

Taxpayers' Charters and a Taxpayers' Charter for Europe

The purpose of this short presentation is to sketch out briefly the background to Taxpayers' Charters and to the current proposal for "a Taxpayers' Charter for Europe".

Taxpayers' rights are protected in European countries in different ways and at different levels.

First, since taxation is administered at a national level, for many countries the primary protection exists under the national constitution. Many of these constitutions contain a bill of rights, and the provisions in that bill of rights are applicable to protect the rights of taxpayers. In some countries – Germany is a prime example – protection of taxpayers under the constitution by the Constitutional Court is very extensive.

Secondly, for those countries which are members of the European Union, rights of taxpayers are protected under the provisions of the Treaties establishing the Union, and also under the General Principles of European Union law. This includes principles such as: the doctrine of effectiveness, which has been applied by the

European Court of Justice to require that a taxpayer has an effective remedy to protect his rights in tax matters coming within the scope of EU law.

Thirdly, all states that are members of Council of Europe are parties to European Convention on Human Rights. This Convention was not drafted with taxpayers' rights in mind, however, it has been applied in a significant number of tax cases¹. Perhaps because the Convention was not drafted with taxpayers' rights in mind, the resulting protection in the tax field is sporadic, inadequate and sometimes inappropriate².

Fourthly, in some countries there are specific national laws protecting taxpayers' rights. In some countries these provisions are contained in the normal fiscal legislation³, while in other countries these provisions are set out in a separate piece of legislation dealing with the rights of taxpayers⁴.

Fifthly, and finally, protection can exist through the terms of a Taxpayer's Charter.

This may – and often will – overlap with the protection of taxpayers' rights found

¹ For a (now somewhat out of date) analysis of this case law see Philip Baker "Taxation and the European Convention on Human Rights" [2000] BTR 211 – 377.

² For example, while the European Court of Human Rights has held that ordinary tax disputes do not fall within the scope of the right to a fair trial in Article 6; where the case involves penalties, the full range of criminal protections apply – not all of which are entirely appropriate in the tax context.

³ An example is the chapter on taxpayers' rights in the Russian Fiscal Code.

⁴ Recent examples are Italy and Spain that have both enacted specific legislation containing codes of taxpayers' rights.

in the national constitution, in EU law, in the European Convention on Human Rights and in national laws on taxpayers' rights: there is nothing wrong in the same rights (and obligations) being stated both in a Taxpayers' Charter and in other more technical provisions. These are different ways of communicating these rights and obligations.

One can make a distinction between two types of statement of taxpayers' rights (and obligations). On the one hand (and this is likely to contain only taxpayers' rights) there may be a Taxpayers' Bills of Rights (abbreviated as "TaBoR"), which is a provision contained in enacted legislation setting out, in summary form, taxpayers' rights. Examples are the recent legislation in Spain and Italy and the Taxpayers' Bills of Rights enacted at the Federal level in the United States. On the other hand, there are Taxpayers' Charters ("TaCh") which are issued by declaration or publication, usually by the Revenue authorities or by the Ministry responsible for tax collection. Examples are the "Charte du Contribuable" in France, and the charters issued by a number of local tax administrations in the several states of the United States.

If one seeks to compare them, the content of these TaBoRs and TaChs are very similar. The real difference is simply in the form adopted. TaBoRs are contained in legislation and are therefore likely to have a more binding legal effect. This is

not to say, however, that TaChs do not have legal effect, even though they are contained in non legislative form.

Focussing on Taxpayers' Charters, they can be defined as "a short, accessible statement of the basic rights [and obligations] of taxpayers in dealing with the tax authorities". The emphasis is on accessibility of the Charter, so that it has to be both promulgated so as to be easily found by revenue officers and those dealing with revenue authorities, and also to be couched in language which is accessible to the general public. In some sense, one can see a Taxpayers' Charter as simply a means of communicating basic rights and obligations which are enjoyed or imposed on taxpayers in their dealing with the revenue authorities: those rights and obligations may be also stated in a more technical, less accessible form in the tax law itself.

The history of Taxpayers' Charters goes back to the second half of the 20th Century. There is something of a dispute as to which country was the first country to introduce such a Charter: the United Kingdom introduced one in 1986, but the French can point to a charter of the rights of taxpayers during a tax audit which dates from 1975. In 1990, the OECD – which is the leading international body involved in direct tax matters – published a report on taxpayers' rights and obligations which recommended to member countries to adopt a Taxpayers'

Charter⁵. There was an update report in 2003, by which time two-thirds of OECD member countries all had a Taxpayers' Charter⁶.

There are some fundamental questions that one can pose about a Taxpayers' Charter. Perhaps the most fundamental question is to ask how a Taxpayers' Charter can improve the relationship between taxpayers, tax advisers, tax administration and tax policymakers. If a Charter cannot or does not improve that relationship, then one wonders whether the effort of producing the Charter is worthwhile: even more significant, if the Charter gives a false impression of the rights and obligations of taxpayers, then it could be positively counter-productive. Anecdotal evidence from countries such as France and Australia - which have put significant efforts into producing and publicising a Taxpayers' Charter - suggests that it can make a significant difference.

Assuming that a country decides to adopt a Taxpayers' Charter, there are a number of further questions that need to be addressed.

First, should it cover only rights of taxpayers or rights and obligations. Earlier charters were seen as a statement of the rights of taxpayers protected under the law,

⁵ *Taxpayers' rights and obligations – A survey of the legal situation in OECD countries, 1990*, OECD

⁶ *GAP002 Taxpayers Rights and Obligations, 2003*, OECD

but more recent documents have tried to balance the rights of taxpayers with their obligations as well. If a short, accessible statement of the principles underlying the relationship between taxpayers and the tax authorities can enhance that relationship, there is much to be said for extending that statement to cover obligations as well as rights.

Secondly, there is the question as to what legal effect – if any – the Charter should have. This may vary from country to country depending on the legal tradition and other protections that exist (for example, protection under the constitution). At the very least, one suspects that revenue officers should take account of a Taxpayers' Charter in carrying out their functions, and any tax court or tribunal should give the Charter whatever weight it considers appropriate in the particular circumstances when hearing a tax dispute.

Thirdly, what arrangements should be made for monitoring the performance of the Charter? It is important that the Charter is not simply published and promulgated and nothing further done to monitor its effect and performance. In some countries – Australia, for example - there is regular independent auditing of the operation of the Charter. In other countries, it is linked to the appointment of a Taxpayers' Advocate or Ombudsman who ensures compliance with the Charter provisions.

Fourthly, what legal form should the Charter take: should it be contained in the legislation itself or should it be a declaration issued by the revenue authorities? Practice on this point varies between countries. In some places, the Taxpayer's Charter has transformed into a Taxpayers' Bill of Rights (or "TaBoR") which is contained in primary legislation: in other countries, the Charter is simply a declaration issued by the revenue authorities.

Fifthly, should the Charter be detailed or general in its form? Taxpayers' Charter lend themselves to publication on the Internet, where it is very easy to provide a hyperlink so that somebody clicking on the terms of the Charter can be taken to further documentation which elaborates on the meaning of the Charter. Under that approach, the basic Charter consists really only of headings, and clicking on those headings takes the reader to further detail that elaborates on the practical aspects of that particular right or obligation. A more sophisticated approach involves a "matrix" structure where, under the chapeau of the basic Charter document, there is one group of documents which elaborate on each of the Charter rights and obligations and a parallel set of documents which elaborate on the publication of the Charter to particular classes of taxpayers (individual taxpayers, corporate taxpayers, VAT traders, etc.).

Sixthly, should the Charter deal only with procedural tax issues or with substantive tax law as well? There are clearly a large number of rights and obligations concerned with tax procedures that can be summarised in the Charter: for example, the right to be given advice by the revenue authorities; the right to be treated as truthful; the obligation to maintain accurate records to support one's tax filing. On the other hand, there are also very basic principles that relate to substantive tax law which also could benefit from a concise, accessible statement: for example, a statement that tax law will not be retrospective (except, perhaps, in the very specific circumstances of countering tax avoidance activities); or a statement that the substantive tax law will seek to minimise compliance obligations and costs. It is quite hard to draw a rigid line between procedural issues and substantive tax issues: taxpayers have rights and obligations that relate to both, and both can benefit from a clear statement of principle in a Charter. There is much to be said for including rights relating to substantive tax law in a Taxpayers' Charter.

Only after all of these questions have been addressed is it appropriate to turn to the actual content of a particular Taxpayers' Charter. In fact, once one has resolved the answers to these various questions, the drafting of the Charter itself may become relatively straightforward.

To take a few examples of existing Charters: the Australian Taxpayers' Charter dates from 1997, and follows the pattern of including both rights and obligations. It contains thirty rights and six obligations. For example, under rights it states that:

“You can expect us to:

2. treat you as being honest in your tax affairs unless you act otherwise
4. accept you can be represented by a person of your choice
6. keep the information we hold about you confidential in accordance with the law
12. administer the tax system in a way that minimises your costs of complying.”

To balance this, the Australian Charter also contains certain obligations. Examples are:

“We expect you to:

1. Be truthful in your dealings with us.
2. Keep records in accordance with the law.
3. Take reasonable care in preparing your tax returns ...”

The German Fiscal Code of 1919 contains a number of rights and obligations of taxpayers. These include: the principle of equitable and lawful taxation; the right to be informed and assisted by the revenue authorities; the right to confidentiality and secrecy; the right to appeal decisions of the revenue authorities; the obligation to keep records for tax purposes; the obligation to co-operate with the revenue authorities. It is significant to note that these principles, rights and obligations have been part of German tax law since the early part of the 20th century.

Applying this discussion to the specific context of Europe, the question arises whether there should be a “Taxpayers’ Charter for Europe”. At present, taxpayers’ rights and obligations are formulated, protected and imposed at three different levels: at the national level, at EU level and at Council of Europe level. At the national level, where most taxation is imposed, there is much to be said for the development of a Model Taxpayers’ Charter which can be adapted for the particular circumstances of each country. At the EU level, while some existing rights are found in the Treaties and in the General Principles of EU law, a Regulation expressing those rights (and possibly obligations, but it is a little less clear why there should be obligations imposed at EU level) could ensure consistency between Member States. There is some efficiency and clarity to be

achieved in developing protections based upon the text of a Regulation, rather than the European Court of Justice developing identical protections but through the vagaries of litigation and under the guise of the General Principles.

At Council of Europe level, the European Convention was clearly not drafted with tax in mind. A new Protocol to the Convention, adapting it to the particular circumstances of tax collection might be a valid project of itself.

Having begun several decades ago, the movement to develop and employ Taxpayers' Charters is unlikely to come to an abrupt end. There is work to be undertaken developing the concept of a Taxpayers' Charter for Europe which, one hopes, may improve the relationship between taxpayers and the tax authorities throughout the European States.