

## **2. A MODEL TAXPAYER CHARTER**

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### **2-1 INTRODUCTION**

The results of our survey of tax advisors in 37 countries have indicated strong support for a Model Taxpayer Charter. Having reviewed the Taxpayer Charters currently in place in the countries surveyed, most contain useful elements that should be included into a Model Taxpayer Charter. However, these existing Taxpayer Charters typically have one or more of the following shortcomings:

- They are not legally binding
- They are not comprehensive in scope
- While listing certain taxpayer rights, these do not go far enough
- The document is no more than a policy notice of the tax administration, which is mainly focused on enforcement
- Tax matters dealing with tax legislation are not addressed
- There is no attempt to hold the tax administration accountable to taxpayers

These comments are echoed over and over in chapter 3, which details the results of the 164 questions posed to tax professionals in 37 countries.

For these reasons and others, the authors, with input from many sources, took it upon themselves to draft a Model Taxpayer Charter that could be adapted for use universally.

Chapters 4 and 5 outline the theory for measures contained in the Model Taxpayer Charter.

### **2-2 ORGANISATION OF A MODEL TAXPAYER CHARTER**

Any tax advisor with a background in international tax will immediately notice that the Model Taxpayer Charter resembles a model international tax treaty in its drafting style. However, this is where the similarities end, since the Model Taxpayer Charter is a unilateral declaration, not a bilateral agreement. That said, the Model Taxpayer Charter should be no less effective.

The Model Taxpayer Charter is divided into Articles and Paragraphs. Each Article deals with a subject area, while the Paragraphs contain the specific provisions. Under each Paragraph or sometimes under the Article heading, there are explanatory notes that convey the intent of the Paragraph as seen through the eyes of those who drafted it. This is to aid in understanding of the provision.

## 2-3 TABLE OF CONTENTS

The table of contents of the Model Taxpayer Charter is shown below.

Article 1: Introduction and purpose	35
Article 2: Definitions	36
Article 3: What is covered?	38
Article 4: Who is covered?	38
Article 5: General provisions	39
Article 6: Filing of tax and information returns	40
Article 7: The assessment process	43
Article 8: The audit process	44
Article 9: The appeals process	47
Article 10: Taxpayer assistance	50
Article 11: Service standards	51
Article 12: Rulings and interpretations	52
Article 13: Taxpayer records	54
Article 14: Confidentiality	55
Article 15: Tax Administration	55
Article 16: Burden of proof	58
Article 17: Drafting standards for tax legislation	58
Article 18: Retroactivity of legislation	61
Article 19: Double taxation and relief	62
Article 20: Interest and penalties	62
Article 21: Voluntary disclosure	65
Article 22: Legislative process and consultation	66
Article 23: Tax levied only by virtue of law	67
Article 24: Equality of Taxpayers	67
Article 25: Matters concerning Tax Advisors	67
Article 26: Breach of Charter rights	68
Article 27: Enforcement and collection of tax, interest and penalties	68
Article 28: Tax avoidance	69
Article 29: Tax evasion and dishonesty	69
Article 30: Special European Union provisions	70
Article 31: Enabling legislation	70
Article 32: Implementation and transition issues	70
Article 33: Amendments to charter	70
Article 34: Concluding matters	71

## **2-4 TEXT OF MODEL TAXPAYER CHARTER**

### **Article 1: Introduction and purpose**

**1. This Charter of Taxpayer Rights and Responsibilities may be cited as the Taxpayer Charter and within its text is referred to as the Charter.**

The full name of this document is the Charter of Taxpayer Rights and Responsibilities, emphasising a balance between Taxpayer rights and Taxpayer responsibilities. However, for brevity it is cited as the Taxpayer Charter and is referred to within the text as the Charter. The name is not to imply that it is a document that applies only to Taxpayers. It is also applicable for the Tax Administration in carrying out its roles of raising tax revenue and administering the tax system of the State and to the State itself, as well as all applicable political subdivisions.

**2. Where defined, terms used in this Charter have the meanings ascribed to them in Article 2.**

Certain terms are defined in Article 2. Otherwise, the terms are to be given their everyday meaning in the context of the laws of the State.

**3. This Charter sets out the rights of a Taxpayer in connection with Tax levied by the State and the obligations of a Taxpayer to the State as set out by law.**

This paragraph acknowledges that the Charter has a dual purpose for Taxpayers: to set out the rights of the Taxpayer in connection with Tax levied by the State and to also codify in one place the responsibilities of a Taxpayer to the State as set out by law. The Charter is not intended to diminish any Taxpayer rights that may be recognised by law or judicial tradition over and above the rights provided in this Charter. The rights of the State are provided under its domestic law. The responsibilities of the State to Taxpayers may be expanded and/or clarified by this Charter.

**4. This Charter recognises the sovereignty of the State to levy Tax in accordance with its laws and to administer such laws.**

The Charter necessarily recognises the sovereignty of the State to levy Tax in accordance with its laws and to administer such Taxes. This is a fundamental right of the State and the levying of Tax is a fundamental hallmark of the right of sovereignty. A Taxpayer is expected to acknowledge the right of the State to lawfully levy Tax and to administer the tax system.

**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.**

The Charter taken as a whole sets out a balanced model and should not be regarded as favouring the Taxpayer or favouring the State. The provisions are to be regarded collectively and read as a whole, such that one does not override the other. The selective implementation of individual elements of the Charter while ignoring others carries with it the risk that the outcome may be neither fair nor balanced, and could amount to an abuse of the purposes of the Charter.

**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 fulfill 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.**

This paragraph, broadly speaking, outlines the overriding purposes of the Charter. It is anticipated that under the Charter there will be benefits for Taxpayers and benefits for the State. By promoting a fair tax system, and one that is based on mutual trust, respect, and acknowledgement of responsibilities on both sides, benefits should result both for the State and for Taxpayers. Complying with the laws of the State in connection with the raising of Taxes is a fundamental duty of Taxpayers. It is clear that Taxpayers will be more likely to comply voluntarily with a system that is believed to be fair and equitable and treats them with respect. This will reduce the costs of compliance, increase voluntary compliance, and assist the State in the raising of tax revenues. At the same time, it is important that all Taxpayers are treated equally, and without bias or preference.

This does not negate the ability of the State to develop legislation that provides incentives for various sectors of the economy, or gives particular treatment to certain Taxpayers through the due process of law. However, and most fundamentally, in like circumstances, Taxpayers are to be treated equally.

**Article 2: Definitions**

The definitions contained below apply in the Charter, for purposes of clarity, and are used throughout. Where terms are not defined in the Charter, they are given their meaning under the laws of the State, but are to be interpreted within the context of the Charter itself. It is noted that in certain instances it may be necessary to add additional definitions or modify certain terms to conform to the legal traditions of a particular State.

**1. State – A sovereign jurisdiction, including a federation and a political subdivision such as a state, province, municipality, or other duly constituted body.**

A State is defined as a sovereign country, and includes a political subdivision such as a state, province, municipality or other body that may levy Tax by the law of that State. It is broadly defined. It is noted that where a country has multiple levels of government it may be necessary for each such level to recognise this Charter.

**2. Taxpayer – A person who under the laws of the State may be liable to pay Tax to the State whether or not actually liable to Tax, including a person who is required to file a reporting form or disclosure to the State pursuant to laws concerning Tax and includes, for greater certainty, an individual, corporation, company, association, trust, estate, or other form of entity, whether or not resident in or constituted under the laws of the State.**

A Taxpayer is defined as an entity whether or not liable to Tax, and whether or not resident in or constituted under the laws of the State. Thus it includes a non-resident as well as a resident. It also includes a person who must file an information return pursuant to a tax statute. Thus, in the broadest sense, a Taxpayer is a person who has a connection with the State related to tax matters.

**3. Tax – An amount required to be paid pursuant to the laws of the State, calculated based on income, capital, value, production and any other similar basis for which a Taxpayer receives no direct benefit and includes fees and levies of a similar nature whether called a tax or otherwise.**

Tax is broadly defined to include taxes and fees levied of any nature that are, in substance, a tax. In this context, Tax includes income tax, value added tax, sales tax, customs duty, net worth tax, inheritance tax, gift tax, succession duties, estate tax, municipal tax such as property tax, any tax which is based on production or usage, including royalties paid in connection with the exploitation of natural resources, and any other type of tax, whether referred to as a tax or otherwise. It does not, however, include a fee which would not be viewed as a tax, such as a licensing fee, for which a Taxpayer obtains a direct benefit or privilege.

**4. Tax Filing – A form or informational filing including supplementary information provided therewith filed pursuant to the laws of a State concerning Tax.**

A Tax Filing includes a tax return, as well as information provided for the purposes of assessment. In a self-assessment context, the Taxpayer will provide a tax return that operates as an assessment. However, in the case of assessment by the State (typical with respect to property taxes, for example), the Taxpayer provides information and the assessment is provided by the State. Accordingly, a Tax Filing is defined to encompass both of these situations, by including within the Tax Filing definition a provision of information.

**5. Tax Administration – A government body or agency whose purpose is to administer Tax of the State.**

The Tax Administration is an organisation or agency of the State (as defined) charged with the raising of revenues and the administration of the tax system. It is important for reasons of disclosure and privacy that the Tax Administration be defined to exclude other government bodies not charged with this function, which are not entitled to information concerning a Taxpayer derived through the activities of the Tax Administration.

**6. Tax Officer – A representative of the Tax Administration.**

A Tax Officer is a representative of the Tax Administration, whether an employee or agent. This recognises that in certain countries the Tax Administration may be constituted separate from certain related government agencies or ministries, who may become involved and work in connection with the Tax Administration or retain persons under contract. An example would be the Ministry of Justice responsible for dealing with tax litigation through the court system. Such persons are considered Tax Officers where they are engaged by the Tax Administration. If the legislative function is separate from the Tax Administration, persons so engaged may be considered Tax Officers, but only if their activities extend to responsibilities directly related to a Taxpayer.

**7. Tax Advisor – A duly appointed representative of a Taxpayer, recognised by the State to act on behalf of a Taxpayer in matters concerning Tax.**

A Tax Advisor is a representative of a Taxpayer whose function is to deal with tax matters on behalf of the Taxpayer. The term includes any person who is recognised by the State to be a representative of a Taxpayer, whether specifically licensed or not.

**Article 3: What is covered?**

Article 3 makes it clear that this Charter applies to Tax Filings, Tax, interest and penalties, as well as Taxpayer records.

**1. This Charter applies with respect to all Taxes, whether self-assessed or otherwise, interest in respect of such taxes and penalties, if assessed, and all rights of objection and appeal, as well as all Taxpayer records and Tax Filings.**

**Article 4: Who is covered?**

Article 4 outlines who is covered by this Charter, and is written in the broadest manner, such that all Taxpayers are to be included, as well as duly appointed Tax Advisors. Specific terms apply concerning Tax Advisors, which are covered under Article 26. Necessarily, that means the Charter applies to States, Tax Administrations and Tax Officers in their dealings with Taxpayers and Tax Advisors.

**1. The persons covered by this Charter include all Taxpayers and their duly appointed Tax Advisors and, in their dealings with Taxpayers and Tax Advisors, all States, Tax Administrations and Tax Officers.**

## **Article 5: General provisions**

Article 5 outlines general provisions concerning the Charter.

**1. A Taxpayer shall be presumed to be honest and truthful unless there is evidence to the contrary.**

A Taxpayer is presumed to be honest and truthful, unless there is evidence to the contrary. Accordingly, information provided by a Taxpayer and Tax Filings are generally presumed to be correct and complete with respect to factual information provided, unless there is reason to believe that the information is incomplete, inaccurate, or misleading. This presumption of honesty and truthfulness is important, and represents a privilege afforded to a Taxpayer, which can be denied in the event of evidence to the contrary.

**2. A Taxpayer shall not use this Charter for frivolous purposes to delay, obstruct, or otherwise interfere with the due process of the State in levying Tax in accordance with its law or the duties of a Tax Officer pursuant thereto.**

The provisions of this Charter are not to be used frivolously, meaning without foundation, particularly for delaying or obstructing the due process of enforcement of tax legislation by a Tax Officer carrying out duties on behalf of the State. Such actions on behalf of a Taxpayer constitute an abuse of rights, which justifies their being withdrawn. This is an important and fundamental provision to make sure that Taxpayers cannot abuse the rights recognised in the Charter to avoid or delay payment of Tax, interest or penalties which may be rightfully owing. Such actions might involve, for example, the filing of an appeal without merit, with the main purpose being to delay the payment of Tax, interest or penalties.

**3. A Taxpayer shall be responsible to pay only the amount of Tax as required by law.**

A Taxpayer shall be responsible for paying only the amount of Tax as required by law. Accordingly, a Taxpayer may plan tax affairs within the law and if the arrangements result in less Tax than that which might otherwise be paid, then so be it. This does not, however, allow a Taxpayer to disregard anti-avoidance legislation.

**4. Ignorance of the law shall not be used as a basis for non-compliance, non-payment of Tax, or defence against a penalty.**

Ignorance of the law may not be used as a basis for non-compliance, non-payment of Tax, or as the defence on a penalty. Taxpayers are subject to, and required to comply with, the law as it is written. A Taxpayer cannot argue as a basis for non-compliance that the law is complicated, that the Taxpayer was unaware of legislative amendments,

or that the Taxpayer is uneducated or is not proficient in the language of the State. The Taxpayer may request the assistance of the State in fulfilling Tax Filings and may engage a Tax Advisor for assistance.

**5. Legislation shall provide for the relief of interest and penalties, the extension of filing deadlines and the time for making elections for reasonable cause.**

Legislation shall provide for the waiver of interest, penalties, the extension of filing deadlines and the deadlines for making elections for reasonable cause. It is left to the legislation of the State to determine what constitutes reasonable cause, either by encoding a definition in the legislation or through administrative or judicial traditions. Since ignorance of the law is not a basis for this, the circumstances under which a reasonable cause argument may be entered are limited. This is an intended result, because otherwise the Tax Administration of the State can be undermined.

**6. Tax laws shall not be used in a manner that is discriminatory.**

Tax laws shall not be discriminatory by reference to race or religion, subject to very limited exceptions, such as special tax exemptions that might be given historically to aboriginal people.

**7. Tax laws shall not be used to punish or fine a particular industry, occupation or sector without due process of law and just cause.**

Tax laws shall not be used as a punishment or fine directed towards a particular industry, occupation or sector of the economy, without due process and just cause. Therefore Taxes should not be levied at any particular group arbitrarily or for non-tax reasons. This is not to say that the State cannot levy Taxes directed at conservation, such as Tax on greenhouse gas emissions, which would broadly affect certain sectors of the economy. This type of Tax is broadly based, and would follow due process of law and just cause. Similarly, a capital tax on financial institutions directed towards establishing an insurance fund for depositors would also reasonably fit within this provision. However, a specific tax on corporate bonuses levied only on certain types of corporations or a particular sector, and not generally on others, would be viewed as discriminatory and in the nature of a punishment or fine, for which the tax system should not be used.

**Article 6: Filing of tax and information returns**

This Article deals with the filing of tax returns and information returns, collectively called Tax Filings.

**1. A Taxpayer shall make a Tax Filing by the due date and in such manner as provided by law.**

A Taxpayer shall make a Tax Filing as shall be required without notification and by the due date and in such manner as the law may provide. Taxpayers are subject to, and



required to comply with, the law with respect to their Tax Filing obligations. This may require, for example, that Tax Filings be made electronically.

**2. In the case of self-assessment, the Taxpayer may be required to certify that the Tax Filing is true, correct and complete.**

Where a Taxpayer is required to make a Tax Filing in a self-assessment, the Taxpayer is responsible for the accuracy of the Tax Filing and may be required to certify that the Tax Filing, which includes all supplementary information, is true, correct and complete. By this, a Taxpayer has a duty to ensure that the Tax Filing is accurate and that all required information is provided.

**3. In the case of assessment by the State, the Taxpayer may be required to certify that the information given for the purposes of assessment is true, correct and complete.**

Where an assessment of Tax is provided by the State, as is typical in the case of, for example, property tax assessment, the Taxpayer is required to provide certain information for the purposes of assessment. In this case, the Taxpayer does not certify that the Tax as calculated is true, correct and complete, but may be required to certify that the information given for the purposes of assessment is true, correct and complete.

**4. A Taxpayer is responsible for the correctness of a Tax Filing whether or not another person (a Tax Advisor) has been engaged to prepare the Tax Filing on the Taxpayer's behalf.**

Where a Tax Advisor has prepared a Tax Filing or prepared information for purposes of assessment by the State, the Taxpayer is nevertheless responsible for the accuracy of the Tax Filing or the provision of information as if the Taxpayer had done so. Accordingly, a Taxpayer cannot be relieved of a penalty or other responsibility simply because a Tax Advisor has acted on behalf of the Taxpayer. Thus a Taxpayer's responsibilities cannot be discharged simply by placing such responsibility in the hands of a Tax Advisor. A Taxpayer is expected to review Tax Filings and other information provided by a Tax Advisor as if the Taxpayer had made the Tax Filing or furnished such information. However the retention by a Taxpayer of a suitably qualified Tax Advisor, and provision to that Tax Advisor of all necessary information for the purpose of the Filing, would ordinarily constitute reasonable care for the purpose of determining any level of penalty applicable in the event of inaccuracy of factual material or error of law associated with the Filing.

**5. A Taxpayer shall be required to make only one Tax Filing in each instance and to send the required information only once, unless the Tax Filing or accompanying information is amended or supplemented.**

A Taxpayer shall be required to make only one Tax Filing, and to send the required information only once, unless the Tax Filing or accompanying information is amended or supplemented. Accordingly, the State is responsible for the receipt, storage and safe

keeping of Tax Filings and other information, and may not call upon a Taxpayer to make a duplicate filing.

**6. The State shall provide clear instructions, guides, forms and information to assist a Taxpayer in a Tax Filing or in providing information for assessment.**

The State shall provide clear instructions, guides, forms and other information to assist a Taxpayer in the making of a Tax Filing or in providing information for the purposes of assessment. It is an important responsibility of the State to assist Taxpayers in discharging their responsibilities. In drafting legislation, the State must ensure that it can comply with these requirements. For example, complex legislation that requires calculations to be done by a Taxpayer must be clearly outlined in forms and guides, so that a Taxpayer can responsibly comply with the requirements. Legislation should be drafted with these requirements in mind.

**7. A Taxpayer shall use the forms provided by the State and shall make the Tax Filing in accordance with the instructions on those forms and in any accompanying guides.**

A Taxpayer shall use the forms provided by the State and make Tax Filings in accordance with the instructions on those forms and any accompanying guides, to facilitate the processing of Tax Filings. A Taxpayer may, however, either upon request or voluntarily, also submit supplementary information to explain the basis of a Tax Filing where appropriate.

**8. Subject to a Taxpayer's rights of appeal, a Taxpayer shall make payment of all Taxes, interest and penalties which are rightfully owing in accordance with the requirements of the legislation by the due date for payment and without protest or offset.**

A Taxpayer shall make a payment of all Taxes, interest and penalties that are rightfully owing in accordance with the requirements of legislation by the due date for payment and without protest or offset. A Taxpayer may not, for example, deduct an amount from Tax, interest or penalties that are rightfully owing, by way of offset. For example, if a Taxpayer anticipates a refund from a particular Tax Filing, and has a payment under another Tax Filing, it is not permissible for a Taxpayer to offset one against the other, unless the law provides for such an offset.

**9. The Tax Administration shall not apply a refund of a Taxpayer against a liability of the Taxpayer under a different statute without specific legislative provisions enabling the offset.**

The Tax Administration shall not apply a refund of a Taxpayer against the liability of the Taxpayer under a different statute, unless the legislation specifically provides for such an offset. Thus the State shall not arbitrarily retain a refund of a Taxpayer because a Taxpayer owes or might owe Tax under another statute.

## **Article 7: The assessment process**

This Article deals with the assessment process itself. It is important that the assessment of Tax by the State be accurate, timely, and contain appropriate information.

### **1. The State shall provide an assessment of Tax following receipt of a Tax Filing, or information received for assessment, within a reasonable period of time and without undue delay.**

The State shall provide an assessment of Tax with all reasonable dispatch, meaning that the State shall ensure that reasonable processes are in place to produce the assessment on a timely basis. The State shall not, in the absence of the Taxpayer's consent, deliberately withhold an assessment of a Taxpayer for any reason. For example, absent such consent the State shall not withhold an assessment because the law concerning a particular issue is undecided, or a Taxpayer is appealing another assessment.

### **2. An assessment shall show the computation of the Tax and the basis on which it was levied in sufficient particulars as to enable the Taxpayer to understand the computation.**

An assessment shall show the computation of the Tax and the basis on which it is levied with sufficient particulars to enable the Taxpayer to reproduce the computation, in order to verify its accuracy. This is a fundamental responsibility of the State, and the State must ensure that sufficient systems are in place for this purpose.

### **3. Where, in a self-assessment, an assessment differs from that calculated by the Taxpayer, the reasons for the difference shall be outlined in the assessment in sufficient particulars as to enable the Taxpayer to comprehend the difference.**

Where a Taxpayer makes a calculation of Tax in a self-assessment, and the calculation of the State differs from that of the Taxpayer, the State must provide sufficient particulars, as well as the basis in law for the difference, so that the Taxpayer can readily understand the computation by the State and the reasons for the difference. General statements by the State, such as the correction of a computation error or that the assessment is based on the information that has been provided, are not sufficient to justify the basis of an assessment that differs from that of the Taxpayer. Specific details are to be provided as to the difference in the basis of the computation or the difference in the information that is used for the assessment.

### **4. Where the assessment levies interest or a penalty, the assessment shall show the calculation of the interest or penalty, as the case may be, in sufficient particulars as to enable the Taxpayer to verify the computation together with the basis therefor.**

Where an assessment levies interest or a penalty, the assessment must show a detailed calculation of the interest or penalty together with the basis for the computation.

**5. The State shall provide with the assessment notice details of the Taxpayer's rights to appeal the assessment with such particulars of the process and applicable deadlines as shall be reasonable to enable the Taxpayer to make such an appeal.**

An assessment shall include a notice of the Taxpayer's rights to appeal the assessment with sufficient particulars as to the process and the applicable deadlines as may be reasonable to enable the Taxpayer to file an appeal should the Taxpayer choose to do so. This does not mean that the specific details of exactly how to file an appeal need to be included with the notice of assessment, but the Taxpayer must be directed to a source that is reasonably accessible to enable the Taxpayer to obtain this information. In addition, the due date for filing the appeal must be clearly disclosed.

### **Article 8: The audit process**

An important aspect of a Tax system is the audit and verification of a Taxpayer's affairs. Accordingly, while maintaining the fundamental premise that a Taxpayer is honest and truthful, unless there is evidence of the contrary, it is still appropriate for the Tax Administration to carry out enquiries and audits as it sees fit. This is an important deterrent to Taxpayers who may not otherwise be honest and truthful in their Tax Filings. Important checks and balances are required in this process, to ensure that the objectives of the State are met, but that a Taxpayer's rights are protected.

**1. Where a Taxpayer is requested to provide information in the course of an enquiry or audit, the Taxpayer shall co-operate in providing the information on a timely basis and shall provide complete information and answer questions of fact truthfully and fully.**

A Taxpayer shall co-operate in providing information on a timely basis in the course of an enquiry or audit by the Tax Administration. The information provided shall be complete and accurate, and questions of fact shall be answered fully and truthfully. A Taxpayer must co-operate in this process, and not obstruct the process by delay, providing incomplete or misleading information, or through any other means.

**2. A Taxpayer shall be required to answer only factual information.**

In the course of an audit or enquiry, the Taxpayer shall be required to answer only factual information. Thus the Taxpayer shall not be required in the course of an audit examination to answer questions of law.

**3. Before commencing an audit or enquiry, a Tax Officer shall notify the Taxpayer of the scope of the audit or enquiry, the issues that are being considered and the implications of the issues, and advise the Taxpayer of the rights that the Taxpayer has under legislation and under this Charter.**

Before commencing an audit or enquiry, a Tax Officer shall provide reasonable notice to the Taxpayer. This notice shall outline the scope of the audit or enquiry, the issues that are being considered, and the implications of the issues. For example, if the audit

is directed at particular issues, the Taxpayer should be advised of these issues and their implications. The Taxpayer should also be advised of rights under legislation and under this Charter, including the right to be represented by a Tax Advisor.

**4. A Tax Officer, in the course of an audit or enquiry, shall request from a Taxpayer only information that is reasonably applicable to the matters under review, and reasonably necessary in the circumstances.**

A Tax Officer should request only the information that is reasonably applicable to the matters under review, and only to the extent that it is reasonably necessary in the circumstances. This limits the scope of the audit or enquiry, within what has been outlined to the Taxpayer. This does not prevent the Tax Officer from considering other matters, but these matters should be outlined in a supplementary communication to the Taxpayer where the scope of the audit or enquiry is broadened.

A Taxpayer shall not be required to disclose information that is not reasonably necessary to the resolution of matters at issue. This is to be understood in the context of an audit or enquiry outlining the issues that are to be reviewed. Accordingly, a Tax Officer cannot request the disclosure of information that is not relevant, but of general interest. However, this provision does not limit a Tax Officer where there is reason to believe that a Taxpayer has not been honest in Tax Filings. Information obtained by a Tax Officer in the course of an audit or enquiry shall be treated with the same level of confidentiality as is afforded Tax Filings.

**5. Punitive provisions including penalty provisions should not be used as a negotiating tactic by a Tax Officer.**

A Tax Officer shall apply the law, without bias or preference, and for this reason shall not use negotiating tactics, such as the prospect of levying a penalty, as a basis for obtaining a Taxpayer's concurrence to adjustments being proposed. In keeping with the principle that the law should be applied as it is written, a Tax Officer shall not attempt to use an alternate and more onerous basis of assessment, or a trade-off of issues, as the basis for resolving matters in dispute.

**6. Where questions are asked by a Tax Officer, the purpose of the questions should be clearly disclosed, so that a Taxpayer is not asked questions that are misleading, intended to be deceptive, or could be answered in a manner that may be self-incriminating or disclose confidential communications between the Taxpayer and his or her Tax Advisors, and the Taxpayer may refuse to answer such questions.**

In the course of an audit or enquiry, many questions are posed to a Taxpayer, and such questions should relate only to issues of fact. Specifically, questions should not be misleading, deceptive or give rise to answers which may be self-incriminating. In such cases, a Taxpayer is entitled to refuse to answer or disclose confidential communications between the Taxpayer and his or her Tax Advisors. Furthermore, the basis and purpose of the questions should be disclosed to the Taxpayer.

**7. In the course of an audit or enquiry, a Taxpayer may request that all communication be in writing and that a Tax Advisor be present at meetings and other proceedings.**

A Taxpayer may request that communication with a Tax Officer in the course of an audit or enquiry be in writing and that a Tax Advisor be present at meetings and other proceedings. A Taxpayer may consult with a Tax Advisor before answering such questions, and sufficient time should be given to enable a Taxpayer or a Tax Advisor to answer such enquiries. This is, however, not to be used as a means of delaying or obstructing the orderly conduct of the audit or enquiry.

**8. A Tax Officer shall summarise the results of the audit or enquiry and provide a reasonable length of time for the Taxpayer or a Tax Advisor to respond.**

A Tax Officer shall summarise the results of an audit or enquiry and provide an opportunity for the Taxpayer or a Tax Advisor if so engaged to respond to such matters within a reasonable length of time. In general, a 30-day period will be considered appropriate for such a response, unless the matters are sufficiently complex or the information required is not readily available, in which case a longer time may be appropriate.

**9. A tax assessment must be clearly justified by the facts and circumstances and have a basis in law, unless a Taxpayer has failed to provide information reasonably required.**

A tax assessment must have a basis in law, which should be adequately explained. It is not appropriate for the State to make general statements as a basis for a tax assessment or reassessment, without sufficient particulars. For example, it is not permissible for the State to disallow a deduction on the basis that an amount was not reasonable in the circumstances, without stating why, in its view, such amount was not reasonable and why that conclusion justifies disallowance of the deduction. As another example, it is not permissible for the State to use as a basis for reassessment an internal policy or interpretation without clearly identifying the basis for same. It is also not permissible for the State to adopt alternate interpretations that are inconsistent with one another and generate multiple assessments of the same income among related Taxpayers. However, these requirements are waived if a Taxpayer has failed to provide information that is reasonably required, whereupon the State may make assessments provided they are reasonable in the circumstances. The State should clearly indicate the information that was required and not provided.

**10. Where, in the course of an audit or enquiry, a Tax Officer of the State considers the application of a penalty, this shall be disclosed at the time the Tax Officer becomes aware of the circumstances that might justify the penalty.**

If, in the course of an audit or enquiry, an Officer of the State becomes aware that a penalty might be applied, this should be disclosed by the Tax Officer at the time of becoming aware of the circumstances that might justify the penalty. The Taxpayer must

be informed of the possibility of a penalty, so that the Taxpayer can take appropriate steps to consider the matter and to retain the professional assistance of a Tax Advisor if the Taxpayer chooses to do so.

**11. A Taxpayer shall treat Tax Officers with respect and courtesy and shall co-operate with them in pursuance of their duties.**

A Taxpayer shall treat Tax Officers with respect and courtesy, shall co-operate with them in pursuance of their duties, and shall not be unco-operative or obstructive. This is of fundamental importance to the relationship between a Taxpayer and the Tax Administration. Other provisions of the Charter deal with the manner with which Tax Officers are to treat a Taxpayer, and contain more specific matters.

**Article 9: The appeals process**

An appeals process is a fundamental Taxpayer right, and specific provisions apply to the conduct of the Tax Administration and the Taxpayer in pursuance of a tax appeal.

**1. A Taxpayer's rights of appeal in connection with an audit or enquiry producing a reassessment should be explicitly provided for by law and clearly explained.**

A Taxpayer who wishes to challenge the decisions of a Tax Administration should have a clearly defined right to do so before an independent Court or Tribunal enshrined in legislation. That right, however, may be subject to the Taxpayer first requesting, and the Tax Administration providing, an internal review of such decisions.

Following an audit or an assessment, a Taxpayer's rights of appeal should be clearly explained.

**2. The State shall not deny a Taxpayer the right of appeal or further appeal as part of a settlement agreement of part of a matter in dispute.**

A Taxpayer shall not be denied the rights of appeal or further appeal as part of a settlement agreement. Thus, in the course of an appeal, a Taxpayer shall not be prevented from further appeal on matters that are unresolved, as a basis for the Tax Administration accepting a negotiated settlement on other matters.

**3. The Taxpayer shall be provided with all relevant information on a timely basis by the State supporting the findings of the audit or enquiry upon request by the Taxpayer in connection with an appeal, except where there is a valid reason to withhold certain information (such as confidential information obtained from third parties).**

All information in the possession of the Tax Administration, other than certain information (such as confidential information obtained from third parties), shall be provided to a Taxpayer in the course of an appeal. The Tax Administration shall not withhold such information as may be reasonably applicable to the Taxpayer without

valid reason that shall be disclosed to the Taxpayer. Information so withheld may not be relied upon by the Tax Administration in the making of assessments or in any appeal therefrom.

**4. The period for requesting an internal review or filing an appeal shall be held in abeyance during the period that the Taxpayer has requested but not received information in the possession of the State relevant to the assessment in dispute.**

The period for requesting an internal review or filing an appeal shall be held in abeyance during any period that the Taxpayer has requested but not received information in the possession of the State reasonably relevant to the assessment that the Taxpayer is considering appealing.

**5. A Taxpayer wishing to represent themselves in an internal review shall be given reasonable assistance but not counsel.**

A Taxpayer should be able to carry out a simple internal review by self-representation. It is important that an internal review be possible at a reasonable cost, and that a Taxpayer is not dissuaded from carrying out an internal review due to the costs or time delays inherent therein. In particular, a Taxpayer shall not be disadvantaged in carrying out an internal review due to self-representation by lack of familiarity with procedural matters. The Taxpayer is, however, expected to conduct the internal review in an appropriate and professional manner.

**6. A Taxpayer shall be entitled to a claim of privilege in respect of communications with a duly appointed Tax Advisor concerning communications between them relating to technical issues of tax appeal.**

Communications between a Taxpayer and a Tax Advisor, whether or not a practising lawyer, shall be subject to a claim of privilege. Thus communications between a Taxpayer and a Tax Advisor, such as the formulation of technical arguments, are not subject to discovery by the State.

**7. A Taxpayer shall not be entitled to costs in respect of an internal review, but may be entitled to reasonable costs in the judicial process, given all relevant factors.**

A Taxpayer shall not be entitled to an award of costs in carrying out an internal review but may if the matter proceeds to a Court or Tribunal.

**8. An internal review shall be heard by a Tax Officer who is independent of the audit or enquiry.**

An internal review shall be heard by a Tax Officer who is independent of the audit or enquiry. However, the State may request further information from the original Tax



Officer, as may reasonably be necessary, or that additional steps and procedures be carried out in order to assist with the review.

**9. A Tax Officer adjudicating an internal review shall act impartially and independently and shall recognise – but not be bound by – the administrative practices and interpretations of the State.**

The Tax Officer shall be impartial and independent of the audit function, and shall not be bound by the administrative practices and interpretations of the State as a basis for rendering a decision if, in the opinion of the Tax Officer adjudicating the appeal, such administrative practices or interpretations are incorrect or not applicable.

**10. The Taxpayer shall not be required to make a payment of tax, interest or penalties in respect of a matter that is under internal review or appeal unless the grounds relied upon are frivolous and without merit, or if recovery of the assessed tax is at risk, in which case the reasons for such findings shall be disclosed to the Taxpayer by a Tax Officer.**

A Taxpayer shall not be required to make a payment of tax, interest or penalties in a matter that is validly under internal review or appeal. However, this requirement is waived if the grounds relied upon are frivolous and without merit, or if recovery of the assessed tax is at risk. In these circumstances, the reasons for such a finding shall be disclosed to the Taxpayer, who may contest such a conclusion through the judicial process.

**11. A Taxpayer shall not use the internal review or appeal process to delay the payment of tax, interest or penalties without a reasonable basis in law.**

A Taxpayer shall not use the appeal process to delay the payment of tax, interest or penalties without a reasonable basis in law. This reasonable basis should be provided in documentation or other evidence furnished by the Taxpayer or a Tax Advisor to the State as a basis for the appeal.

**12. On an appeal to a court of first instance, a Taxpayer shall be entitled to self-representation and to such reasonable assistance as may be required in the circumstances; in particular, the Taxpayer shall not be disadvantaged in respect of procedural matters by reason of self-representation.**

A Taxpayer shall be entitled to self-representation and to such reasonable assistance as may be required in the circumstances. It is important that a Taxpayer be able to conduct an appeal to a court in circumstances where this is justified. For example, if the State chooses to take forward a test case, in which the amounts of Tax in question would not normally warrant prosecution, to the courts, a Taxpayer may be entitled to costs on a party-and-party basis.

**13. Where a test case is brought before the courts, a Taxpayer may be – but is not obligated to be – bound by the results of the test case.**

Where a test case is brought before the courts, a Taxpayer may agree to be bound by the results of the test case but is not obligated to do so. This addresses a number of issues concerning test cases, one of which is to prevent the State from taking forward a test case with facts generally unfavourable to the Taxpayer that may not necessarily be a fair hearing of this issue.

**14. Neither the Taxpayer nor the Tax Administration shall deliberately seek to delay the appeal process.**

The appeal process should proceed without undue or deliberate delays.

**15. The Taxpayer, having filed a request for an internal review, shall have a right to request a meeting with a Tax Officer charged with determining such matter at a time and place reasonable in the circumstances.**

This provision provides a Taxpayer with a fundamental right, which is the right to be heard.

**Article 10: Taxpayer assistance**

A Taxpayer shall have the right to request and receive reasonable assistance from the Tax Administration. The rights to such assistance are laid out here.

**1. A Taxpayer shall have the right to be heard and responded to and to receive such assistance as may be reasonable to carry out a Tax Filing.**

The Taxpayer shall have the right to be heard and responded to where a Taxpayer makes to request for assistance in accordance with the procedures made available by the Tax Administration. A Taxpayer's request cannot be ignored and must be responded to on a timely basis.

**2. The Tax Administration shall be required to provide assistance as to the application and interpretation of tax laws but shall not be required to provide planning advice to a Taxpayer.**

The Tax Administration shall provide up-to-date guides, forms, and other written materials to assist the Taxpayer in compliance with Tax Filings. However, the Tax Administration is not required to initiate communication with the Taxpayer, provided such information is readily available in the public domain.

**3. The Tax Administration shall provide Taxpayers with sufficient forms, guides and related information to enable a Taxpayer to comply with the requirements under tax legislation.**

Given the complexity of modern tax law, it is a responsibility of the Tax Administration to help Taxpayers and Tax Advisors comply with tax law, by providing reasonable assistance in various ways.

**4. The Tax Administration shall keep such forms, guides and information up to date and generally accessible to Taxpayers.**

The Tax Administration is responsible for keeping forms, guides and instructions up to date and accessible to Taxpayers.

**5. Tax Officers must know and apply the law as is applicable in pursuance of their duties.**

Tax Officers shall be familiar with the law in respect of the areas with which they are involved. They shall attend sufficient training programmes such that they are knowledgeable in the relevant areas. Technical experts may be trained in particular areas involving more complex matters.

**6. A Taxpayer shall be entitled to reasonable information concerning past tax records in possession of the State.**

A Taxpayer shall be entitled to records concerning past filings, which shall be maintained by the State. This shall include such carry-forward information as may be necessary and relevant to Taxpayers.

## **Article 11: Service standards**

Reasonable standards of service should be defined and published by the Tax Administration in its dealings with Taxpayers. Just as Taxpayers are accountable to the Tax Administration, so the Tax Administration must be accountable to the State and to the Taxpayers to whom a service is provided. This Article seeks to define, in general terms, such service standards.

**1. The Tax Administration shall define service standards for its dealings with Taxpayers, publish such service standards, and periodically provide a report on actual performance relative to such service standards which service standards shall include the processing of tax returns, processing of requests for information, technical interpretations and rulings, waivers and clearances, and the disposition of appeals.**

The Tax Administration shall define service standards for its dealings with Taxpayers, shall publish such service standards, and shall periodically publish an evaluation of its actual performance relative to its service standards. These service standards shall be set out in sufficient detail to enable the general public to understand them, giving

a breakdown by activity and location. Serious deficiencies in the actual realisation of service standards should be published and investigated, outlining, where applicable, the causes for the deficiency and the remedial action being taken. Aspects of the Tax Administration that cannot provide adequate service over a sustained period of time should be changed. This may potentially require amendments to legislation.

Service standards should specifically deal with the time for processing of tax returns, requests for adjustment, requests for information, the processing of technical interpretations and rulings, the processing of waivers and clearances, and the disposition of tax appeals. This is not intended to be a complete list of what may potentially be relevant, which will vary from State to State, and the type of tax system that is applicable. As a fundamental and overriding standard, delays on the part of the Tax Administration should not be allowed to interfere with the daily conduct of business.

**2. The Tax Administration shall publish the results of its audit programmes, including the number of Taxpayers audited, the general nature of the Taxpayer (individual, company, resident, non-resident etc), the revenue raised, the duration of the audit programme, and the approximate cost of each programme annually.**

The Tax Administration shall publish the results of its audit programmes, giving details of the number of Taxpayers audited, the general nature of the Taxpayers, the revenue raised, the duration of the audit programme if it is not ongoing, and the approximate cost of administration of each programme. This information will be sufficiently general that it does not reveal the identities of Taxpayers, or provide information that might be used by Taxpayers to avoid being selected for audit. Fundamentally, it is to provide accountability for the audit activities of the Tax Administration, which will be relevant for many purposes, including rationalisation of the costs to Taxpayers of compliance.

**3. The Tax Administration shall not be responsible for verbal information but shall put such advice in writing if requested in writing to do so, in which case the Tax Administration is responsible for the accuracy of such information.**

The Tax Administration shall not be responsible for verbal advice, because such advice is easily misinterpreted, but shall be responsible for the accuracy of information put in writing. The Tax Administration must use due care in the information provided to Taxpayers, particularly if this information could be relied on to a Taxpayer's detriment. Further specific provisions are outlined later in the Charter dealing with technical interpretations and rulings.

## **Article 12: Rulings and interpretations**

Rulings and interpretations of tax law provided by the Tax Administration are an important component of the tax system. Taxpayers seek clarity and certainty with respect to their transactions and arrangements. At the same time, a rulings and technical interpretations function can provide guidance to Tax Officers in carrying out their duties. Anti-avoidance legislation is often a reason for seeking a technical

interpretation or ruling, because the application of these provisions is frequently judgmental on the part of the Tax Administration. The provisions of this Article address rulings and technical interpretations.

**1. The Tax Administration shall not maintain secret positions on the interpretation of legislation, or based on fiscal data, and where the Tax Administration adopts a position, it shall be published and made generally available to Taxpayers and Tax Advisors.**

If the Tax Administration adopts a position on interpretation of legislation, it shall be published and generally available to Taxpayers and Tax Advisors, and shall not be kept secret. The public interest is not served by maintaining secret positions on the interpretation of tax legislation. Similarly if the Tax Administration adopts policies on such matters as transfer pricing and valuations it shall reveal such policies and their basis in a timely manner.

**2. A Taxpayer or a Tax Advisor may apply for a technical interpretation on a matter, and the Tax Administration shall normally respond within a reasonable period of time.**

A Taxpayer or a Tax Advisor may apply for a technical interpretation on a matter, which shall be provided within a reasonable period of time. However, if the matter is under litigation, is the subject of a tax appeal that is ongoing, or is a matter upon which the Tax Administration has not adopted a position, it is permissible for the Tax Administration to respond without giving an interpretation. It will be unfair and prejudicial for the Tax Administration to be required to provide an analysis on a matter that is currently the subject of litigation, or for a Taxpayer to request a technical interpretation on a matter that is currently under dispute with the Tax Administration.

**3. A rulings process shall be in place whereby a Taxpayer or a Tax Advisor may apply to the Tax Administration for a ruling on the operation of the taxation law as it affects a Taxpayer, and seek internal review of – or appeal – an unfavourable ruling.**

A rulings process shall be in place whereby a Taxpayer or a Tax Advisor may request a ruling with respect to a particular transaction or series of transactions. In contrast to a technical interpretation that is general in nature, a ruling is specific to the facts as presented. The Tax Administration shall be bound by the ruling that is given, unless the actual facts of the Taxpayer are different to those stated in the ruling request, in such a way that the rulings given are affected.

The rights of a Taxpayer to internal review of – and appeal against – an assessment should also apply to an unfavourable ruling given to a Taxpayer.

**4. Such a ruling shall be binding on the Tax Administration to the extent of the specific rulings given or arising from internal review or appeal, unless the facts are subsequently found to be materially different in respect of the reasonable application of the positions in the ruling.**

**5. Published interpretations of tax matters shall be binding on the State unless and until withdrawn.**

Published interpretations shall be binding on the State and the State may not argue a contrary position in dealing with the affairs of a Taxpayer, unless and until the published interpretation is withdrawn. This places a heavy onus on the Tax Administration to keep technical interpretations and published positions up to date, which is as it should be.

### **Article 13: Taxpayer records**

A fundamental responsibility of a Taxpayer is to keep appropriate records, so that a Taxpayer's financial affairs can be verified on audit. These records must be generally available to a Tax Officer in order for the Tax Officer to carry out duties on behalf of the Tax Administration. Failure to keep adequate books and records, or to provide the required information to enable a Taxpayer's income to be verified within any applicable limitation period, should always be construed against the Taxpayer. This overrides the general presumption of honesty of a Taxpayer.

**1. A Taxpayer shall keep sufficient records to enable the information provided in the Tax Filing to be verified to the extent reasonable in the circumstances.**

A Taxpayer shall keep sufficient records to enable the information provided in a Tax Filing to be verified and failure to do so may be relied upon by the Tax Administration in support of an assessment. However, this is subject to materiality, as may be reasonable in the circumstances. This recognises that there may be limitations on the extent to which detailed records may reasonably be kept, particularly in dealing with small businesses. No adverse conclusion should be drawn from the fact that a Taxpayer has not retained records beyond any applicable limitation period ordinarily applicable to Taxpayers in the same class as the Taxpayer.

**2. A Taxpayer shall not be subject to unreasonable search and seizure without due process of law.**

A Taxpayer shall not be subject to unreasonable search and seizure without due process of law, which will normally require a search warrant signed by a judge or a Justice of the Peace. This recognises that search and seizure is an extreme sanction, and should only be carried out where there is evidence to suspect dishonesty.

**3. Where a Taxpayer's records are seized by the State, a copy shall be made immediately to the extent that the seizure may impair the Taxpayer's ability to carry on a business or occupation.**

Where a Taxpayer's records are seized by the State, a copy is to be made, or the records made available to the Taxpayer, where failure to do so might impair the Taxpayer's ability to carry on a business or an occupation. This recognises the importance of records to a Taxpayer, and efforts must be made to enable the Taxpayer to carry on the business or occupation in such circumstances.

**Article 14: Confidentiality**

Confidentiality is an important right of a Taxpayer, and any Tax Filings are to be kept confidential by the Tax Administration. Failure to do so can have commercial, as well as social and ethical, consequences. Thus this is an important right of Taxpayers and specific provisions are necessary to protect the confidentiality and privacy of Taxpayers.

**1. The tax affairs of a Taxpayer shall be confidential and private and shall not be disclosed outside of the Tax Officers who are charged with handling the affairs of the Taxpayer.**

The tax affairs of a Taxpayer are to be kept confidential and private. They are not to be disclosed outside of the Tax Officers who are charged with handling the affairs of the Taxpayer. Only the Tax Officers who are charged with handling the affairs of the Taxpayer are entitled to have access to a Taxpayer's Tax Filings and related information. Thus Tax Officers, in general, are to be restricted in their access to a Taxpayer's filings and other information. This prevents Tax Officers from viewing a Taxpayer's information out of curiosity. This is particularly important with respect to persons who may have a high public profile, celebrities, and persons of political sensitivity. This does not, however, prevent international information exchange.

**2. The affairs of the Taxpayer shall not be assigned to Tax Officers who have a connection to the Taxpayer or are specifically known to them outside of their dealings as a representative of the State.**

Tax Officers who have a connection to a Taxpayer, or are specifically known to such persons outside of their dealings as a representative of the State, should not have access to a Taxpayer's confidential information, nor should such persons be assigned to any tasks associated with a Taxpayer who is specifically known to them. This does not prevent carrying out audit activities with respect to persons who are generally known to Tax Officers by virtue of being public figures.

**Article 15: Tax Administration generally**

The Tax Administration has the responsibility to enforce the tax laws of the State and to collect Taxes on behalf of the State, and must be unrestricted as far as possible in its ability to do so. Having said this, a balance is necessarily appropriate with respect to a Taxpayer's rights, and Article 15 seeks to strike this important balance.

**1. The Tax Administration of the State has the responsibility to enforce the tax laws of the State and collect Tax on behalf of the State.**

This paragraph confirms that the Tax Administration has the responsibility to enforce the tax laws of the State and to collect Tax on behalf of the State in accordance with the laws of the State.

**2. The Tax Administration shall apply the tax laws of the State as they are written, without bias or exception, and shall have no ability to vary therefrom without a basis in law.**

The Tax Administration shall apply the laws of the State as they are written, without bias or exception, and shall have no ability to vary therefrom without a basis in law. Thus the Tax Administration cannot grant exemptions unless there is discretion to do so, nor can it levy additional Tax in any way, unless the basis is clearly identified in the law. This also means that the Tax Administration cannot compromise in a dispute without a basis in law. This is important to maintain the integrity of the tax system and ensure all Taxpayers are treated fairly and equally.

**3. The Tax Administration may carry out programmes of audit and enquiry into particular industries, sectors of the economy, occupations or professions, and, generally speaking, using Taxpayer profiles, but only for valid reasons related to the administration of the tax system.**

The Tax Administration may carry out audit programmes, but may not target a particular Taxpayer or group of Taxpayers except for valid reasons relating to the administration of the tax system. Audit programmes may be directed at particular industries, sectors of the economy, occupations or professions. The audit programmes may also use Taxpayer profiling (risk profiling), provided these programmes are broadly based. Failure to recognise this principle may result in Taxpayers being unreasonably targeted and even harassed.

**4. The foregoing shall not prevent the Tax Administration from carrying out an audit or enquiry into a group of Taxpayers where there is reasonable justification.**

The Tax Administration shall not be prevented from carrying out audits and enquiries into a particular group of Taxpayers where there is sufficient justification. For example, if it is known that a particular group of Taxpayers have participated together in tax avoidance or tax evasion activities, the Tax Administration shall not be prevented from targeting such a group.



**5. The Tax Administration shall respond to arguments put forward by a Taxpayer with sufficient detail and reference to tax legislation as is reasonable in the circumstances including, where appropriate, a reasoned analysis of the Taxpayer's facts and the interpretation of applicable legislation to the Taxpayer's circumstances.**

The Tax Administration shall respond to reasonable arguments put forward by a Taxpayer and shall give sufficient details and references to tax legislation as may be reasonable in the circumstances. The Tax Administration shall give a reasoned and appropriate analysis of a Taxpayer's facts, and the interpretation of legislation applicable to a Taxpayer in its particular circumstances. It is important that the Tax Administration engages in meaningful discussions with a Taxpayer, and does not present arbitrary reasoning or interpretations as to the application of tax legislation. Failure to do so can result in a Taxpayer being forced to proceed through the judicial system where not reasonably necessary. It is also, at worst, an abuse of power.

**6. The Tax Administration shall compile and publish statistics of reasonable detail with respect to the Tax levied under the tax legislation, including the revenue raised and the Tax relieved by applicable deductions.**

The Tax Administration shall compile and publish statistics with reasonable detail as to the Tax levied under tax legislation, including the revenues raised and the Tax relieved by applicable deductions, credits and so forth. These statistics shall be published in reasonable detail, as a matter of public interest. Systems shall be put in place to allow for the compilation of such information. Taxpayers in general have a right to know this information. This is also important in the formulation of tax legislation. Having such information available also contributes to an overall sense of fairness and a respect for the tax system.

**7. A Taxpayer shall be entitled to have communication with the State in any official language that has the force of law in the State as applicable to the Taxpayer, but that choice of language shall not be altered by the Taxpayer without reasonable cause.**

A Taxpayer is entitled to a choice of official language for communication with the State where the State recognises more than one official language. However, the Taxpayer shall not arbitrarily change the choice of language, without reasonable cause, as such will contribute unnecessarily to the administrative burden placed on the Tax Administration and may result in unnecessary delays.

**8. If a Taxpayer is not proficient in an official language used by the State, the Taxpayer may employ the services of a Tax Advisor in respect of dealings with the State.**

A Taxpayer who is not proficient in an official language of the State may employ the services of a Tax Advisor in respect of dealings with the State. A Taxpayer shall not be discharged of responsibilities to the State by virtue of not being proficient in an official

language. This results partially from the fundamental principle that ignorance of the law is no excuse. The law is written in an official language of the State, and while the choice of official language is a fundamental right of a Taxpayer, the right does not go beyond this.

### **Article 16: Burden of proof**

The burden of proof typically rests upon a Taxpayer to prove the facts and the application of the law to the facts in question. This is generally applicable in tax systems because the Taxpayer is in the best position to advance the facts, having access to the information. This presents a higher threshold to a Taxpayer than to the Tax Administration, but for appropriate reasons. Having said this, there are exceptions, which must be recognised in particular circumstances, such as the levying of a penalty or the application of the statute of limitations. Also, the State is in the best position to present the policy intent of legislation.

#### **1. A statute of limitations on audit and reassessment shall be clearly stated, with the burden of proof on the State in any matters that result in the normal statute of limitations being extended.**

In matters concerning the statute of limitations, the burden of proof to assess beyond the normal statute shall be on the State. This recognises that the normal statute of limitations is to be generally applicable to all Taxpayers, with it being the exception that the period be extended, usually for reasons of a misrepresentation.

#### **2. The burden of proof to demonstrate the applicability of anti-avoidance legislation shall be on the State.**

Tax-avoidance legislation often makes reference to the policy intent of legislation or hypothetical alternative transactions into which a Taxpayer may have entered. The burden of proof to clearly demonstrate the policy intent of legislation upon which the assessment of a tax avoidance provision may be based, and of any factual matters relied upon in support of that provision (such as alternatives open to a Taxpayer), shall rest on the State.

#### **3. If a penalty is appealed, the burden of proof to justify the penalty rests on the State and, in particular, the State is required to prove the facts for the justification of the penalty.**

A penalty is a sanction that is levied in addition to the Tax that would normally be due. Because of the nature of a penalty, the burden of proof to justify a penalty rests on the State.

### **Article 17: Drafting standards for tax legislation**

In many States, there are no specific standards for the drafting of tax legislation. The State is free to draft whatever legislation it sees fit and in whatever way it is traditionally done. This, however, can undermine the fairness of the tax system, and the respect

that Taxpayers and Tax Advisors have for the system. Accordingly, certain minimum standards should be applicable to the drafting of tax legislation. Article 17 lays out these standards.

**1. Tax legislation shall be written in clear and unambiguous language such that a Taxpayer without specialised professional knowledge shall be able to understand the general provisions of the tax law with reasonable time, effort and study, except for areas that would reasonably require specialised knowledge.**

Tax legislation shall be written in clear and unambiguous language. The standard is to be that a Taxpayer without specialised professional knowledge shall be able to understand the law provided the Taxpayer spends reasonable time, effort and study in this endeavour. This is an overriding principle, which should be enforced, and may require that certain tax legislation be rewritten. Extensive cross-referencing, use of double negatives, exceptions to exceptions, and having legislation scattered throughout the statute all contribute to the complexity of the legislation, leading to the inability of Taxpayers to understand the legislation. The use of forms, guides, interpretations and other resources provided by the Tax Administration are useful, but are not sufficient as a substitute for legislation that is written clearly and unambiguously. However, this does not apply as a standard for specialised areas, such as corporate reorganisations, or specialised industries, such as banking or mining.

**2. Legislation shall not permit interest or a penalty to be levied if it is not reasonably possible for a Taxpayer acting diligently to comply with the legislation without incurring interest or a penalty.**

Taxpayers should be reasonably able to comply with legislation without incurring interest or a penalty, because otherwise the fairness of the tax system is undermined. If it is not reasonably possible for a Taxpayer to comply without incurring interest or a penalty, then the legislation is badly conceived. This puts a heavy onus on the State to draft legislation that is appropriate. With the sovereign right to levy tax comes the responsibility to do it properly.

**3. Legislation shall be introduced only through the due process of law, and shall not be effective until the legislation is enacted into law.**

Legislation shall be introduced only through the due process of law, and shall not be effective until the legislation is enacted into law. Because of this, legislation shall not be applied until it is passed into law. Thus administrative announcements by the Tax Administration about proposed law cannot carry the force of law and are of no legal effect. Further provisions apply under Article 18 with respect to retroactivity of legislation.

**4. If legislation has the effect of levying additional Tax through an increase in the base for taxation, an increase in the tax rate, or the reduction or denial of deductions, the projected revenue to be raised shall be disclosed with the legislation.**

When new legislation is introduced, a reasonable estimate shall be given of the additional tax revenue to be raised or the revenue to be relieved from the legislation. It is the responsibility of the State to provide an estimate of tax revenues along with the legislation that is to be enacted.

**5. Where tax legislation makes reference to other laws, those laws shall be referred to in the tax legislation with sufficient particulars to enable an understanding to the law, and not merely incorporated by cross-reference.**

Where legislation makes reference to other laws, those laws shall be summarised in the tax legislation. They shall not be incorporated merely by cross reference. Otherwise, it becomes difficult for a Taxpayer to understand the tax legislation without extensive research into these other laws. While this may contribute to the length of the tax legislation, this is viewed as being worthwhile when compared to the alternatives.

**6. Where tax legislation is to be interpreted in accordance with underlying tax policy, that tax policy shall be written in the tax legislation in clear and unambiguous language.**

Where tax legislation is to be interpreted in accordance with underlying tax policy, that tax policy shall be written in clear and unambiguous language in the legislation itself. It shall not be reproduced in notes, committee discussions, interpretations that may accompany the tax legislation, or headings. Tax legislation is often changed as it works its way through the legislative process and, accordingly, the underlying tax policy may be altered from what was originally intended. Reference shall especially be made in tax-avoidance legislation to the underlying tax policy. It is of benefit both to the State and to Taxpayers for the tax policy to be clearly understood, especially in the context of tax avoidance. Note that the burden of proof for interpreting tax legislation should rest upon the State with respect to anti-avoidance legislation where a Taxpayer is considered to have entered into an avoidance-type transaction that is contrary to the policy of the legislation, and thus may have it re-characterised.

**7. Provisions of tax law that are no longer of relevance shall be removed from the tax legislation.**

Tax laws that are no longer relevant – often referred to as ‘deadwood provisions’ – shall be removed from the tax legislation. This enhances the readability of the tax legislation, and shortens the legislation itself. It reduces complexity in the legislation.

**8. Tax legislation shall be ordered in the tax legislation in an organised and logical manner, such that a subject may be viewed in a readily accessible way and to the extent that other applicable provisions are cross-referenced to aid in understanding the legislation.**

Tax legislation shall be drafted in an organised manner. Laws that deal with a particular matter shall be contained in the same general area of the tax legislation. Where this is not practical, there should be cross-referencing to aid in the understanding of the legislation. Otherwise, the Taxpayer reading the legislation may be unaware of a provision that may be applicable in a different area of the legislation and, taken to an extreme, it would be necessary to read the entire taxing statute before a Taxpayer could completely understand the provisions that are applicable.

### **Article 18: Retroactivity of legislation**

It is generally inappropriate for tax legislation to be retroactive. This breaches a fundamental right of a Taxpayer to organise a Taxpayer's affairs, and undermines the fairness of the tax system. Accordingly, limits should be placed on retroactive legislation. This is to be distinguished from the practice set aside in 5 above of cross-referencing legislation as a shortcut to drafting primary legislation.

Retroactivity in tax terms takes two forms: changes that apply prospectively but to arrangements completed in the past; and changes that apply retrospectively that alter the tax liability attached to the completed arrangement prior to the legislation coming into effect.

#### **1. Legislation shall not be retrospective unless it is relieving in nature.**

Legislation shall not be retrospective, unless the legislation is relieving in nature. Accordingly, a State may pass retrospective legislation that is generally a benefit to Taxpayers, but not if it is detrimental. Legislation is considered retrospective if it applies prior to its enactment. It may, however, apply to arrangements entered into after it is announced but before the legislation has been enacted, provided the revenue to be raised is prospective and the announcement is fairly reflected in subsequent legislation.

#### **2. Where legislation has the effect of causing something to be subject to Tax that was not previously so, or changes the Tax consequences flowing from completed transactions, transitional rules should be provided to enable a fair and reasonable transition.**

Reasonable transitional rules shall be provided where legislation has the effect of causing something to become newly subject to Tax, or changes the tax consequences flowing from completed transactions, in order to allow Taxpayers to reorganise their affairs appropriately. For example, if a State did not previously tax an item of capital gains, transitional rules may provide for an adjustment to the cost of property equal to fair market value at the date the legislation became applicable.

## **Article 19: Double taxation and relief**

Double taxation is widely considered unfair and prejudicial to Taxpayers and often one of the most unpopular aspects of the tax system. Accordingly, methods should provide for the elimination of double taxation as far as possible. This may be done through an exemption system, a tax credit system, or a system of tax deductions. All of these systems will potentially work to relieve double taxation if drafted appropriately.

The method by which double taxation is relieved is not, in itself, of consequence, provided the end result is that double taxation is eliminated or taken into consideration appropriately in the tax system.

Double taxation can arise in many ways. The following are examples:

- Tax is levied on a corporation, and again on the distribution of profits or on the liquidation of the corporation at the shareholder level, without any appropriate mechanism to mitigate double taxation.
- Tax is levied on more than one Taxpayer in respect of the same component of income, or in respect of capital gains, possibly through the denial of appropriate adjustments to the cost base of assets.
- Income is taxed in a foreign country and also domestically, without relief being given for the foreign tax that is paid.

**1. Legislation shall provide for relief of double taxation, through an exemption or tax credit mechanism or as may be suitable in the circumstances.**

## **Article 20: Interest and penalties**

Interest and penalties are sanctions applied against a Taxpayer for failure to make payments when due, or for conduct that fails to comply with tax legislation. Because the payment of interest and penalties are sanctions in addition to the Tax that is normally levied, particular provisions should apply to interest and penalties to ensure that a Taxpayer is treated fairly.

**1. The Taxpayer shall pay interest as may be calculated and such penalties as may be duly levied in accordance with the law of the State.**

A Taxpayer shall pay interest as may be calculated and such penalties as may be levied in accordance with the laws of the State, meaning that there is no prohibition, as such, on the right of the State to assess interest or levy penalties. However, such matters should comply with the further rules outlined below.

**2. The State may charge interest on late payments of Tax, and the State shall pay interest on overpayments of Tax, with the rate of interest and the calculation basis being the same whether the amount is owing to or from the State.**

The rate of interest charged on late payments of Tax should not exceed the rate of interest paid on overpayments of Tax, and the calculation basis should be the same. Failure to do so results in a bias in favour of the State. This is inappropriate and unfair. One justification for this by the State is the fact that the State incurs bad debts, and the creditworthiness, in general, of Taxpayers is less than that of the State. However, this results in a majority of Taxpayers paying for the delinquency of a few. Also, the uneven playing field is commonly made worse because interest paid on taxes owing is not deductible for the Taxpayer but any interest received from the State is taxable. This is also unfair, but might be justified somewhat on the basis that Taxpayers need some deterrent to late payment of tax.

**3. Where a penalty is assessed, the basis of the penalty must be clear and unambiguous in legislation and the basis for the justification of the penalty must be disclosed by the State.**

Where a penalty is assessed, the basis of the penalty must be clear and unambiguous in the legislation. In the event of doubt, the penalty should not be assessed or should be reversed. The basis for the justification of the penalty must be disclosed by the State with sufficient particulars. Note also that the burden of proof to justify a penalty rests with the State.

**4. A Taxpayer shall not be charged a penalty for an error or omission made in good faith provided the Taxpayer has exercised due diligence.**

Penalties are increasingly becoming commonplace in the tax system. This is inappropriate, because a penalty is an additional sanction levied on top of the Tax that is lawfully due. Accordingly, a penalty shall not be applied where a Taxpayer has acted in good faith and exercised due diligence. This shall apply to all manner of penalties.

**5. The State shall have the ability to mitigate or waive a penalty in appropriate cases.**

Legislation shall provide that the State has the ability to mitigate or waive a penalty where, for example, a Taxpayer has acted diligently and reasonably. Put another way, a Taxpayer should not be levied a penalty without reasonable cause.

**6. Where a penalty results by virtue of a Taxpayer not reasonably being able to comply with a requirement under legislation, then, provided the Taxpayer can substantiate the reasons for this with reasonable detail, the penalty shall be waived.**

Where a Taxpayer is reasonably unable to comply with the requirements of legislation, and the Taxpayer can substantiate this with reasonable detail, any penalty levied shall be waived. If, for example, a Taxpayer does not have information reasonably necessary to report a component of income, because such income is unavailable by the due date for filing a tax return, and subsequently the information becomes available, no penalty should result. This is beyond the Taxpayer's ability to comply. Another example may be where third-party tax information is provided to a Taxpayer that is subsequently amended, resulting in an understatement of the Taxpayer's tax liability.

**7. The penalty shall be of an amount or nature that is reasonable to the circumstances giving rise to the penalty and where a penalty is of a level to be considered appropriate to a criminal action, the State shall demonstrate that all the rights of the Taxpayer have been protected and due process has been followed.**

A penalty shall not be of an amount or nature that is patently unreasonable in relation to all of the surrounding circumstances that have given rise to the penalty. It is therefore not appropriate for a penalty of a large amount (say 20 per cent of assets, for example) to be levied for failure to file an information return, especially where the failure was due to inadvertence. While a penalty is to act as a deterrent and also a punishment, the punishment must be appropriate to the circumstances. In addition, only one penalty should apply per infraction. Failure to do so violates the principles of fundamental justice.

**8. No penalty shall be levied where the circumstances surrounding the penalty do not involve fault, recognising that a penalty is a sanction applied in addition to the Tax lawfully due.**

A penalty shall only be levied where it involves fault. No penalty shall be applied where a Taxpayer is not at fault.

**9. Interest payable to the State by a Taxpayer, and interest owing by the State to the Taxpayer, may be offset against one another by the State.**

Typically, interest payable to the State by a Taxpayer is not deductible for tax purposes, but interest owing by the State and paid to the Taxpayer is taxable. This introduces an undue bias into the tax system, and an offset mechanism should be provided to prevent the State from receiving an undue windfall in tax revenue.



## **Article 21: Voluntary disclosure**

A voluntary disclosure process is of considerable importance in the administration of a tax system to enable a Taxpayer to correct past filings and deficiencies. Failure to provide for such an approach to the Tax Administration may often perpetuate a Taxpayer's deficiencies, and encourage the Taxpayer to continue with this course of conduct. The process must be accessible, well-known, and free of recrimination. At the same time, the process should not be viewed as a tax amnesty, or enable a Taxpayer to obtain a materially better result than might have been the case had the Taxpayer been compliant. Thus, a delicate balance is necessary to ensure that the tax system is fair, encourages and increases voluntary compliance, but ensures that a Taxpayer cannot unduly obtain a benefit from non-compliance.

### **1. A process shall exist whereby a Taxpayer may come forward voluntarily to a Tax Officer to correct deficiencies in past Tax Filings, whether the deficiencies were deliberate, done in circumstances amounting to gross negligence, negligence, or carelessness, or through inadvertence or otherwise.**

A voluntary disclosure type of process shall exist whereby a Taxpayer may come forward voluntarily to correct deficiencies in past filings. This shall apply whether the deficiencies are deliberate or not, done in circumstances amounting to gross negligence, negligence, or carelessness or through inadvertence. When using the voluntary disclosure process, a Taxpayer shall not be required to detail the circumstances for the deficiency, except to factually present the items of deficiency in past Tax Filings, and to correct them. The background as to why the deficiencies occurred is not relevant.

### **2. Where a Taxpayer comes forward with a voluntary disclosure, it shall be complete in all material respects failing which it shall be invalid.**

A Taxpayer choosing to use the voluntary disclosure process shall make a disclosure that is complete in all material respects, failing which the disclosure shall be invalid. Thus, if a Taxpayer does not make a complete and truthful disclosure, and it is determined that the disclosure is incomplete, the entire voluntary disclosure shall be disregarded and the Taxpayer may be subject to penalties and prosecution as provided by law.

### **3. Under a voluntary disclosure, a Taxpayer shall be able to make such elections and designations as would have been available had the Taxpayer made these on a timely basis, but not so as to allow retroactive tax planning.**

A Taxpayer shall be entitled to make such reasonable elections and designations as would have been available had the Taxpayer filed on a timely basis. However, this does not allow retroactive tax planning, which must be defined according to the circumstances. The Taxpayer may make such elections and designations as would reasonably have been made had the Tax Filings been made on a timely basis containing all of the required information.

**4. In the case of voluntary disclosure, penalties for under-reporting income may be mitigated or waived.**

Under a voluntary disclosure, penalties for under-reporting of income or claiming of excessive deductions may be mitigated or waived, but interest may still be charged on the Tax that is owing.

**5. Reasonable deadlines may be imposed by the State in respect of a voluntary disclosure such that the process is completed within a reasonable period of time.**

A Taxpayer shall proceed forthwith with completing a voluntary disclosure and provide all required information within a reasonable time as may be specified by the State. Failure to provide this information and proceed diligently shall render the voluntary disclosure void, and the taxpayer may be liable to prosecution in the normal course.

**Article 22: Legislative process and consultation**

Persons who draft tax legislation may benefit from the advice and experience of others. Furthermore, by allowing interested parties and subject matter experts to have input into the legislative process, it is likely that a better overall result will be obtained. Certainly, it will be perceived that the process is fairer than if consultation was not permitted. This is not to say that the State must accept the advice and recommendations it hears, and it is recognised that certain representations may be self-serving (from lobby groups, trade associations etc). Also, it should be recognised that not all persons will necessarily agree with legislation, particularly if it narrows deductions, closes tax loopholes, introduces tax-avoidance legislation, or raises tax rates.

**1. The legislative process shall provide for the opportunity for interested and affected parties and subject-matter experts to provide comment prior to its passage.**

The legislative process shall permit opportunity for interested parties and subject matter experts to be consulted and provide input. Such persons would act in an advisory capacity only, with no authority to influence the legislation. It is important that the process be an open one, which is perceived as being fair and reasonable. The period for consultation should be sufficient to enable meaningful input. Adequate time and attention should be given to submissions, which should be in writing, published and widely accessible.

**2. Legislation that is not passed in a timely manner shall be reintroduced into the legislative process, modified or abandoned, as best suits the circumstances and the tax policy objectives of the State.**

Legislation that is not passed in a timely manner should be abandoned and modified or reintroduced, as fitting in the circumstances. It is not appropriate for legislation to be pending for a lengthy period of time, as this introduces confusion and uncertainty.

**Article 23: Tax levied only by virtue of law**

Tax, along with interest and penalties, shall only be levied by due process of law. Thus, Tax may not be levied based on pending legislation, or by regulations that have not been enacted by the legislative process of the State. The Tax levied should also have a basis in law and should not be arbitrary or determined by discretion of a Tax Officer.

**1. Tax shall be levied only by virtue of law.****Article 24: Equality of Taxpayers****1. All Taxpayers shall be equal before the law.**

It is important and fundamental that all Taxpayers be treated equally before the law. Accordingly, no bias or prejudice is to be shown to any Taxpayer over another, regardless of the Taxpayer's size, status, worth, importance to society, political or social standing or other criteria. The State may, however, grant exemptions to certain Taxpayers, such as non-profit organisations or religious orders, charities, pension funds, government agencies, schools, hospitals, etc, and this does not violate the principle of equality. The principle is, however, violated if Taxpayers of the same basic category (for example, individuals or profit-making corporations) are treated fundamentally differently without just cause and due process of law.

**Article 25: Matters concerning Tax Advisors**

Tax Advisors play an important role in assisting Taxpayers with Tax Filing requirements, interpretation of legislation, resolution of tax disputes, and other related matters. Because of the significance of this role, special provisions apply with respect to Tax Advisors. The term 'Tax Advisors' is defined, and reference should be made to that definition. A Tax Advisor does not include an employee of a Taxpayer when acting in that capacity.

**1. A Taxpayer shall have the right to be represented by a Tax Advisor.**

A Taxpayer shall have a right to be represented by a Tax Advisor in dealings with the Tax Administration. A Tax Officer shall respect this right and direct correspondence and communications to the Tax Advisor, along with the Taxpayer, upon request.

**2. The State may define requirements and procedures for who may represent a Taxpayer as a Tax Advisor.**

The State may define licensing requirements for recognition of a Tax Advisor. Many States have seen fit to do so, because of the privileges afforded a Tax Advisor, and to make sure that the Tax Advisor is suitably qualified to represent the Taxpayer. Acting as a Tax Advisor involves certain responsibilities, including a thorough knowledge of the areas of tax law concerning which the Tax Advisor will advise the Taxpayer. Accordingly, it is reasonable for the State to consider reasonable licensing requirements for who may serve a Taxpayer as a Tax Advisor. Note also that a Taxpayer is ultimately

responsible for the actions of a Tax Advisor, and protection of the public interest requires that a Tax Advisor practise to a high standard.

**3. A Taxpayer shall have the right to be represented by a Tax Advisor, except that in judicial proceedings the Tax Advisor shall be a lawyer where the judicial system requires this.**

It is recognised that certain countries have a tradition where only persons with legal qualifications may appear before a court.

**4. A Tax Advisor shall have authority to certify tax returns and information filings on behalf of a Taxpayer and negotiate arrangements on behalf of the Taxpayer if specifically authorised to do so. In such a case, this authorisation is binding on the Taxpayer, and the Tax Advisor shall be treated as if it and the Taxpayer were one and the same.**

A Tax Advisor may be given the authority to certify Tax Filings on behalf of a Taxpayer. The Tax Advisor shall be treated as if it was the Taxpayer who certified the Tax Filing. Accordingly, a Tax Advisor may be charged a penalty in certain situations, but only to the extent that the Tax Advisor knew or should reasonably have known (after making such enquiries as would be reasonable in the circumstances) of materially incomplete or incorrect facts or has made a gross error in law. A Tax Advisor may also be charged a penalty for mistakes resulting from culpable conduct.

## **Article 26: Breach of Charter rights**

**1. A Taxpayer shall have recourse to complain and plead for an appropriate remedy in the event that a Taxpayer's rights are not adhered to as laid out in this Charter through a suitable mechanism established by the State in its legislation implementing this Charter.**

Because of the diversity of legal traditions in countries across the world, it is not appropriate for the Charter to specify how a Taxpayer may enforce Charter rights. What is important is that there be a reliable and accessible route open to a Taxpayer to pursue. If the Charter is doing its job, these situations should be quite rare.

## **Article 27: Enforcement and collection of tax, interest and penalties**

**1. A Taxpayer shall be able to present for consideration a payment arrangement with respect to unpaid Taxes, interest and penalties in circumstances of financial hardship.**

Little is to be gained by bankrupting a Taxpayer due to a tax debt where a payment arrangement might be satisfactory to all. Therefore, the Taxpayer has a right to present a payment arrangement in circumstances of financial hardship that the Tax Administration should consider, but is not obliged necessarily to accept.

## **Article 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.**

This provision affirms that tax-avoidance legislation, whether specific or general, is a valid approach to counter artificial, blatant and contrived tax-reduction arrangements. However, a reasonable balance is needed that the paragraphs below seek to achieve.

**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.**

Tax-avoidance legislation should not deny a Taxpayer the benefit derived from incentives provided in the legislation or the benefit of reasonable choices among alternative transactions or business structures. The applicable doctrine of when a general anti-avoidance rule will become actionable will vary from country to country. However, the threshold should be a high one, since the Taxpayer has otherwise complied with all requirements of the tax legislation.

**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.**

What is most important in practical terms concerning tax-avoidance laws is that they be clear, well known, and not open to the discretion of the Tax Administration – or, worse yet, particular Tax Officers. Taxpayers are entitled to reasonable certainty in their tax affairs. Broadly worded tax-avoidance legislation that gives wide discretion in interpretation is unfair.

## **Article 29: Tax evasion and dishonesty**

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

Tax evasion is fundamentally a crime against the State. However, the term needs clarity because it is easy to blur the line between tax planning, tax avoidance and tax evasion. Thus aggressive but honest tax planning may be tax avoidance but, as long as appropriate disclosure is made, it is not tax evasion.

## **Article 30: Special European Union provisions**

**1. Any Taxpayer Charter entered into by a Member State of the European Union shall acknowledge the force and primacy of the four fundamental freedoms of the European Union and shall recite the rights of the Taxpayer identified and derived therefrom from time to time. The Member State shall assert its support of those rights.**

Member States of the European Union are committed to four freedoms enshrined in the treaties of accession. The four freedoms are the right to free movement of goods, people, services and capital. Within the European Union, litigation before the Court of Justice of the European Union (CJEU) has and is defining exactly what these freedoms mean for Taxpayers within Member States.

As a result, some of the provisions within this Model Taxpayer Charter are already established rights for EU Taxpayers and deal not just with the relationship between the Taxpayer and the Member State of residence, incorporation or belonging, but also with any relationship with any other Member State or States and with issues associated with cross-border operations within the EU.

While these rights already exist and therefore are not derived from a Charter, the recital of the rights and the stated acceptance of the primacy of the fundamental freedoms within the Charter will mean that there is no confusion or doubt that the Member State willingly and positively upholds the pre-existing rights and any that should subsequently be determined by the CJEU.

## **Article 31: Enabling legislation**

Depending on how the Charter is implemented, there may be a need for enabling-type legislation to be contained within the Charter, so that it can easily be integrated with domestic law.

## **Article 32: Implementation and transition issues**

Where the Charter is to be adopted, there will be an implementation period. It may take several years for the State to comply with all of the requirements. There will be issues of matters that are in process, and systems that will require changing. In certain cases, parts of the legislation may need to be rewritten. All of this will require time, and therefore the provisions of the Charter may be introduced in stages.

## **Article 33: Amendments to Charter**

It will be easy for a State to amend the Charter or revoke it entirely. Some provisions need to be inserted to prevent the terms of the Charter being watered down easily. Since it is normally not possible to bind the legislative process, nor is it likely that a State would agree to be so bound, probably the best that can be expected is a statement about notice, intent, public discussion and due process, in the event of amendments to the Charter being considered.

**Article 34: Concluding matters**

This Article is reserved for any other matters that may be particular to a certain State, and are not dealt with in other terms of the Charter.