



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Sylvie De Raedt, Professor at the *University of Antwerpen* and Jef van Eyndhoven, Attorney at *HCGB Advocaten*, both OPTR National Reporters of Belgium.

This set of questionnaires comprise the National Reporter's assessment on the country practice during 2021 in the protection of taxpayers' rights, 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".

OPTR - 2021 Questionnaire 1 - Country Practice

Dear National Reporter,

I would like to thank you for your participation in the IBFD's Observatory on the Protection of Taxpayers' Rights (OPTR).

This form collects the information on the practical implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights in 82 situations for the practical protection of taxpayers' rights, as monitored by the IBFD Observatory on the Protection of Taxpayers' Rights.

We kindly ask you to assess assertively (yes/no) the level of practical implementation of said procedures, safeguards and guarantees associated with taxpayers' rights in your country. When answering, please bear in mind the actual practice regarding each situation, regardless of whether a given procedure, safeguard or guarantee has been formally adopted in your country.

We would be very grateful if you submit us this questionnaire, duly filled out, by no later than 14 January 2022.

Feel free to contact us for any clarification you may need. We look forward to your valuable contribution to this remarkable project.

Kind regards,

Prof. Dr. Carlos E. Weffe
Scientific Coordinator
IBFD Observatory on the Protection of Taxpayers' Rights.

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

Email *

Sylvie.deraedt@uantwerpen.be

Reporters' info

Name: *

Sylvie De Raedt and Jaf Van Eyndhoven

Country: *

Belgium

Affiliation *

Taxpayers / Tax Practitioners

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. 26 and Q. 45), 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.

Area 1 - Identification of taxpayers, issuing tax returns and communicating with taxpayers

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

Yes

No

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

Yes

No

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

Yes

No

6. 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 question 5)

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. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 2 - The issue of tax assessment

8. 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

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

- Not applicable (click here if you answered "No" to question 8)
- Yes
- No

10. 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

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 3 - 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 question 12)

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 and 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 and 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 question 19)

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 4 - Normal audits

21. 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

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

Not applicable (click here if you answered "No" to question 21)

Yes

No

23. 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

24. 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

25. 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

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

There is no limit (click here if you answered "No" to question 25) ▼

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

Yes

No

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

Yes

No

29. 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

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

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 5 - More intensive audits

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

Yes

No

32. 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 question 31)

Yes

No

33. 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 31)

Yes

No

34. 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

35. 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 question 34)

Yes

No

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

Yes

No

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

Yes

No

38. 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

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

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Please provide separately (via optr@ibfd.org and 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. Does the taxpayer need permission to appeal to the first instance tribunal? *

Yes

No

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

Yes

No

43. 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

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

Yes

No

45. 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 question 44) ▼

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

Yes

No

47. 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

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

Yes

No

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

Yes

No

50. 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 question 49)

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 question 51)

Yes

No

53. 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

54. Are judgments of tax tribunals published? *

Yes

No

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

- Not applicable (click here if you answered "No" to question 54)
- Yes
- No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 7 - 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 question 56)
- 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. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 8 - Enforcement of taxes

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

Yes

No

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

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 9 - Cross-border situations

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. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 10 - Legislation

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

Yes

No

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

Not applicable (click here if you answered "Yes" to question 69)

Yes

No

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

Yes

No

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

Yes

No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 11 - 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. Does your country have a generalised system of advanced rulings available to taxpayers? *

Yes

No

75. If yes, is it legally binding? *

- Not applicable (click here if you answered "No" to question 74)
- Yes
- No

76. If a binding ruling is refused, does the taxpayer have a right to appeal? *

- Yes
- No

77. If your country publishes guidance as to how it applies your tax law, 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 question 76)
- Yes
- No

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 12 - Institutional framework for protecting taxpayers' rights

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

Please provide separately (via optr@ibfd.org and 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 and 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 question 80)

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

This content is neither created nor endorsed by Google.

Google Forms

OPTR - 2021 Questionnaire 2 - Standards of Protection

Dear National Reporter,

I would like to thank you for your participation in the IBFD Observatory on the Protection of Taxpayers' Rights (OPTR).

This form collects the information on developments occurred in 2021 regarding the implementation of 57 minimum standards and 44 best practices, distributed into 86 benchmarks, for the practical protection of taxpayers' rights as monitored by the OPTR.

We kindly ask you to provide an impartial, non-judgmental summary of events occurred in 2020 that in your opinion affect the level of compliance of a given of minimum standard/best practice in your country. These events may include, without limitation, legislation enacted, administrative rulings and/or circulars issued, case law and tax administration practices implemented, among others, as requested by this form.

You are also kindly required to assess whether the events you described represent either a step towards or a step away from the practical implementation of the given minimum standard/best practice in your country. Full instructions are provided below.

This form should be filled in as soon as any of the events mentioned above occurs and edited as many times as necessary to cover all relevant developments occurred in 2020, until no later than 14 January 2022. We appreciate very much your cooperation in this regard.

Feel free to contact us for any clarification you may need. We look forward to your valuable contribution to this remarkable project.

Kind regards,

Prof. Dr Carlos E. Weffe
Scientific Coordinator
IBFD Observatory on the Protection of Taxpayers' Rights.

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

Email *

Sylvie.deraedt@uantwerpen.be

Reporters' info

Name: *

Sylvie De Raedt and Jef Van Eyndhoven

Country: *

Belgium

Affiliation *

Taxpayers / Tax Practitioners

Tax Administration

Judiciary

(Tax) Ombudsperson

Academia

Other: _____

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 "MS" and/or "BP", and "S"). They comprise a minimum standard (MS) and /or a best practice (BP), and a "summary of relevant facts in 2021" (S), 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 2021. If there were no changes, please indicate so by clicking on the corresponding button.

4. In ALL cases where an assessment of either improvement or decrease is reported, please refer the relevant novelties in the space provided under "summary of relevant facts in 2021", for each question. Please give a summarized account of 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 answer "no changes".

5. If any, make additional, non-judgmental commentaries at the space provided under "summary of relevant facts in 2021".

6. In ALL cases back up your assertions with the relevant documentary materials. 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 and 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 survey has 12 sections, as many as those identified by Baker and Pistone in their 2015 IFA General Report.

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.

Area 1 - Identification of taxpayers, issuing tax returns and communicating with taxpayers

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

- No changes
- Shifted away
- Shifted towards

1 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

2 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

3 (BP). 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
- Shifted towards

3 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

4 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

5 (MS). Provide a right to access to taxpayers to personal information held about them, and a right to correct inaccuracies. *

- No changes
- Shifted away
- Shifted towards

5 (BP). Publish guidance on taxpayers' rights to access information and correct inaccuracies *

- No changes
- Shifted away
- Shifted towards

5 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

The Belgian tax authorities refused the request made by a Luxembourg fiduciary (an individual) requesting information, access, rectification and restriction of processing of personal information held about her. In a decision of June 4th, 2021 (n° 66/2021) the Belgian Data Protection Authority ruled that the Belgian tax authorities had to comply with the request for information, access and rectification, and that the Belgian tax authorities could not reject the request merely by referring to the exceptional ground provided for by law allowing a restriction of the rights of interested parties when this is strictly necessary to safeguard the tax interests of the state. However, the Belgian tax authorities appealed against this decision. With a judgement of December 1st, 2021 the "Marktenhof" overturned the decision of the Data Protection Authority ruling that it didn't take into account the tax authority's mission of general interest (2021/AR/1044). According to the "Marktenhof" the Luxembourg fiduciary abused her right of complaint (misusing it for a purpose other than that for which it is intended), and the Belgian tax authorities were not obligated to comply with request.

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

- No changes
- Shifted away
- Shifted towards

6 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

On January 26th, 2021 the Law on the dematerialisation of relations between the Tax Authorities, citizens, legal persons and certain third parties was adopted. The objective of this Law is for electronic communication with the tax authorities to become the general rule and "paper communication" the exception. One of the principles of the Law is that electronic communication must be safe and reliable. The communication between the tax authorities and citizens takes place via an "eBox", i.e. an electronic mailbox that allows users to exchange electronic messages. To ensure security, communication takes place via authentication mechanisms as defined by the eIDAS-Regulation (Regulation (EU) nr. 910/2014). These mechanisms are provided by the CSAM Platform, the central login point for all online services provided by the government, and are designed to ensure maximum protection of the user's identity and data. When registering with the eBox via this platform, citizens can choose between a number of secured digital keys to identify themselves. For example, they can register via their electronic identity card (eID), or via the Itsme application on their smartphone.

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

- No changes
- Shifted away
- Shifted towards

7 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

8 (MS). 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
- Shifted towards

8 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

On January 26th, 2021 the Law on the dematerialisation of relations between the Tax Authorities, citizens, legal persons and certain third parties was adopted (see also question 6) making the electronic communication with the tax authorities the general rule. As from January 1st, 2025 onwards, all communication between the tax authorities and citizens, businesses and professional third parties must, in principle, be in electronic form. However, individuals will benefit from an "opt-in system". They may still choose whether they wish to communicate with the tax authorities digitally or on paper, as the legislator assumes that private individuals do not always have the necessary IT equipment and know-how to communicate electronically. This is different for professionals, legal persons and professional third parties. For them, there is no "opt-in system". They are obliged to communicate digitally with the tax authorities, as they are considered to have sufficient possibilities and know-how to communicate electronically.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 2 - The issue of tax assessment

9 (BP). 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

Shifted towards

9 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

10 (BP). Use e-filing to speed up assessments and correction of errors, particularly systematic errors *

- No changes
- Shifted away
- Shifted towards

10 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 3 - Confidentiality

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

- No changes
- Shifted away
- Shifted towards

11 (BP). Encrypt information held by a tax authority about taxpayers to the highest level attainable. *

- No changes
- Shifted away
- Shifted towards

11 (S). Summary of relevant facts in 2020

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

12 (MS). Introduce an offence for tax officials covering up unauthorised disclosure of confidential information. *

- No changes
- Shifted away
- Shifted towards

12 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

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

- No changes
- Shifted away
- Shifted towards

13 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

14 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

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

- No changes
- Shifted away
- Shifted towards

15 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

16 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

17 (MS). Provide remedies for taxpayers who are victims of unauthorised disclosure of confidential information. *

- No changes
- Shifted away
- Shifted towards

17 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

18 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

19 (BP). Require judicial authorisation before any disclosure of confidential information by revenue authorities *

- No changes
- Shifted away
- Shifted towards

19 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

20 (BP). 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
- Shifted towards

20 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

21 (MS). 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
- Shifted towards

21 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

22 (BP). Anonymize all tax judgments and remove details that might identify the taxpayer *

- No changes
- Shifted away
- Shifted towards

22 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

23 (MS). Legal professional privilege should apply to tax advice. *

Please provide separately (via 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
- Shifted towards

23 (BP). 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) 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
- Shifted towards

23 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

The Belgian Constitutional Court has suspended the Flemish, the Walloon and the Brussels transposition of the European DAC-6 Directive insofar as it relates to certain aspects of the reporting obligation of cross-border tax arrangements as imposed on 'lawyers' (Const. Court. 17 December 2020, n° 167/2020 Flemish Region; Const. Court 11 March 2021, n° 45/2021, Walloon Region; Const. Court 11 March 2021, n° 46/2021, Brussels Region). The Belgian Constitutional Court wished to have an answer first to preliminary question to the European Court of Justice whether Directive 2018/822 is compatible with the right to a fair trial and the right to respect for private life, as it forces Member States to provide for an exception to the 'legal privilege under the national law of that Member State' when an intermediary is required to inform another intermediary. In particular, the Constitutional Court asks whether the duty of the intermediary 'lawyer' to disclose information which he has learned in the course of exercising the essential activity of his profession to another intermediary, even outside any court proceeding, is compatible with the right to a fair trial and to respect for private life.

24 (MS). 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 and 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
- Shifted towards

24 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

In a judgement of 7 September 2021 the Court of Appeal of Antwerp confirmed the crucial importance of a lawyer's professional secrecy, and the central role that the President of the Bar plays in safeguarding it. The President of the Bar must filter the documents and data copied or taken away by the tax authorities in the context of a search of premises, i.e. check that nothing is included that would violate professional secrecy if the tax authorities would become aware of it. It must also be possible to do this post factum, when the data is already in the possession of the tax authorities. In this specific case, the taxpayer, who only found out afterwards that the tax authorities had copied confidential e-mails with his lawyer during a search of premises, obtained – through summary proceedings – that the tax authorities had to hand over all copied data to the President of the Bar (via a sequestrator).

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 4 - Normal audits

25 (MS). 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

Shifted towards

25 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

26 (MS). 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
- Shifted towards

26 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

During the Covid-19 crisis it has become increasingly common that the tax authorities 'start' the audit of a taxpayer by requesting the taxpayer (or his/her accountant) to digitally transfer a backup file containing the 'entire' electronically held bookkeeping/accounts of the taxpayer (often for several years). This raises questions with regard to the proportionality of such a practices.

27 (BP). 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
- Shift away
- Shift towards

27 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

28 (MS). 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
- Shifted towards

28 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

29 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

30 (BP). Tax audits should follow a pattern that is set out in published guidelines. *

- No changes
- Shifted away
- Shifted towards

30 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

31 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

32 (BP). Taxpayers should be entitled to request the start of a tax audit (to obtain finality). *

- No changes
- Shifted away
- Shifted towards

32 (S). Summary of relevant facts in 2020

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

33 (MS). Where tax authorities have resolved to start an audit, they should inform the taxpayer *

- No changes
- Shifted away
- Shifted towards

33 (BP). 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
- Shifted towards

33 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

34 (MS). Taxpayers should be informed of information gathering from third parties. *

- No changes
- Shifted away
- Shifted towards

34 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

35 (BP). Reasonable time limits should be fixed for the conduct of audits. *

- No changes
- Shifted away
- Shifted towards

35 (S). Summary of relevant facts in 2020

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

36 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

37 (MS). 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
- Shifted towards

37 (BP). 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
- Shifted towards

37 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Taxpayers who were subject to a tax audit could already consult the audit report on their personal file in MyMinfin. In a recent press release the tax authorities have announced that for audits 'closed after 14 October 2021' also the intermediaries with a mandate for certain electronic applications (MyMinfin, Biztax or Intervat) will have access to the audit reports of their clients in MyMinfin.

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

- No changes
- Shifted away
- Shifted towards

38 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 5 - More intensive audits

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

- No changes
- Shifted away
- Shifted towards

39 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

40 (MS). 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
- Shifted towards

40 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

41 (MS). Entering premises or interception of communications should be authorised by the judiciary. *

- No changes
- Shifted away
- Shifted towards

41 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

42 (MS). 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
- Shifted towards

42 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

43 (BP). 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
- Shifted towards

43 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

44 (BP). Access to bank information should require judicial authorisation. *

- No changes
- Shifted away
- Shifted towards

44 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

45 (BP). 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
- Shifted towards

45 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

46 (MS). 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
- Shifted towards

46 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

47 (BP). 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
- Shifted towards

47 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

48 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 6 - Reviews and appeals

Please provide separately (via optr@ibfd.org and 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.

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

No changes

Shifted away

Shifted towards

49 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

50 (MS). The right to appeal should not depend upon prior exhaustion of administrative reviews. *

- No changes
- Shifted away
- Shifted towards

50 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

51 (BP). Reviews and appeals should not exceed two years. *

- No changes
- Shifted away
- Shifted towards

51 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

52 (MS). Audi alteram partem should apply in administrative reviews and judicial appeals. *

- No changes
- Shifted away
- Shifted towards

52 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

53 (MS). 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
- Shifted towards

53 (BP). An appeal should not require prior payment of tax in all cases. *

- No changes
- Shifted away
- Shifted towards

53 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

*

- No changes
- Shifted away
- Shifted towards

54 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

55 (MS). Legal assistance should be provided for those taxpayers who cannot afford it. *

- No changes
- Shifted away
- Shifted towards

55 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

56 (MS). Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing. *

- No changes
- Shifted away
- Shifted towards

56 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

57 (MS). Tax judgments should be published. *

- No changes
- Shifted away
- Shifted towards

57 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 7 - Criminal and administrative sanctions

58 (MS). Proportionality and ne bis in idem should apply to tax penalties. *

- No changes
- Shifted away
- Shifted towards

58 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

59 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

60 (BP). Voluntary disclosure should lead to reduction of penalties. *

- No changes
- Shifted away
- Shifted towards

60 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

61 (MS). Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures. *

- No changes
- Shifted away
- Shifted towards

61 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 8 - Enforcement of taxes

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Please be particularly aware of regulations on the COVID-19 pandemic. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

62 (MS). Collection of taxes should never deprive taxpayers of their minimum necessary for living. *

- No changes
- Shifted away
- Shifted towards

62 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

63 (BP). Authorisation by the judiciary should be required before seizing assets or bank accounts *

- No changes
- Shifted away
- Shifted towards

63 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

64 (MS). Taxpayers should have the right to request delayed payment of arrears. *

- No changes
- Shifted away
- Shifted towards

64 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

In a press release issued in 2021 the Belgian Tax Administration has stated that companies that are unable to pay their debts for corporate income tax, withholding tax and VAT on time, can apply for a payment plan (delayed payment of arrears) until 30 June 2021, as well as an exemption from interests and/or remission of fines for non-payment of the tax debt. At least under certain conditions (e.g. proof of "nuisance" experienced as a result of the corona crisis, no structural payment difficulties independent of the corona crisis, etc.). A model application form was made available on the website of the Tax Administration.

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

- No changes
- Shifted away
- Shifted towards

65 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

66 (MS). Temporary suspension of tax enforcement should follow natural disasters. *

Please provide separately (via optr@ibfd.org and c.weffe@ibfd.org) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Please be particularly aware of regulations on the COVID-19 pandemic. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away
- Shifted towards

66 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Normally, companies have a period of 7 months starting from the balance sheet date to submit their corporate tax declaration. However, due to the special circumstances created by the Covid-19 crisis, legal entities with a balance sheet date from 31 December 2020 to 28 February 2021 were granted an additional filing period until 28 October 2021.

The deadline for submitting the periodic VAT returns for the month March 2021 and for the first quarter of 2021 were extended from 20 April 2021 until 3 May 2021.

With a Royal Decree of 29 March 2021 the general proportional fine that is imposed for non-payment or delayed payment of VAT (of which the due date is evidenced by a periodic VAT declaration) was reduced from 15% to 10%. This reduction is temporary. It applied from 1 April 2021 to 30 June 2021, but later the reduction was prolonged until 30 September 2021.

With the Law of 2 April 2021 the applicable interest rate for late payment of VAT was temporarily reduced from 9,6%/year to 4%/year, for the months April, May and June 2021, due to the Covid-19 crisis.

According to a press release of 8 February 2021 the Belgian Tax Administration decided to "temporarily suspend the collection of the 'corona debts'" for companies that were financially healthy before the start of the corona crisis. The suspension applied provisionally until 31 March 2021. Targeted are companies which only have 'corona debts', i.e. tax and non-tax debts due since 1 January 2020 (the suspension does however not apply to debts resulting from established fraud or organised insolvency).

Last year the Belgian Government adopted a Royal Decree n° 15 of 24 April 2020 regarding the temporary suspension of enforcement measures and other measures in favour of companies during the COVID-19 crisis. With a Law of 20 December 2020 these safeguards for companies in difficulty were prolonged. However, an extra condition was added: it must concern companies that were subject of closure measures/compulsory closure. In first instance the measures were prolonged until 31 January 2021. Since they are not excluded, 'tax' debts are also targeted by the measures.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 9 - Cross-border situations

67 (MS). 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

Shifted towards

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

No changes

Shifted away

Shifted towards

67 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

68 (BP). 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
- Shifted towards

68 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

69 (BP). Provisions should be included in tax treaties setting specific conditions for exchange of information. *

- No changes
- Shifted away
- Shifted towards

69 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

70 (MS). If information is sought from third parties, judicial authorisation should be necessary. *

- No changes
- Shifted away
- Shifted towards

70 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

71 (BP). The taxpayer should be given access to information received by the requesting state. *

- No changes
- Shifted away
- Shifted towards

71 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

72 (BP). 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
- Shifted towards

72 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

73 (BP). A requesting state should provide confirmation of confidentiality to the requested state. *

- No changes
- Shifted away
- Shifted towards

73 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

74 (MS). 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
- Shifted towards

74 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

75 (BP). 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
- Shifted towards

75 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

76 (BP). Taxpayers should have a right to request initiation of mutual agreement procedure. *

- No changes
- Shifted away
- Shifted towards

76 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

77 (MS). 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
- Shifted towards

77 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 10 - Legislation

78 (MS). Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail. *

No changes

Shifted away

Shifted towards

78 (BP). Retrospective tax legislation should ideally be banned completely. *

No changes

Shifted away

Shifted towards

78 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

The Belgian general anti-avoidance rule (Art. 344, §1 BITC) was introduced with effect as from assessment year 2013. According to the Belgian Minister of Finance as well as the Belgian tax administration this general anti-avoidance rule can be applied to a series of legal acts of which the constituent acts did not all take place in the taxable period associated with assessment year 2013. It is sufficient that the last legal act occurred after the entry into force of Art. 344, §1 BITC. In its judgments of 3 December 2019, 28 April 2020 and 6 October 2020, the Court of Appeal of Ghent rejected the opinion of the Belgian tax administration on the temporal application of the general anti-avoidance rule to a series of legal acts. According to the Court of Appeal of Ghent, it is required that all legal acts which, taken as a whole, bring about the same transaction, fall within the temporal scope of Art. 344, §1 BITC and are thus established as from assessment year 2013. On 25 November 2021, the Belgian Court of Cassation confirmed the one of the aforementioned judgements of the Ghent Court of Appeal. The Court of Cassation confirmed that all legal acts which are part of a complex of legal acts must have taken place as from the taxable period connected to the assessment year as from which article 344, §1 BITC applies, in order for this provision to be applied to them. It is not sufficient that the last legal act of the complex of legal acts as a whole was performed after article 344, §1 BITC became temporally applicable.

79 (BP). Public consultation should precede the making of tax policy and tax law. *

- No changes
- Shifted away
- Shifted towards

79 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 11 - Revenue practice and guidance

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

No changes

Shifted away

Shifted towards

80 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

81 (MS). 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
- Shifted towards

81 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

82 (MS). Binding rulings should only be published in an anonymised form *

- No changes
- Shifted away
- Shifted towards

82 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

83 (MS). 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
- Shifted towards

83 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

Do you want to save your results and quit? *

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. 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

Area 12 - Institutional framework for protecting taxpayers' rights

84 (MS). Adoption of a charter or statement of taxpayers' rights should be a minimum standard. *

No changes

Shifted away

Shifted towards

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

- No changes
- Shifted away
- Shifted towards

84 (S). Summary of relevant facts in 2020

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

85 (BP). 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
- Shifted towards

85 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

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

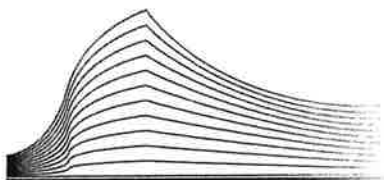
- No changes
- Shifted away
- Shifted towards

86 (S). Summary of relevant facts in 2021

Only if answered "shifted away" or "shifted towards", please give here a summarized account of 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. Please back up your assertions with the relevant documentary materials. 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 and c.weffe@ibfd.org. Thank you.

This content is neither created nor endorsed by Google.

Google Forms



Repertoriumnummer 2021 /
Datum van uitspraak 07 september 2021
Rolnummer 2021/RK/6

Uitgifte

Uitgereikt aan	Uitgereikt aan	Uitgereikt aan
op € BUR	op € BUR	op € BUR

Mededeelbaar aan de
ontvanger

Eindarrest

fiscaal

Hof van beroep Antwerpen

Arrest

kamer B6M
burgerlijke zaken

Aangeboden op
Niet te registreren

BELGISCHE STAAT, FOD FINANCIEN, ON 0308.357.159, in de persoon van de minister van Financiën, met kabinet te 1000 BRUSSEL, Wetstraat 12, woonstkeuze op het kantoor van de stafdienst Logistiek Brussel, met diensten te North Galaxy Toren B, 2e verdiep, 1030 BRUSSEL, Koning Albert II-laan 33 bus 971,

Eiser in hoger beroep,
vertegenwoordigd door mr. LEYNS Gerd, advocaat te 9030 MARIAKERKE (GENT), Brugsesteenweg 591 (ref.: Bel.21.0989)

tegen de beschikking van de voorzitter van de rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen van 07 januari 2021, gekend onder rolnummer 20/80/C

tegen

1. [REDACTED] RRN [REDACTED] wonende te [REDACTED]
[REDACTED]
2. [REDACTED] RRN [REDACTED], wonende te [REDACTED]
[REDACTED]

Verweerders in hoger beroep,
vertegenwoordigd door mr. VAN HEMELEN Jan en mr. TUERLINCKX Jan, beiden advocaat te 2018 ANTWERPEN, Van Putlei 14 (ref.: 20.1259/1/P)

andere:

STAFHOUDER VAN DE BALIE VAN DE PROVINCIE ANTWERPEN, met diensten te 2000 ANTWERPEN, Bolivarplaats 20/15,

tussenkomen partij,
vertegenwoordigd door mr. VERBIST Johan, advocaat te 2000 ANTWERPEN, Amerikalei 187 / 302

Gelet op de door de wet vereiste processtukken in behoorlijke vorm overgelegd waaronder een eensluitend afschrift van de bestreden beschikking van de voorzitter van de rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen, zetelend in kortgeding van 7 januari 2021, betekend bij gerechtsdeurwaardersexploot d.d. 29 januari 2021, alsmede het verzoekschrift tot hoger beroep, neergelegd ter griffie van het hof van beroep te Antwerpen op 15 februari 2021, waarbij hoger beroep wordt ingesteld.

1. Feitelijke en procedurele retroacta.

1.1. Huidige betwisting heeft betrekking op de al dan niet terechte aanstelling van een sekwester over informatie, stukken en digitale bestanden die werden gekopieerd door de Belgische Staat tijdens een fiscale controle op 8 juli 2020 op de maatschappelijke zetel van NV [REDACTED] te Herentals.

Verweerders in hoger beroep waren met hun dochter, [REDACTED] de bestuurders dan wel zaakvoerders van NV [REDACTED] BV [REDACTED] en BV [REDACTED]. In hoofde van deze vennootschappen vond op 15 maart 2018 een fiscale controle plaats door de Belgische Staat die aanleiding heeft gegeven tot aanzienlijke taxaties in de vennootschapsbelasting en inzake B.T.W.. Stukken betreffende deze taxaties worden niet voorgelegd. Er bestaat ter zake tussen partijen geen betwisting. Op 30 juni 2020 werd het faillissement van de betrokken vennootschappen geopend (B.S., 6 juli 2020).

Op 12 mei 2020 werd een vraag om inlichtingen verzonden aan verweerders in hoger beroep in de personenbelasting voor aanslagjaar 2014 waarbij werd meegedeeld dat een fraudecircuit zou zijn vastgesteld bij NV [REDACTED] en BV [REDACTED] met medeweten van de bestuurders. Er werd verzocht een overzicht te geven van al de bank- en spaarrekeningnummers, het saldo van de rekeningen en de uittreksels. Indien deze financiële gegevens verborgen zouden worden gehouden of indien geweigerd zou worden deze te verschaffen, zou de administratie het bankgeheim lastens verweerders in hoger beroep laten opheffen. Hierop werd geantwoord bij brief van 15 juni 2020 door de raadsman van verweerders in hoger beroep. Er werd om uitstel verzocht. Tevens werd de onrechtmatigheid van de vraag om inlichtingen opgeworpen en werd meegedeeld dat de gevraagde stukken ter beschikking zouden liggen van de administratie bij verweerders in hoger beroep op welbepaalde data.

Het uitstel werd door de administratie geweigerd en omdat de gevraagde bankuittreksels niet werden bijgebracht, werd contact opgenomen met de Nationale Bank om een overzicht te krijgen van de financiële rekeningen van verweerders in hoger beroep. Hierover werden twee bijkomende vragen om inlichtingen gesteld waarop voor verweerders in hoger beroep werd geantwoord, telkens zonder voorlegging van de gevraagde gegevens maar met melding dat deze klaarliggen ter inzage bij verweerders in hoger beroep.

Bij brief van 25 augustus 2020 werden verweerders in hoger beroep ervan ingelicht dat het bankgeheim zou worden opgeheven.

Er werd op 27 augustus 2020 namens verweerders in hoger beroep een eenzijdig verzoekschrift neergelegd teneinde te bekomen dat de Belgische Staat het verbod zou worden opgelegd om het bankgeheim op te heffen. Bij beschikking van 28 augustus 2020 werd de Belgische Staat door de Voorzitter van de rechtbank van eerste aanleg zetelend in kort geding het verbod opgelegd om bij de bankinstellingen alle bankuittreksels op te vragen.

Naar aanleiding van de inzage op 30 september 2020 van het fiscaal dossier van verweerders in hoger beroep in de personenbelasting werd vastgesteld dat op 8 juli 2020 bij BV [REDACTED] een fiscale controle plaatsvond op de maatschappelijke zetel met toestemming van de curatoren waarbij kopie werd genomen van alle gegevens opgeslagen op de laptops, desktops en servers van de vennootschap. Daarbij werd ook kopie genomen van de inhoud van de mailbox [REDACTED]@[REDACTED] en werden foto's gemaakt. Aldus werd kopie genomen van briefwisseling tussen verweerders in hoger beroep en hun advocaten.

In het kader van het derdenverzet door de Belgische Staat tegen de beschikking d.d. 28 augustus 2020 waarbij het verbod werd opgelegd om het bankgeheim op te heffen, blijken stukken te zijn neergelegd voor de rechtbank door de Belgische Staat houdende mails tussen verweerders in hoger beroep en hun advocaten. Naar aanleiding van deze neerlegging verzochten verweerders in hoger beroep de Belgische Staat bij brief van 7 oktober 2020 om het fiscaal dossier te zuiveren van de door het beroepsgeheim gedragen stukken. Hierop blijkt door de Belgische Staat niet te zijn gereageerd.

1.2. Bij dagvaarding in kort geding d.d. 29 oktober 2020 voor voorzitter van de rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen, zetelend in kort geding, vorderden verweerders in hoger beroep een sekwester aan te stellen met de zending zich na betekening van de beschikking daartoe gewezen in deze procedure, zich de volgende informatie, stukken (ongeacht de drager), digitale bestanden en informatiedragers te laten overhandigen door de Belgische Staat,

- van alle correspondentie ontvangen door [REDACTED]@[REDACTED]
- van alle correspondentie met de heer [REDACTED] (in persoonlijke naam, dan wel in hoedanigheid van bestuurder) als bestemming (ongeacht de informatiedrager);
- van alle foto's die door de controlerende ambtenaren werden genomen;
- en van alle mogelijke kopies waarvan de Belgische Staat dienaangaande in het bezit zou zijn, waaronder onder meer de *images* van iedere server en computer aanwezig op de maatschappelijke zetel van [REDACTED] BV te [REDACTED] tijdens de visitatie.

Alsmede de Belgische Staat op te leggen zich definitief en onherroepelijk van deze informatie te ontdoen, geen kopie achter te houden, op welke informatiedrager ook, waar

ook te houden en in geval digitale informatie deze definitief en onherroepelijk te deleten en verwijderen.

Een sekwester aan te stellen met de zending zich na ontvangst van deze informatie deze op een veilige plaats te stockeren.

Zulks onder verbeurte van een dwangsom van 5.000 EUR per werkdag, gerekend van uur tot uur berekend, vertraging dat zulks niet de volledigheid wordt voltrokken (sic).

Ten aanzien van de Belgische Staat te bevelen om de door de sekwester gehouden informatie voor te leggen aan de stafhouder en verweerders in hoger beroep of diens vertegenwoordiger zodat de Orde van Vlaamse Balies kan instaan voor de naleving en handhaving van het beroepsgeheim tussen cliënt en advocaat en alzo kan overgaan tot zuivering van het dossier daarop.

De Belgische Staat te veroordelen tot de kosten, met inbegrip van de rechtsplegingsvergoeding, dagvaardingskosten kosten eigen aan zuivering die worden verricht door de Stafhouder en de Orde van Vlaamse Balies, alsmede de gerechtsdeurwaarderskosten.

Bij conclusie bevattende verzoekschrift tot vrijwillige tussenkomst d.d. 11 december 2020 kwam de stafhouder van de balie provincie Antwerpen vrijwillig tussen in de procedure voor de eerste rechter.

De eerste rechter verklaarde de vrijwillige tussenkomst van de stafhouder van de balie provincie Antwerpen toelaatbaar en verklaarde de eis toelaatbaar en gegrond als volgt:

“stelt gerechtsdeurwaarder Egbert Lemouche aan als gerechtelijk sekwester voor de bewaring van de volgende informatie, stukken (ongeacht de drager), digitale bestanden en informatiedragers die door (de Belgische Staat) werden gekopieerd op 8 juli 2020 (hierna tezamen aangeduid als ‘de Bestanden’):

- *alle correspondentie ontvangen door [REDACTED]@ [REDACTED]*
- *alle correspondentie met de heer [REDACTED] (in persoonlijke naam, dan wel in hoedanigheid van bestuurder) als bestemming (ongeacht de informatiedrager);*
- *alle foto’s die door de controlerende ambtenaren werden genomen;*
- *en alle mogelijke kopies waarvan (de Belgische Staat) dienaangaande in het bezit zou zijn, waaronder onder meer de images van iedere server en computer aanwezig op de maatschappelijke zetel van [REDACTED] BV te [REDACTED] tijdens de visitatie.*

Beveelt aan de Belgische Staat om de Bestanden ten laatste binnen de 10 werkdagen na betekening van deze beschikking te overhandigen aan gerechtsdeurwaarder Egbert Lemouche, op straffe van een dwangsom van 1.000 EUR per dag vertraging.

Verzoekt gerechtsdeurwaarder Egbert Lemouche, in zijn hoedanigheid van gerechtelijk sekwester, om:

- *de Bestanden na ontvangst ter beschikking te stellen van de stafhouder van de balie van de provincie Antwerpen opdat deze, in afwezigheid van de partijen, zou onderzoeken welke Bestanden als vertrouwelijke briefwisseling tussen (één van de) (verweerders in hoger beroep) en hun advocaat moeten worden bestempeld;*

- *en vervolgens, nadat de stafhouder van de balie van de provincie Antwerpen zijn opdracht zal hebben uitgevoerd:*
 - *de Bestanden die door de stafhouder niet als vertrouwelijk werden bestempeld, terug ter beschikking te stellen van (de Belgische Staat);*
 - *de Bestanden die door de stafhouder wel als vertrouwelijk werden bestempeld, in bewaring te houden tot op het ogenblik dat de rechter ten gronde, zetelend in eerste aanleg, uitspraak heeft gedaan over het lot van deze Bestanden of tot het ogenblik dat er een schriftelijk akkoord is tussen (verweerders in hoger beroep) en (de Belgische Staat) dienaangaande.*

Machtigt de aangestelde gerechtelijk sekwester om, telkens hij zulks nuttig of noodzakelijk acht voor de vervulling van zijn opdracht, zich te laten vervangen door/bevoegdheden te delegeren aan een gerechtsdeurwaarder naar keuze evenals zich te laten bijstaan door een gerechtsdeurwaarder of welke andere instantie, macht of persoon dan ook.

Zegt voor recht dat de kosten verbonden aan de gerechtelijke sekwester dienen te worden geprovisioneerd door (de Belgische Staat), met dien verstande dat de rechtbank ten gronde, zetelend in eerste aanleg, zal beslissen wie deze kosten uiteindelijk dient te dragen."

De eerste rechter veroordeelde de Belgische Staat tot de kosten, begroot op 1.049,78 EUR dagvaardingskosten, inclusief bijdrage fonds en 1.440 EUR rechtsplegingsvergoeding en tot de betaling van het rolrecht van 165 EUR aan de FOD Financiën.

De eerste rechter oordeelde dat verweerders in hoger beroep het vereiste rechtstreeks en persoonlijk belang hebben om de vertrouwelijke briefwisseling waarover de Belgische Staat zou beschikken te laten verwijderen uit het fiscaal dossier.

Het spoedeisend karakter staat vast en er is voldoende schijn van recht om de gevraagde maatregel toe te kennen. Aangezien de Belgische Staat over vertrouwelijke correspondentie tussen verweerders in hoger beroep en hun advocaten beschikt en de Belgische Staat bij de captatie daarvan prima facie niet de nodige zekerheidsmechanismen heeft ingebouwd ter bescherming van het privéleven van verweerders in hoger beroep, is het aan de stafhouder om het dossier te zuiveren en de vertrouwelijke informatie af te zonderen om mogelijke inbreuken op het recht op privéleven en de rechten van verdediging te voorkomen.

Tegen de beschikking heeft eiser in hoger beroep bij verzoekschrift, neergelegd ter griffie van het hof op 15 februari 2021, hoger beroep ingesteld.

2. De vorderingen en standpunten in hoger beroep.

2.1. Eiser in hoger beroep, de Belgische Staat, vordert het hoger beroep toelaatbaar en gegrond te verklaren, de bestreden beschikking te vernietigen en opnieuw rechtdoende, te zeggen voor recht dat de oorspronkelijke vordering onontvankelijk en ongegrond is, dat de maatregel van het sekwester ongegrond is, minstens dat een termijn van één maand moet

worden opgelegd waarbinnen de gesekwestreerde bestanden door de stafhouder dienen onderzocht te worden en verweerders in hoger beroep te veroordelen tot de kosten van het geding in eerste aanleg en in hoger beroep, begroot op 1.440 EUR rechtsplegingsvergoeding per aanleg en de kosten van het sekwester, momenteel 6.050 EUR te verhogen met alle nog later aangerekende kosten.

2.2. Verweerders in hoger beroep vorderen het hoger beroep van de Belgische Staat ontvankelijk doch ongegrond te verklaren, dienvolgens de beschikking van de voorzitter van de rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen, zetelend in kort geding, te bevestigen behoudens wat de opgelegde dwangsom betreft en de beschikking van de voorzitter van de rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen, zetelend in kort geding, te hervormen als volgt, de opgelegde dwangsom te verhogen van 1.000 EUR per dag vertraging naar 5.000 EUR per dag vertraging, eiser in hoger beroep te veroordelen tot de kosten van het geding, begroot op de rechtsplegingsvergoeding, begroot op 2.880 EUR, zijnde tweemaal het basisbedrag en de kosten verbonden aan het sekwester, begroot op heden 6.050 EUR, te verhogen met later aangerekende kosten.

2.3. De stafhouder van de Balie Provincie Antwerpen, vrijwillig tussenkomende partij, vordert het hoger beroep van eiser in hoger beroep ontvankelijk maar ongegrond te verklaren en eiser in hoger beroep te veroordelen tot de kosten.

3. Bespreking.

3.1. (On)ontvankelijke vordering: hoogdringendheid en belang.

De Belgische Staat stelt dat de oorspronkelijke vordering van verweerders in hoger beroep tot aanstelling van een sekwester onontvankelijk zou zijn bij gebrek aan hoogdringendheid en belang.

De voorzitter van de rechtbank van eerste aanleg doet in gevallen die hij spoedeisend acht bij voorraad uitspraak. Er is sprake van urgentie in toepassing van artikel 584 Ger.W. zodra de vrees voor schade van enig belang, of zelfs voor ernstige nadelen, een onmiddellijke beslissing wenselijk maakt (Cass. 23 september 2011, *Pas.*, 2011, 2031). Urgentie wordt beoordeeld op het ogenblik van de uitspraak (Cass. 11 mei 1998, *Arr.Cass.*, 1998, 505) en wanneer de rechter de vordering niet spoedeisend acht, dient hij de vordering ongegrond te verklaren (Cass. 11 mei 1990, *Arr.Cass.*, 1989-90, 1175).

De rechter in kort geding is bevoegd om een door het bestuur bij de uitoefening van haar discretionaire en niet-gebonden bevoegdheid begane onrechtmatig geachte aantasting van een subjectief recht te voorkomen en te vergoeden maar mag daarbij aan het bestuur zijn

beleidsvrijheid niet ontnemen en zich niet in de plaats stellen van het bestuur (Cass. 1 oktober 2007, *R.W.*, 2009-10, 105). De rechter in kort geding oordeelt of de eiser die op grond van spoed een voorlopige maatregel vraagt, een rechtmatig belang heeft om deze maatregel te vragen. Daarbij beschikt hij over een grote mate van vrijheid (Cass. 20 februari 2009, *Pas.*, 2009, 532). De procespartij die beweert houder te zijn van een subjectief recht heeft, ook al wordt dat recht betwist, het vereiste belang opdat zijn vordering ontvankelijk wordt verklaard. Het onderzoek naar het bestaan en de omvang van dat recht houdt geen verband met de ontvankelijkheid maar met de gegrondheid van de vordering (Cass. 23 februari 2012, *R.W.* 2012-2013, 1106).

Gebrek aan belang en hoogdringendheid kunnen niet tot de onontvankelijkheid leiden van de oorspronkelijke vordering van verweerders in hoger beroep tot aanstelling van een sekwester. De beschikking van de eerste rechter dient dan ook te worden bevestigd in de mate dat de oorspronkelijke vordering van verweerders in hoger beroep ontvankelijk wordt verklaard.

Het staat vast in casu dat tijdens de fiscale controle bij BV [REDACTED] op 8 juli 2020 door de Belgische Staat briefwisseling werd gekopieerd tussen verweerders in hoger beroep en hun advocaat. Verweerders in hoger beroep stellen dat het bezit van vertrouwelijke correspondentie tussen henzelf en hun advocaat een ongerechtvaardigde inmenging is in hun privéleven. Zij werpen aldus, onder meer, een schending op van het recht op eerbiediging van het privéleven en van het beroepsgeheim door de Belgische Staat. Verweerders in hoger beroep die beweren houder te zijn van een subjectief recht, hadden aldus het vereiste belang om de aanstelling van een sekwester te vorderen over de in het bezit genomen bestanden. Daarbij is het niet van belang of er effectief een schending van het recht op de eerbiediging van het privéleven of van het beroepsgeheim voorligt. Zulks vereist immers een beoordeling ten gronde, waarvoor de rechter in kort geding niet bevoegd is.

Dat de fiscale controle plaatsvond bij een vennootschap waarvan verweerders in hoger beroep bestuurders waren en niet bij verweerders in hoger beroep zelf, doet geen afbreuk aan het persoonlijk belang van verweerders in hoger beroep. Er blijkt immers tijdens de fiscale controle bij de vennootschap briefwisseling te zijn gekopieerd tussen verweerders in hoger beroep en hun advocaat die aldus, ongeacht waar, de drager waarop en de vorm waarin zij werden aangetroffen, hen toebehoort. Dat de curator aanwezig was tijdens de fiscale controle en zijn toestemming heeft gegeven, doet hieraan geen afbreuk. Gelet op de daadwerkelijke inbezitneming door de administratie van briefwisseling en bestanden die mogelijks een vertrouwelijk karakter kent en die kan worden aangewend lastens verweerders in hoger beroep en ook effectief werd aangewend, is van een vordering ad futurum geen sprake. Verweerders in hoger beroep hebben dan ook het vereiste belang om een sekwester te laten aanstellen over de bij BV [REDACTED] gekopieerde bestanden.

De vordering tot aanstelling van een sekwester heeft tot doel om te laten onderzoeken welke briefwisseling en bestanden, die werden gekopieerd op 8 juli 2020, als vertrouwelijk dienen te worden beschouwd en om na onderzoek de vertrouwelijke briefwisseling en bestanden door de sekwester in bewaring te laten houden. Aldus strekt de vordering ertoe om de vertrouwelijke briefwisseling uit het bezit te nemen van de Belgische Staat, zodat zij deze niet kan aanwenden in welke procedure dan ook.

Deze vordering tot aanstelling van een sekwester heeft de vereiste urgentie nu is gebleken dat op 8 juli 2020 gekopieerde briefwisseling en bestanden werden aangewend door de administratie tegen verweerders in hoger beroep, minstens in de procedure in derdenverzet tegen de beschikking van 28 augustus 2020 waarbij het verbod werd opgelegd het bankgeheim op te heffen en nu niet kan worden uitgesloten dat deze briefwisseling en bestanden ook in andere toekomstige procedures zouden worden aangewend. Zulks kan ernstige schade opleveren. Dat de Belgische Staat, zelf partij in deze, het dossier zou hebben gefilterd, doet geen afbreuk aan de urgentie van de gevraagde maatregel om de gekopieerde bestanden in bewaring te laten nemen door een onafhankelijke partij met het oog op een onafhankelijk onderzoek van hun potentieel vertrouwelijk karakter.

Althans kan geenszins worden vastgesteld dat verweerders in hoger beroep, dan wel hun raadsman of de gerechtsdeurwaarder aan wie de opdracht tot betekening van de bestreden beschikking werd gegeven, op enigerlei wijze hebben getalmd, waardoor de hoogdringendheid van de gevorderde maatregel zou zijn vervallen -quod non.

De aanwending van de gekopieerde briefwisseling in de procedure van het derdenverzet en het aantreffen ervan in het administratief dossier in de personenbelasting van verweerders in hoger beroep benadrukt ten overvloede het persoonlijk belang van verweerders in hoger beroep.

Het vereiste belang en de vereiste urgentie zijn dan ook aanwezig in deze.

3.2. Ten gronde: Schijn van recht.

De rechter in kort geding mag nagaan of het bestaan van een recht voldoende waarschijnlijk is, of er een schijn van recht is, om een bewarende maatregel te bevelen, zonder zich daarbij uit te spreken over de grond van het geschil. De vordering tot aanstelling van een sekwester moet aanvaard worden in elke omstandigheid waarin bewarende maatregelen nodig blijken, in het belang van alle partijen om onherstelbare handelingen of slecht beheer te vermijden (Antwerpen 30 juni 1987, *Limb. Rechtsl.*, 1988, 6). De opsomming in artikel 1961 B.W. oud van de gevallen waarin de rechter een sekwester kan bevelen, is niet limitatief (Brussel 23 oktober 1997, *TBH*, 1999, 255).

In casu staat vast dat tijdens de fiscale controle bij BV [REDACTED] briefwisseling tussen verweerders in hoger beroep en hun advocaten gekopieerd werd door de administratie. Zulks blijkt onder meer uit het proces-verbaal d.d. 2 september 2020. Briefwisseling tussen cliënt en zijn advocaat kan een vertrouwelijk karakter hebben. Dit wordt bevestigd door de administratie die bij proces-verbaal d.d. 23 november 2020 zelf 173 mails of attachments, gekopieerd op 8 juli 2020, heeft afgeschermd als zijnde vertrouwelijk. Gelet op het feit dat potentieel vertrouwelijke briefwisseling en bestanden werden gekopieerd, bestaat de mogelijkheid dat het beroepsgeheim, het recht van verdediging en het recht op de eerbiediging van het privéleven werd of zal worden geschonden bij de aanwending van de gekopieerde bestanden. Er bestaat in casu dan ook een schijn van recht die de aanstelling van een sekwester rechtvaardigt teneinde ongerechtvaardigde aanwending van mogelijk vertrouwelijke briefwisseling en bestanden te vermijden.

Er blijkt niet dat verweerders in hoger beroep bij de vordering tot aanstelling van een sekwester de bedoeling zouden hebben gehad de onderzoeksmogelijkheden van de Belgische Staat te beperken. Zulks wordt op geen enkele wijze aangetoond. Bovendien zouden op heden alle taxaties in hoofde van verweerders in hoger beroep en in hoofde van de betrokken vennootschappen definitief zijn afgerond. Hiervan worden geen stukken voorgelegd, maar zulks wordt door partijen niet betwist. Van enige onmogelijkheid tot onderzoek en/of taxatie door de aanstelling van een sekwester is dan ook geen sprake. De bevolen maatregel is slechts van bewarende aard en brengt op zich de rechten van de Schatkist geenszins in het gedrang, in het bijzonder gelet op de uitgebreide onderzoeksbevoegdheden waarover de Belgische Staat ingevolge het W.I.B. 1992 en het W.B.T.W. beschikt.

De rechter in kort geding die vaststelt dat de zaak urgent is en die na de belangen te hebben afgewogen van eiser en verweerder bij het verkrijgen van de gevraagde maatregel en oordeelt dat er voor de eiser in kort geding onmiddellijke schade dreigt indien een bewarende maatregel niet wordt bevolen, is niet verplicht nader in te gaan op het verweer van degene tegen wie de maatregel wordt gevraagd en dat gebaseerd is op het materiële recht (Cass. 4 februari 2000, *Arr.Cass.*, 2000, 92).

In de mate dat de grieven van partijen betrekking hebben op de al dan niet daadwerkelijke schending van een subjectief recht, met name de al dan niet daadwerkelijke schending van het beroepsgeheim, het recht van verdediging en het recht op de eerbiediging van het privéleven, betreffen zij de grond van de zaak waarvoor het hof niet bevoegd is. Ook de vraag naar de al dan niet rechtsgeldige kopienamen van de bestanden bij BV [REDACTED] betreft de grond van de zaak. Het hof gaat op deze grieven dan ook niet nader in.

Het is in die context niet relevant of nu alle briefwisseling tussen advocaat en cliënt vertrouwelijk is of niet. Het volstaat vast te stellen dat briefwisseling tussen advocaat en cliënt vertrouwelijk kan zijn en er aldus een schending kan voorliggen van het

beroepsgeheim en van het recht op de eerbiediging van het privéleven. Zulks dient door de rechter ten gronde te worden beoordeeld. Het hof gaat hier dan ook niet verder op in.

Het is tevens irrelevant of de administratie nu al dan niet de nodige zekerheidsmechanismen heeft ingebouwd bij het kopiëren van de bestanden tijdens de fiscale controle op 8 juli 2020. Dat de Belgische Staat zelf het nodige doet en kan doen voor de filtering van de gekopieerde data en welke voordelen zulks oplevert, doet evenmin ter zake. Het volstaat vast te stellen dat er briefwisseling tussen advocaat en cliënt en bestanden werden gekopieerd die potentieel vertrouwelijk is. Het hof gaat hier dan ook niet nader op in.

Hoeveel vertrouwelijke briefwisseling en bestanden uiteindelijk werden gekopieerd, zal moeten worden beoordeeld door de stafhouder na onderzoek ter zake. De stafhouder is daarvoor de uitgelezen persoon gelet op zijn disciplinaire functie als hoofd van de orde van advocaten. Aan zijn onafhankelijkheid kan dan ook bezwaarlijk worden getwijfeld. Zulks moet tevens worden afgeleid uit artikel 334 W.I.B. 1992 dat stelt dat de tuchtoverheid, in casu de stafhouder, dient tussen te komen bij een onderzoek inzake inkomstenbelastingen bij personen die het beroepsgeheim opwerpen. Of al dan niet een daadwerkelijke schending van artikel 334 W.I.B. 1992 voorligt, vergt een beoordeling ten gronde waartoe het hof niet bevoegd is in kort geding. Zulks doet echter geen afbreuk aan de vaststelling dat de administratie zelf de stafhouder vooruitschuift als tuchtoverheid die over de eerbiediging van het beroepsgeheim moet waken. Dat de stafhouder in huidige betwisting vrijwillig is tussengekomen, doet althans aan zijn onpartijdigheid geen afbreuk, in het bijzonder nu de stafhouder geen vordering stelt lastens de Belgische Staat en slechts ten bewarende titel tussenkomt. Enige schending van het recht op een eerlijk proces door de aanstelling van de stafhouder kan niet worden vastgesteld.

Hoe de sekwester en de stafhouder zich van hun opdracht zullen kwijten na hun aanstelling, valt evenmin onder de beoordelingsbevoegdheid van het hof, dat slechts moet beoordelen of bewarende maatregelen noodzakelijk zijn om een dreigend nadeel te voorkomen. Het hof gaat dan ook niet nader in op de bedenkingen van de Belgische Staat ter zake. Om dezelfde reden gaat het hof niet nader in op de vragen om toelichting d.d. 12 februari 2021 van verweerders in hoger beroep aan de administratie omtrent de wijze waarop de gekopieerde bestanden aan de als sekwester aangestelde gerechtsdeurwaarder werden overgemaakt en of de gekopieerde bestanden aan andere administraties werden overgemaakt.

Gelet op het voorgaande, bevestigt het hof de beschikking van de eerste rechter waarbij een sekwester werd aangesteld over de bestanden die werden gekopieerd tijdens de fiscale controle bij BV [REDACTED] op 8 juli 2020 teneinde deze te laten onderzoeken door de stafhouder op hun al dan niet vertrouwelijk karakter. Aangezien dit een bewarende maatregel betreft en met inachtneming van het grote aantal gekopieerde bestanden, legt het hof de stafhouder voor onderzoek van deze bestanden een termijn op van drie maanden te rekenen vanaf het tijdstip van terbeschikkingstelling door de sekwester.

Er is geen aanleiding om de dwangsom van 1.000 EUR te verhogen tot 5.000 EUR per dag vertraging dat de Belgische Staat deze bestanden niet overhandigt aan de aangestelde sekwester. Dat verweerdere in hoger beroep betwijfelen of de Belgische Staat wel alle beschikbare kopieën aan de gerechtsdeurwaarder heeft overgemaakt, rechtvaardigt op zich niet de verhoging van de dwangsom. Een dwangsom van 1.000 EUR, mocht blijken dat de Belgische Staat nog bestanden dan wel kopieën onder zich houdt, volstaat.

In ieder geval maken verweerdere in hoger beroep niet aannemelijk aan de hand van gewichtige, bepaalde en met elkaar overeenstemmende vermoedens dat de administratieve dossiers van verweerdere in hoger beroep met betrekking tot aanslagjaar 2019 het bewijs zouden inhouden van een ter zake dienend feit, met name dat de administratie nog gekopieerde bestanden onder zich zou houden. Zulks kan niet worden afgeleid uit (het tijdstip van) de voorlegging van de geanonimiseerde mail. Het hof beveelt de voorlegging van het administratief dossier over aanslagjaar 2019 dan ook niet in toepassing van artikel 877 Ger.W..

Het hoger beroep van eiser in hoger beroep is ontvankelijk doch ongegrond. De beschikking van de eerste rechter verdient bevestiging met dien verstande dat de stafhouder een termijn van drie maanden wordt opgelegd voor onderzoek van de bestanden, te rekenen vanaf het tijdstip van terbeschikkingstelling ervan door de sekwester.

Eiser in hoger beroep en verweerdere in hoger beroep begroten de rechtsplegingsvergoeding op 1.560 EUR in hoger beroep. Het hof begroot de rechtsplegingsvergoeding op 1.560 EUR en legt deze ten laste van eiser in hoger beroep als de in het ongelijk gestelde partij.

4. Beslissing.

Het hof beslist bij arrest op tegenspraak.

De rechtspleging verliep in overeenstemming met de wet van 15 juni 1935 op het gebruik van de taal in gerechtszaken.

Het hof verklaart het hoger beroep ontvankelijk doch ongegrond en bevestigt de beschikking van de eerste rechter met dien verstande dat de stafhouder een termijn van drie maanden wordt opgelegd voor onderzoek van de bestanden, te rekenen vanaf het tijdstip van terbeschikkingstelling ervan door de sekwester.

Het hof veroordeelt eiser in hoger beroep tot de kosten van het hoger beroep, in hoofde van verweerders in hoger beroep begroot op en vereffend op 1.560 EUR rechtsplegingsvergoeding in hoger beroep.

Het hof verstaat dat de volgende kosten van het hoger beroep ten laste vallen van eiser in hoger beroep: het rolrecht hoger beroep: 400,00 EUR.

Het hof gelast de griffier om de bevoegde ontvanger van de administratie van de federale overheidsdienst Financiën belast met de inning en de invordering van de niet-fiscale schuldvorderingen, van het verschuldigd zijn van dit rolrecht ter kennis te stellen conform artikel 3 van het KB van 28 januari 2019 betreffende de uitvoering van het wetboek der registratie-, hypotheek- en griffierechten en het houden van de registers in de griffies van de hoven en rechtbanken.

Dit arrest werd uitgesproken in de openbare zitting van 07 september 2021 door

M. GHYSELEN	Kamervoorzitter
C. PRINCEN	Raadsheer
E. DE BRAUWER	Raadsheer
E. CLEYMANS	Griffier

E. CLEYMANS

E. DE BRAUWER

C. PRINCEN

M. GHYSELEN