



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 comprises the National Reporter's assessment of the country's practice during 2022 in protecting 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 - 2023 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 12 January 2024.

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

Kind regards,

Dr Alessandro Turina
Scientific Coordinator
IBFD Observatory on the Protection of Taxpayers' Rights.

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

Email *

j.vaneyndhoven@ecgb-advocaten.be

Reporters' info

Name: *

Sylvie De Raedt and Jef 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) 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.

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) 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.

- 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

Area 6 - Reviews and appeals

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.

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) 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.

- Yes
- No

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

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.

- 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 - 2023 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 2023 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 2023 that in your opinion affect the level of compliance of a given 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.

In ALL cases back up your assertions with the relevant documentary materials, and provide full details for identifying the documents related to the reported developments. Either a (soft) copy or internet links to make said documents available (and therefore, quotable) are greatly appreciated.

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 2023, until no later than 12 January 2024. 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,

Dr Alessandro Turina
Scientific Coordinator
IBFD Observatory on the Protection of Taxpayers' Rights.

Email *

j.vaneyndhoven@ecgb-advocaten.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 2023" (S). The latter is 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 2023. 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 2023", 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 2023".

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.

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

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2 - The issue of tax assessment

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Concerning income tax, when the Belgian tax authorities want to change the income and/or other information that a taxpayer has stated in his tax return, they must send a prior notification explaining the reasons for these changes ('notice of change'; Art. 346 BITC92). This obligation is intended to establish a (constructive) dialogue between the taxpayer and the tax authorities. In a case before the Belgian Court of Cassation the taxpayer had mentioned his remuneration from Luxembourg sources as an 'exempted' foreign income. The Belgian tax authorities were of the opinion that this foreign income could only be exempted if the taxpayer could prove his physical presence in Luxembourg during the period in question. The tax authorities therefore taxed the Luxembourg income, without, however, sending a prior notice of change to the taxpayer. The Belgian Court of Cassation declared this taxation invalid. Since the tax authorities had changed a fact stated in the tax return (exemption), they were obliged to first send a notice of change and allow the taxpayer to respond to this notice (Judgement of 2 March 2023, F. 21.0156.F).

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

With a Royal Decree of 15 March 2023 a regulation entered into force stipulating that a taxpayer can expressly opt to receive "proposed simplified returns" exclusively 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 3 - Confidentiality

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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) 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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 4 - Normal audits

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

During tax audits the tax authorities regularly ask for a complete copy of the taxpayer's digital data, including the mailboxes of directors and employees. In a case before the Court of First Instance of Ghent the taxpayer refused to comply with the tax authorities' request for a complete copy off all digital data. The tax authorities turned to the Court in order to force the taxpayer's cooperation. With a judgement of 20 February 2023 the Court of First Instance of Ghent refused to accede to the demand of the tax authorities for a complete copy. The Court rules that the tax authorities' claim doesn't respect the fair balance between social interests and individual interests. A complete copy of all digital data would always result in obtaining information that is irrelevant for tax purposes and (probably) also private or confidential data from third parties. Copying confidential information also leads to irreparable damage. By demanding a copy of all digital data from the taxpayer, the tax authorities violate the purpose of the tax audit and they conduct an covert 'fishing expedition'. Given the violation of investigative powers, the requested measures are considered completely disproportionate and are rejected by the Court.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

In Belgium the tax authorities are allowed to enter the premises of the taxpayer (other than residences) without prior authorisation of the judiciary. Once the tax authorities have entered the premises, they are allowed to examine all books and documents located in the premises without prior consent of the taxpayer. In a judgement of 6 October 2023 the Court of Cassation ruled that the right to inspect professional premises grants the competent officials the right to examine books and documents located in closed cupboard, rubbish bins or refrigerators in the premises where the taxpayer's professional activities are carried out. And this 'without' having to obtain the taxpayer's prior consent. The Court of Cassation however clarifies, and this is crucial, that when the taxpayer opposes to the investigation, the consultation of the books and documents cannot take place (judgement of 6 October 2023, F.22.0082.F). In essence, with this judgment the Court of Cassation only confirmed prior caselaw of the Belgian Constitutional Court of 2017. Nevertheless it was a very welcome confirmation for practitioners who face audits in practice.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

In Belgium the tax authorities may only inspect taxpayer's homes or occupied premises with a prior authorisation of a police judge. In a judgement of 16 June 2023, the Court of Cassation clarified that the authorisation of the police judge only gives tax officials permission to inspect a certain home or occupied premises. However, that does not mean that those officials may enter those premises without the 'consent' of the taxpayer. The consent of the taxpayer is thus essential for a legally valid inspection. Moreover, the Court of Cassation clarifies that the consent must remain present for the entire duration of the inspection and can thus also be withdrawn by the taxpayer, which prevents the inspection from being continued. Although this point of view could already be derived from prior caselaw of the Belgian Constitutional Court of 2017, it was nevertheless a very welcome confirmation for practitioners who face audits in practice.

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

- No changes
- Shifted away
- Shifted towards

44 (S). Summary of relevant facts in 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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) 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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

Concerning income tax, taxpayers are obliged to exhaust administrative review before they can appeal to the judiciary. Such a request for administrative review must be 'reasoned', which according to the Court of Appeal of Mons means that the administrative appeal must contain the legal and factual arguments that the taxpayer invokes in support of his claims. The taxpayer cannot therefore simply invoke his disagreement with the taxation; he must also formulate a minimum of arguments. The Court of Appeal of Mons therefore ruled that an administrative appeal that is limited to the request to review the taxation, without stating the reason why this should be done, is insufficiently reasoned. Therefore the administrative appeal is invalid. And consequently, the taxpayer didn't have access to the judiciary, as this requires compliance with the obligation to first submit a valid administrative appeal. The appeal before the Court was therefore found inadmissible (judgement of 8 March 2023, 2021/RG/734).

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

- No changes
- Shifted away
- Shifted towards

51 (S). Summary of relevant facts in 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

- No changes
- Shifted away
- Shifted towards

57 (S). Summary of relevant facts in 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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) 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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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

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

66 (S). Summary of relevant facts in 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 9 - Cross-border situations

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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

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.

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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@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 2023

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. IN ALL CASES 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 welcome to send us these materials to our email: optr@ibfd.org. Thank you.

This content is neither created nor endorsed by Google.



F° 01524

Repertoriumnummer 2023 / 246
Kamer 6^e burgerlijke kamer
Datum van uitspraak 20 februari 2023
Rolnummer 22/1096/A
IB.1

Uitgifte

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

- Dagvaarding/verzoekschrift
na 31.01.2019
- Aan te bieden voor
registratie

Rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent

Tussenvonnis (+ bijzondere rol)

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

In de zaak van :

De BELGISCHE STAAT, FOD Financiën – Stafdienst Logistiek - Koning Albert II laan 33 bus 971 te 1030 Brussel, vertegenwoordigd door de Minister van Financiën, op vervolging en benaarding van de Algemene Administratie van de Bijzondere Belastinginspectie (AABBI), handelend ten verzoeken van de Adviseur-generaal of de door hem gedelegeerde ambtenaar, Gewestelijke Directie Gent, met kantoor te 9050 Gent (Ledeberg), Gaston Crommenlaan 6 bus 803, KBO 0308.357.159,

eisende partij, hebbende als raadsman mr.

TEGEN:

NV met zetel te KBO

NV, met zetel te KBO

verwerende partijen, hebbende als raadslieden mr.
en mr. beiden advocaat te

Vonnist de rechtbank als volgt:

I. DE RECHTSPLEGING

De rechtbank hoorde partijen in hun argumenten op de openbare terechtzitting van 26 januari 2023. Vervolgens sloot de rechtbank het debat en nam de zaak in beraad. De rechtbank zag het dossier van de rechtspleging

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

en de bewijsstukken in en in het bijzonder de gedinginleidende dagvaarding van 28 april 2022 inzake het verzoek tot toekenning van voorafgaande maatregelen (art. 19, 3° lid Ger. W.), de conclusies en de stavingstukken van partijen.

II. DE VORDERING

Eiseres vordert in 'aanvullende conclusie' de vordering ontvankelijk en gegrond te verklaren:

"derhalve bij wijze van voorafgaande maatregelen op grond van de bepalingen van art. 19, 3e lid Ger.W. de toestand van de partijen als volgt voorlopig te regelen zodat alle digitale data op de volledige ICI-infrastructuur van beide verweersters wordt bevroren en te bevelen dat:

- *binnen een week na betekening van het tussen te komen tussenvonnis een kopie van alle data aanwezig op de volledige ICT-infrastructuur (lokale harde schijven, server, cloud-omgeving, ...) van beide verweersters wordt gemaakt door of namens de verweersters op externe drager(s) van de verweersters en dit in aanwezigheid van de [eiseres];*
- *deze externe gegevensdrager(s) onmiddellijk zouden worden verzegeld in aanwezigheid van partijen en ter bewaring worden neergelegd op de burgerlijke griffie van de rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent om later uitspraak te kunnen horen doen over deze kopie(ën), waarbij aan niemand inzage of kopienamen zal worden verleend, behoudens andersluidend bevel van deze Rechtbank of eventueel de bevoegde beroepsinstantie, en dit in afwachting van de beslechting van de betwisting ten gronde middels een in kracht van gewijsde gegane rechterlijke uitspraak;*

de verweersters te veroordelen tot eventuele kosten spruitend uit de voorafgaande maatregelen;

**RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023**

de tussen te komen uitspraak uitvoerbaar bij voorraad te horen verklaren niettegenstaande enige borgstelling of kantonnement;

in voorkomend geval, het verzoek van verweersters tot het bekomen van een machtiging tot het onmiddellijk instellen van hoger beroep tegen het vonnis dat een voorafgaande maatregel gelast, af te wijzen als ongegrond."

Verweerders vorderen in 'syntheseconclusie – voorlopige maatregelen':

"De vordering tot het opleggen van voorlopige maatregelen van eiseres onontvankelijk, minstens ongegrond te verklaren;

In hoofdorde — bij gebrek aan belang — de vordering tot het nemen van voorafgaande maatregelen onontvankelijk te verklaren;

In ondergeschikte orde de gevorderde voorafgaande maatregelen op grond van artikel 19, 3e lid Ger.W. minstens ongegrond te verklaren;

Derhalve de vordering van eiseres tot veroordeling van [eisers] tot eventuele kosten voortvloeiend uit de voorafgaande maatregelen minstens ongegrond te verklaren;

De vordering van eiseres tot het uitvoerbaar bij voorraad horen verklaren, niettegenstaande enige borgstelling of kantonnement, minstens ongegrond te verklaren;

In uiterst ondergeschikte orde, indien Uw Zetel zou besluiten om de door eiseres gevraagde maatregelen toe te wijzen, [eisers] overeenkomstig de bepalingen van artikel 1050, 2^{de} lid Ger.W. te machtigen om onmiddellijk, zonder het eindvonnis af te wachten, een beroep in te stellen tegen het vonnis waarbij de eventuele maatregel bij de wet is gelast;

Eiseres tot slot te veroordelen tot de kosten van het geding, inclusief de dagvaardingskosten en inclusief de rechtsplegingsvergoeding, thans begroot op 1.800,00 EUR op basis van artikel 1022 Ger.W. juncto KB d.d. 26 oktober 2007 (BS 9 november 2007), zoals van toepassing vanaf 1 november 2022."

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

III. RELEVANTE FEITEN EN GESCHIL

1.

Hieronder worden de feiten weergegeven zoals verwoord door de nv
..... te nv

2.

Verweerders, nv en nv , maken deel
uit van de die actief is in het aanleveren van
gespecialiseerde voedings- en gezondheidsproducten, bestemd voor de
aquacultuur- en visteeltsector.

3.

Op 14 september 2021 voerde de fiscale administratie (AABBI, Inspectie BBI
Gent 2) een onaangekondigde zoeking uit op de maatschappelijke zetel van
verweerders gelegen te

4.

Nadat de fiscale ambtenaren zich om 9u45 de toegang hadden verschaft tot
de maatschappelijke zetel, zijn zij overgegaan tot een 'actieve zoeking' in de
bedrijfslokalen. Verweerders hebben hiervoor geen toestemming gegeven.

5.

Volgens verweerders haalden de fiscale ambtenaren kasten en bureaus leeg
zonder enige acht te slaan op de aard van de documenten en zonder de
aanwezigheid van een gemachtigde persoon.

Dit blijkt ook uit de processen-verbaal van retentie d.d. 16 september 2021
(stuk 1 verwerende partij) waarin diverse lokalen en bureaus op de
verschillende verdiepingen (die niet zonder meer toegankelijk zijn) worden
vermeld.

Daarnaast blijkt dat de fiscale ambtenaren zich volledig eigenhandig toegang
hebben verschaft tot de archieven op het gelijkvloers en de tweede
verdieping.

**RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023**

6.

Ook blijkt uit de processen-verbaal van retentie dat meerdere kasten in de bureaus van o.a. de heer P. , de heer H. en de heer D. F. , zijn leeggehaald zonder de toestemming van een naar behoren gemachtigd persoon (in casu de heer H.), Finance Director van verweerders). De heer H. was immers op dat ogenblik nog niet ter plaatse.

Zoals uit het feitenrelaas van het proces-verbaal van bedrijfsvisitatie d.d. 14 september 2021 blijkt (stuk 2 verwerende partij), is de heer H. pas ter plekke aangekomen om 11u50 (terwijl het onderzoek reeds om 9u45 startte). De fiscale ambtenaren waren tussen hun aankomst om 9u45 en de aankomst van de heer H. om 11u50 reeds bezig met de actieve, eigenmachtig afgedwongen zoekingen.

Voorts vroegen de fiscale ambtenaren aan de heer Frederik N. de ICT-verantwoordelijke van verweerders, om inzage te krijgen in alle digitale data die op het informaticasysteem op de maatschappelijke zetel worden bewaard. Nochtans is ook de heer N. als werknemer niet gemachtigd om verweerders te binden of te vertegenwoordigen. Het is enkel de heer H. die als gemachtigd persoon al dan niet toestemming hiertoe kon verlenen.

Omstreeks 16u30 deelde de heer H. dan ook mee dat de fiscale ambtenaren niet het recht hadden om alle digitale data te kopiëren en gaf hij samen met meester V. opdracht om de ongebreidelde kopienamen (van alle gegevens inclusief fiscaal irrelevante gegevens) stop te zetten. De zoeking werd beëindigd om 20u30.

7.

Op 16 september 2021 deelt de raadsman van verweerders in een e-mail het volgende mee aan de fiscale administratie, Inspectie BBI Gent 2 (stuk 4 verwerende partij):

“Wij betreuren de hardhandige wijze waarop de controle is uitgevoerd. Na toegang afgedwongen te hebben van een persoon die niet gemachtigd is om onze cliënt te binden of te vertegenwoordigen, werden kasten en bureaus leeggehaald zonder rekening te houden met de aard van de meegenomen documenten, en dit zelfs voordat een naar behoren gemachtigd persoon ter

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

plaats was aangekomen. Uit een niet-ondertekende lijst op papier die tijdens de visitatie werd overhandigd, begrijpen wij dat de volgende categorieën documenten (op papieren drager) in retentie werden genomen:

- *Documenten die vallen onder het beroepsgeheim van de advocaat of het beroepsgeheim van de gecertificeerde belastingadviseur; en/of*
- *Documenten die dateren van vóór de onderzochte belastbare tijdperken; en/of*
- *Documenten van louter private aard; en/of*
- *Documenten die geen verband houden met de onderzochte vennootschappen.*

Wij wensen erop te wijzen dat deze documenten ten onrechte in retentie zijn genomen en derhalve niet als bewijs tegen de vennootschappen in kwestie kunnen worden gebruikt.”

8.

Op 21 september 2021 verzond de fiscale administratie een officiële ingebrekestelling naar verweerders met de eis om een oplevering van een kopie in leesbare vorm van alle databestanden zoals ze werden opgevraagd tijdens de visitatie d.d. 14 september 2021 tegen de uiterlijke termijn van 28 september 2021.

9.

Op 28 september 2021 kondigde de fiscale administratie per e-mail aan dat een nieuwe bedrijfsvisitatie zou plaatsvinden op 4 oktober 2021 op de maatschappelijke zetel.

10.

Op 30 september 2021 deelden de raadsleden van verweerders mee aan de fiscale administratie dat een (nieuwe) actieve zoeking in de digitale data op de zetel van verweerders, automatisch zou stuiten op de grenzen van onderzoeksbevoegdheden van de fiscale administratie.

Verweerders stelden voor om de fiscaal relevante digitale gegevens te laten filteren door het gerenommeerde bedrijf I-FORCE en aan te leveren aan de fiscale administratie op een door haar te bepalen gegevensdrager.

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

11.

Op 4 oktober 2021 vond de tweede bedrijfsvisitatie op de maatschappelijke zetel plaats. De ter plekke aangekomen fiscale ambtenaren verzochten om een kopiname van alle data van verweerders. Overeenkomstig het voormelde standpunt (dat per brief d.d. 30 september 2021 werd meegedeeld) konden zij hiermee niet akkoord gaan. Om het onderzoek niet te verhinderen, stelden verweerders opnieuw voor om een filtering van de fiscaal relevante digitale gegevens te laten uitvoeren door I-FORCE en aan de fiscale administratie over te maken op een door haar te bepalen gegevensdrager. De raadslieden van verweerders benadrukten opnieuw dat verweerders wensen mee te werken aan het onderzoek, maar binnen de grenzen van de fiscale wetgeving.

12.

Op 19 oktober 2021 werd door verweerders, middels de tussenkomst van haar raadslieden, een eerste externe gegevensdrager overhandigd met door I-FORCE gefilterde data. Op 10 december 2021 en op 20 december 2021 werden respectievelijk de tweede en de derde externe gegevensdrager met gefilterde data overhandigd aan de fiscale administratie. De overdracht van gegevens gebeurde — gelet op de omvang van de data (met name 83,4 GB) — op drie tijdstippen.

13.

Volgens verweerders werden in concreto onderstaande data afgesplitst van de overgemaakte data (filters) (cfr. begeleidend schrijven bij overdracht gegevens d.d. 18 oktober 2021):

- Alle data van voor 1 september 2018 en na 14 september 2021 (t.w. het ogenblik van de eerste visitatie op de maatschappelijke zetel van cliënten);
- Alle data met betrekking tot niet-Belgische entiteiten;
- Alle beeld- en videobestanden (wegens fiscaal irrelevant);
- Alle e-mails en andere gegevens die onder het beroepsgeheim vallen (met inbegrip van adviezen van advocaten en externe accountants);
- Alle gegevens die buiten het bestek van het fiscaal onderzoek vallen;
- Alle gegevens die persoonlijk en privé van aard zijn;
- Alle samengestelde bestanden (ZIP, RAR, PST, ...) aangezien deze bestanden eveneens gegevens bevatten die buiten de

**RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023**

onderzoeksbevoegdheden van de fiscale administratie vallen. Om deze reden werden ook deze samengestelde bestanden gefilterd (cfr. voormelde premissen) en werden enkel de fiscaal relevante gegevens aan de fiscale administratie meegedeeld.

14.

Op 18 november 2021 verzond de fiscale administratie acht boeteberichten voor een bedrag van 13.000,00 EUR, zowel inzake inkomstenbelastingen als inzake btw, aan verweerders (stuk 7 verwerende partij).

15.

Op 6 december 2021 deelden verweerders hun niet-akkoord met voormelde boeteberichten mee aan de fiscale administratie. De fiscale administratie verwijt verweerders dat zij doelbewust het fiscaal onderzoek zouden hebben willen verhinderen – met het (vermeende) opzet om belastingen te ontduiken. Verweerders betwisten dit met klem.

Bij brieven d.d. 20 januari 2022, gericht aan verweerders, stelt de fiscale administratie vervolgens dat zij geen rekening zal houden met de opmerkingen geformuleerd in het kader van het niet-akkoord met de boeteberichten d.d. 6 december 2021.

16.

Bij brief d.d. 14 februari 2022 benadrukten verweerders dat zij met “*de beweringen*” omtrent waarborgen en een beperkt onderzoek geenszins kunnen instemmen.

Tijdens de onregelmatig uitgevoerde visitatie d.d. 14 september 2021 heeft de fiscale administratie immers diverse fiscaal irrelevante stukken en documenten meegenomen (cfr. pagina's 2 t.e.m. 6 van de processen-verbaal van retentie d.d. 16 september 2021).

17.

Reeds op 16 september 2021 werd namens verweerders duidelijk een voorbehoud gemaakt bij de uitgevoerde zoeking en retentie (stuk 4 verwerende partij). Tevens werd gevraagd om de meegenomen stukken terug

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

te willen geven aan verweerders. Dit gebeurde, volgens verweerders, tot op heden — om een onduidelijke reden — niet.

18.

Volgens verweerders heeft de fiscale administratie de door haar op 14 september 2021 meegenomen documenten nog steeds niet gefilterd op aard en fiscale relevantie, noch heeft zij deze documenten terugbezorgd aan cliënten, noch laat de fiscale administratie enige intentie tot dergelijke filtering of teruggave blijken.

Deze handelswijze komt helaas bekend voor, volgens verweerders, en verklaart meteen waarom cliënten op eigen initiatief de gevraagde computerdata hebben laten filteren door het gereputeerde bedrijf I-FORCE. Op deze wijze vermijden cliënten dat een ongefilterde kopie van de integrale servers en e-mailboxen (die bulken van de fiscaal irrelevante gegevens) door de fiscale administratie zou worden meegenomen én — zoals de voormelde documentatie die buit werd gemaakt op 14 september 2021 — niet zouden worden gefilterd op hun fiscale relevantie.

IV. BEOORDELING

1. Ontvankelijkheid inzake een pre-taxatiegeschil

1.1.

Verweerders voeren redenen aan die tot de onontvankelijkheid (van het pre-taxatiegeschil) van de vordering kunnen leiden.

Zij werpen op dat eiseres geen actueel belang heeft bij de gevorderde voorlopige maatregelen. Meer in het bijzonder heeft de fiscale administratie geen belang bij het verzoeken van een volledige kopie van alle data en de volledige ICT-infrastructuur.

1.2.

Eiseres werpt op dat de belangen van verweerders niet worden geschaad door een kopienamen en verzegeling ten bewarende titel van de digitale data. Door het niet uitvoeren van deze bewarende maatregelen in de uitoefening

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

van haar onderzoeksbevoegdheden wordt eiseres gedwarsboemd omdat zij niet in staat is om de juiste belastbare grondslag te bepalen.

1.3.

De rechtbank merkt op dat het voorliggende pre-taxatiegeschil betrekking heeft op een afweging enerzijds van het algemeen maatschappelijk belang bij het uitvoeren van een fiscaal onderzoek en anderzijds van de rechten van de belastingplichtigen.

1.4.

De rechtbank is van oordeel dat eiseres wel degelijk een actueel belang heeft.

1.5.

Nu de rechtbank evenmin middelen van onontvankelijkheid, die zij ambtshalve zou moeten opwerpen, vaststelt is de vordering ontvankelijk betreffende de gevorderde maatregelen.

2. Ten gronde

Algemeen

2.1.

Het voorliggende geschil heeft betrekking op een pre-taxatiegeschil waarbij de rechtbank dient na te gaan in welke mate de fiscale administratie toegang krijgt, bij wijze van voorafgaande maatregelen, tot "alle digitale data aanwezig op de volledige ICT-infrastructuur van beide verweerdere" en deze te laten kopiëren op externe gegevensdragers en vervolgens deze onmiddellijk verzegeld ter griffie van deze rechtbank neer te leggen.

Inzake de fiscale onderzoeksbevoegdheden

2.2.

De rechtbank brengt hieronder enkele principes in herinnering inzake de fiscale onderzoeksbevoegdheden zonder een uitspraak ten gronde te doen betreffende het voorliggende geschil vermits het hier enkel een pre-

**RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023**

taxatiegeschil betreft. Deze principes zijn uiteraard een leidraad om het pre-taxatiegeschil te beslechten.

2.3.

Overeenkomstig art. 63 W.BTW, moeten de BTW-belastingplichtigen de fiscale ambtenaren, die in het bezit zijn van hun aanstellingsbewijs, op elk tijdstip en zonder voorafgaande verwittiging, vrije toegang verlenen tot de ruimten waar de activiteit wordt uitgeoefend. Op grond van dezelfde bepaling mogen die ambtenaren eveneens op elk tijdstip, zonder voorafgaande verwittiging, vrij binnentreden in alle gebouwen, werkplaatsen, Inrichtingen, lokalen of andere plaatsen die hogerstaand niet bedoeld werden en waar in het W. BTW bedoelde handelingen verricht of vermoedelijk verricht worden. Tot de particuliere woningen of bewoonde lokalen hebben zij evenwel slechts toegang tussen vijf uur 's morgens en negen uur 's avonds en uitsluitend met de machtiging van de politierechter.

Overeenkomstig artikel 319 WIB92, zijn de natuurlijke personen gehouden aan de ambtenaren van de administratie der directe belastingen, voorzien van hun aanstellingsbewijs en belast met het verrichten van een controle of een onderzoek, tijdens de uren dat er een werkzaamheid wordt uitgeoefend, vrije toegang te verlenen tot hun beroepslokalen, ten einde aan die ambtenaren de mogelijkheid te verschaffen onder meer om de aard en de belangrijkheid van bedoelde werkzaamheden vast te stellen.

2.4.

Een bevoegde ambtenaar, die belast is met een controle of onderzoek kan dus onaangekondigd een visitatie afleggen, aangezien geen enkele wettelijke bepaling hem voorschrijft dat zijn komst moet worden aangekondigd. De ambtenaar is niet verplicht zijn aanstellingsbewijs voor te leggen alvorens een controle bij te wonen.

De betrokken ambtenaar dient wel in het bezit te zijn van zijn aanstellingsbewijs. Een machtiging van de politierechter is niet nodig voor een 'bedrijfs'visitatie.

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

2.5.

Volgens het Grondwettelijk Hof gaat de fiscale visitatie inzake de inkomstenbelastingen en de BTW gepaard met voldoende waarborgen tegen misbruik. De wetgever heeft een billijk evenwicht tot stand gebracht tussen, enerzijds, de rechten van de betrokken belastingplichtigen en, anderzijds, de noodzaak om op een doeltreffende manier een controle of een onderzoek betreffende de toepassing van de inkomstenbelastingen of de belasting over de toegevoegde waarde te kunnen verrichten.

De fiscale visitatie is doelgebonden. De administratieve onderzoeksbevoegdheid, die doelgebonden is, kan enkel worden uitgeoefend met het oog op het vaststellen van de regelmatigheid van de belastingaangifte in de inkomstenbelastingen of in de BTW. Er dient geen vermoeden van fraude te zijn om een fiscale visitatie te verantwoorden.

Voor zover de finaliteit van de fiscale visitatie enkel gericht is op de juiste belastingheffing, kan de belastingplichtige zich niet beroepen op het zwijgrecht en het recht om zichzelf niet te beschuldigen teneinde te ontkomen aan zijn verplichting tot medewerking aan de visitatie (EHRM, besl. 16 juni 2015, Van Weerelt t. Nederland, § 56).

De ambtenaren die de fiscale visitatie uitvoeren, moeten evenwel in het bezit zijn van een aanstellingsbewijs, dat hen toelaat zich te legitimeren en dat zij op verzoek van de belastingplichtige moeten voorleggen (Cass., 12 september 2008, Arr. Cass., 2008, nr. 469).

Wanneer de bevoegde fiscale ambtenaren de grenzen van hun onderzoeksbevoegdheid overschrijden, maken zij zich schuldig aan machtsafwending of machtsoverschrijding, wat kan leiden tot de nietigheid van de visitatie.

Het is de bodemrechter die dient na te gaan of de voorwaarden vervat in de in het geding zijnde bepalingen zijn nageleefd en of de uitgevoerde visitatie evenredig was met het nagestreefde doel. Aldus is een effectieve rechterlijke controle van de regelmatigheid van een fiscale visitatie en het verkregen bewijs mogelijk.

**RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023**

2.6.

Het Grondwettelijk Hof stelt verder in haar arrest van 12 oktober 2017 inzake de onderzoeksbevoegdheden dat de bevoegde ambtenaren over ruime onderzoeksbevoegdheden beschikken, teneinde de verschuldigde belasting te kunnen bepalen, en het recht hebben om tijdens de visitatie na te gaan welke boeken en stukken of bescheiden zich in de lokalen bevinden en ze te onderzoeken, zonder voorafgaand om de voorlegging ervan te moeten verzoeken. Een zinvolle interpretatie van de verplichting tot medewerking vereist dat de belastingadministratie niet afhankelijk is van de keuze van de belastingplichtige om te bepalen in welke documenten hij inzage verleent en dat de belastingplichtige zijn medewerking dient te verlenen om bijvoorbeeld gesloten kasten of kluizen te openen. De in het geding zijnde bepalingen laten de bevoegde ambtenaren evenwel niet toe om de inzage van de bedoelde boeken en stukken of bescheiden eigenmachtig af te dwingen indien de belastingplichtige zich daartegen verzet.

Het Grondwettelijk Hof merkt op dat de bevoegde ambtenaren bij een fiscale visitatie niet over een algemeen, onvoorwaardelijk en onbeperkt recht van vrije toegang tot de beroepslokalen beschikken. De in het geding zijnde bepalingen vermelden de personen die ertoe gehouden zijn de belastingadministratie vrije toegang tot beroepslokalen te verlenen, zij preciseren waar, wanneer en door wie de visitatie kan worden uitgevoerd en wat het voorwerp ervan is.

Het Grondwettelijk Hof besluit dat de fiscale visitatie inzake de inkomstenbelastingen en de belasting over de toegevoegde waarde gepaard gaat met voldoende waarborgen tegen misbruik. Daardoor heeft de wetgever een billijk evenwicht tot stand gebracht tussen, enerzijds, de rechten van de betrokken belastingplichtigen en, anderzijds, de noodzaak om op een doeltreffende manier een controle of een onderzoek betreffende de toepassing van de inkomstenbelastingen of de belasting over de toegevoegde waarde te kunnen verrichten.

2.7.

“Wat de inzage in de computerbestanden betreft, hebben de bevoegde ambtenaren, teneinde de verschuldigde belasting te kunnen bepalen, het recht om tijdens de visitatie na te gaan welke elektronische bestanden zich in

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

de bedrijfslokalen bevinden en ze te onderzoeken, zonder voorafgaand om de voorlegging ervan te moeten verzoeken, net zoals het geval is voor de boeken en stukken bedoeld in het eerste lid van artikel 61, §1 W.BTW. Een zinvolle interpretatie van de verplichting tot medewerking vereist dat de belastingadministratie niet afhankelijk is van de keuze van de belastingplichtige om te bepalen in welke elektronische documenten hij inzage verleent en dat de belastingplichtige zijn medewerking dient te verlenen om toegang te verlenen tot elektronische documenten op computers. Artikel 61, §1, vierde lid W.BTW laat de bevoegde ambtenaren evenwel niet toe om de inzage van de computerbestanden eigenmachtig af te dwingen (bijvoorbeeld door toegang te nemen indien de bestanden zijn beveiligd met een paswoord), indien de belastingplichtige zich daartegen verzet (zie ook GwHof nr. 116/2017, 12 oktober 2017, te raadplegen op www.const-court.be). De appellant stelt dat de toegang tot de computerbestanden kon worden genomen zonder dat hiervoor een wachtwoord was vereist, hetgeen de geïntimeerde niet betwist. Zoals hierboven reeds vermeld, blijkt uit niets dat de belastingplichtige zich heeft verzet tegen de wijze waarop de ambtenaren toegang hebben genomen tot de elektronische bestanden of dat deze toegang werd afgedwongen ten opzichte van de geïntimeerde. Het hof stelt geen onregelmatigheid vast met betrekking tot de inzage in de computerbestanden.

Wat de kopiname betreft, vereist artikel 61, §1, vierde lid W.BTW dat het verzoek tot kopiname van de boeken, facturen en andere stukken in elektronisch formaat wordt gericht aan de belastingplichtige die in het bijzijn van de administratie en op zijn uitrusting de kopieën maakt. Niettegenstaande de administratie recht heeft op een kopie, dient de administratie hiervoor de medewerking te vragen van de belastingplichtige. Geen enkel artikel verleent aan de administratie het recht om zelf een kopie te nemen van alle computergegevens en alle data, tenzij de belastingplichtige de administratie hiervoor uitdrukkelijk toestemming geeft.”

Inzake het voorliggende pre-taxatiegeschil

2.8.

De rechtbank stelt vast dat de fiscale administratie een fiscale visitatie heeft uitgevoerd op 14 september 2021 bij verweerders, met een ploeg van 12

**RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023**

fiscale BBI-ambtenaren in het kader van een onderzoek inzake de inkomstenbelasting als inzake de btw. Zowel de artikelen 60 t.e.m. 63 W.BTW als de artikelen 315 t.e.m. 319 WIB92 zijn dan ook van toepassing.

2.9.

De fiscale administratie vraagt, bij wijze van voorafgaande maatregelen, een kopie van alle data aanwezig op de volledige ICT-infrastructuur (lokale harde schijven, server, cloud-omgeving, ...) van beide verweerders.

Verweerders verzetten zich tegen een volledige kopie van alle data en de volledige ICT-infrastructuur. De fiscale administratie tracht inzage te krijgen van alle data om onrechtmatig verkregen gegevens aan te wenden voor taxatiedoeleinden.

2.10.

De rechtbank stelt vast dat de fiscale ambtenaren bij verweerders in totaal 112 stukken, waaronder mappen en dozen, hebben meegenomen in het kader van de uitgevoerde bedrijfsvisitatie.

Verweerders werpen op dat *“Uit een niet-ondertekende lijst op papier die tijdens de visitatie werd overhandigd, begrijpen wij dat de volgende categorieën documenten (op papieren drager) in retentie werden genomen;*

- *Documenten die vallen onder het beroepsgeheim van de advocaat of het beroepsgeheim van de gecertificeerde belastingadviseur; en/of*
- *Documenten die dateren van vóór de onderzochte belastbare tijdperken; en/of*
- *Documenten van louter private aard; en/of*
- *Documenten die geen verband houden met de onderzochte vennootschappen.”*

2.11.

Bij de uitvoering van de eerste fiscale visitatie werd uiteindelijk geen enkel digitaal bestand voorgelegd en werd de fiscale administratie belet om ook maar enig digitaal bestand in te zien en/of te kopiëren.

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

Bij een tweede aangekondigd bezoek ter plaatse stelde de fiscale administratie voor een filtering van de digitale data door haar ICT-ambtenaren te laten verrichten onder toezicht en in het bijzijn van de verweerders en/of een externe firma. Dit voorstel werd door verweerders, met tussenkomst van hun raadslieden, van de hand gewezen.

Op 18 oktober en op 10 december 2021 verstrekten verweerders drie gegevensdragers met telkens delen van de vooraf door de firma I-Force gefilterde data. De raadslieden van verweerders deelden bovendien mee dat bepaalde data niet zouden verstrekt worden. Zo weigerden verweerders om alle data op te leveren in verband met de buitenlandse entiteiten, zowel buiten als binnen de 3-jarige onderzoekstermijn.

2.12.

Verder stelt de rechtbank vast dat verweerders blijkbaar verschillende data hebben afgesplitst van de overgemaakte data (filters) (cfr. begeleidend schrijven bij overdracht gegevens d.d. 18 oktober 2021):

- Alle data van voor 1 september 2018 en na 14 september 2021 (d.i. het ogenblik van de eerste visitatie op de maatschappelijke zetel van verweerders);
- Alle data met betrekking tot niet-Belgische entiteiten;
- Alle beeld- en videobestanden (wegens fiscaal irrelevant);
- Alle e-mails en andere gegevens die blijkbaar onder het beroepsgeheim vallen (met inbegrip van adviezen van advocaten en externe accountants);
- Alle gegevens die buiten het bestek van het fiscaal onderzoek vallen;
- Alle gegevens die persoonlijk en privé van aard zijn;
- Alle samengestelde bestanden (ZIP, RAR, PST, ...) aangezien deze bestanden eveneens gegevens bevatten die buiten de onderzoeksbevoegdheden van de fiscale administratie vallen. Om deze reden werden ook deze samengestelde bestanden gefilterd (cfr. voormelde premissen) en werden enkel de fiscaal relevante gegevens aan de fiscale administratie meegedeeld.

Er vond een totale overdracht van gegevens plaats voor een omvang van omstreeks 83,4 GB.

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

2.13.

De rechtbank is van oordeel dat een kopiname van alle data en de volledige ICT-infrastructuur, hetgeen dan ook zou betekenen dat fiscaal irrelevante gegevens alsook gegevens die zich waarschijnlijk in de privé sfeer situeren, zonder de uitdrukkelijke toestemming van verweerders niet kunnen overgemaakt worden overeenkomstig artikel 61, §1, vierde lid W.BTW. Het is immers niet ondenkbaar dat anno 2022 werknemers privégegevens en privécorrespondentie ook op hun bedrijfscomputer raadplegen. Ook kunnen er gegevens van derden voorkomen die zonder hun toestemming worden overgedragen aan de fiscale administratie. Des te meer daar het beroepsgeheim van de beëdigde fiscale ambtenaren van de BBI geen afdoende garantie biedt dat de vertrouwelijkheid van de documenten wordt gewaarborgd.

De rechtbank merkt op dat bij een kopiname van alle data en de volledige ICT-infrastructuur, vertrouwelijke informatie rechtstreeks dan wel onrechtstreeks kan worden gebruikt om nieuwe informatie of nieuwe bewijsmiddelen te verkrijgen. Daarnaast kan de schade die de betrokken belastingplichtige lijdt doordat door de vertrouwelijkheid beschermde informatie bij derden bekend wordt, niet worden hersteld.

Het fiscaal onderzoek — in het kader waarvan de fiscale administratie een kopie vraagt van alle gegevens — betreft bovendien een verdoken 'fishing expedition' die wettelijk niet verenigbaar is met de wettelijk toegekende fiscale onderzoeksbevoegdheden. Dergelijke voorafgaande maatregelen zijn volstrekt disproportioneel in het kader van een fiscaal onderzoek. Een fiscaal onderzoek biedt nu immers niet dezelfde waarborgen als een fiscaal 'strafonderzoek'.

Inzake de uitvoerbaarheid bij voorraad

2.14.

Hoewel de uitvoerbaarheid bij voorraad van gerechtelijke uitspraken sinds de wet van 19 oktober 2015 (Potpourri I) de regel is geworden, bepaalt artikel 1397 Ger.W. sinds die wet nog steeds dat deze regel geldt, behoudens de uitzonderingen die de wet bepaalt. Ingevolge artikel 377 WIB92 schorsen de termijnen van verzet, hoger beroep en cassatie, alsook het verzet, het hoger

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023

beroep en de voorziening in cassatie de tenuitvoerlegging van de gerechtelijke beslissing. Eenzelfde regeling is voorzien in artikel 92bis WBTW.

Gelet op deze afwijkingen van artikel 1397 Ger.W., voorzien in de fiscale wetgeving, kan onderhavig vonnis niet uitvoerbaar bij voorraad worden verklaard.

Besluit

2.15.

De rechtbank besluit, op grond van de hierboven gedane vaststellingen en overwegingen, dat op de vordering betreffende voorafgaande maatregelen tot "alle digitale data aanwezig op de volledige ICT-infrastructuur van beide verweerders" en deze te laten kopiëren op externe gegevensdragers en vervolgens deze onmiddellijk verzegeld ter griffie van deze rechtbank neer te leggen, niet kan worden ingegaan.

Alle meeromvattende en strijdige conclusies te verwerpen als niet ter zake dienend.

De vordering van eiseres is ongegrond.

V. GERECHTSKOSTEN - RECHTSPLEGINGSVERGOEDING

Aangezien dit vonnis geen eindvonnis is, worden de gerechtskosten aangehouden.

**OM DEZE REDENEN,
BESLIST DEZE RECHTBANK, recht doende op tegenspraak,**

met inachtneming van de artikelen 2 en 37 van de wet van 15 juni 1935 op het taalgebruik in gerechtszaken:

RECHTBANK VAN EERSTE AANLEG OOST-VLAANDEREN,
afdeling GENT
FISCAAL – ZESDE BURGERLIJKE KAMER
OPENBARE TERECHTZITTING VAN 20 FEBRUARI 2023


- alle meeromvattende en strijdige conclusies te verwerpen als niet ter zake dienend;
- de vordering van eiseres ontvankelijk en ongegrond te verklaren;
- de zaak voor het overige naar de bijzondere rol te verzenden;
- de beslissing omtrent de kosten van het geding aan te houden.

Aldus gewezen en uitgesproken in openbare terechtzitting door de zesde **burgerlijke kamer** van de rechtbank van eerste aanleg Oost-Vlaanderen, afdeling Gent, op maandag **20 februari 2023**, waar aanwezig waren :

- Thierry Loquet, rechter, voorzitter van deze kamer,
- Twiggy De Zutter, griffier.



T. DE ZUTTER



T. LOQUET