CFE PAC also feels that the protection of individual persons, whether it be a legal or a natural person, is likely to be aided if there is some independent authority, such as a Tax Ombudsman, Inspector General of Taxation (as in Australia), National Taxpayer Advocate (as in the United States) or Tax Adjudicator, to monitor the general working of the system and how it affects individual cases so that such bodies can recommend changes to the system, based on real knowledge, when such change is identified as being necessary and appropriate.

## ***Conclusion***

CFE PAC aims to establish the Ten Fundamentals as an inherent part of CFE and GTAP and to encourage MOs to promote them so they will become a binding element of the CFE network.

Furthermore, the Ten Fundamentals should serve as a benchmark to discuss legislation in discussions among MO's and with media and politicians. This should help legislators, politicians, Ombudsmen, tax administrations, tax advisors and courts to focus on fair taxation in law and in practice.

CFE PAC believes tax administrations should have a discretionary power to prevent undue harshness in applying tax legislation.

CFE has also encouraged the European Commission to consider the substantive issues related to Model Taxpayers Charters and continue building on its project Guidelines for Taxpayers Rights. CFE stands ready to share our findings and experience in this area with the EU. Fundamentally, EU action in this area would potentially allow European taxpayers to avail of their fundamental rights in a more uniform manner, regardless of borders, legal cultures, administrative or court practice.

Lastly, CFE PAC feels that every state should have an independent authority to monitor the general working of the system and how it affects individual cases, and to recommend changes to tax systems.

***Discussion points for the PAC meeting***

1 Do you support the paper propositions?

2 Would you agree that the Ten Fundamentals should have effect on:

- The legislator
- The responsible ministry
- The tax administration
- The relevant courts
- The doctrine as published by academics and tax specialists
- The position of the taxpayer

3 Should there be an ombudsperson or a similar institution to which a taxpayer may appeal without invoking insurmountable costs and which protects the taxpayer against harmful lengthy procedures?

4 Would your MO agree to have the Fundamental Principles or equivalent arrangements as part of the CFE membership requirements/ benefits?

Below we reproduce the fundamental principles, the 10 rights and the 10 obligations, which we believe need to underpin any well-functioning tax system.

**As a Taxpayer you have the right to:**

**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**

In cases of disputes as to Tax liability an independent, objective, speedy and cost effective appeal process. Disputes as to actions of the Tax Authority will be followed up without fear of reprisal under independent oversight.

**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 no 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 prosecutions will be proportionate to the circumstances.

**10. Honesty**

In the absence of any evidence to the contrary to be presumed honest.

**And the responsibility to:**

**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 dealings 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.

**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, noting that abuse of Tax Officers in performance of their duties is never acceptable.

**10. Comply cross border**

Ensure that all legitimate cross border compliance requirements are met.

### **Some notes on the fundamental rights and responsibilities of the taxpayer.**

The rights and responsibilities of the taxpayer were defined by Michael Cadesky, Ian Hayes and David Russel on behalf of AOTCA, CFE and STEP. CFE realises that defining these rights and responsibilities will immediately evoke discussion whether these principles are correct and complete. However, these discussions were held in conceiving them and therefore, for now, CFE believes it is better to work with them than to go on discussing them. This does not mean they are set in stone, but discussing broad principles instead of actually using them, does not bring us nearer to our goal.

Nevertheless, CFE does believe the defined principles indeed cover the fundamental rights and responsibilities of the taxpayer, if not directly than in most cases indirectly.

One might ask whether the taxpayer only has the rights described, if the taxpayer fulfils its obligations. As guiding principles, they are all applicable and not dependent on the question whether or not a specific right or obligation has been fulfilled. Whether or not the taxpayer has been truthful, he is still entitled to a tax system based on integrity and equality. Whether or not the tax system is efficient and effective, the taxpayer still has to comply with the law. The rights and responsibilities have been described in 10 points and set next to each other only for ease of understanding and to show where there are rights there are obligations.

Specific legislation may rule that if the taxpayer is not truthful the burden of proof shifts to the taxpayer or that that the taxpayer who on its on record reports an omission in the tax return will not be fined. This is still possible under the fundamental principles.