



## Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Arjo van Eijdsen, Partner at *Ernst & Young Belastingadviseurs LLP* and National Reporter of The Netherlands.

This set of questionnaires comprise the National Reporter's 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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## 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)? \*

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

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? \*

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

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.
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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.
12. 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.

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

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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

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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

Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception.  
.....

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  
.....



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

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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

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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

In response to research done by a Dutch tv program at the beginning of 2017, which showed that the personal data of citizens are not sufficiently secured, the Dutch Tax Authority has undertaken measures to restrict access to personal data by their employees. This is an ongoing process.

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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

In response to research done by a Dutch tv program at the beginning of 2017, which showed that the personal data of citizens are not sufficiently secured, the Dutch Tax Authority has undertaken measures to restrict access to personal data by their employees. This is an ongoing process.

---

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

In response to research done by a Dutch tv program at the beginning of 2017, which showed that the personal data of citizens are not sufficiently secured, the Dutch Tax Authority has undertaken measures to restrict access to personal data by their employees. This is an ongoing process.

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

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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

---

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

Please note that "naming and shaming" is introduced with respect to certain penalties that are imposed to tax advisors as from 1 January 2020.

---

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 \*

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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

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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.

see email

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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 email  
.....

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

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

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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 \*

---

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 \*

---

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

---

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

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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

---

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

---

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? \*

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- 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 \*

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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

Please note that as per 1 January 2020 the voluntary disclosure regime which lead to reduction of penalties will be abolished for saving/portfolio investments (box 3) held in the Netherlands and with respect to income from substantial interests (box 2).

---

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

Please note that as per 1 January 2020 the voluntary disclosure regime which lead to reduction of penalties will be abolished for saving/portfolio investments (box 3) held in the Netherlands and with respect to income from substantial interests (box 2).

---

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? \*

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- 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

---

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

---

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

---

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

---

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

The government uses the public consultation more and more.

---

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

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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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# Institutional framework for protecting taxpayers' rights – The Netherlands

In the Netherlands we do not have a Taxpayer Charter which contains the rights and obligations of a taxpayer. In the view of the State Secretary of Finance such a Taxpayer Charter is not necessary since those rights and obligations are included in the Dutch tax legislation and developed in (Dutch) case law.

# Privilege of non-disclosure

## The Netherlands

### 1. Formal and 'derived' privilege of non-disclosure

In general no one can refuse to fulfill its information obligations invoking the pledge of secrecy, even if this is imbedded in the law. Based on their position, profession or office, certain groups of persons (servants of religions, the notary, lawyers, public prosecutors, doctors and pharmacists) have the privilege of non-disclosure which implies that these groups are not obliged to provide information regarding third parties. This is an independent right.

Even if the respective third party or client gives permission to provide the requested information, these parties can invoke their privilege of non-disclosure. This right does not apply unconditionally. Certain corporate data is not covered by the privilege of non-disclosure as the knowledge of this information has not been 'entrusted' to a party with privilege of non-disclosure in that capacity. A judge faces a trade-off between the interest of the tax authorities and the privilege of non-disclosure of certain parties.

#### Example

If patient records or charts contain financial information which could be of importance to the tax position of the doctor, upon request the doctor should provide these records or charts to the tax authorities. In relation to his own taxation the doctor cannot invoke his privilege of non-disclosure. This would be different if the information was requested for the taxation of a patient. In that situation the doctor can invoke his privilege of non-disclosure and is not required to provide information.

The abovementioned professions can invoke the privilege of non-disclosure. This right applies to their entire administration. Should this party however act in a different capacity, for example as accountant, the privilege of non-disclosure does not apply. The privilege of non-disclosure only covers matters the knowledge of which has been entrusted to them in the capacity of abovementioned profession. The question arises how this applies to a tax lawyer. According to case law of the lower courts a lawyer who also acts as tax expert has the privilege of non-disclosure also for the tax related activities he performs.

Besides the privilege of non-disclosure in certain situations the 'derived' privilege of non-disclosure can apply. This can apply to for example a tax advisor or accountant. If a person with privilege of non-disclosure (for example a lawyer) called in the expertise of a tax advisor, the privilege of non-disclosure 'reflects' in a certain degree to the tax advisor. The 'derived' privilege of non-disclosure is limited to the information provided to the expert (for example a tax advisor) relating to the assignment he is called in for. Vice versa, if a tax advisor requests a lawyer for his expertise, the lawyer may not invoke his privilege of non-disclosure. According to case law of the lower courts it can be derived that in that situation a lawyer has similar rights as a tax advisor (see hereafter in par. 2). The Supreme Court has not ruled yet on this matter.

Clients of parties with the privilege of non-disclosure have the right of refusal. For example, if a tax inspector asks a client of a lawyer to review correspondence between the client and the lawyer, the client may refuse to provide this information. If the correspondence between the client and his lawyer is kept by a trust office, the trust office may invoke its 'derived' right of refusal. The trust office can refuse to

provide correspondence with the party with the privilege of non-disclosure to the tax authorities. The tax authorities should however be able to verify this right of refusal'. This could be performed by an independent third party, for example a notary.

## 2 The tax authorities cannot ask to review tax advice and similar information

It is important to realize that the tax authorities cannot ask for reports, correspondence and other documents containing advice from a tax advisor. This has been ruled by the Supreme Court in the 'fair play' case which concerned the question whether the tax authorities could review due diligence reports. The Dutch Supreme Court ruled that it is not in line with the fair play principle if the tax authorities ask for reports and other documents which main purpose is discussing or advising the tax position of the taxpayer. This judgment is not only relevant for due diligence reports but also for other documents. Every document with the abovementioned purpose does not need to be provided to the tax authorities. The same applies to the facts and circumstances included in these documents. Documents which main purpose is not to discuss or advise the tax position in principle need to be provided in full to the tax authorities. However, if it includes information which discusses the tax position of the taxpayer then that information can be blacklined. This may apply to the management letter an accountant typically sends to the management of a company. A management letter will describe among others risks identified by the accountant which could include tax risks. If the tax authorities request for a management letter, this needs to be provided as the main purpose of the management letter is not discussing or advising the tax position. The tax paragraphs in the management letter which do have that purpose can be blacklined.

In light of the above it is of great importance to keep files containing facts which could be of importance to the tax position separate from files that the tax authorities cannot request.

## 3. Access to buildings and land

The person that uses a building or land (for example the owner or tenant) is obliged upon request to provide access to the building or land to a tax inspector and experts appointed by the tax inspector. Providing access should relate to a tax audit to be carried out, such as counting stock and take notice of all information available. Consequently, a so-called 'fishing expedition' by the tax inspector is not allowed. The tax inspector is not allowed to open and search through cabinets without permission, just in the hope to find something with respect to the tax position of the taxpayer. The same applies for computers. The tax inspector may not go through and review every file, which is considered to search through every cabinet and open every drawer. He can only review those files that are accessible to him based on the information obligation. These are the files that contain factual information which could be of importance to the tax position of the taxpayer.

Specific rules apply to the right of the tax authorities to enter houses. A tax inspector is not allowed to just enter a house. He needs to identify himself and the resident can even refuse the tax inspector to enter the house. This refusal must be explicit as a judge often assumes the tax inspector had permission to enter the house.

If the resident does not want the tax inspector to enter the house, it is recommend to speak to the tax inspector in front of the house. Please note that if the tax inspector has a warrant he can access the house against the will of the resident.

## 1. Review and Appeal – The Netherlands

### 1.1 Dutch tax proceedings – general overview

In the Netherlands the tax administration is responsible for levying and collecting taxes imposed by the Dutch state. In the Constitution ('Grondwet') it is stipulated that State taxes are levied by law (article 104 of the Constitution).

Dutch tax law is part of public law in the Netherlands. A dispute between a taxpayer and the tax inspector formally starts with an objection against the decision of the tax inspector (paragraph 1.2). If the dispute is not settled in the objection phase a taxpayer can lodge an appeal against that decision. The Dutch legal protection (for tax matters) counts 3 stages of appeal: the Lower Court (paragraph 1.3), the Court of Appeal (paragraph 1.4) and the Supreme Court (paragraph 1.5).

A dispute between the taxpayer and the tax inspector is settled by administrative chambers of the Lower Courts. The courts of appeal also have administrative chambers specialized in tax matters. All the courts are allowed to nullify the decisions of the tax inspector. Their competence goes therefore further than only setting general principles which the tax authorities need to follow.

Most of the procedural rules in tax law are embedded in the General Administrative Law Act ('Algemene wet bestuursrecht' (hereafter: GALA) and the General Taxes Act ('Algemene wet inzake Rijksbelastingen' (hereafter: GTA)).

### 1.2 Objection

In the Netherlands a taxpayer can only object to an assessment and decisions made by tax inspectors if they are specifically mentioned in the tax law (such as an income tax assessment or a denial of a fiscal unity) (article 26 GTA) as being open to objection and appeal. This is the so-called 'closed system of legal remedies'. Other decisions of the tax authorities are not open for objection. The same applies for certain actions of the tax authorities, such as a tax audit.

A taxpayer or his representative (e.g. tax advisor) may lodge an objection with the tax inspector within 6 weeks after the assessment date (article 22j GTA and article 6:7 GALA). One objection may cover several assessments or decisions of the tax inspector (article 24a GTA).

The objection must mention the grounds on which the assessment should be revised, but it is permitted to file a pro forma objection (i.e. a mere statement that the taxpayer objects to the assessment, without stating the grounds on which the objection is based). The tax inspector will request the taxpayer to substantiate his objection. The taxpayer will then be granted an additional period of 4 weeks to substantiate his objection. If the taxpayer fails to send an elaboration the objection is generally declared non-admissible.

The taxpayer lodging an objection has the right to request for a hearing before a decision is rendered. The hearing is held by a tax inspector other than the one who has levied the tax assessment (article 7:5 GALA and 10:3, paragraph 3, GALA). During that hearing the taxpayer has also the right to get access to the files of the tax authorities which refer to the case.

If the objection is lodged by a representative, the taxpayer can also claim a compensation for the legal costs (article 7:15 GALA). Apart from special circumstances this is a fixed (very marginal) compensation.

The compensation is only appointed when the challenged decision is revoked as a result of an unlawful deed by the tax administration.

The tax inspector must render his written decision within 6 weeks after receiving the objection (article 7:10 GALA). If the tax inspector exceeds this time limit (intentionally or not), no sanction applies for the tax inspector. Nevertheless, in that case the taxpayer could lodge an appeal with the Lower Court against the so-called fictitious refusal of decision.

### 1.3 Lower Court

If the taxpayer is not satisfied with the decision of the tax inspector regarding the objection, an appeal may be lodged with a Lower Court ('Rechtbank') (article 26 GTA). The appeal must be lodged within 6 weeks after the date of the decision of the tax inspector (article 26c GTA; article 6:7 GALA). One appeal may cover several decisions of the tax inspector (article 26b GTA).

The taxpayer must pay legal charges (article 8:41 GALA). The legal charges (2020) vary from € 48 to € 178 for an appeal lodged by a natural person and € 354 for a legal body. If these charges are not paid within 4 weeks after the notification of the court the appeal is declared non-admissible.

The appeal must mention the grounds on which the appeal is based (article 6:5 GALA). It is, however, allowed to lodge a pro forma appeal (i.e. a mere statement that the taxpayer appeals to the decision, without stating the grounds of the appeal). The court will grant an additional period of time for the taxpayer to substantiate his appeal.

The tax inspector is allowed to submit a written defense within 4 weeks after the date the appeal was sent to the tax administration (article 8:42 GALA). This term can be extended by the court. When requested by the taxpayer and permitted by the Lower Court, the taxpayer can respond to the written defense in a statement of reply ('conclusie van repliek'). The tax inspector is allowed to reply by rejoinder ('conclusie van dupliek') (article 8:43 GALA). Both parties are allowed to send in further information up to ten days before the court session (article 8:58 GALA).

The taxpayer and the tax inspector are invited to make their case before the court in person (oral pleadings). A taxpayer does not have to be legally represented by a legal representative (in the Dutch tax law there is no obliged representation in law).

The Lower Court must render its written decision within 6 weeks after the closure of its investigations (article 8:66 GALA). In extraordinary circumstances, this period is extended by another 6 weeks. If the time limit (intentionally or not) is exceeded, no sanction applies. The Lower Court may also render an oral decision. The oral decision may be adjourned for 2 weeks (article 27d GTA). The court can decide that the appeal is legitimate or disallow it. The court can also decide that it is not competent to make a decision regarding the case or declare the appeal non-admissible (article 8:70 GALA).

### 1.4 Court of Appeal

Within 6 weeks after sending the decision by the Lower Court, the parties involved could lodge an appeal with the Court of Appeal ('Gerechtshof') (article 27h GTA and article 6:7 GALA).

The procedure before the Court of Appeal is not limited to the dispute before the Lower Court. That means that all aspects of the decision of the tax inspector can be challenged. Both taxpayer and the tax inspector may bring forward new grounds, arguments and proof.



The procedural aspects before the Court of Appeal are the same as before the Lower Court (see above). Legal charges are also due in the Court of Appeal but different tariffs apply. The legal charges (2020) vary from € 131 to € 265 for an appeal lodged by a natural person and € 532 for a legal body (article 8:109 GALA).

The Court of Appeal can confirm the verdict of the Lower Court either on the same or on other grounds. The court can also (partly) nullify the verdict of the Lower Court (article 8:113 GALA). The Court of Appeal may also decide to refer a case back to the Lower Court (article 8:115 GALA).

## 1.5 Supreme Court

Both the taxpayer and the tax authorities (i.e. the state, represented by the State Secretary of Finance) may lodge an appeal against the decision of the Court of Appeal with the Supreme Court ('Hoge Raad'). If the appeal is based on an oral verdict of the Court of Appeal, this verdict will be replaced by a written decision. The appeal must be lodged within 6 weeks after the date of the decision of the Court of Appeals was sent to both parties (article 6:8 GALA).

The Supreme Court can only make a judgment based on the grounds that the tax law has been misunderstood or the formal procedure by the Court of Appeals has been neglected (article 79 Judicial Organization Act ('Wet op de rechterlijke organisatie')). Facts are not open to judgment by the Supreme Court.

The procedural aspects before the Supreme Court are more or less the same as before the Lower Court and the Court of Appeal (see above). One difference is that the written defense can be submitted within 8 weeks instead of 4 weeks (article 29b GTA). The legal charges (2020) are also the same as with the Court of Appeal.

The taxpayer and the State Secretary of Finance can ask the Supreme Court to plead their case before the court by a lawyer (oral and written pleadings)(representation is obliged before the Supreme Court) (article 29c GTA). We note that it is not usual to ask the Supreme Court to have an oral or written pleading in the case before the court. Normally the Supreme Court rules on the basis of the written documents provided by the parties involved. Please note that in a tax case it is not obliged to be represented by a lawyer, not even during a procedure at the Supreme Court. If the Supreme Court nullifies the verdict given by the Court of Appeal, the Supreme Court may refer the case to a Court of Appeal or a Lower Court. Such will be the case if further investigation into the facts is necessary (article 29e GTA).

## 1.6 Capita Selecta

### 1.6.1 Shorting the objection and appeal phase

The Dutch fiscal procedural rules contain two procedures to shorten the tax procedure. The first procedure regards 'jumping over' the objection phase. This is called: 'direct appeal' (prorogation) (article 7:1a GALA). Direct appeal is convenient if for example detailed technical fiscal discussions have been taken place between the tax payer and the tax inspector in the assessment phase. Result of those discussions could be that only a dispute has been left regarding the application of certain tax rules, but not regarding the facts. If the tax administration agrees to a direct appeal it sends the objection document to the competent Lower Court.

The second procedure is direct cassation ('sprongcassatie') (article 28 GTA). If the taxpayer and the State Secretary of Finance both agree, both parties can lodge an appeal against the verdict of the Lower Court directly with the Supreme Court at once (skip Court of Appeal phase). Direct cassation is convenient if there is no discussion between the parties about the facts but only a difference of opinion exists concerning the interpretation of the tax law.

#### 1.6.2 Preliminary questions

All courts in the Netherlands are allowed to refer questions to the European Court of Justice (hereafter: ECJ). The Supreme Court however is obliged to refer to the ECJ unless in so-called 'acte clair' (there is no reasonable doubt that a certain tax rule is or is not compatible with EC law) or – 'acte éclairé' (the ECJ has already answered the underlying question in a comparable case) situations. Some lower tax courts are of the opinion that it is not their duty to ask preliminary questions before the ECJ but that it is solely the task of the Dutch Supreme Court.

As per 1 January 2016 the Lower Court and Court of Appeal are allowed to ask preliminary questions to the Dutch Supreme Court. It needs to concern a legal question concerning the explanation of the law. Furthermore, this legal question needs to be (potentially) relevant for a large amount of similar cases.

#### 1.6.3 Legal remedies after the final decision of the tax court

The question is whether a taxpayer has other legal remedies in a situation that he didn't follow the objection and appeal procedure through to the end or that the taxpayer went to the Supreme Court but lost his case. Could the taxpayer for example go to the civil court in which he argues that the tax authorities are liable because of the unjust levying of taxes? This question could be answered on the basis of the principle of 'procedural legal effect' ('formele rechtskracht'). This principle, which is not laid down in a tax act or another act, has been construed by the Supreme Court in a variety of decisions. This principle could be described as follows: "If an administrative judicial process is available to contest a decision, with sufficient guarantees, then the civil court must assume where the validity of a decision in proceedings brought before it is disputed, that if this judicial process was not used, not followed through to the end or not used successfully, then this decision is in accordance with the relevant legal rules and general legal principles, with regard to both the way it was arrived at and its substance."

This means that if a taxpayer didn't use or didn't successfully use his legal tax remedies, in principle he has no possibilities any longer to get his right even if a European tax law issue is at stake.