



# Being tax compliant guarantees a license to operate your business

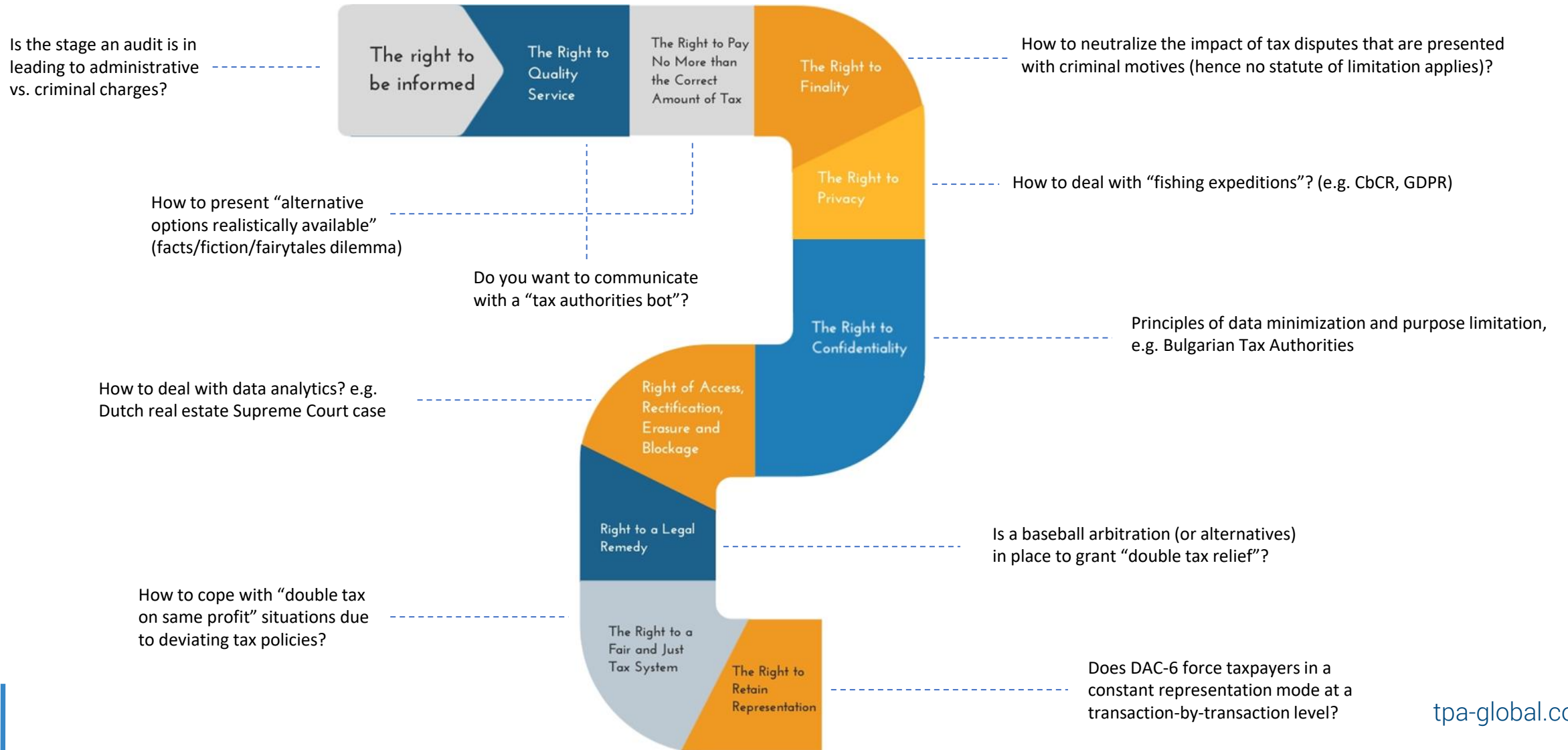
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# Compliance and transparency – a balancing act

- The transparency and compliance requirements applied to financial institutions could be seen as a stepping stone for governments to force corporates in the future to be similarly transparent to the public domain.
- In the light of recent events and the crisis caused by COVID-19, governments will be ever more active in asking for a high level of transparency and compliance from corporates.
- If governments will not get it, tax authorities on their behalf are expected to take unreasonable positions.

# Visualization of taxpayers' rights & threats

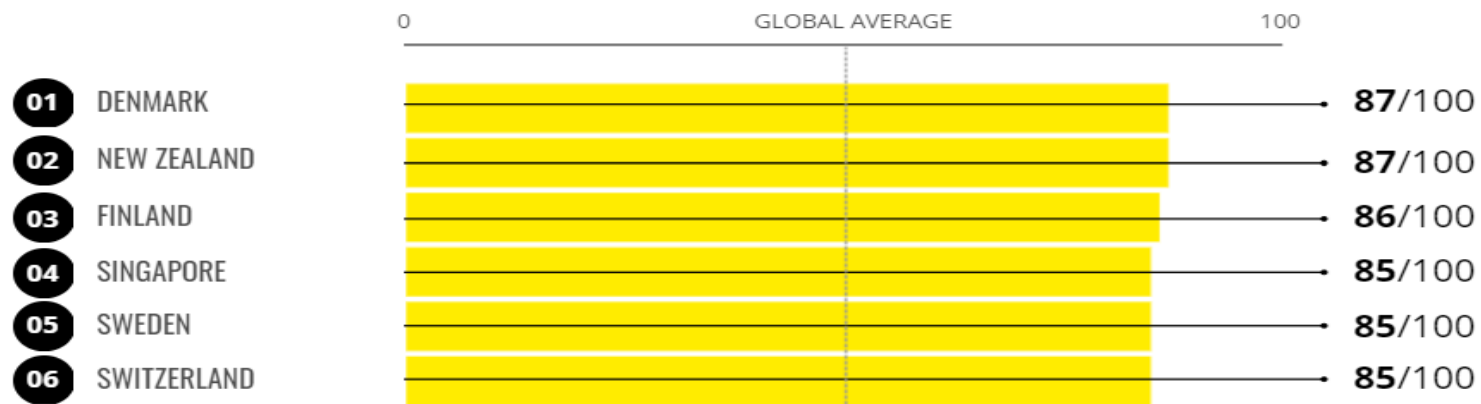


# Is full transparency always a possibility?

- Governments are expected to reach a certain stage of maturity before companies are going to be comfortable with being 100% transparent (i.e. CbCR implementation package)
- It is easier for the taxpayers to be nearly fully transparent in a country like Singapore, than it is in Cambodia, where the corporates have major concerns with regard to potential privacy breaches (i.e. governments sell companies' data to their competitors).
- Low pay of government officials and the lack of proper controls in place indicate that a government has not reached the necessary level of maturity to be entrusted with taxpayer's data.

# Is full transparency always a possibility?

## ▲ TOP COUNTRIES



## ▼ BOTTOM COUNTRIES

# Benefits of being transparent and compliant

- If corporates are fully transparent and compliant and the tax authorities are mature enough to deal with a full level of transparency, you still would have to deal with the exchange of information of tax relevant data to other governments.
- The nature of controversy and the time spent on it would radically change.

- In Asia there are not as many dispute resolution mechanisms as there are in Europe. That puts the responsibility on the corporates to show good diligence.
- There transparency boils down to documentation.
- A lot of it is still form over substance, especially if one deals with regional authority. It is usually enough for corporates to show documentation that fits the substance of the law.
- A lot of success with both informal and formal tax rulings.

# Perceptions of non-transparency

Country	Rank
Singapore	4
Japan	20
Korea	39
China	80
Indonesia	85
Vietnam	96
Thailand	101
Myanmar	130
Laos	130
Cambodia	162

Source: [https://www.transparency.org/files/content/pages/2019\\_CPI\\_Report\\_EN.pdf](https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf)



## Questions:

1. Will corporates be willing to disclose of sensitive information to developing countries, if cyber security and confidentiality remain an issue?
2. Will developing countries focus short term goals and low hanging fruit to fill tax coffers quickly?
3. What is the impact of the combination of Covid 19, low oil prices and new free trade agreements on tax collections in Asia ?
4. How can unreasonable tax positions be the “Achilles” heal of good corporate citizenship?
  - What are the Tax Authorities’ views of the following:
    - NOLs
    - Management service fees
    - Confidentiality vs. “name and shame”
    - Advertising and other common business expenses
5. Tax authority discretion vs. transparency - in relation to reporting what is the balance?

# Is full transparency always a possibility?

## Questions:

1. History, political situation – is it a one party system?
  - Impact of Rule of Law
2. Regional vs. central control – what is the balance? (*i.e.* tax incentives)
3. Is the court system fully independent?
  - Have there be any successful recent tax cases in the country (Australia and Singapore vs. Vietnam, Cambodia and etc.)?
  - APAs? Or MAPs?
5. How important is upfront planning for tax dispute resolution strategies?
6. Are we moving towards more transparency and rule of law – what are the recent developments?

# Is full transparency always a possibility?

Solutions		Can a ruling help?
1	Lack of transparency	Yes
2	Lack of confidentiality / Corruption / Political changes	Somewhat
3	Documentation / Seals, e-documents and digital files	Somewhat
4	Form vs. substance	Yes
5	Media – public relations	Somewhat
6	<i>Ad hoc</i> changes to laws	Yes

# Case studies – Examples of business licenses

1	Gold mine licenses – perceived TP abuses – profit shifting	VN
2	Tax authority ability to freeze bank accounts – if late payments	KZ
3	Tax audit leads to immigration and labour compliance audits	KOR / KZ
4	Stamp duties – unreasonable penalties	MYN
5	Disallowance of advertising expenses	VN

- A higher degree of reporting drives a higher transparency.
- Transparency levels for financial institutions and extractive industries linked to licenses to operate.
- Do governments consider applying the same transparency levels to other industries?
- Digital interaction with taxpayers opens new control and monitoring features for governments.

**Question:** When do we expect the filing of tax related forms converge into a real time sharing of all tax data point with governments and/or public?

# Benefits of being transparent and compliant



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# Is full transparency always a possibility?

The minute the OECD published the Country-by-Country Reporting (CbCR) requirements, there was also published a paper on the minimum technological, organizational and integrity standard a government needs to comply with in order to be allowed to receive the CbCR data. This ISO standard is part of the types of information taxpayers are entitled to have access to when their data is being handled by the TAs. Taxpayers are entitled to be assured by the TAs that their information will be handled appropriately. They have the right to request through a letter the confirmation of the relevant TAs that they have taken all the necessary measures to keep their personal data safe. Some of the measures expected from the TAs relating to information security management are:

- Screenings and background investigations for employees and contractors;
- Initial training and periodic security awareness training based on roles, security risks, and applicable laws;
- Departure policies to terminate access to confidential information;
- Security measures to restrict entry to premises: security guards, policies, entry access procedures;
- Secure physical storage for confidential documents: policies and procedures;
- Authenticating the identifying users and devices that require access to information systems;
- Protection against malicious code and monitoring system security alerts;
- Penalties imposed for unauthorized disclosures; etc.

Full check-list to be found in OECD Action 13: Country-by-Country Reporting Implementation Package, available at <https://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf>