



## Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Roxana Bos, Partner at *Ernst & Young Belastingadviseurs LLP* and Paul Halprin, Partner at *Halprin Law*, both OPTR National Reporters of The Netherlands.

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 fulfillment 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.

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

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## Reporters' info

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## Questionnaire 1 - Country Practice

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. For assertive questions, please answer with "yes" or "no" by clicking on the corresponding button.
3. For questions that require you to specify a period of time (namely, Q. 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](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of  
your country's legislation regarding this matter. Technically accurate translations of such material into  
English, if possible, would be very appreciated. Thank you.

Yes

No

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

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

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 <sup>\*</sup> et repete)?

Yes

No

50. If yes, are there exceptions recognised where the taxpayer does not need to pay before <sup>\*</sup> 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? <sup>\*</sup>

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 <sup>\*</sup> 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? <sup>\*</sup>

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? <sup>\*</sup>

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

Yes

No

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

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

- 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

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

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

Taxpayers can request to get access to their personal tax file held by the tax authorities. As of 31 December 2025, if the tax authorities decline to give this access, the taxpayer will have a right to appeal to this decision. This law is enacted per 2023 and will enter into effect later.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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

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

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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Yes

No

## Area 3 - Confidentiality

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

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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 <sup>\*</sup> 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](mailto:optr@ibfd.org). Thank you.

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14 (MS). Audit data access periodically to identify cases of unauthorised access. <sup>\*</sup>

- No changes
- Shifted away
- Shifted towards

#### 14 (S). Summary of relevant facts in 2023

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#### 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

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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

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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

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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

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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

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

Taxpayers can request to get access to their personal tax file held by the tax authorities. As of 31 December 2025, if the tax authorities decline to give this access, the taxpayer will have a right to appeal to this decision. Shift Towards in 2025, not in 2023.

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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](mailto:optr@ibfd.org). Thank you.

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

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

- No changes
- Shifted away
- 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](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away
- Shifted towards

23 (S). Summary of relevant facts in 2023

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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](mailto: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

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- Yes
- No



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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](mailto:optr@ibfd.org). Thank you.

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26 (MS). In application of proportionality, tax authorities may only request for information that <sup>\*</sup> 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](mailto:optr@ibfd.org). Thank you.

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27 (BP). In application of ne bis in idem the taxpayer should only receive one audit per <sup>\*</sup> 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

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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### 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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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### 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

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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Yes

No

### Area 5 - More intensive audits

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

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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 <sup>\*</sup> 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](mailto:optr@ibfd.org). Thank you.

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44 (BP). Access to bank information should require judicial authorisation. <sup>\*</sup>

- 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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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Yes

No

### Area 6 - Reviews and appeals

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

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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

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### 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

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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

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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

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

- No changes
- Shifted away
- Shifted towards

### 57 (S). Summary of relevant facts in 2023

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Yes

No

### Area 7 - Criminal and administrative sanctions

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

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](mailto:optr@ibfd.org). Thank you.

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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

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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Yes

No

## Area 8 - Enforcement of taxes

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

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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### 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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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

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- No changes
- Shifted away
- Shifted towards



## 66 (S). Summary of relevant facts in 2023

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Yes

No

## Area 9 - Cross-border situations

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

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](mailto:optr@ibfd.org). Thank you.

The Dutch State Secretary of Finance published a letter in 2023 stating that, irrespective of the developments in EU Case Law, the Dutch authorities do not see a reason to change the legislation at this point (i.e., no/little participation by taxpayers involved).

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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### 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](mailto:optr@ibfd.org). Thank you.

As of 2023, a provision has been introduced in formal Dutch tax law that provides taxpayers with the possibility to object/appeal against a refusal to commence a MAP.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org))

an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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- Yes
- No

Area 11 - Revenue practice and guidance

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org))  
an annex with the actual wording of relevant excerpts of your country's

legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

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](mailto:optr@ibfd.org). Thank you.

As of March 30, 2023, official opinions of the tax authority's knowledge groups (which are binding for inspectors since they qualify as 'policy statements') are published automatically on a publicly available website.

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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Yes

No

## Area 12 - Institutional framework for protecting taxpayers' rights

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

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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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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](mailto:optr@ibfd.org). Thank you.

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## **OPTR - 2023 Questionnaire 2 - question 5 and 21**

When the Tax Plan 2024 was adapted, which was enacted as law by the Dutch parliament in December 2023, it was decided that as of 1 January 2025, taxpayers will be allowed to submit a request to access their personal tax file, and if this request is rejected, this decision will be subject to appeal, thus providing a low-threshold legal remedy.

Please find below a translated version of the adoption to the Tax Plan 2024 (Kst. 36 418, nr. 110)

### **“Note**

This amendment regulates a right for a taxpayer or withholding agent to request access to his tax file. It provides that further rules will be laid down by order in council. These include the manner in which access is granted. Furthermore, the possibility has been included to regulate by order in council the situations in which such a request can be (partially) refused. One example is the situation in which access to (certain data in) the tax file would frustrate an enforcement or investigation interest. For such an order in council this amendment regulates a preliminary procedure, so that both chambers of the States General can influence it. Furthermore, this amendment regulates that a decision on a request for access is an objectionable decision, so that it is open to objection and appeal. Finally, through the amendment of Section 67(2)(c) AWR, it is provided that the tax secrecy obligation does not apply with respect to the granting of access pursuant to the proposed right of inspection and therefore does not constitute an obstacle to the exercise of this right of inspection.

The FSV, ethnic profiling and the "1043 project" have, in the opinion of the undersigned, made it clear that there is a great need for adequate legal protection of citizens and businesses against the actions of the Tax Administration. The right of access to one's own tax file, for example, is crucial for taxpayers to be able to find out whether the Tax Administration has violated a fundamental right, such as the prohibition on discrimination based on origin, sexual orientation or religious beliefs.<sup>1</sup> Taxpayers' tax files include tax assessments, interview reports (e.g., a hearing), tax audits, exchanges of tax data with other countries or agencies, and data stored in IT systems for fraud detection/risk identification.

The proposed objection and appeal mechanism ensures that the proposed right to access one's own tax file is not a dead letter in practice. Furthermore, the amendment enables the review of the decision on the inspection request against the principles of good administration by the tax administrative court.

### **Effective date**

The proposed right of access to the complete tax file and the possibility of objection and appeal against a decision on a request for access will enter into force as of December 31, 2025 or at an earlier time to be determined by Royal Decree. Specifically, this means that taxpayers can file objections and appeals against a decision made by the Minister of Finance on or after the effective date on a request for inspection.”

DISCLAIMER: This document has been translated from Dutch to English using a translate tool.

## Legal protection in the WIB

### 1. Reason

On April 1, 2021, my predecessor informed the Senate of the consequences of the Court of Justice of the European Union (CJEU) judgment of October 6, <sup>2020</sup><sup>1</sup> (hereinafter, the judgment of October 6, 2020) from the point of view of legal protection.<sup>2</sup> I hereby share the results of that study.

### 2. Scope of research

Central to this study is the question of whether legal protection in the Law on International Assistance in Taxation (WIB) is sufficiently guaranteed, also in light of the CJEU ruling of October 6, 2020, and whether a distinction in legal protection when providing information to another EU member state or to a third country is justified and desirable.

The Oct. 6, 2020 judgment concerns the exchange of information in the context of mutual assistance in the collection of taxes. In that judgment, the CJEU ruled, in brief, that a possessor of information to whom an information exchange order is addressed must have the opportunity to appeal directly against such an order. In the announcement of the inquiry, it was stated that the position of the taxpayer himself would not be considered in this inquiry, in part because the CJEU has held that the taxpayer with respect to whom an information request is received from abroad has a legal remedy in the state in which the tax assessment is made.<sup>3</sup> Some authors have reacted to this disappointingly in the literature.<sup>4</sup> Partly in view of a ruling by the Administrative Law Division of the Council of State (ABRvS)<sup>5</sup>, which I will discuss in more detail in section 5.3, I will discuss the position of the taxpayer in this study despite the earlier announcement. For the sake of completeness, I also consider the position of third parties.

### 3. The method of providing information

The WIB distinguishes three modes of providing information: upon request, automatically and spontaneously.

#### 3.1 Automatic exchange

In the case of automatic exchange, a directive, treaty or law specifically defines the information to be provided.<sup>6</sup> For this category, the proportionality of information exchange is tested at the <sup>directive-7</sup>, treaty and legislative levels. To this extent, the Directive leaves no discretion to Member States. In the past, the so-called "pre-notification" was only sent prior to provision of information upon request or spontaneously (see section 4.1 below).

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<sup>1</sup> ECJ EU 6 October 2020, C-245/19 and C-246/19, ECLI: EU:C:2020:795.

<sup>2</sup> Parliamentary Papers I 2020/21, 25 087, no. P.

<sup>3</sup> Parliamentary Papers I 2020/21, 25 087, no. P.

<sup>4</sup> W. Buoy, "Legal protection in tax international data exchange anno 2021," *WFR* 2021/114 and L.M. Hendriks and J.J. van Dam, "Recent developments in EU data exchange and implications for the Netherlands," *NLF-W* 2021/17.

<sup>5</sup> ABRvS Feb. 12, 2020, ECLI:NL:RVS:2020:453.

<sup>6</sup> There is also automatic exchange on the basis of a (bilateral) Memorandum of Understanding with some countries. The basis of this is the Directive or a treaty.

<sup>7</sup> In the creation of the directive. A directive does not have direct effect in the national legal order, but must be transposed into national law.

### 3.2 Exchange on request

Information will be shared at the request of another State if that information is expected to be relevant to the administration and enforcement of the domestic laws of the requesting State relating to the levy of taxes falling within the scope of mutual assistance. The test of whether this is the case is carried out by the competent authority in the State providing the information (in the Netherlands: the Belastingdienst/Central Liaison Office). As of January 1, 2023, Article 5bis(1) of the ITC stipulates that information is foreseeably relevant "if the competent authority of a requesting State is of the opinion, at the time of the request, that there is a reasonable possibility under its domestic law that the information requested will be relevant to the tax affairs of one or more taxpayers, identified by name or otherwise, and the request is justified for the purposes of the investigation." To demonstrate the anticipated relevance of the information requested, the requesting State must provide information, which are listed in paragraphs two and three of that article.

In addition, the exhaustion principle must be met in order to exchange information upon request. The exhaustion principle forces states to have exhausted all customary avenues of obtaining the information before an intelligence request can be made to another state.<sup>8</sup>

### 3.3 Spontaneous exchange

In the case of spontaneous provision of information, it must be assessed before exchange whether the information may be provided in the specific case. Indeed, information can only be spontaneously provided to another (Member) State in cases in which (a) it is suspected that in the (Member) State of the competent authority a reduction, exemption, refund or exemption from tax would be wrongly granted or the levying of tax would be wrongly omitted if the information had not been provided; (b) a reduction, exemption, refund or exemption from tax has been granted in the Netherlands which may affect the levying of tax in the (Member) State of that competent authority; (c) legal or other acts have been performed in the Netherlands with the aim of rendering the levying of tax in the (Member) State of the competent authority wholly or partly impossible; or (d) this is otherwise appropriate in the opinion of Our Minister.<sup>9</sup>

The ITC contains a basis by which, by order in council (Algemene maatregel van bestuur, AMvB), it is possible to designate administration agents and taxpayers who are obliged to provide data and information of their own accord.<sup>10</sup> This has been implemented with the Uitvoeringsbesluit internationale bijstandsverlening bij de heffing van belastingen (Uitvoeringsbesluit internationale bijstandsverlening bij de heffing van belastingen).<sup>11</sup> This decree stipulates, among other things, that the taxpayer who does not meet the requirements for being a taxpayer in the Netherlands must provide information of his own accord.<sup>12</sup> The Netherlands then provides this data and information "spontaneously" to another (member) state.

## 4. Notification procedure

### 4.1 Abolition of advance notice

Until January 1, 2014, prior to the provision of information upon request or spontaneously, a notification was sent to the person who provided the information (pre-notification), provided that the person resided or was established in the Netherlands. This notification was also sent if the tax authority already had the information in its possession and therefore did not need to conduct an investigation within the meaning of Article 8 of the ITC to obtain the required information. The information was sent during

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<sup>8</sup> See Article 14, paragraph 2, introductory sentence and letter c, WIB.

<sup>9</sup> Article 7 WIB.

<sup>10</sup> Article 8, paragraphs 4 and 5, WIB.

<sup>11</sup> See Articles 2, 2a and 3a.

<sup>12</sup> Article 3a.

ten days unless there were compelling reasons to do so already.<sup>13</sup> During that time, the information provider could object and ask the interim relief judge to suspend the exchange. The objection usually took the position that the requesting (member) state had not exhausted all the usual avenues or that the information requested was not relevant to taxation. The information was not shared with the requesting (member) state until a ruling was issued by the preliminary injunction court. Sometimes the judge ruled that the ruling on the objection should be awaited and sometimes an appeal followed. In such cases, it was often not possible to exchange the requested information within the applicable time limits. These deadlines<sup>14</sup> are laid down in the European Directive,<sup>15</sup> which the Netherlands has to comply with. Failure to meet these deadlines can result in the European Commission initiating infringement proceedings. Deadlines within which information must be exchanged have also been agreed in non-EU situations.<sup>16</sup>

The reason for abolishing the advance notification was that sending the advance notification does not derive from a European directive or treaty and it was concluded that sufficient safeguards exist in all countries with which the Netherlands exchanges intelligence that ensure the confidentiality of the data exchanged.<sup>17</sup>

Moreover, EU law also does not grant the taxpayer the right to be informed of the request for assistance addressed by a Member State to another Member State, nor the right to participate in the formulation of the request addressed to the requested Member State, nor the right to participate in witness hearings organized by the latter, according to the CJEU.<sup>18</sup> Article 8 ECHR also does not require advance notice.<sup>19</sup>

#### 4.2 Legal protection since 2014

If the Netherlands is requested by another (member) state to provide information, two phases can be distinguished in the context of its obligation to provide information, namely the phase of information gathering and information exchange. An assessment can then be imposed abroad.

##### 4.2.1 Tax authorities already have requested information

If the Tax Administration already possesses the information to be exchanged upon request, automatically or spontaneously on other grounds, and therefore does not need to initiate an investigation or gather new information, no legal recourse is available to the taxpayer under the ITC. Whether objection is possible to the (national) information collection that precedes the exchange depends on the specific tax law in which the basis for information collection is laid down. In many cases this is not the case. An exception is made if the inspector in a national procedure wants to reverse and aggravate the burden of proof regarding an assessment to be imposed if the request to provide data and information is not complied with.<sup>20</sup> The inspector must then impose an information decision,

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<sup>13</sup> Article 5, third paragraph, CIS (old). Information was also provided before notification if the information was collected in the presence of an official of a requesting State (Article 9, paragraph 4, CIR (old)).

<sup>14</sup> DAC7 provides that requested information must be provided "as soon as possible, but not later than three months from the date of receipt of the request" (Article 1, fourth paragraph, Directive 2021/514 amending Article 7, first paragraph, Directive 2011/16/EU). That provision was transposed into Article 5a, first paragraph, of the ITC as of January 1, 2023.

<sup>15</sup> Council Directive 2011/16/EU of February 15, 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011, L 64).

<sup>16</sup> For the exchange of information on request, pursuant to paragraphs 10.4 and 10.5 of the OECD Commentary on Article 26 OECD Model Convention, a period of two months applies if the information is already in the possession of the Tax Administration and a period of up to six months if it is not. Following this, the OECD Global Forum has set the 90-day time limit in the Terms of Reference. This means that countries are assessed in the peer review for responding to requests within the ninety-day period.

<sup>17</sup> Parliamentary Papers II 2013/14, 33 753, no. 3, p. 10-11 and Parliamentary Papers II 2021/22, 36 063, no. 3, p. 20.

<sup>18</sup> ECJ EU 22 October 2013, C-276/12 (*Sabou*), para. 46.

<sup>19</sup> ECHR 16 June 2015, No. 75292/10 (*Othymia Investments BV v. the Netherlands*), ECLI:CE:ECHR:2015:0616DEC007529210, para. 44.

<sup>20</sup> Section 52a in conjunction with Section 47 AWR.

allowing the taxpayer to have the legality of that request reviewed by a judge before facing the consequence (the reversal and aggravation of the burden of proof). Although the provision laying down the information decision procedure falls under the section declared applicable by analogy in Article 8(3) of the Income Tax Code, there is no obligation to impose such a decision in the context of a WIB investigation.<sup>21</sup> This is because this provision of the Algemene wet inzake rijksbelastingen (hereinafter: AWR) concerns a so-called 'may provision'. The information requested in the context of an investigation as referred to in Section 8 of the WIB is not requested for the purpose of the imposition of an assessment by the Netherlands. The imposition of an information decision is therefore also not obvious.

#### 4.2.2 Tax authorities do not yet have requested information

If the Tax and Customs Administration does not already possess the information to be exchanged upon request, automatically or spontaneously on other grounds, an investigation is initiated - whether or not at the request of the requesting state.<sup>22</sup> In principle, neither the announcement of an investigation nor the investigation itself can be appealed.<sup>23</sup> A taxpayer information holder<sup>24</sup> can appeal to the administrative court against the legal opinion that he does not meet the requirements for being a taxpayer in the Netherlands (see section 5.3 below). In other cases, the information holder to whom an information order is addressed has recourse to the civil court - as a residual judge. The information holder can ask the civil court to grant an injunction so that the information does not have to be submitted, or the information holder can ask the court to prohibit the Tax and Customs Administration from exchanging the information with foreign countries.

#### 4.2.3 Post intelligence exchange phase

A taxpayer can in principle<sup>25</sup> submit the lawfulness of the provision of information to a court in (assessment) proceedings in the requesting state.<sup>26</sup> In the Netherlands, he has the right to access information provided.<sup>27</sup> If information has been exchanged and this is subsequently found to be unlawful, damages can be claimed in the civil court for unlawful government action.

Finally, under circumstances the inspector may, upon request, issue a cost reimbursement decision after information has been provided. This follows from Section 8(3) of the ITC, in which Chapter VIII, Section 2 of the AWR is declared applicable mutatis mutandis.<sup>28</sup> This means that if an information holder was obliged to provide information in the context of an investigation as referred to in Section 8(1) of the ITC, but is of the opinion that this obligation was imposed unlawfully, he may request reimbursement of costs directly related to this compliance. The inspector shall decide on such request by order open to appeal and shall award reasonable reimbursement of costs in the event of an obligation imposed unlawfully.<sup>29</sup>

<sup>21</sup> Otherwise M.E. Kiers and M. Ruigrok, "Recommendations for improved legal protection in international data exchange," *Tfb* 2018/4, para. 4.

<sup>22</sup> Article 8, paragraph 1, WIB.

<sup>23</sup> Article 8(6) WIB. See also ABRvS 15 July 2009, ECLI:NL:RVS:2009:BJ2662, in which the ABRvS ruled that an announcement of an investigation within the meaning of Article 8 WIB is not aimed at any legal effect as referred to in Article 1:3 Awb. The announcement was therefore not equated with a decision.

<sup>24</sup> "Information holder" means the person who holds information relevant to the exchange. This can be the taxpayer, but also a third party (for example, a service provider, such as a bank). In the latter case, it is referred to as a third-party information holder.

<sup>25</sup> This is more nuanced in the case at issue in ABRvS February 12, 2020, ECLI:NL:RVS:2020:453 (see section 5.3 below).

<sup>26</sup> See ECJ EU Oct. 6, 2020, C-245/19 and C-246/19, ECLI: EU:C:2020:795, paras. 81-83.

<sup>27</sup> See Parliamentary Papers II 2014/15, 34 276, no. 3, p. 18.

<sup>28</sup> Article 8, paragraph 3, WIB reads, "In the investigation referred to in paragraph 1, the provisions of Chapter VIII, Section 2, with the exception of Article 53, paragraphs 2 and 3, of the Algemene wet inzake rijksbelastingen shall apply mutatis mutandis." Sections 52(7) and 53(5) of the AWR lay down these regulations.

<sup>29</sup> Pursuant to this declaration of analogous application of certain provisions of the AWR in Section 8(3) WIB, the cost reimbursement decision cannot, strictly speaking, be issued in respect of all requests for information. The expression "*applies by analogy*" is used

The legal protection afforded by the cost reimbursement decision is essentially the same as the legal protection afforded by a posteriori notification. The difference is that a cost reimbursement decision is a decision on application. A subsequent decision, i.e. after the information exchange, has the advantage that the information holder has access to the administrative court and that the information can, in principle, be exchanged within the stipulated period. A cost reimbursement order can be used to provoke a decision of principle by the administrative judge on information exchange, which contributes to the development of the law. To date, however, this has not been used. It is unclear whether this is because information holders are unfamiliar with this possibility or whether there is another cause.

#### 4.3 *Notification procedures other countries*

A few countries do still have a notification procedure. An example is Switzerland, which sends an advance notice to the taxpayer in the country where the request originates. The taxpayer can then appeal directly. In exceptional cases, not an advance notice is sent, but a notification afterwards. Liechtenstein has a similar procedure. Another example is Luxembourg. Luxembourg informs the information holder, who can then appeal within two weeks. An agreement has been made with the court that an appeal will be heard within 14 days. The exchange times can therefore still be met.

### 5. Stakeholders

Not only the taxpayer is an interested party in information exchange. In fact, the information holder need not be the taxpayer. In that case we speak of a third party information holder. A third party information holder could include banks and financial institutions. It is also conceivable that there are third party information holders who are neither taxpayers nor information holders. These might, for example, be legal entities with which the taxpayer under investigation maintains or may maintain legal, banking, financial or, more generally, economic ties.<sup>30</sup> The legal protection to which a third-party information holder, taxpayer non-informant, taxpayer information holder and third party are entitled in the context of the collection and exchange of information will be discussed in turn below.

#### 5.1 *Third-information holder*

The CJEU ruled in the Oct. 6, 2020 judgment that the information holder to whom an intelligence order is addressed should have the possibility to directly appeal the order to provide information. This procedure concerned exchange of information upon request. It is logical that this rule of law should in any case also apply when it concerns the spontaneous exchange of information.

The CJEU ruled in its judgment of November 25, 2021 that if a fine has been imposed on the person in possession of information for non-compliance with a final order and that order is not subject to appeal in the requested Member State, he must have the possibility, after the legality of the order has been established, of complying with the order within the period initially provided for by national law to that effect without incurring a penalty.<sup>31</sup> A remedy must therefore be provided if the order itself is not appealable and a fine has been imposed.

Thus, based on this case law, I conclude that an intelligence order need not be appealable, as long as the information holder has the option, if he is fined

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if the provision referred to cannot be applied entirely literally (instruction 3.32 of the Instructions for Regulations). Therefore, a translation to the WIB must be made. In the context of the WIB, the scope of application of the cost reimbursement decision should not be interpreted restrictively.

<sup>30</sup> See CJEU Oct. 6, 2020, C-245/19 and C-246/19, para. 94.

<sup>31</sup> CJEU Nov. 25, 2021, C-437/19, para. 99.

imposed for non-compliance with that order, (i) question the legality of that order and (ii) comply with it if the legality of the order is established. I see no reason to distinguish between intelligence gathering for the purpose of exchange to other member states and third states with respect to the degree of legal protection. At present, information holders to whom an intelligence order is addressed also have the possibility of a civil remedy, with the possibility of applying for an injunction not to exchange the submitted information with foreign countries. Thus, in my judgment, an effective remedy exists in the courts.

## 5.2 Taxable non-information holder

The taxpayer has legal recourse in the state to which the information has been provided if that state imposes a tax assessment on him. In proceedings against that assessment, the taxpayer may raise the legality of the information exchange. Therefore, it can be excluded that the taxpayer under investigation can directly appeal an order to provide information. This follows from the judgment of

October 6, 2020. According to the CJEU, this is appropriate and necessary for the achievement of the objective pursued by Directive 2011/16/EU<sup>32</sup> of combating international tax fraud and evasion, given the deadlines that must be respected in order to ensure the effectiveness and rapidity of the information exchange procedure that gives concrete expression to that objective and the possibility of legal action. Nor is such an arrangement disproportionate.<sup>33</sup> Indeed, the situation of the taxpayer differs from that of the information holder. The taxpayer in question is not the addressee of an information order and is thus not subject to any legal obligation arising from that order, nor - consequently - to the risk of a penalty being imposed on him in the event of non-compliance. Thus, the judgment of October 6, 2020 does not give rise to any adjustment to the ITC as regards the legal status of the taxpayer who is not an information holder in the event of information gathering and exchange. I see no reason to deviate from this with respect to the exchange of information to non-member states. This is without prejudice to the fact that the taxpayer can also turn to the civil courts as a rest judge.<sup>34</sup> It should be noted, however, that the taxpayer will not always be aware that an information request has been made by another state. As I wrote in section 4.1, Union law does not grant the taxpayer the right to be informed of the request for assistance made by one state to another.<sup>35</sup>

## 5.3 Taxable information holder

In very exceptional situations, however, a taxpayer can challenge the basis for the exchange of information before the Dutch administrative court. Indeed, the ABRvS has ruled that legal recourse must be available to challenge the legal opinion that the interested party does not meet the requirements for the presence of a taxpayer in the Netherlands.<sup>36</sup> The consequence of this qualification is that the taxpayer is obliged to provide certain data and information.<sup>37</sup> The Netherlands then 'spontaneously' provides this data and information to another (member) state. The letter informing the interested party that she did not meet the requirements for being a taxpayer in the Netherlands was regarded by the ABRvS as an administrative legal judgment<sup>38</sup> and, for the sake of legal protection, equated with a decision within the meaning of the Awb. According to the ABRvS, this was a very exceptional situation. To that judgment

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<sup>32</sup> Council Directive 2011/16/EU of February 15, 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011, L 64).

<sup>33</sup> ECJ EU Oct. 6, 2020, C-245/19 and C-246/19, paras. 85-92.

<sup>34</sup> See, for example, Court of The Hague December 8, 2021, ECLI:NL:RBDHA:2021:13503.

<sup>35</sup> ECJ EU 22 October 2013, C-276/12 (*Sabou*), para. 46.

<sup>36</sup> ABRvS Feb. 12, 2020, ECLI:NL:RVS:2020:453.

<sup>37</sup> Article 8, fifth paragraph, WIB in conjunction with Article 3a, fourth and seventh paragraphs, WIB Implementation Decree.

<sup>38</sup> An administrative law judgment is a "written opinion of an administrative body charged with implementing or enforcing certain legal rules on the validity and meaning of those rules in a case submitted to it" (M. Schreuder-Vlasblom, *Legal Protection and Administrative Pre-Procedure*, 6th edition, § 2.1.1.4, p. 179).



was based on the premise that the taxpayer must either refuse to provide the information, thereby allowing the request for information to be reviewed by a court in penalty proceedings, or the information must be provided and the interested party must wait to see if a foreign authority takes a decision based on it, such as the imposition of a tax assessment. In the latter case, an interested party can appeal against the tax assessment in the requesting Member State, but in the ABRvS' view it is insufficiently certain whether a foreign court can and will accede to an assessment of legal judgments based on Dutch law in proceedings against that decision. Against this background, the ABRvS came to the opinion that it is disproportionately onerous for the interested party if she cannot appeal in the Netherlands against the legal judgment contained in the letter.

It does not follow from the October 6, 2020 ruling whether the CJEU distinguishes between a taxable information holder (as referred to above) and a taxable non-information holder (see section 5.2) and whether or not it grants the taxpayer information holder the same rights as the information holder. The CJEU ruled that "such a taxpayer need not be in a situation of illegality<sup>39</sup> in order to be able to exercise his right to an effective remedy." <sup>40</sup> By "such a taxpayer," the CJEU refers, from my reading, to a taxpayer non-information holder. Indeed, a taxable information holder can - at least under the ITC - be fined for non-compliance with an information order just like a third-party information holder. The supporting considerations of the CJEU for the opinion that an information holder should be able to appeal directly against such an order therefore also apply to the taxable information holder. I believe that in other cases the taxable information holder is entitled to the same legal protection as the third-party information holder (see section 5.1 above).<sup>41</sup>

#### 5.4 Third non-information holder

The third non-information holder is neither the taxpayer nor the standard addressee of an information injunction.<sup>42</sup> This third party is therefore not subject to any legal obligation arising from that injunction, nor - consequently - to the risk of a penalty being imposed on him in case of non-compliance. The CJEU has ruled that third parties are entitled to an effective remedy in the event of an information injunction that could violate their right to protection against arbitrary or disproportionate interference by public authority in their private sphere.<sup>43</sup> However, the right to an effective remedy does not require that litigants such as third parties should still have the possibility - as a third-party interested party - to directly challenge the information injunction.<sup>44</sup>

The CJEU explained in the Oct. 6, 2020 judgment that it follows from its case law that there is effective judicial protection for third parties if (i) the litigant has the possibility of bringing legal proceedings to establish that the rights guaranteed to him by Union law have been violated, and (ii) he can obtain compensation for damage suffered as a result of that violation, provided that (iii) the court seised has the possibility of reviewing the act or measure underlying that violation.<sup>45</sup>

At present, the third non-information holder already has recourse to the civil courts. The civil court can award damages, for example, because of a

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<sup>39</sup> Footnote MoR: By "a situation of illegality," the CJEU means that "he violates a rule or a legal obligation and thus exposes himself to the penalty attached to that violation" (para. 66).

<sup>40</sup> CJEU Oct. 6, 2020, C-245/19 and C-246/19, para. 80.

<sup>41</sup> Cf. L.M. Hendriks and J.J. van Dan, "Recent developments in data exchange within the EU and implications for the Netherlands," *NLF-W* 2021/17.

<sup>42</sup> See paragraph 5, first paragraph.

<sup>43</sup> CJEU Oct. 6, 2020, C-245/19 and C-246/19, paras. 96-97.

<sup>44</sup> ECJ EU Oct. 6, 2020, C-245/19 and C-246/19, para. 102.

<sup>45</sup> ECJ EU Oct. 6, 2020, C-245/19 and C-246/19, para. 101.

wrongful government action by having information pertaining to that third party exchanged inappropriately.

## 6. Conclusion

EU Member States are obliged to provide the necessary remedies to ensure effective judicial protection in the areas covered by Union law.<sup>46</sup> That effective remedy means that the court possibly seized shall have jurisdiction to examine all questions of law and fact relevant to the resolution of that dispute and to verify that the evidence on which that act relies has not been obtained or used in violation of the rights and freedoms of the person concerned as guaranteed by Union law.<sup>47</sup>

I conclude that interested parties in an investigation initiated pursuant to Article 8 WIB have an effective remedy and legal protection is thus adequately guaranteed in the WIB. I see no reason to distinguish between intelligence requests originating from another EU member state or from a third country. I consider such a distinction neither justified nor desirable. For both the information holder, the taxpayer and the third non-information holder, the way to the civil court is open. The taxpayer also has an effective remedy in the state to which the information has been provided if that state imposes a tax assessment on him. In proceedings against that assessment, the taxpayer can challenge the lawfulness of the exchange of information.<sup>48</sup> In the specific case in which a taxpayer is notified that he does not meet the requirements for being a taxpayer in the Netherlands, as a result of which he is required to provide certain data and information, he does have recourse to the Dutch administrative courts. This is what the ABRvS has ruled and is therefore applicable law. The lawfulness of an information order can also be called into question in the context of an objection and appeal against a fine imposed for failure to comply with that order. Finally, an information holder who is of the opinion that an information order has been unlawfully imposed in the context of an investigation as referred to in Article 8, paragraph 1 of the ITC may, under circumstances, request reimbursement of costs directly related to such compliance. The inspector shall decide on that request by order open to objection, giving the information holder a legal remedy before the administrative court.

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<sup>46</sup> Article 19, first paragraph, TEU. See also Article 47, first paragraph, Charter of Fundamental Rights of the European Union.

<sup>47</sup> CJEU Oct. 6, 2020, C-245/19 and C-246/19, paras. 81-82.

<sup>48</sup> CJEU Oct. 6, 2020, C-245/19 and C-246/19, paras. 81-82.

## **OPTR - 2023 Questionnaire 2 - question 80**

The Dutch Tax and Customs Administration has 26 knowledge groups, each of which deals with legal issues and other complex questions in its own policy area. Since March 30, 2023, the Tax Administration has been publishing the so-called knowledge group positions. The publication will make it clear what the Tax and Customs Administration thinks about the tax issues submitted to the knowledge groups. The published positions are policy and therefore can be justifiably relied upon.