



## Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Jennifer Roeleveld, Professor at the *University of Cape Town*, Kevin Burt, Advocate at the *Johannesburg Bar* and Gert van Heerden, Acting Chief Executive Officer at the *Office of the Tax Ombud*, all of them National Reporters of South Africa.

This set of questionnaires comprise the National Reporters' assessment on the country practice during 2019 in the protection of taxpayers' rights (Questionnaire # 1), and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*" (Questionnaire # 2). These questionnaires were filled in considering the following parameters:

1. *For Questionnaire # 1*, an assertive assessment (yes/no) was required on the effective implementation in domestic law of 82 legal safeguards, guarantees and procedures relevant in 12 specific areas for the practical protection of taxpayers' rights, as identified by Baker & Pistone in 2015. This line of questioning aims to get an overview of the state of protection of taxpayers' rights in the country in 2019.
2. *For Questionnaire # 2*, an impartial, non-judgmental evaluation was required on the developments, either of improvement or of decline, in the level of realisation of 57 minimum standards and 44 best practices, distributed into 87 benchmarks for the practical protection of taxpayers' rights. In this regard, a summary of events occurred in 2019 (legislation enacted, administrative rulings, circulars, case law, tax administration practices), that serve as grounds for each particular assessment, was also required.

# IBFD Observatory on the Protection of Taxpayers' Rights

Dear National Reporter,

On behalf of Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone, I would like to thank you for your participation in the IBFD's Observatory on the Protection of Taxpayers' Rights (OPTR).

As you are aware, the OPTR aims to keep track of the developments in the practical protection of taxpayers' rights around the world. We intend to do so through the valuable and timely information you are kindly supplying, as member of your country's group of experts. Practitioners, tax authorities, academics and the judiciary of each surveyed country form national groups, to obtain a neutral, balanced report on the situation of taxpayers' rights in these countries.

Following you will find two questionnaires, of twelve sections each, aiming to compile relevant information regarding the level of practical implementation of the minimum standards and best practices of 12 taxpayers' rights, as identified by Prof. Dr. Baker and Prof. Dr. Pistone in Basel, 2015. We kindly ask you to fill them out completely, according to the instructions provided at the beginning of each questionnaire.

We would be very grateful if you submit us this questionnaire, duly filled out, by no later than 17 January 2020. We remain at your disposal for any clarification you may need.

We look forward to your valuable contribution to what we believe is an extraordinary project!

Kind regards,

Prof. Dr. Carlos E. Weffe  
Managing Editor  
IBFD Observatory on the Protection of Taxpayers' Rights.

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\* Better if filled in using Google Chrome © or Mozilla Firefox ©

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Tax Administration

Judiciary

(Tax) Ombudsperson

Academia

Other: \_\_\_\_\_

## Questionnaire 1 - Country Practice

### Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. For assertive questions, please answer with "yes" or "no" by clicking on the corresponding button.
3. For questions that require you to specify a period of time (namely, Q. 23 and Q. 44), please select the time applicable in your country to carry out the procedures indicated in the questions in practice, within the options provided.
4. For questions with more than one possible answer (namely, Q. 56), please check all necessary boxes to reflect better the practical situation of your country regarding the issue, by clicking on them.
5. When completed, please submit the survey.
6. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.
7. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
8. An option to quit the survey and save your answers is provided at the end of each section.

9. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.

10. For editing your answers, please use the last "edit your response" link provided to you via email. Please bear in mind that this is the only way the system will acknowledge your previous answers. If you use a link other than the last one provided, some (or all) changes might not be retrieved by the system.

11. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

## I. Identifying taxpayers and issuing tax returns

1. Do taxpayers have the right to see the information held about them by the tax authority?

\*

Yes

No

2. If yes, can they request the correction of errors in the information? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

3. In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only? \*

Yes

No

4. If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non discriminatory/non arbitrary basis? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

5. Is it possible in your country for taxpayers to communicate electronically with the tax authority? \*

Yes

No

6. If yes, are there systems in place to prevent unauthorised access to the channel of communication? \*

Yes

No

7. Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## II. The issue of tax assessment

8. If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them? \*

Yes

No

9. Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment? \*

Yes

No

10. If yes, can the taxpayer request a meeting with the tax officer? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

### III. Confidentiality

11. Is information held by your tax authority automatically encrypted? \*

Yes

No

12. Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs? \*

Yes

No

13. If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

14. Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information? \*

Yes

No

15. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data? \*

Yes

No

16. Is information about the tax liability of specific taxpayers publicly available in your country? \*

Yes

No

17. Is "naming and shaming" of non-compliant taxpayers practised in your country? \*

Yes

No



18. Is there a system in your country by which the courts may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information)? \*

Yes

No

19. Is there a system of protection of legally privileged communications between the taxpayer and its advisors? \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Yes

No

20. If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)? \*

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Not applicable (click here if you answered "No" to the previous question)

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

#### IV. Normal Audits

21. Does the principle audi alteram partem apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)? \*

Yes

No

22. Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)? \*

Yes

No

23. If yes, what is the normal limit in months? \*

4-6 months

24. Does the taxpayer have the right to be represented by a person of its choice in the audit process? \*

Yes

No

25. May the opinion of independent experts be used in the audit process? \*

Yes

No

26. Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process? \*

Yes

No

27. Does the principle ne bis in idem apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)? \*

Yes

No

28. If yes, does this mean only one audit per tax per year? \*

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

29. Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)? \*

- Yes
- No

30. Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)? \*

- Yes
- No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

V. More intensive audits

31. Is authorisation by a court always needed before the tax authority may enter and search premises? \*

Yes

No

32. May the tax authority enter and search the dwelling places of individuals? \*

Yes

No

33. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search? \*

Yes

No

34. Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)? \*

Yes

No

35. Is the principle nemo tenetur applied in tax investigations (i.e. the principle against self-incrimination)? \*

Yes

No

36. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

37. If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority? \*

Not applicable (click here if you answered "No" to question 35)

Yes

No

38. Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognised? \*

Yes

No

39. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination? \*

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

## VI. Review and appeals

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary? \*

- Yes
- No

41. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary? \*

Yes

No

42. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing? \*

Yes

No

43. Are there time limits applicable for a tax case to complete the judicial appeal process? \*

Yes

No

44. If yes, what is the normal time it takes for a tax case to be concluded on appeal? \*

There is no limit (click here if you answered "No" to the previous question) ▼



45. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve et repete)? \*

Yes

No

46. If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt)? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

47. Does the taxpayer need permission to appeal to the first instance tribunal? \*

Yes

No

48. Does the taxpayer need permission to appeal to the second or higher instance tribunals? \*

Yes

No

49. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing)? \*

Yes

No

50. Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals? \*

Yes

No

51. Does the loser have to pay the costs in a tax appeal? \*

Yes

No

52. If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of the conduct of the other party)? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

53. Are judgments of tax tribunals published? \*

Yes

No

54. If yes, can the taxpayer preserve its anonymity in the judgment? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

55. If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

VII. Criminal and administrative sanctions

56. Does the principle ne bis in idem apply in your country to prevent either: \*

- The principle does not apply in my country
- The imposition of a tax penalty and the tax liability
- The imposition of more than one tax penalty for the same conduct
- The imposition of a tax penalty and a criminal liability

57. If ne bis in idem is recognised, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)? \*

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty? \*

- Yes
- No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

59. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)? \*

Yes

No

60. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## IX. Cross-border procedures

61. Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request? \*

Yes

No

62. Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for exchange of information? \*

Yes

No

63. If no to either of the previous two questions, did your country previously recognise the right of taxpayers to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information? \*

Not applicable (click here if you answered "No" to either question 61 or question 62)

Yes

No

64. Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country? \*

Yes

No

65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country? \*

Yes

No

66. Does the taxpayer have the right to see any information received from another country that relates to him? \*

Yes

No

67. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated? \*

Yes

No

68. Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

69. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation? \*

Yes

No

70. Is tax legislation subject to constitutional review which can strike down unconstitutional laws? \*

Yes

No

71. Is there a prohibition on retrospective tax legislation in your country? \*

Yes

No

72. If no, are there restrictions on the adoption of retrospective tax legislation in your country? \*

Not applicable (click here if you answered "Yes" to the previous question)

Yes

No



Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## XI. Revenue practice and guidance

73. Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law? \*

Yes

No

74. If yes, can taxpayers acting in good faith rely on that published guidance (i.e. protection of legitimate expectations)? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

75. Does your country have a generalised system of advanced rulings available to taxpayers? \*

Yes

No

76. If yes, is it legally binding? \*

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

77. If a binding rule is refused, does the taxpayer have a right to appeal? \*

- Yes
- No

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

## XII. Institutional framework for protecting taxpayer's rights

78. Is there a taxpayers' charter or taxpayers' bill of rights in your country? \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- Yes
- No

79. If yes, are its provisions legally effective? \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

80. Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country? \*

- Yes
- No

81. If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)? \*

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

82. If yes to a (tax) ombudsman, is he/she independent from the tax authority? \*

- Not applicable (click here if you answered "No" to question 80)
- Yes
- No

## Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## Questionnaire 2 - Standards of protection

### Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. All questions are two or three-tiered (namely, either with parts "A" and "B" or "A", "B" and "C"). They comprise a minimum standard and /or a best practice, and a "summary of relevant facts in 2019", a space for providing a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way.
3. Please Indicate, by clicking on the corresponding button, whether there was an improvement or a decrease of the level of compliance of the relevant standard/best practice in your country in 2019. If there were no changes, please indicate so by clicking on the corresponding button.
4. In all cases, please refer the relevant novelties in the space provided under "summary of relevant facts in 2019", for each question. Please give a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. In case there is nothing to report for a given minimum standard/best practice, please indicate so briefly.
5. If any, make additional, non-judgmental commentaries at the space provided under "summary of relevant facts in 2019".
6. Back up your assertions with the relevant documentary materials, if possible. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcomed to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org).
7. When completed, please submit the survey.
8. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.
9. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
10. An option to quit the survey and save your answers is provided at the end of each section. This part of the survey has 12 sections.
11. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.
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13. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## I. Identifying taxpayers and issuing tax returns

1 (A). Implement safeguards to prevent impersonation when issuing a unique identification number \*

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

1 (B). Summary of relevant facts in 2019

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2 (A). The system of taxpayer identification should take account of religious sensitivities \*

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

2 (B). Summary of relevant facts in 2019

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3 (A). Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

3 (B). Summary of relevant facts in 2019

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4 (A). Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax \*

- No changes
- Shifted away from the best practice
- Shifted towards / match the best practice

4 (B). Summary of relevant facts in 2019

taxpayer remains liable

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5 (A). Where pre/populated returns are used, these should be sent to taxpayers to correct errors. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

5 (B). Summary of relevant facts in 2019

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6 (A). Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

6 (B). Publish guidance on taxpayers' rights to access information and correct inaccuracies \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

6 (C). Summary of relevant facts in 2019

The prepopulated efilng tax return has been enhanced and personal information may be corrected

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7 (A). Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

7 (B). Summary of relevant facts in 2019

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8 (A). Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

8 (B). Summary of relevant facts in 2019

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9 (A). Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

9 (B). Summary of relevant facts in 2019

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Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

II. The issue of tax assessment

10 (A). Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

10 (B). Summary of relevant facts in 2019

On a strategic level dialogue from the commissioner improved. But on a case by case basis for the normal taxpayer on the street there is no dialogue

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11 (A). Use e-filing to speed up assessments and correction of errors, particularly systematic errors \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

11 (B). Summary of relevant facts in 2019

Enhanced capability of the e-filing forms to be submitted for assessment.

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Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

III. Confidentiality

12 (A). Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced). \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

12 (B). Encrypt information held by a tax authority about taxpayers to the highest level attainable. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

12 (C). Summary of relevant facts in 2019

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13 (A). Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

13 (B). Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

13 (C). Summary of relevant facts in 2019

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14 (A). Audit data access periodically to identify cases of unauthorised access. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

14 (B). Summary of relevant facts in 2019

we cannot confirm that such audits/checks are taking place

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15 (A). Introduce administrative measures emphasizing confidentiality to tax officials. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

15 (B). Appoint data protection/privacy officers at senior level and local tax offices. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

15 (C). Summary of relevant facts in 2019

we cannot confirm if this is being done

---

16 (A). Where pre/populated returns are used, these should be sent to taxpayers to correct errors. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

16 (B). Summary of relevant facts in 2019

Improvement on the e filing system

---

17 (A). If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges). \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

17 (B). Summary of relevant facts in 2019

We cannot confirm this

---

18 (A). Introduce an offence for tax officials covering up unauthorised disclosure of confidential information. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

18 (B). Summary of relevant facts in 2019

---

19 (A). Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

19 (B). Summary of relevant facts in 2019

---

20 (A). If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer). \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

20 (B). Summary of relevant facts in 2019

---

21 (A). No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

21 (B). Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data, and then reporting to Parliament. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

21 (C). Summary of relevant facts in 2019 \*

No changes to legislation. However it is reported that reorganisation is taking place to improve SARS

---

22 (A). Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

22 (B). Summary of relevant facts in 2019

---

23 (A). If published, tax rulings should be anonymised and details that might identify the taxpayer removed. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard



23 (B). Anonymise all tax judgments and remove details that might identify the taxpayer

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

23 (C). Summary of relevant facts in 2019

---

24 (A). Legal professional privilege should apply to tax advice. \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

24 (B). Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure. \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

#### 24 (C). Summary of relevant facts in 2019 \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Excerpts from legislation supplied Section 42A and 64 of the Tax Administration Act (TAA)

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#### 25 (A). Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege. \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

#### 25 (B). Summary of relevant facts in 2019 \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

see above

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#### Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

26 (A). Audits should respect the following principles: (i) Proportionality. (2) Ne bis in idem (prohibition of double jeopardy). (3) Audi alteram partem (right to be heard before any decision is taken). (4) Nemo tenetur se detegere (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

26 (B). Summary of relevant facts in 2019

---

27 (A). In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

27 (B). Summary of relevant facts in 2019

---

28 (A). In application of ne bis in idem the taxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

28 (B). Summary of relevant facts in 2019 \*

Audits for the same period can be redone and revised more than once. Double jeopardy only applies to criminal charges laid due to tax offences

---

29 (A). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

29 (B). Summary of relevant facts in 2019

---

30 (A). In application of nemo tenetur, the right to remain silent should be respected in all tax audits. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

30 (B). Summary of relevant facts in 2019

---

31 (A). Tax audits should follow a pattern that is set out in published guidelines. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

31 (B). Summary of relevant facts in 2019 \*

No particular problems to be highlighted as procedures are followed

---

32 (A). A manual of good practice in tax audits should be established at the global level. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

32 (B). Summary of relevant facts in 2019

---

33 (A). Taxpayers should be entitled to request the start of a tax audit (to obtain finality). \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

33 (B). Summary of relevant facts in 2019

This is not explicit in the legislation but there is nothing preventing a taxpayer from requesting the start of an audit

---

34 (A). Where tax authorities have resolved to start an audit, they should inform the taxpayer \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

34 (B). Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

34 (C). Summary of relevant facts in 2019

---

35 (A). Taxpayers should be informed of information gathering from third parties. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

35 (B). Summary of relevant facts in 2019

---

36 (A). Reasonable time limits should be fixed for the conduct of audits. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

36 (B). Summary of relevant facts in 2019

While not legislated SARS has undertaken to try and complete within 90 days. The service Charter states 4-6 months

---

37 (A). Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

37 (B). Summary of relevant facts in 2019

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38 (A). The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

38 (B). The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

38 (C). Summary of relevant facts in 2019

---

39 (A). Following an audit, a report should be prepared even if the audit does not result in additional tax or refund. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

39 (B). Summary of relevant facts in 2019

---

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

V. More intensive audits

40 (A). More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance. \*

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

40 (B). Summary of relevant facts in 2019

---

41 (A). If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

41 (B). Summary of relevant facts in 2019

---

42 (A). Entering premises or interception of communications should be authorised by the judiciary. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

42 (B). Summary of relevant facts in 2019

---

43 (A). Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for ex-post ratification. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

43 (B). Summary of relevant facts in 2019

---

44 (A). Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

44 (B). Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

44 (C). Summary of relevant facts in 2019

---

45 (A). Access to bank information should require judicial authorisation. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

45 (B). Summary of relevant facts in 2019

---

46 (A). Authorisation by the judiciary should be necessary for the interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

46 (B). Summary of relevant facts in 2019

---

47 (A). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

47 (B). Summary of relevant facts in 2019

---

48 (A). If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

48 (B). Summary of relevant facts in 2019

---

49 (A). Where invasive techniques are applied, they should be limited in time to avoid a disproportionate impact on taxpayers. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

49 (B). Summary of relevant facts in 2019

---

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

## VI. Review and appeals

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

50 (A). E-filing of requests for internal review to ensure the effective and speedy handling of the review process. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

50 (B). Summary of relevant facts in 2019

---

51 (A). The right to appeal should not depend upon prior exhaustion of administrative reviews. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

51 (B). Summary of relevant facts in 2019 \*

If a taxpayer wishes to appeal against a decision of the tax court to the SCA, the president of the tax court must make an order granting or refusing leave to appeal. The taxpayer may, if the president refuses leave to appeal, apply to the SCA for leave to appeal.

---



52 (A). Reviews and appeals should not exceed two years. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

52 (B). Summary of relevant facts in 2019

---

53 (A). Audi alteram partem should apply in administrative reviews and judicial appeals. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

53 (B). Summary of relevant facts in 2019

---

54 (A). Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

54 (B). An appeal should not require prior payment of tax in all cases. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

54 (C). Summary of relevant facts in 2019

---

55 (A). The state should bear some or all of the costs of an appeal, whatever the outcome.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

55 (B). Summary of relevant facts in 2019

---

56 (A). Legal assistance should be provided for those taxpayers who cannot afford it. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

56 (B). Summary of relevant facts in 2019

---

57 (A). Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

57 (B). Summary of relevant facts in 2019

---

58 (A). Tax judgments should be published. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

58 (B). Summary of relevant facts in 2019

---

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## VII. Criminal and administrative sanctions

59 (A). Proportionality and ne bis in idem should apply to tax penalties. \*

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

59 (B). Summary of relevant facts in 2019

---

60 (A). Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied. \*

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

60 (B). Summary of relevant facts in 2019

---

61 (A). Voluntary disclosure should lead to reduction of penalties. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

61 (B). Summary of relevant facts in 2019

---

62 (A). Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

62 (B). Summary of relevant facts in 2019

---

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## VIII. Enforcement of taxes

63 (A). Collection of taxes should never deprive taxpayers of their minimum necessary for living. \*

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

63 (B). Summary of relevant facts in 2019

---

64 (A). Authorisation by the judiciary should be required before seizing assets or bank accounts \*

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

64 (B). Summary of relevant facts in 2019

---

65 (A). Taxpayers should have the right to request delayed payment of arrears. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

65 (B). Summary of relevant facts in 2019

---

66 (A). Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

66 (B). Summary of relevant facts in 2019

---

67 (A). Temporary suspension of tax enforcement should follow natural disasters. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

67 (B). Summary of relevant facts in 2019

---

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

## IX. Cross-border procedures

68 (A). The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard



68 (B). The taxpayer should be informed that a cross-border request for information is to be made. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

68 (C). Summary of relevant facts in 2019

Taxpayer not informed

69 (A). Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

69 (B). Summary of relevant facts in 2019

---

70 (A). Provisions should be included in tax treaties setting specific conditions for exchange of information. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

70 (B). Summary of relevant facts in 2019

---

71 (A). If information is sought from third parties, judicial authorisation should be necessary.

\*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

71 (B). Summary of relevant facts in 2019

---

72 (A). The taxpayer should be given access to information received by the requesting state. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

72 (B). Summary of relevant facts in 2019

---

73 (A). Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

73 (B). Summary of relevant facts in 2019

We do not know if there are any firm views or internal instructions in this regard

---

74 (A). A requesting state should provide confirmation of confidentiality to the requested state. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

74 (B). Summary of relevant facts in 2019

---

75 (A). A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

75 (B). Summary of relevant facts in 2019

---

76 (A). For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

76 (B). Summary of relevant facts in 2019

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77 (A). Taxpayers should have a right to request initiation of mutual agreement procedure. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

77 (B). Summary of relevant facts in 2019

---

78 (A). Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to the progress of the procedure. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

## 78 (B). Summary of relevant facts in 2019

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Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## X. Legislation

79 (A). Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail. \*

No changes

Shifted away from the minimum standard

Shifted towards / improved the minimum standard

79 (B). Retrospective tax legislation should ideally be banned completely. \*

No changes

Shifted away from the best practice

Shifted towards / matched the best practice

79 (C). Summary of relevant facts in 2019

---

80 (A). Public consultation should precede the making of tax policy and tax law. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

80 (B). Summary of relevant facts in 2019

---

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

XI. Revenue practice and guidance

81 (A). Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

81 (B). Summary of relevant facts in 2019

---

82 (A). Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

82 (B). Summary of relevant facts in 2019

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83 (A). Binding rulings should only be published in an anonymised form \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard



83 (B). Summary of relevant facts in 2019

---

84 (A). Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

84 (B). Summary of relevant facts in 2019

---

Do you want to save your results and quit? \*

If "Yes", please submit the form. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

## XII. Institutional framework for protecting taxpayers' rights

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org) and [c.weffe@ibfd.org](mailto:c.weffe@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

85 (A). Adoption of a charter or statement of taxpayers' rights should be a minimum standard. \*

- No changes
- Shifted away from the minimum standard
- Shifted towards / improved the minimum standard

85 (B). A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

85 (C). Summary of relevant facts in 2019

---

86 (A). A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

86 (B). Summary of relevant facts in 2019

---

87 (A). The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally. \*

- No changes
- Shifted away from the best practice
- Shifted towards / matched the best practice

87 (B). Summary of relevant facts in 2019

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**42A. Procedure where legal professional privilege is asserted.**—(1) For purposes of Parts B, C and D, if a person alleges the existence of legal professional privilege in respect of relevant material required by SARS, during an inquiry or during the conduct of a search and seizure by SARS, the person must provide the following information to SARS and, if applicable, the presiding officer designated under section 51 or the attorney referred to in section 64:

- (a) a description and purpose of each item of the material in respect of which the privilege is asserted;
- (b) the author of the material and the capacity in which the author was acting;
- (c) the name of the person for whom the author referred to in paragraph (b) was acting in providing the material;
- (d) confirmation in writing that the person referred to in paragraph (c) is claiming privilege in respect of each item of the material;
- (e) if the material is not in possession of the person referred to in paragraph (d), from whom did the person asserting privilege obtain the material; and
- (f) if the person asserting privilege is not the person referred to in paragraph (d), under what circumstances and instructions regarding the privilege did the person obtain the material.

(2) A person must submit the information required under Part B to SARS at the place, in the format and within the time specified by SARS, unless SARS extends the period based on reasonable grounds submitted by the person.

(3) If SARS disputes the assertion of privilege upon receipt of the information—

- (a) SARS must make arrangements with a practitioner from the panel appointed under section 111 to take receipt of the material;
- (b) the person asserting privilege must seal and hand over the material in respect of which privilege is asserted to the practitioner;
- (c) the practitioner must within 21 business days after being handed the material make a determination of whether the privilege applies and may do so in the manner the practitioner deems fit, including considering representations made by the parties;
- (d) if a determination of whether the privilege applies is not made by the practitioner or a party is not satisfied with the determination, the practitioner must retain the relevant material pending final resolution of the dispute by the parties or an order of court; and
- (e) any application to a High Court must be instituted within 30 days of the expiry of the period of 21 business days, failing which the material must be handed to the party in whose favour the determination, if any, was made.

(4) The appointed practitioner—

- (a) is not regarded as acting on behalf of either party;
- (b) must personally take responsibility for the safekeeping of the material;
- (c) must give grounds for the determination under subsection (3) (d); and
- (d) must be compensated in the same manner as if acting as chairperson of the tax board.

[S. 42A inserted by s. 41 of Act No. 23 of 2015.]

**64. Legal professional privilege.**—(1) If SARS foresees the need to search and seize relevant material that may be alleged to be subject to legal professional privilege, SARS must arrange for an attorney from the panel appointed under section 111 to be present during the execution of the warrant.

(2) An attorney with whom SARS has made an arrangement in terms of subsection (1) may appoint a substitute attorney to be present on the appointing attorney's behalf during the execution of a warrant.

(3) If, during the carrying out of a search and seizure by SARS, a person alleges the existence of legal professional privilege in respect of relevant material and an attorney is not present under subsection (1) or (2), SARS must seal the material, make arrangements with an attorney from the panel appointed under section 111 to take receipt of the material and, as soon as is reasonably possible, hand over the material to the attorney.

(4) An attorney referred to in subsections (1), (2) and (3)—

(a) is not regarded as acting on behalf of either party; and

(b) must personally take responsibility—

(i) in the case of a warrant issued under section 60, for the removal from the premises of relevant material in respect of which legal privilege is alleged;

(ii) in the case of a search and seizure carried out under section 63, for the receipt of the sealed information; and

(iii) if a substitute attorney in terms of subsection (2), for the delivery of the information to the appointing attorney for purposes of making the determination referred to in subsection (5).

(5) The attorney referred to in subsection (1) or (3) must within 21 business days make a determination of whether the privilege applies and may do so in the manner the attorney deems fit, including considering representations made by the parties.

(6) If a determination of whether the privilege applies is not made under subsection (5) or a party is not satisfied with the determination, the attorney must retain the relevant material pending final resolution of the dispute by the parties or an order of court.

(7) The attorney from the panel appointed under section 111 and any attorney acting on behalf of that attorney referred to in subsection (1) must be compensated in the same manner as if acting as Chairperson of the tax board.